ments, and the putting of the matter to the vote of the people, there is copious discussion in the press and at public meetings, so that the citizens often go well prepared to the polls. An all-pervading press does the work which speeches did in the ancient republics, and the fact that constitutions and amendments so submitted are frequently rejected, shows that the people, whether they act wisely or not, do not at any rate surrender themselves blindly to the judgment of a convention, or obediently adopt the proposals of a legislature.

These merits are indeed not always claimable for conventions and their remodelled constitutions, much less for individual amendments. The Constitution of California of 1879 (whereof more in a later chapter) is a striking instance to the contrary; nor have the recent Conventions even of such old States as Mississippi and Kentucky shewn all the judgment that the problems before them required. But a general survey of this branch of our inquiry leads to the conclusion that the peoples of the several States, in the exercise of this their highest function, show little of that haste, that recklessness, that love of change for the sake of change, with which European theorists, both ancient and modern, have been wont to credit democracy; and that the method of direct legislation by the citizens, liable as it doubtless is to abuse, causes, in the present condition of the States, fewer evils than it prevents.

It would doubtless be better, if good legislatures were attainable, to leave the enactment of what are really mere statutes to the legislature, instead of putting them in a Constitution. But if good legislatures are unattainable, if it is impossible to raise the Senate and the House of each State above that low level at which (as we shall presently see) they now stand, then the system of direct popular action may be justified as a salutary effort of the forces which make for good government, opening for themselves a new channel.

CHAPTER XL

STATE GOVERNMENTS: THE LEGISLATURE

THE similarity of the frame of government in the forty-four republics which make up the United States, a similarity which appears the more remarkable when we remember that each of these republics is independent and self-determined as respects its frame of government, is due to the common source whence the governments flow. They are all copies, some immediate, some mediate, of ancient English institutions, viz. chartered self-governing corporations, which, under the influence of English habits, and with the precedent of the English parliamentary system before their eyes, developed into governments resembling that of England in the eighteenth century. Each of the thirteen colonies had up to 1776 been regulated by a charter from the British Crown, which, according to the best and oldest of all English traditions, allowed it the practical management of its own affairs. The charter contained a sort of skeleton constitution, which usage had clothed with nerves, muscles, and sinews, till it became a complete working system of free government. There was in each a governor, in two colonies chosen by the people,[1] in the rest nominated by the crown or the "proprietor"; there was a legislature; there were executive officers acting under the governor's commission and judges nominated by him; there were local self-governing communities. In none, however, did there exist what we call cabinet government, *i.e.* the rule of the legislature through a committee of its own members, coupled with the irresponsibility of the permanent nominal head of the executive. This separation of the execu-

[1] However, in Rhode Island the governor was chosen, not as now by the people at large, but by the Company assembled in general court, a body which passed into the legislature of the colony. See Charter of Rhode Island, 1663. In Connecticut the general court chose if the people failed to elect, or a sudden vacancy occurred.

tive from the legislature, which naturally arose from the fact that the governor was an officer directly responsible to another power than the colonial legislature, viz. the British Crown, his own master to whom he stood or fell,[1] distinguishes the old colonial governments of North America from those of the British colonies of the present day, in all of which cabinet government prevails.[2] The latter are copies of the present Constitution of England; the former resembled it as it existed in the seventeenth and beginning of the eighteenth century before cabinet government had grown up.

When the thirteen colonies became sovereign States at the Revolution, they preserved this frame of government, substituting a governor chosen by the State for one appointed by the Crown. As the new States admitted to the Union after 1789 successively formed their constitutions prior to their admission to the Union, each adopted the same scheme, its people imitating, as was natural, the older commonwealths whence they came, and whose working they understood and admired.[3] They were the more inclined to do so because they found in the older constitutions that sharp separation of the executive, legislative, and judicial powers which the political philosophy of those days taught them to regard as essential to a free government, and they all take this separation as their point of departure.

I have observed in an earlier chapter that the influence on the framers of the Federal Constitution of the examples of free government which they found in their several States, had been profound. We may sketch out a sort of genealogy of Governments as follows: —

First. The English incorporated Company, a self-governing body, with its governor, deputy-governor, and assistants chosen by the freemen of the company, and meeting in what is called the General Court or Assembly.

[1] Even in Connecticut and Rhode Island the governor, though chosen by the colony, was in a sense responsible to the Crown.

[2] Of course in the British self-governing colonies the governor is still responsible to the Crown, but this responsibility is confined within narrow limits by the responsibility of his ministers to the colonial legislature and by the wide powers of that legislature.

[3] Massachusetts worked for several years with a small council as the executive power representing the former Crown governor, but in 1780 she came back to the plan of a single governor, while retaining, as she still retains, a council surrounding him.

Next. The Colonial Government, which out of this Company evolves a governor or executive head and a legislature, consisting of representatives chosen by the citizens and meeting in one or two chambers.

Thirdly. The State Government, which is nothing but the colonial government developed and somewhat democratized, with a governor chosen originally by the legislature, now always by the people at large, and now in all cases with a legislature of two chambers. From the original thirteen States this form has spread over the Union and prevails in every State.

Lastly. The Federal Government, modelled after the State Governments, with its President chosen, through electors, by the people, its two-chambered legislature, its judges named by the President.[1]

Out of such small beginnings have great things grown.

It would be endless to describe the minor differences in the systems of the forty-four States. I will sketch the outlines only, which, as already observed, are in the main the same everywhere.

Every State has —

An executive elective head, the governor.

A number of other administrative officers.

A legislature of two houses.

A system of courts of justice.

Various subordinate local self-governing communities, counties, cities, townships, villages, school districts.

The governor and the other chief officials are not now chosen by the legislature, as was the case under most of the older State Constitutions, but by the people. They are as far as possible disjoined from the legislature. Neither the governor nor any other State official can sit in a State legislature.[2] He cannot lead it. It cannot, except of course by passing statutes, restrain him. There can therefore be no question of any gov-

[1] One might add another generation at the beginning of this genealogy by deriving the English corporate company from the Roman *collegia*, and a generation at the end by observing how much the constitution of modern Switzerland owes to that of the United States.

[2] In Rhode Island, however, the lieutenant-governor is a member of the Senate, the governor presiding, but with only a casting vote. When the governor is absent, the lieutenant-governor presides, and has a casting vote besides his own vote as senator.

ernment by ministers who link the executive to the legislature according to the system of the free countries of modern Europe and of the British colonies.

Of these several powers it is best to begin by describing the legislature, because it is by far the strongest and most prominent.

An American State legislature always consists of two houses, the smaller called the Senate, the larger usually called the House of Representatives, though in six States it is entitled "The Assembly," and in three "The House of Delegates." The origin of this very interesting feature is to be sought rather in history than in theory. It is due partly to the fact that in some colonies there had existed a small governor's council in addition to the popular representative body, partly to a natural disposition to imitate the mother country with its Lords and Commons, a disposition which manifested itself both in colonial days and when the revolting States were giving themselves new Constitutions, for up to 1776 some of the colonies had gone on with a legislature of one house only. Now, however, the need for two chambers is deemed an axiom of political science, being based on the belief that the innate tendency of an assembly to become hasty, tyrannical, and corrupt, needs to be checked by the co-existence of another house of equal authority. The Americans restrain their legislatures by dividing them, just as the Romans restrained their executive by substituting two consuls for one king. The only States that ever tried to do with a single house were Pennsylvania, Georgia, and Vermont, all of whom gave it up: the first after four years' experience, the second after twelve years, the last after fifty years.[1] It is with these trifling exceptions the *quod*

[1] Upon this subject of the division of the legislature, see Kent's *Commentaries*, i. 208–210; and Story's *Commentaries on the American Constitution*, §§ 548–570. It deserves to be remarked that the Pennsylvania Constitution of 1786, the Georgian Constitution of 1777, and the Vermont Constitutions of 1786 and 1793, all of which constituted one house of legislature only, provided for a second body called the Executive Council, which in Georgia had the duty of examining bills sent to it by the House of Assembly, and of remonstrating against any provisions they disapproved, and in Vermont was empowered to submit to the Assembly amendments to bills sent up to them by the latter, and in case the Assembly did not accept such amendments, to suspend the passing of the bill till the next session of the legislature. In 1789, Georgia abolished her Council, and divided her legislature into two houses; Pennsylvania did the same in 1790; Vermont in 1836. Both Pennsylvania and Vermont had also a body called the Council of Censors, who may be compared with the Nomothetæ of Athens, elected every seven years, and charged with the duty of examining the laws of the State and their execution, and of suggesting amendments. This body was abolished in Pennsylvania in 1790, but lasted on in Vermont till 1870. All these experiments well deserve the study of constitutional historians.

semper, quod ubique, quod ab omnibus of American constitutional doctrine.[1]

Both houses are chosen by popular vote, generally[2] in equal electoral districts, and by the same voters, although in a few States there are minor variations as to modes of choice.[3] Illinois by her Constitution of 1870, and Michigan by a statute of 1889, create a system of proportional representation by means of the cumulative vote; *i.e.* the elector may cast as many votes for any one candidate as there are representatives to be elected in the district, or may distribute his votes among the candidates. The plan seems to give satisfaction in Illinois, where the northern counties (called Canaan) have usually had a Republican, the southern (called Egypt) a Democratic, majority, so that there were special reasons for breaking the party solidity of each section.

[1] It ought to be noted as an illustration of the divergences between countries both highly democratic that in the cantons of Switzerland the legislatures consist of one chamber only. In most of these cantons there is, to be sure, a *referendum* and a small executive council. Another remarkable divergence is that whereas in America, and especially in the West, the tendency is towards "rotation" in office, in Switzerland an official and a member of a legislature is usually continued in his post from one term to another, in fact is seldom displaced except for some positive fault. At one time officials were steadily re-elected in Connecticut.

[2] In Connecticut, every town which had two members in 1874 still returns two, whatever its size, and new towns obtain two members when they reach 5000. Thus 42,000 voters have 133 members in the House, and 92,000 only 117 members; a great many very small places having each two members. The State is virtually governed by the representatives of "rotten boroughs," and as they form the majority, they have hitherto refused to submit to the people a constitutional amendment for a redistribution of seats on the basis of equal population. The recent troubles in the State are partly due to this excessive difficulty in reforming an antiquated Constitution. In some States there has been audacious gerrymandering. The Supreme court of Wisconsin recently declared inconsistent with the Constitution a redistricting of the State which had neglected county boundaries and created very unequal districts.

[3] For instance, in Rhode Island every town or city, be it great or small, returns one senator; and thus it lately befel that a population of 253,000 in 13 cities and towns had 13 senators, while 23 towns with 20,000 people sent 23 senators. In Illinois, every district returns one senator and three representatives.

The following differences between the rules governing the two Houses are general: —

1. The senatorial electoral districts are always larger, usually twice or thrice as large as the House districts, and the number of senators is, of course, in the same proportion smaller than that of representatives.

2. A senator is usually chosen for a longer term than a representative. In twenty-eight States he sits for four years, in one (New Jersey) for three, in thirteen for two, in two (Massachusetts and Rhode Island) for one year only; the usual term of a representative being two years.

3. In most cases the Senate, instead of being elected all at once like the House, is only partially renewed, half its members going out when their two, or four, years have been completed, and a new half coming in. This gives it a sense of continuity which the House wants.

4. In some States the age at which a man is eligible for the Senate is fixed higher than that for the House of Representatives; and in one (Delaware) he must own freehold land of 200 acres or real or personal estate of the value of £1000 (Const. of 1792, repeated in Const. of 1831). Other restrictions on eligibility, such as the exclusion of clergymen (which still exists in six States, and is of old standing), that of salaried public officials (which exists everywhere), that of United States officials and members of Congress, and that of persons not resident in the electoral district (frequent by law and practically universal by custom), apply to both Houses. In some States this last restriction goes so far that a member ceasing to reside in the district for which he was elected loses his seat *ipso facto*.

I have dwelt in an earlier chapter (Chap. XIV.) on the strength of this local feeling as regards congressional elections, and on the results, to a European eye mostly unfortunate, which it produces. It is certainly no weaker in State elections. Nobody dreams of offering himself as a candidate for a place in which he does not reside, even in new States, where it might be thought that there had not been time for local feeling to spring up. Hence the educated and leisured residents of the greater cities have no chance of entering the State legislature except for the city district wherein they dwell; and as these

city districts are those most likely to be in the hands of some noxious and selfish ring of professional politicians, the prospect for such an aspirant is a dark one. Nothing more contributes to make reform difficult than the inveterate habit of choosing residents only as members. Suppose an able and public-spirited man desiring to enter the Assembly or the Senate of his State and shame the offenders who are degrading or plundering it. He may be wholly unable to find a seat, because in his place of residence the party opposed to his own may hold a permanent majority, and he will not be even considered elsewhere. Suppose a group of earnest men who, knowing how little one man can effect, desire to enter the legislature at the same time and work together. Such a group can hardly arise except in or near a great city. It cannot effect an entrance, because the city has at best very few seats to be seized, and the city men cannot offer themselves in any other part of the State. That the restriction often rests on custom, not on law, makes the case more serious. A law can be repealed, but custom has to be unlearned; the one may be done in a moment of happy impulse, the other needs the teaching of long experience applied to receptive minds.

The fact is, that the Americans have ignored in all their legislative as in many of their administrative arrangements, the differences of capacity between man and man. They underrate the difficulties of government and overrate the capacities of the man of common sense. Great are the blessings of equality; but what follies are committed in its name!

The unfortunate results of this local sentiment have been aggravated by the tendency to narrow the election areas, allotting one senator or representative to each district. Under the older Constitution of Connecticut, for instance, the twelve senators were elected out of the whole State by a popular vote. Now (Amdts. of A.D. 1828) the twenty-four senators are chosen by districts, and the Senate is to-day an inferior body, because then the best men of the whole State might be chosen, now it is possible only to get the leading men of the districts. In Massachusetts, under the Constitution of 1780, the senators were chosen by districts, but a district might return as many as six senators: the Assembly men were chosen by