

REPRESENTATION IN STATE LEGISLATURES.

IV.

THE WESTERN STATES.

There are certain American institutional tendencies which can be seen nowhere else so clearly as in the western states. Many considerations make them an interesting field for the study of political development. In the first place, these communities are all young, and youth is often the period of most eager experimenting in matters political. The admission of California, the oldest of these states, marks the middle point of the century ; Oregon was admitted on the eve of the Civil War, and Nevada towards its close, while Colorado followed in 1876. The other seven came into the Union in a single period of seven years, beginning in 1889. The conditions of state growth have here been unique. It is true that they have been developed by incomers from the eastern states, and that none of them has so large a proportion of foreign-born inhabitants as have several of the north central states ; nevertheless this movement has had its unique features. It has been no gradual infiltration of farmers, like that which prepared the northwest territory for statehood ; not the prairie schooner but the continental express has brought the eager settlers to the land whose varied resources awaited their developing, and Congress has spoken these communities into states as soon as party expediency seemed to demand it. In framing and in working political institutions, be it for good or ill, the conservative influences have here had least effectiveness, and innovations are introduced with indifference which in other states could be brought about only after prolonged and vigorous agitation.

[243]



But it is these very states, where the positive influences in the direction of radicalism are so strong and where the restraints of habit and tradition are so little felt,—it is these very states which are gaining rapidly in influence upon the rest of the country. In area they comprise one-third of the United States, and in no other section is the present rate of increase of population so great. In any attempt to forecast the development of American political institutions, therefore, the practice and tendencies observable in the western states can not be neglected.

I.

Who are represented? or rather, who may vote in the choice of legislators?

Of this freedom from the restraints of tradition and of this readiness for innovation in matters of government few more striking illustrations could be cited than are afforded by the suffrage legislation of the western states. In the south effective agitation in favor of woman's suffrage is practically unknown. In the eastern and central states the woman's suffragist must be of highly sanguine temperament who can detect signs of advance; vigorous agitation may secure from an indulgent legislature the submission to the people of a constitutional amendment, but it meets with overwhelming defeat at the polls; indeed, in some states in recent years the anti-suffragists among the women themselves have put forward such a vigorous opposition to the extension of the suffrage that the empty honor of a favorable report from a legislative committee has been refused.

But the western states present a very different aspect. With but rare exceptions their constitutions recognize the extension of the suffrage to women as a change possible if not probable in the near future. In Wyoming and in Utah equal suffrage was decreed by the original constitutions. In

[244]

Colorado and in Idaho it has come more recently by amendment. In both Colorado and South Dakota the constitution required the submission of this question to the voters at the first general election. While four of these states have thus adopted equal suffrage,—the only states in the Union which have done so,—in four others the question has been referred to the voters at the polls during the past five years ; in each case it was negatived by so narrow a majority as to make it not at all improbable that a few more years of agitation may reverse the decision.¹ In Washington, while it was still a territory, women voted for several years, before the law authorizing it was declared void by the court, upon a technicality.² In Montana, where there has been no very recent referendum upon the subject, not only may women vote on school matters, but those who pay taxes may vote on any question which is submitted for the decision of the taxpayers. With the single exception of Nevada, therefore, the western states have shown themselves susceptible beyond all precedent to the urgings of women aspirants for the ballot.

In other directions, however, the suffrage has been restricted. More distinctly than in any other section is race openly made the ground for refusing men the voter's privilege. This is in large part merely a matter of geography. Thus, California and Nevada exclude all natives of China; Idaho's disqualification applies to "Chinese, or persons of Mongolian descent, not born in the United States," while

¹ California, 1896—For, 100,355; against, 137,099. South Dakota, 1898—For, 19,698; against, 22,983. Washington, 1898—For 20,658; against 30,540. Oregon, 1900—For, 26,265; against, 28,402. In each case, as is invariably true in referenda, the vote on this question was much lighter than in the election of state officers. Thus, in Oregon, last June, the vote on the general ticket was something over 80,000, while less than 55,000 voted upon the amendment. By nearly a third of the voters the matter was looked upon with indifference. It was the vote of Multnomah County, in which Portland is located, that turned the scale.

² In 1883 the territorial legislature passed "An Act to Amend Sec. 3050, Ch. 238 of the Code of Washington Territory," which authorized women to vote. In 1887 the Supreme Court of the territory declared this law void because its object was not declared in its title as the Organic Law of the territory required.—Harland v. Terr. of Wash., Wash. Terr. Reports, III, p. 131.

the voters of Oregon, so late as June, 1900, chose still to retain in their constitution a clause declaring: "No negro, Chinaman or mulatto shall have the right of suffrage."¹ Of course so much of this clause as refers to persons born in the United States and subject to its jurisdiction, and to negroes and mulattoes is rendered obsolete and void by the Fifteenth Amendment; the disqualification of alien Chinese, on the other hand, escapes that fate, since under the present construction of our naturalization law a Chinaman may not become a citizen since he is not "white" in the meaning of the statute.

Three states specifically exclude from the suffrage Indians who have not renounced the tribal relation, North Dakota insisting that this must have been accomplished two years before the applicant may vote.²

A further instance of the westerners' openness to new ideas is the favor which has been shown to educational qualifications for the suffrage. Wyoming began her career as a state with a constitutional limitation of the suffrage to those who could read the constitution.³ California requires that voters be able to read the constitution and write their names, and in 1896 Washington adopted an amendment disqualifying future applicants for the suffrage who should not be able to speak and read the English language;⁴ as yet, however, the legislature has passed no law prescribing a method by which this ability may be determined, so that the amendment is not in force. The Colorado constitution authorizes the

¹ Another race discrimination which has been nullified by the Fifteenth Amendment, but which Oregon still retains, is the clause which declares that "no free negro or mulatto, not residing in Oregon at the time of the adoption of the constitution, shall come to reside or be within the state," and prescribing for their deportation, and for the punishment of persons who shall bring them into the state, or employ or harbor them. The amendment proposing the repeal of this clause was defeated June 4, 1900, by a vote of 19,074 to 19,999.

² Washington, Idaho and North Dakota.

³ In *Rasmussen v. Baker*, 50 "Pacific Reporter," p. 819, it was decided that the constitution must be read in English, not in a translation. Later decisions have reaffirmed that contention. *Blydenburgh v. Chatterton*, and *Irons v. Clark*. Supreme Court of Wyoming, November 15, 1897.

⁴ Vote: For, 28,019; against, 11,983.

general assembly to prescribe an educational qualification, stipulating, however, that no qualified voter shall be thereby deprived of the right to vote,—a restriction which, in southern states, would rob this test of much of its charm. But the most radical suffrage legislation as yet seriously put forward by any state is the amendment which has received the sanction of the North Dakota voters, during the past year. It provides not only that “the legislature shall by law establish an educational test as a qualification,” but also that it “may prescribe penalties for failing, neglecting or refusing to vote at any general election.”

The other suffrage regulations are more of the conventional type. Seven¹ of the states grant the ballot only to citizens of the United States, and three specify that naturalization shall have been completed at least ninety days before the election.² Of the states which accept the aliens' declaration of intention as sufficient, two insist that this shall have been made a year before he may vote.³ Six of the states,⁴—all but one of them of very recent admission,—require that the voter shall have been resident within the state one year prior to the election; the others shorten the preliminary residence to six months. In the county the period varies from one to six months, and in the town or voting precinct from ten to ninety days. The Oregon constitution contains a unique provision which allows qualified electors to vote in any county of the state for state officers. In none of the states is the payment of a poll tax made a prerequisite, although its requirement is authorized by the constitution of Nevada. In all of the states but one registration in some form is provided for, and in four at least it is made a prerequisite to voting.⁵

¹ California, Nevada, Montana, Washington, Idaho, Wyoming and Utah.

² California, Montana and Utah.

³ Oregon and North Dakota. In the latter the declaration must not have been made more than six years earlier.

⁴ California, North Dakota, Montana, Washington, Wyoming and Utah.

⁵ Montana, Washington, Wyoming and Utah.

The disqualifications specified in these western constitutions are of the type prevalent throughout the Union. The most common disqualification is that of persons convicted of certain crimes. It will be observed that this does not exclude men who are awaiting trial. Instances are cited where sheriffs have escorted persons of their own political party from the jail to the polls and back. Mr. Henry A. Fanwell, of Worcester, Mass., tells of this having occurred in both Illinois and Ohio. He was well acquainted with both of the sheriffs. One was a Democrat, the other a Republican. In each case the prisoner was charged with larceny. Only California and Nevada have singled out duelists and their abettors for especial disfranchisement. The Utah constitution, while declaring that the clause: "Polygamous or plural marriages are forever prohibited," shall be irrevocable without the consent of the United States and of the people of Utah, makes no reference to polygamy in its suffrage clauses. The constitution of Idaho, on the other hand, in most explicit terms disqualifies any person who is "a bigamist or polygamist, or is living in what is known as a patriarchal, plural or celestial marriage," or who "in any manner teaches, advises, counsels, aids or encourages any person" to enter upon such practices, or who "is a member, or contributes to the support of any order, organization, association, corporation or society," which gives countenance to them. It may not be without significance that, although this portion of the constitution was re-enacted *verbatim* by the legislature as a part of the election law of 1893, the succeeding legislature amended the law by striking out all the clauses which related to polygamy.

II.

What is the basis of representation?

In a group of states the great majority of whose constitutions have been formed within the past dozen years, it is a

[248]

matter of course that the local system of representation has been determined not by a century of development of historic communities which were at last merged in the state, but by present day notions of what is expedient.

One of the most striking contrasts which the western legislatures present is in the smallness of their numbers. The notion that in the multitude of legislators there is safety seems to have found less acceptance in these our newest states than elsewhere. In the senates of 1899 the average membership was 28, the range being from 15 to 40. In the lower houses the average was only 60; Nevada had the smallest, 30; while California heads the list with 80. That these constitutions are made to order and are not the product of slow-growing custom is shown again by the devices for keeping the numbers within what are deemed reasonable limits. To only one of the twenty-two legislative bodies, the Montana senate, does the constitution give the local communities a representative irrespective of population, and here it seems to be a matter of temporary expediency rather than of theoretical necessity. In two states the limit takes the form of a maximum upon the aggregate membership of the two houses together,¹ In four a limited range of increase is allowed to each house, North Dakota being most sanguine of future growth.² Two states enjoin that the proportions existing between the two houses in the apportionment made by the constitution shall be preserved in the future,³ while four constitutions answer the question as to the normal ratio more directly by decreeing that the house shall never have less than twice nor more than three times the members of the senate.⁴

¹ Nevada, limit seventy-five; present aggregate, forty-five; Colorado, limit 100, already reached.

² North Dakota, Senate, 30-50, now 31; House, 60-140, now 62.
 South Dakota, " 25-45, " 45; " 75-135, " 87.
 Idaho, " 18-24, " 21; " 36-60, " 49.
 Oregon, " 16-30, " 30; " 34-60, " 60.

³ Colorado and Oregon.

⁴ Nevada, 15-30; Washington, 34-78; Wyoming, 19-38; Utah, 18-45.

It is surprising that the oldest of these states, California, should be the very one to adopt the most artificial system of apportionment, electing members of both senate and house from districts containing as nearly as possible equal blocks of population, excluding the Chinese, while the other states, many of which have been "checker-boarded off" into counties according to the lines of the government survey, nevertheless show not a little regard for county individuality in representation. Thus, under the present law in Montana and in Idaho each county, whatever its population, is accorded one and only one senator. In three of the states senators are apportioned to the several counties according to population.¹ Three distribute the requisite number of senators according to population among districts regardless of county lines,² while three assign one to each district.³

In the lower house four states make the county the basis of representative apportionment; two—Wyoming and Utah—guaranteeing a minimum of one to each county.⁴ California alone attempts to divide the state into equal districts, each electing a single representative. All the other states of the group make use of districts which take some account

¹ Oregon.—Twenty-five counties elect thirty. There is much overlapping; thus, Multnomah County appears in three; it elects five by itself and is in two other counties which each elect a senator, jointly.

Nevada.—Thirteen counties elect one each, and one elects two.

Wyoming.—Eight counties elect one each; four elect two, and one elects three.

²South Dakota, forty-five senators are elected from forty-one districts; thirty-seven elect one each; four elect two; ten of the forty-one districts combine from two to seven counties; the others are single counties.

Colorado.—Twenty-five districts elect one each; two elect two; one elects six.

Utah.—Seven composite districts elect one each. The other districts are single counties. Two elect one each; two elect two each, and one elects five.

³ California, North Dakota, Washington.

⁴ Nevada.—Five counties elect one each; four two; two, three; three, four.

Idaho.—Four counties elect one each; ten, two; four, three; two, four, and one, five.

Montana.—Here the constitution speaks in terms of districts, but the last apportionment seems to have been made by counties, as follows: Six counties elect one each; nine, two; four, three; one, four; one, five; one, six; one, seven, and one, twelve.

Wyoming.—Three counties elect one each; three, two; three, three, two, four; one, five, and one, seven.

of county boundaries.¹ North Dakota introduces the only variation of interest; the state having been divided into nearly equal senatorial districts, these same districts are made to serve for the apportionment of representatives.²

III.

How are the legislatures elected?

Evidence of these constitutions, having been formed upon a common model may be found in many points connected with the election of representatives. In every state the term of members of the lower house is two years; in all except Idaho and South Dakota, the senate is chosen for a term of four years, one-half of the senators going out of office every two years; in these two states alone is the renewal of the senate total at each election. The regular sessions of all the legislatures are biennial, and they all place sharp limits upon the session's length, eight making the limit absolute, while California, Oregon and Idaho fix a day beyond which the compensation shall cease. The limit is sixty days, except in Colorado, where it is ninety, and in Oregon and Wyoming, where it is forty.³

In election methods variety is precluded by the prevalence of the one-member districts. In five of the states there are

¹ Colorado.—Forty-five districts elect sixty-five representatives; thirty-six elect one each; three, two; two, three; one, four, and one, thirteen. Twenty-eight of the districts are single counties, several of which are combined with others in the election of joint representatives.

South Dakota.—Forty-eight districts—forty-five of which are single counties—elect eighty-seven representatives; twenty-three elect one each; fifteen, two; seven, three; two, four, and one, five.

Washington.—Twenty-two elect one each; twenty-five, two; two, three.

Utah.—Twenty-two elect one each; one, two; one, three; two, four; one, ten.

Oregon.—Fifteen elect one each; five, two; six, three; one, five; one, twelve.

² The same device is employed in Illinois, but, while in Illinois each of the districts elect three representatives, in North Dakota the number varies; six districts elect one each; twenty, two; four, three; one, four. If these diversities represent an effort to correct in the apportionment of members of one chamber the inequalities of the other, it suggests a curious provision of the Tennessee constitution of like import. Art. II, Sec. 6.

³ Oregon and Nevada limit special session to twenty days; Utah to thirty.

no others for the choice of senators;¹ in the others plural constituencies are very rare, and the constitutions show no evidence of an attempt to secure representation of minorities. In the lower houses almost exactly one-third of all the members are chosen from single constituencies, nearly as many more by pairs, and a very considerable number by threes. Most of the states contain one or two larger constituencies, brought about by the prohibition of the dividing of a county or of a city in the formation of representative districts. Thus Washington has one ten-member district; Oregon and Montana each have a district which elects twelve members, and Colorado one of thirteen. All of these are states of many parties whose factional rivalries have brought representatives of diverse views to the legislature.

Throughout the western states the legislators are paid by the day. The rate varies from three dollars in Oregon to eight in California and Nevada; the most common wage is five dollars. All of the states pay a mileage; Montana is the most lavish, paying twenty cents "for each mile necessarily traveled in going to and returning from the seat of government." Four pay fifteen cents and five ten. In South Dakota, by a special referendum, in 1892 the original mileage of ten cents was cut down to five.² While several states in the Union have found it necessary to prohibit the use of passes by members of the legislature, Idaho strikes a unique compromise by requiring that the number of miles actually traveled by each member upon a free pass shall be deducted in computing his mileage. The payment of other perquisites is generally prohibited, yet provision is made for the furnishing of stationery, etc., it being provided that such supplies

¹ At least 83 per cent of all the senators in these eleven states are from single-member constituencies; whenever a delegation contains members of several parties, it simply indicates their closely balanced strength.

² The constitutional amendment by which the mileage in South Dakota was reduced from ten cents to five was ratified by a vote of 39,364 to 11,236, indicating a widespread opinion that the mileage paid in most states of the Union, in South Dakota, at least, is extravagant.

shall be bought by some state official of the lowest responsible bidder. Idaho allows each member five dollars for "stamps, wrappers and newspapers;" for similar expenditures Nevada sets the limit at twenty dollars, and California at twenty-five. Oregon makes up-to-date provision for furnishing any member of either house in due order with the services of a committee clerk or stenographer for one hour daily, provided such an official is disengaged.¹

IV.

Who are the legislators?

For the answer to this question the constitutions must first be searched, since they establish certain general qualifications. In these a considerable degree of uniformity is to be observed. Thus, all the states but two, California and South Dakota, require that their legislators shall have completed their citizenship in the United States. Several states content themselves with requiring that the members shall possess merely the electors' qualifications as to residence prior to the election, but the majority now require a year's residence in the county or election district. The oldest and

¹ Compensation of Legislators:—

	Per diem, \$8 00	Mileage, 10c.
California	" 3 00	" 15c.
Oregon	" 8 00	" 15c.
Nevada	" 7 00	" 15c.
Colorado	" 5 00	" 10c.
North Dakota	" 5 00	" 5c.
South Dakota	" 6 00	" 20c.
Montana	" 5 00	" 10c.
Washington	" 5 00	" 10c.
Idaho	" 5 00	" 10c.
Wyoming	" 4 00	" 10c.
Utah	" 4 00	" 10c.
Arizona	" 5 00	
New Mexico	" 4 00	
Oklahoma	" 4 00	

the youngest of these states, California and Utah, agree in requiring the longest preliminary residence within the state,—three years. Five states make no special requirement as to the age of members; three, on the other hand, call for added years from their senators,¹ while the other three allow no one to be eligible to membership in either house who has not reached the age of twenty-five.²

There is practical unanimity throughout this group in excluding from membership in the legislature men holding offices of profit under the state or national government, and also in making it impossible for members to retain their seats after accepting any office which has been created or the emoluments of which have been increased during their term of service; California and Oregon distinctly exempt, however, the acceptance of such offices as may be filled by election by the people, on the principle, apparently, that if the voters are satisfied no one else has cause to complain.³ The specific disqualification of duelists and of their abettors, so frequent in southern constitutions, is to be found only in those of the oldest three states of this group.

If laws were self-operative underhanded legislation would be almost impossible in the western states, for nowhere else have possible legislative iniquities been more explicitly set forth and condemned. Lobbying, bribery and solicitation to bribery are defined in most comprehensive terms; in addition to the ordinary penalties, the legislator convicted of such practices is expelled from his seat and made forever ineligible to membership in the legislature, and in some states disqualified from holding any office of public trust. Such are the provisions to be found in almost identical terms in the constitutions of five of the states; Colorado weakly

¹ North Dakota and Wyoming, 25; Montana, 24.

² Colorado, South Dakota and Utah.

³ The several states draw the line differently as to minor offices, which shall not render a man ineligible. *E. g.*, Nevada excludes postmasters with a salary of over \$500. In South Dakota and Washington, \$300 marks the limit. In Utah none above the fourth class are eligible.

confines the ineligibility to membership in the particular legislature in connection with which the offence was committed. In the attempt to ferret out the misdoings of legislators California, South Dakota, Montana and Wyoming have gone so far as to insert in their constitutions a clause providing that in the prosecution of charges of bribery, or corrupt solicitation, any person may be compelled to testify, "and shall not be permitted to withhold his testimony upon the ground that it may criminate himself, or subject him to public infamy; but such testimony shall not afterward be used against him in any judicial proceedings, except for perjury in giving such testimony."¹ South Dakota and Wyoming incorporate in the members' oath of office a denial of participation in bribery or corruption, and a pledge to abstain from such offences. South Dakota also forbids any member during the term of his service or for a year thereafter to be interested directly or indirectly in any contract with the state or any county, authorized by any law passed during the term for which he was elected.

The western states take little pains to acquaint their legislators with one another's record. Only one legislative directory and one "album" have been available, which shed any light upon the personnel of the law-making bodies. Some other data have been furnished by the secretaries of the several states.

The age of Oregon members is unusually great, the average of the senators being 47.5, and of the representatives, 45.5. Only a fifteenth of the senators and a fifth of the representatives were natives of Oregon; two-thirds of the members of each house came from states east of the Mississippi.

The accompanying table presents the percentage of representation from different callings, in the only states where the data for such a comparison are obtainable:

¹ Constitution of California, Art. V, Sec. 35.

Occupations of Legislators.

STATE.	CHAMBER.	Farmers.	Miners.	Lawyers.	Merchants.	Manufacturers.
Oregon	Senate	10.	3.4	31.	31.	0.
	House	33.3	1.7	21.	10.5	3.5
South Dakota . . .	Senate	28.8	2.2	22.2	31.1	0.
	House	63.2	2.3	4.6	11.5	1.2
Idaho	Senate	41.2	11.7	29.4	5.9	0.
	House	26.3	30.3	15.1	6.0	0.

Percentages based on total number reported.

The most striking points are the slight representation of manufacturing interests, as compared with the eastern states, and the relatively large representation of the agricultural interests, particularly in the South Dakota house, where partiality for farmers seems to be offset by distrust of lawyers.

The Nevada secretary of state reports that 73.3 per cent of the senators and 43.3 per cent of the representatives had had previous legislative experience. In the Colorado, Montana and Wyoming senates experienced legislators constituted 82.8, 58.3 and 68.4 per cent respectively; members of the lower houses naturally have seen fewer years of service, the percentage of experienced members ranging from 14.3 in Montana to 43.3 in Nevada.

Of the four states which admit women to the suffrage, three at least have gallantly elected them to the legislature. The Utah senate and house each have one woman member. In the Colorado house is one woman doctor and two married women. In the Idaho house the two whose Christian names are given without a prefix are listed as Republicans and "housekeepers," while the third, a Mrs. W., is classed as a Populist, Democrat, Silver-Republican "office-holder."

V.

To what extent does each state's system of representation make the political complexion of the legislature vary from that of the body of the voters ?

Under the simplest and most conservative political conditions, any adequate answer to this question is well-nigh impossible.¹ But in the western states these difficulties are vastly increased by the perplexing fusion of party organizations. The cynic might suggest that the politicians of these states have not yet learned that in the long run office-winning campaigns are more successfully carried on by massed and disciplined forces than by guerilla bands. The idealist, on the other hand, would fain see in the dissolving views presented by western politics the attempt of public-spirited men to give effect to their political principles, without suffering their independence of thought and of action to be put entirely at the mercy of self-seeking politicians. Be that as it may, the accompanying table, while showing the unprecedented flux of state politics, at the same time throws some light upon the degree of variation which the system of representation, worked out by each state, has introduced into its law-making body, as compared with the electorate. In each instance the attempt has been to compare the proportion of the aggregate vote for governor cast by each party, with the representation which that party, at the same election, secured in each house of the legislature.

¹ In the ANNALS for March, 1900, p. 82, the writer has discussed these difficulties at length, and also the qualifications with which the results of such a comparison are to be accepted.

Party Votes Compared with Party Representation.

STATE.	PARTY.	Percent- age of Vote for Governor.	Party Represent- ation in Senate.	Party Represent- ation in House.
California . . .	Republican	51.7	65.0	73.8
	Democrat	¹ 45.0	35.0	25.0
	Socialist Labor	1.8	. . . . .	² 1.2
	Prohibition	1.5		
Oregon	Republican	53.2	80.0	70.0
	Democrat	¹ 40.7	10.0	10.0
	People's	3.4	10.0	5.0
	Prohibition	2.7		
	Silver Republican . . .	. . . . .	. . . . .	6.7
	Union . . . . .	. . . . .	. . . . .	6.7
	Fusion . . . . .	. . . . .	. . . . .	1.6
Nevada	Republican	35.5	26.7	33.3
	Democrat	20.6	6.6	
	Silver	35.7	60.0	56.7
	People's	8.3	² 6.6	² 10.0
Colorado	Republican	35.2	14.3	7.7
	Democrat	¹ 62.1	27.7	33.8
	Prohibition	2.6	. . . . .	0.0
	Populist . . . . .	. . . . .	28.4	29.2
	Teller Silver Rep. . .	. . . . .	31.4	29.2
North Dakota .	Republican	58.3	71.0	88.7
	Fusion	41.7	29.0	11.3
South Dakota .	Republican	49.2	62.2	67.8
	Fusion	49.6	37.8	32.2
	Prohibition	1.2		
Montana	Republican	² 29.1	25.0	12.9
	Fusion	³ 70.9		
	Democrat . . . . .	. . . . .	70.8	81.4
	Populist . . . . .	. . . . .	4.1	⁴ 5.7
Washington . .				
Idaho	Republican	34.7	42.9	24.5
	Fusion	48.8	23.3	34.6
	People's	13.5	9.5	12.2
	Prohibition	2.9		
	Democrat . . . . .	. . . . .	14.3	28.6

Party Votes—Continued.

STATE.	PARTY.	Percent- age of Vote for Governor.	Party Repre- sentation in Senate.	Party Repre- sentation in House.
Wyoming . . .	Republican	55.3	63.1	92.1
	Democrat	42.2	36.9	7.9
	Populist	2.6		
Utah	Republican	⁵ 44.8	11.1	31.1
	Democrat	⁵ 52.9	77.7	60.0
	Populist	⁵ 2.3	¹ 11.1	18.9
New Mexico .	Republican	52.9	83.3	91.7
	Democrat	47.1	16.7	8.3
Arizona	Republican . . . . .	. . . . .	25.0	45.8
	Democrat . . . . .	. . . . .	75.0	54.2
Oklahoma . . .	Republican	58.2	61.5	65.4
	Fusion	39.1		
	Populist	2.6	7.7	19.2
	Democrat . . . . .	. . . . .	30.8	15.4

¹ Fusion.² Independent.³ Vote for Governor in 1896. No election of state officers in 1898.⁴ Silver Republican.⁵ Vote for Judge of Supreme Court.

VI.

To what extent is the representative system elastic?

Free from the trammels of tradition, which often upholds the pretensions of rotten boroughs,⁶ and proud of the phenomenal growth of their cities, the western states have as yet shown no desire to curb the proportionate influence of urban populations.⁷ If restraint does press upon them, it comes indirectly through the guaranteeing of the same representation to all counties, whatever their population, as in

⁶ As in Vermont, and, above all, in Connecticut.⁷ As in Rhode Island and New York.

the Montana senate, or through the allotting of at least one member to a county, however small its population.¹ Regard for county individuality leads often to prohibiting the division of a county in forming districts, and also to the prohibiting of the attachment of a part of one county to another for purposes of representation.²

But in the attempt to secure equality of representation the chief reliance is placed upon frequent revision and adjustment of the apportionment; indeed, more radical use is made of this device than in any other section. California is the only state which confines itself to the federal census as the basis for its apportionment of members. Eight of the states provide in their constitutions for the taking of a state census midway between those of the national government; six of them direct the legislature to revise the apportionment at the first session after each census, *i. e.*, every five years. South Dakota insists that the reapportionment shall be made at no other time; North Dakota, on the other hand, provides that this may be done at any regular session, while Colorado, Montana and Wyoming authorize the legislature to alter senatorial and representative districts "from time to time, as public convenience may require." Most radical of all, the Idaho constitution omits all reference to any census enumeration, state or federal, as a basis for the apportionment, and, merely fixing the maximum membership of each house, commits the whole matter to the hands of the legislature.

VII.

Representation in the territories.

Representation in the organized territories claims a moment's attention because, in the first place, these commu-

¹ Idaho, house; Wyoming, senate and house; Utah, house. This is of little effect, however, as in Idaho alone of these states is a rigid maximum fixed by the constitution.

² In California, Oregon, Colorado, Montana, Washington, Idaho, Wyoming and Utah; unless the county is entitled to two or more senators

nities are undergoing their apprenticeship for statehood, an apprenticeship which—if the platforms of the two great parties in the present election are to be believed—is soon to end. In the second place, representation in these territories is of interest because it is not of native growth, but embodies the collective wisdom of Congress upon the subject.

In the two older territories the suffrage is confined to citizens of the United States; in Oklahoma it is left within the discretion of the local legislature, subject to the limitations of the federal constitution, and to the further requirement that an alien must not simply have declared his intention to become a citizen, but must also have taken an oath to support the Constitution of the United States. In Arizona registration and the payment of a poll-tax are prerequisites to voting. The New Mexico voter is allowed to vote in a precinct other than that of his residence on taking oath that he has not voted and will not vote elsewhere in this election. Half a dozen crimes are mentioned which disqualify the voter both for the suffrage and for office-holding; petty larceny is included only if twice committed. The Pueblo Indians are excluded except “in the elections for overseers of ditches to which they belong.”

For these states-in-the-making Congress has adopted a ratio of two to one between the upper and the lower chambers, and legislative membership has been fixed at a very low figure. In New Mexico and Arizona the council has twelve members; in Oklahoma, thirteen. Uniformity appears in several other particulars. Both chambers in each of the territories are chosen for a term of two years; their sessions are biennial and are limited to sixty days. The members receive four dollars a day except in New Mexico, where the wage is five dollars. Federal law imposes upon the territories what custom and law, without too great warrant in reason, have made practically universal throughout the states—the lawmakers must be actual residents of their constituencies. The members of the council must come

from single-member districts. As Arizona has but eleven counties, it is provided that the various counties shall jointly elect one member.¹

But little information is available in regard to the personnel of these legislatures. It is not surprising that comparatively few of the members have had previous legislative experience ; in the Oklahoma legislature about one-third of the councilmen and one-fifth of the representatives had seen previous service, most of them outside of that territory.² It is interesting to notice that while the list of members of the Oklahoma legislature of 1899 does not include a single Spanish or Indian name, the list of New Mexico legislators is as un-American as the roll of members of the Spanish Cortes. Another novelty is the provision in the fundamental law of New Mexico that such bills and orders as the legislature shall determine shall be printed in the Spanish language. Mixed nationalities are also evidenced by the presence of an interpreter, a translator and an assistant translator as regular officers of each house of this legislature.

VIII.

Upon taking his seat as a member of the Academy a few months ago, M. Deschanel, then president of the chamber of deputies, delivered a notable address upon "Democracy." In speaking of the progress achieved by the United States, he said: "Not a day passes among this practical, innovating people but some state makes a new experiment in political science."

In their systems of representation, however, the Americans have certainly shown themselves rather practical than

¹ In the house representation is by counties. Four elect one each ; three, two ; two, three ; two, four.

² In New Mexico five of the Councillors and seven of the Representatives had served a previous term in the Legislature.

innovating; their experiments have been rather in the way of adaptation than of invention. Indeed, a survey of the representative systems throughout the Union leaves an impression of general conformity to a common type quite overshadowing minor variations. It is the lack of individuality that is striking. Everywhere the legislature is bicameral; the upper chamber is usually elected for a longer term, and renewed gradually. The relative numbers in the two chambers, however, vary greatly; in the newer states and in the territories one to two, or one to three, seems to have been fixed upon as the normal ratio, but in the older states, where local tradition holds theorizing in abeyance, it becomes one to ten, as in Connecticut, or even one to fifteen, as in New Hampshire.

In deference to the modern interpretation of the demands of equality, in the newer states, counties and towns give place to districts containing approximately equal blocks of population, as the basis of representation.

In personnel the influence of the basis chosen for representation is often clearly discernible; when the local community, as such, regardless of population, is accorded representation the proportion of farmers rises to an abnormal degree, as in New Hampshire and Connecticut. The characteristic industries of different sections naturally find reflection in the legislatures: thus, the manufacturers of the east give place to merchants and miners in the central and western states. Lawyers are everywhere a prominent element, though rarely in the majority.

In his more striking than convincing discussion of the "Causes of Anglo-Saxon Superiority," M. Demolins devotes a chapter to a comparison of the political personnel in France with that in England.—Book III., Ch. I. He lays great stress upon his demonstration that whereas the French chamber of deputies is "an inverted pyramid," its representatives of the rank and file of the people, of those engaged in agriculture, industry and commerce, being outweighed more than

three to one by members of the liberal professions,¹ officials, and men of no profession, in the English house of commons, on the other hand, the representative pyramid rests on a broad base of representatives from the callings in which the mass of the citizens, and not the privileged few, are engaged. It is not the present purpose to challenge the validity of this comparison, although at first glance the question might suggest itself, whether, for example, the members who are accredited to agriculture in the two countries really belong to the same social and economic class, and whether the large group under the title "No Profession" has not its counterpart in the English commons. It is of interest, however, to note that American state legislatures follow much more closely the English rather than the French type. The absence of officials in the lists of members of American legislatures is necessitated by stringent provisions of the constitutions. It is to be remembered, on the other hand, that both the house of commons and the chamber of deputies are *national* legislative bodies, in a system of government in which not the severance but the merging of the legislative and executive departments is the characteristic feature.

Comparative Personnel of Legislatures.

OCCUPATION.	France Ch. of D.	England H. of C.	Connecti- cut H. R.	Michigan H. R.	Louisiana H. R.	South Dakota H. R.
Office Holders	17.2	8.1	2.0		1.0	
Army and Navy	1.0	11.1				
Liberal Professions (Lawyers)	49.0 (25.2)	18.4	11.8 (8.9)	25.0 (19.)	27.6 (24.0)	5.7 (4.6)
Commerce	4.0	17.2	22.7	20.	28.6	17.2
Industry	7.4	22.5	20.0	13.	3.1	13.8
Agriculture	13.0	22.8	40.2	41.	36.7	63.2
No Profession	7.8		3.3	1.	1.0	

There can be no doubt that in the last quarter of a century state legislatures have fallen much in general esteem.

¹ Indeed, the lawyers alone exceed by three the aggregate number of deputies from agriculture, industry and commerce.

Critics, American not less than foreign, unite in attributing to them the worst faults of state governments. The people, like Frankenstein, have come to distrust and fear their own creature and servant. In many ways they seek to curb the legislature's power for evil, even if its power for good be checked at the same time. Sessions are limited; the competence of the legislature is sharply defined, both as to the subjects upon which it may make laws and the methods of legislative procedure; conventions are summoned, and the opportunity is seized to pack all sorts and conditions of laws into the constitution, that these they may be safe from the hands of the people's representatives; and, finally, earnest advocates are urging the adoption of direct legislation, frankly acknowledging that it would make of the legislature merely a consultative body with no serious responsibility upon any measure of moment.

The purpose of the present series of papers has been, not to assail or to defend any particular system of representation, but simply to analyze the actual systems in operation in the several states. Inadequate as this survey has been,—imperfect as it must be, from the very nature of the material,—it may, nevertheless, serve as the basis for directing attention anew to some of the familiar causes of the deterioration observable in many of our legislatures. Assuming for the moment that legislation through representatives, rather than by the voters in primary assembly, is desirable, the question becomes, why do we get such unworthy representatives? The old saying, that every people has the government that it deserves, might, with almost equal truth, be applied to our bodies of representatives. Whatever their defects, ultimate responsibility for their shabby work must rest upon the electors who have put them in office. If we flatter American pride by assuming that the vast majority of the electors are men of integrity and public spirit, where shall the responsibility for the miscarriage of the representative system be placed?

In the first place, it is evident that not a few of the evils in our present system arise out of an illogical assignment of functions to the state legislatures. It needs no argument to prove that the choice of United States senators is not at all a legislative act. DeTocqueville to the contrary, it may be doubted whether this indirect election has ever been a cause contributing materially to the excellence of the senate. But that it has been a source of disorganization and corruption to the electing body, the slightest familiarity with the last half decade's politics in New York, Pennsylvania, Ohio, Delaware, Oregon, California, and Montana,—not to extend the list unduly,—leaves no room to doubt. “There is no knife so sharp as legislation,” says Emerson. An amendment introducing the election of senators by the people might have consequences for the senate quite other than those ordinarily predicted; it may well be questioned whether the personnel of the senate would be improved by the change. Majorities can be as adroitly managed at the polls as in the legislature; it has been claimed that popular election would have given us Quay, and Clark, and perhaps Addicks, as members of the present senate. There is more ground for urging popular choice with a view to bettering the state legislatures. It would at least remove the blur from the voter's mind in the state election; he would no longer be called upon to vote for an official whose main business, ostensibly, would be to determine matters relating to education, business law, taxation, etc., but whose chief function would really be the choice of a dispenser of federal patronage. From the state legislator, also, the popular choice of senators would remove a frequent source of temptation to look upon state politics merely as a pawn in the larger game, if to do nothing more palpably discreditable.

The last few years have emphasized another evil, growing out of the apportionment of powers between Congress and the state legislatures, entirely unforeseen by the framers of the constitution. Power to regulate commerce between the

[266]

states is given to Congress; but the power to incorporate companies which shall do business, it may be on the other side of the continent, is left in the hands of the state legislatures. The evil consequences are too familiar to need enumeration. "Wheresoever the carcase is, there will the eagles be gathered together." With the opportunities for plunder what they are, what are the chances, as a mere problem in probabilities, that a New Jersey legislature, with its seat midway between New York and Philadelphia, will remain free from all taint of corruption throughout its session?¹

In voting for state legislators men usually follow the line of least resistance in accepting the nominations of their respective parties. Indeed, this becomes almost inevitable where the shadow of an approaching election of United States senator is to be seen. Yet the spheres of action of Congress and of the state legislature have comparatively little in common. Capacity for serving the commonwealth's varied needs should be the one thing sought. Greater freedom of nomination must be recovered, if legislatures are to be improved. It is but the empty husk of representation, where the candidate is the choice, not of the men who are to elect him, but of the "ring,"—where Platt or Croker names *his* representative, and whips us all into line to register his will under the lash of "loyalty to party."

Aside from these conditions associated with the federal system, there are others connected with the state constitutions and their administration, which conduce to unsatisfactory results in the legislative bodies. Two of these are among the unfortunate corollaries of a new and ill-considered notion of equality. In many states by specific constitutional requirement, and practically everywhere by custom, it is insisted that a legislator must be a resident of the constituency which he represents. Congress has sanctioned this requirement by making it law for each of the territories. It

¹ Much stress is laid upon this point by Mr. Ellwood Pomeroy, Secretary of the Direct Legislation League of New Jersey.

would be easy to prove that this sentiment is "un-American," in the sense that in the earliest colonial legislatures this insistence upon residence within the district did not obtain.¹ It is not less easy of proof that despite the member's more minute knowledge of his district's needs, representation is degraded by this restriction. It leads the member to regard the local, the petty, as outweighing the general interest; is it not to his own district that he standeth or falleth?² It narrows the field of choice, if indeed it does not at times foreordain that the member must be of little fitness, moral or intellectual, for legislative work. It discourages men of merit from consenting to become candidates, and checks many a career which has opened with promise of great advantage to the public.

The second unfortunate corollary of the growing American notion of equality is the insistence upon narrowing the constituency. The vast majority of the members of American legislatures are elected from single-member districts. The results are most odious in those states where no regard is paid to population, as in the Connecticut house and Rhode Island senate, where the influence of large and flourishing cities, teeming with the characteristic industries of the state, is balanced by that of an equal number of rapidly dwindling country towns. When coupled with the insistence upon residence within the district, this narrowing of the constituency puts absurd restraint upon the range of choice of material for the legislatures. Even if one be a firm believer in the impracticability of proportional representation,

¹ During the first sixty years of representative government in the Massachusetts Bay Colony it was quite the custom for distant towns to choose, as their deputies, gentlemen living nearer the centre of the government. Residence within the constituency was first required in 1694.—"Representation and Suffrage in Massachusetts," 1620-1690, p. 24.—George H. Haynes.

² "If by a fair, by an indulgent, by a gentlemanly behaviour to our representatives, we do not give confidence to their minds, and a liberal scope to their understandings; if we do not permit our members to act upon a *very* enlarged view of things; we shall at length infallibly degrade our national representation into a confused and scuffling bustle of local agency."—Burke, Speech at Bristol previous to the Election. "Works," ii, p. 130.

he cannot fail to recognize grave elements of injustice and of impolicy in the single-member system. It is unjust that large minorities—made minorities, very likely, only by a skillful gerrymander—should be allowed no voice in the discussion of the affairs of the state within the legislature. Yet Illinois is the only state which takes any notice of this injustice. A single illustration will suffice. In two adjoining states the results of the election in 1898 were as follows:

STATE.	PARTY.	Percent- age of vote for Governor.	Percent- age of members, Senate.	Percent- age of members, House.
Illinois	Republican	51.1	66.6	52.9
	Democrat	46.2	31.4	46.4
	Prohibition	1.3	. . .	.7
	People's . . . . .	.9	2.	
	Socialist Labor . . . .	.5		
Wisconsin . .	Republican	52.6	93.9	81.
	Democrat	41.1	6.1	19.
	Prohibition	2.4		
	People's	2.6		
	Socialist Democrat . .	.8		
	Socialist Labor . . . .	.4		
	Scattering . . . . .	.1		

The contrast in party showing between the Illinois senate and house is itself instructive, since for the senate the single-member district is the unit. The closeness of correspondence between the party vote for state officers and party representation in the house is evidence that the leading minority party does here secure representation very nearly in proportion to its strength. In Wisconsin, on the other hand, the minority's showing is far from proportionate. If it be true, as Pym asserted, that "the best form of government is that which doth actuate and inspire every part and member of a state to the common good," it can hardly be contended that this single-member system, with its discouragement of all political effort on the part of nearly half of the electors,

will bear the test. Another element in the impolicy of the system is the instability to which it leads; for if the plurality be but small, the turning of only a few votes entirely reverses the influence of this constituency.

The discussion in the last few paragraphs has proceeded upon the assumption that representative government, or rather, legislation through representatives, is desirable. But is that assumption warranted? Already South Dakota has adopted both the initiative and the referendum; other states have taken preliminary steps in the same direction. There is no disputing the growth of sentiment in favor of direct legislation—a sentiment which took its rise in the fear and distrust generated by the scandalous work of many a legislature, but which now finds its chief support in a distorted theory of democracy. The attack is no longer merely upon bad representatives—it is upon representation itself.

Whether we deem representative government worth preserving will depend largely upon what we think a representative should be. If he is to be simply a mouthpiece, a transmitter, for declaring upon each question the opinion of his constituents, representation may well be regarded as of doubtful utility, if not of probable danger. But such was not Burke's conception of this office. To his Bristol constituents he boldly declared: "I did not obey your instructions: No. I conformed to the instructions of truth and nature and maintained your interest, against your opinions, with a constancy that became me. A representative worthy of you ought to be a person of stability. I am to look, indeed, to your opinions; but to such opinions as you and I *must* have five years hence. I was not to look to the flash of the day. I knew that you chose me, in my place, along with others, to be a pillar of the state, and not a weathercock on the top of the edifice, exalted for my levity and versatility, and of no use but to indicate the shiftings of every fashionable gale."¹

¹ Speech at Bristol previous to the Election, 1780.

That representation at its best possesses excellencies which direct legislation can never claim, may be seen by contrasting the solemn sense of responsibility, the patience of debate, the tireless search for and comparison of precedents, the forbearance where concession was necessary, which characterized the constitutional convention of 1787, with the windy harangues, the crude logic and the wild denunciations which greeted its masterly work in the town meeting and county court. That the ratification of the constitution would have been impossible, had it been left to the decision of the people instead of to that of their representatives, no student of history can deny.

In the success which has attended American government thus far no small element has lain in the fact that from the beginning the people have chosen to put checks upon their own action. Says Webster: "We are not to take the will of the people from public meetings, nor from tumultuous assemblies, by which the timid are terrified, the prudent are alarmed, and by which society is disturbed. These are not American modes of signifying the will of the people, and they never were. If anything in the country, not ascertained by a regular vote, by regular returns and by regular representation, has been established, it is an exception, and not the rule; it is an anomaly which, I believe, can scarcely be found."¹

If in recent years many representatives have proved unworthy, the vital questions are: Why did we elect men so weak or so vicious? have we surrounded them with temptations which are almost irresistible? The average voter wants good laws; but he is far better qualified to judge of the intelligence and integrity of a man than to decide intricate questions of economics and politics. The lack of representation greatly hampered the governments of Greece and of Rome; it was among our own Germanic forefathers that it took its rise. If the spirit and teaching of Burke and of

¹ Webster's "Works," vi, p. 225.

Webster are not entirely outworn, English-speaking men will not grudge their best efforts to make good their faith in representation before reverting to the crude law-making processes which it displaced centuries ago. It is futile to drift along with the lazy plea that it is too hard work to reform our state legislatures. Eternal vigilance will ever be the price of liberty. What the present problem demands is not the devising of new and more complicated machinery, but the courageous and persistent bringing to bear of the old-fashioned virtues of fair-dealing and honesty upon the choice and guidance of our representatives. If it be a hopeless task to find any means of enlisting these homely virtues in so simple a task as the choice of representatives, then is our faith in democracy vain.

GEORGE H. HAYNES.

Worcester Polytechnic Institute.