

CHAPTER XLI

THE STATE EXECUTIVE

THE executive department in a State consists of a governor (in all the States), a lieutenant-governor (in thirty-two), and of various minor officials. The governor, who, under the earlier Constitutions of most of the original thirteen States, was chosen by the legislature, is now always elected by the people, and by the same suffrage, practically universal, as the legislature. He is elected directly, not, as under the Federal Constitution, by a college of electors. His term of office is, in nineteen States, four years; in two States, three years; in twenty-one States, two years; and in two States (Massachusetts and Rhode Island), one year. His salary varies from \$10,000 in New York and Pennsylvania to \$1000 in Michigan. Some States limit his re-eligibility; but in those which do not there exists no tradition forbidding a third term of office similar to that which prevails in the Federal Government.

The earlier Constitutions of the original States (except South Carolina) associated with the governor an executive council¹ (called in Delaware the Privy Council), but these councils have long since disappeared, except in Massachusetts, Maine, and North Carolina, and the governor remains in solitary glory the official head and representative of the majesty of the State. His powers are, however, in ordinary times

¹ Another illustration of the tendency to reproduce England. Vermont was still under the influence of colonial precedents when it framed its Constitutions of 1786 and 1793. Maine was influenced by Massachusetts. None of the newer Western States has ever tried the experiment of such a council.

New York had originally two Councils, a "Council of Appointment," consisting of the Governor and a Senator from each of the (originally four) districts, and a "Council of Revision," consisting of the Governor, the Chancellor and the judges of the Supreme court, and possessing a veto on statutes. The Governor has now, since the extinction of these two councils, obtained some of the patronage which belonged to the former as well as the veto which belonged to the latter.

more specious than solid, and only one of them is of great practical value. He is charged with the duty of seeing that the laws of the State are faithfully administered by all officials and the judgments of the courts carried out. He has, in nearly all States, the power of reprieving and pardoning offenders, but in some this does not extend to treason or to conviction on impeachment (in Vermont he cannot pardon for murder), and in some, other authorities are associated with him in the exercise of this prerogative. Some recent Constitutions impose restrictions which witness to a distrust of his action; nor can it be denied that the power has sometimes been used to release offenders (*e.g.* against the election laws) who deserved no sympathy. The governor is also commander-in-chief of the armed forces of the State, can embody the militia, repel invasion, suppress insurrection. The militia are now important chiefly as the force which may be used to suppress riots, latterly not unfrequent in connection with labor disputes. Massachusetts has also created a small State police force (called the District Police), placing it at the disposal of the governor for the maintenance of order, wherever disturbed, and for the enforcement of various administrative regulations. It has recently been proposed to establish a State police in Pennsylvania for the same purposes. Michigan has (and Massachusetts and Rhode Island formerly had) a State police for the enforcement of their anti-liquor legislation.

He appoints some few officials, but seldom to high posts, and in many States his nominations require the approval of the State Senate. Patronage, in which the President of the United States finds one of his most desired and most disagreeable functions, is in the case of a State governor of slight value, because the State offices are not numerous, and the more important and lucrative ones are filled by the direct election of the people. He has the right of requiring information from the executive officials, and is usually bound to communicate to the legislature his views regarding the condition of the commonwealth. He may also recommend measures to them, but does not frame and present bills. In a few States he is directed to present estimates. He has in all the States but four a veto upon bills passed by the legislature.¹ This

¹ It deserves to be remarked that neither the Constitution of the Swiss Confederation nor any cantonal constitution vests a veto in any officer.

veto may be overridden in manner already indicated (see last preceding chapter), but generally kills the measure, because if the bill is a bad one, it calls the attention of the people to the fact and frightens the legislature, whereas if the bill be an unobjectionable one, the governor's motive for vetoing it is probably a party motive, and the requisite overriding majority can seldom be secured in favour of a bill which either party dislikes. The use of his veto is, in ordinary times, a governor's most serious duty, and chiefly by his discharge of it is he judged.

Although much less sought after and prized than in "the days of the Fathers," when a State governor sometimes refused to yield precedence to the President of the United States, the governorship is still, particularly in New England, and the greater States, a post of some dignity, and affords an opportunity for the display of character and talents. It was in his governorship of New York that Mr. Cleveland, for instance, commended himself to his party, and rose to be President of the United States. Similarly Mr. Hayes was put forward for the Presidency in 1876 because he had been a good governor of Ohio. During the Civil War, when each governor was responsible for enrolling, equipping, officering, and sending forward troops from his State,¹ and when it rested with him to repress attempts at disorder, much depended on his energy, popularity, and loyalty. In some States men still talk of the "war governors" of those days as heroes to whom the North owed deep gratitude. And since the Pennsylvanian riots of 1877 and those which have subsequently occurred in Cincinnati and Chicago have shown that tumults may suddenly grow to serious proportions, it has in many States become important to have a man of prompt decision and fearlessness in the office which issues orders to the State militia. The elective Lieutenant-Governor who, in most States, steps into the governor's place if it becomes vacant, is usually also *ex officio* President of the Senate,²

Switzerland seems in this respect more democratic than the American States, while in the amount of authority which the Swiss allow to the executive government over the citizen (as witness the case of the Salvation Army troubles in Canton Bern) they are less democratic.

¹ Commissions to officers up to the rank of colonel inclusive were usually issued by the governor of the State: the regiment, in fact, was a State product, though the regular Federal army is of course raised and managed by the Federal Government directly.

² In Rhode Island the governor presides over the Senate, an interesting survival of European arrangements.

as the Vice-President of the United States is of the Federal Senate. Otherwise he is an insignificant personage, though sometimes a member of some of the executive boards.¹

The names and duties of the other officers vary from State to State. The most frequent are a secretary of state (in all States), a treasurer (in all), an attorney-general, a comptroller, an auditor, a superintendent of public instruction. Now and then we find a State engineer, a surveyor, a superintendent of prisons. Some States have also various boards of commissioners, *e.g.* for railroads, for canals, for prisons, for the land office, for agriculture, for labour, for immigration. Most of these officials are in nearly all States elected by the people at the general State election. Sometimes, however, they, or some of them, are either chosen by the legislature, or, more rarely, appointed by the governor, whose nomination usually requires the confirmation of the Senate. Their salaries, which of course vary with the importance of the office and the parsimony of the State, seldom exceed \$5000 (£1000) per annum and are usually smaller. So, too, the length of the term of office varies. It is often the same as that of the governor, and never exceeds four years, except that in New Jersey, a conservative State, the secretary and attorney-general hold for five years; and in Tennessee the attorney-general, who, oddly enough, is appointed by the supreme court of the State, holds for eight.

It has already been observed that the State officials are in no sense a ministry or cabinet to the governor. Holding independently of him, and responsible neither to him nor to the legislature, but to the people, they do not take generally his orders, and need not regard his advice.² Each has his own department

¹ Where there is no lieutenant-governor, the President of the State Senate or the Secretary of State usually succeeds if the governor dies or becomes incapable.

² Florida, by her Constitution of 1868, Art. vi. 17, and Art. viii., created a "cabinet of administrative officers," consisting of eight officials, appointed by the governor, with the consent of the Senate, to hold office for the same time as the governor, and "assist the governor in the performance of his duties." However, in her Constitution of 1886 she simply provides that "the governor shall be assisted by administrative officers," viz. secretary of state, attorney-general, comptroller, treasurer, superintendent of public instruction, and commissioner of agriculture, all elected by the people at the same time with the governor and for the same term. The council of North Carolina (Const. of 1868) consists of five officials, who are to "advise the governor in the execution of his duty," but they are elected directly by the people. Their position

to administer, and as there is little or nothing political in the work, a general agreement in policy, such as must exist between the Federal President and his ministers, is not required. Policy rests with the legislature, whose statutes, prescribing minutely the action to be taken by the officials, leave little room for executive discretion. Europeans may realize the nature of the system by imagining a municipal government in which the mayor, town clerk, health officer, and city architect are all chosen directly by the people, instead of by the common council, and in which each of these officials is for most purposes, independent not only of the mayor, but also of the common council, except in so far as the latter has the right of granting money, and as it can act by general ordinances—that is to say, act as a legislative and not as an administrative body.¹

To give a clearer idea of the staff of a State government I will take the great State of Ohio, and give the functions of the officials by whom it is administered.

The executive officials of Ohio were in 1891—

- A Governor*, elected by the people for two years. His chief duties are to execute the laws, convene the legislature on extraordinary occasions, command the State forces, appoint staff officers and aides-de-camp, grant pardons and reprieves, issue commissions to State and county officers, make a variety of appointments, serve on certain boards, and remove, with the assent of the Senate, any official appointed by him and it. He is paid \$8000 (£1600) a year.
- A Lieutenant-Governor*, elected for two years, salary \$800 a year, with the duty of succeeding to the governor (in case of death or disability), and of presiding in the Senate.
- A Secretary of State*, elected for two years (along with the governor), salary \$2000 a year, besides sundry fees for copies of documents. His duties are to take charge of

may be compared with that of the Council of India under recent English statutes towards the Secretary of State for India. Massachusetts has always had an "executive council" consisting of eight persons chosen annually by the people in districts. They "advise the governor in the executive part of the government" and have the right of rejecting nominations to office made by him. Here too we find a survival, which at present seems to do more harm than good, because it lessens the governor's responsibility.

¹ In the Swiss Confederation the Federal Council of Seven consists of persons belonging to different parties, who sometimes speak against one another in the chambers (where they have the right of speech), but this is not found to interfere with their harmonious working as an administrative body.

- laws and documents of the State, gather and report statistics, distribute instructions to certain officers, and act as secretary to certain boards, to serve on the State printing and State library boards, to make an abstract of the votes for candidates at presidential and State elections.
- A State Auditor*, elected for four years, salary \$3000. Duties — to keep accounts of all moneys in the State treasury, and of all appropriations and warrants, to give warrants for all payments from or into the treasury, to conduct financial communications with county authorities, and direct the attorney-general to prosecute revenue claims, to serve on various financial boards, and manage various kinds of financial business.
- A State Treasurer*, elected for two years, salary \$3000. Duties — to keep account of all drafts, paying the money into the treasury, and of auditor's warrants for drafts from it, and generally to assist and check the auditor in the supervision and disbursement of State revenues, publishing monthly statements of balances.
- A State Attorney-General*, elected for two years, salary \$1500 a year, and 3 per cent on all collections made for the State, but total not to exceed \$3000 a year in all. Duties — to appear for the State in civil and criminal cases, advise legally the governor and other State officers, and the Assembly, proceed against offenders, enforce performance of charitable trusts, submit statistics of crime, sit upon various boards.
- A State Commissioner of Common Schools*, elected for three years, salary \$2000 a year. Duties — to visit and advise teachers' institutes, boards of education, and teachers, deliver lectures on educational topics, see that educational funds are legally distributed, prepare and submit annual reports on condition of schools, appoint State board of examiners of teachers.
- Three Members of Board of Public Works*, elected for three years, one in each year, salary \$800 a year, and travelling expenses, not exceeding \$50 a month. Duties — to manage and repair the public works (including canals) of the State, appoint and supervise minor officials, let contracts, present annual detailed report to the governor.
- A State Dairy and Food Commissioner*, elected for two years, salary \$1200, and travelling expenses.

Besides these, the people of the State elect the judges and the clerk of the supreme court. Other officials are either elected by the people in districts, counties, or cities, or appointed by the governor or legislature.

Of the subordinate civil service of a State there is little to be said. Though it is not large, for the sphere of administrative action which remains to the State between the Federal government on the one side, and the county, city, and township governments on the other, is not wide, it increases daily, owing to the eagerness of the people (especially in the West) to have State aid rendered to farmers, to miners, to stock-keepers, and generally in the material development of the country. Much is now done in the way of collecting statistics and issuing reports. However, these administrative bureaux are seldom well manned, for the State legislatures are parsimonious, and do little, by good salaries or otherwise, to induce able men to enter it: while the so-called "Spoils System," which has been hitherto applied to State no less than to Federal offices, too often makes places the reward for electioneering and wirepulling. Efforts are now being made in some States to introduce reforms similar to those begun in the Federal administration, whereby certain walks of the civil service shall be kept out of politics, at least so far as to secure competent men against dismissal on party grounds. Such reforms would in no case apply to the higher officials chosen by the people, for they are always elected for short terms and on party lines.

Every State, except Oregon, provides for the impeachment of executive officers for grave offences. In all, save two, the State House of Representatives is the impeaching body; and in all but Nebraska the State Senate sits as the tribunal, a two-thirds majority being generally required for a conviction. Impeachments are rare in practice.

There is also in many States a power of removing officials, sometimes by the vote of the legislature, sometimes by the governor on the address of both houses, or by the governor either alone, or with the concurrence of the Senate. Such removals must of course be made in respect of some offence, or for some other sufficient cause, not from caprice or party motives; and when the case does not seem to justify immediate removal, the governor is frequently empowered to suspend the officer, pending an investigation of his conduct.

CHAPTER XLII

THE STATE JUDICIARY

THE Judiciary in every State includes three sets of courts: — A supreme court or court of appeal; superior courts of record; local courts; but the particular names and relations of these several tribunals and the arrangements for criminal business vary greatly from State to State. We hear of courts of common pleas, probate courts,¹ surrogate courts, prerogative courts, courts of oyer and terminer, orphans' courts, court of general sessions of the peace and gaol delivery, quarter sessions, hustings courts, county courts, etc. etc. All sorts of old English institutions have been transferred bodily, and sometimes look as odd in the midst of their new surroundings as the quaint gables of a seventeenth-century house among the terraces of a growing London suburb. As respects the distinction which Englishmen used to deem fundamental, that of courts of common law and courts of equity, there has been great diversity of practice. Most of the original thirteen colonies once possessed separate courts of chancery, and these were maintained for many years after the separation from England, and were imitated in a few of the earlier among the new States, such as Michigan, Arkansas, Missouri. In some of the old States, however, the hostility to equity jurisdiction, which marked the popular party in England in the seventeenth century, had transmitted itself to America. Chancery courts were regarded with suspicion, because thought to be less bound by fixed rules, and therefore more liable to be abused by an ambitious or capricious judiciary.² Massachusetts, for instance,

¹ Admiralty business is within the exclusive jurisdiction of the Federal courts.

² Note that the grossest abuses of judicial power by American judges, such as the Erie Railroad injunctions of Judge Barnard of New York in 1869, were perpetrated in the exercise of equitable jurisdiction. Equity in granting discretion opens a door to indiscretion, or to something worse.