boiling liquid, it does not follow that the material, nor the process to which it is subjected, is itself bad. Universal suffrage, as it exists in the United States, is not only a great element of safety in the present day and generation, but it is perhaps the mightiest educational force to which the masses of men ever have been exposed. In a country where wealth has no hereditary sense of obligation to its neighbours, it is hard to conceive what would be the condition of society if universal suffrage did not compel every one having property to consider, to some extent at least, the well-being of the whole community.

It is probable that no other system of government would have been able to cope any more successfully, on the whole, with the actual conditions that American cities have been compelled to face. It may be claimed for American institutions even in cities, that they lend themselves with wonderfully little friction to growth and development and to the peaceful assimilation of new and strange populations. Whatever defects have marked the progress of such cities, no one acquainted with their history will deny that since their problem assumed its present aspect, progress has been made, and substantial progress, from decade to decade. The problem will never be anything but a most difficult one, but with all its difficulties there is every reason to be hopeful.

APPENDIX

NOTE TO CHAPTER III

ON CONSTITUTIONAL CONVENTIONS

In America it is always by a convention (*i.e.* a representative body called together for some occasional or temporary purpose) that a constitution is framed. It was thus that the first constitutions for the thirteen revolting colonies were drawn up and enacted in 1776 and the years following; and as early as 1780 the same plan had suggested itself as the right one for framing a constitution for the whole United States.[1] Recognized in the Federal Constitution (Art. v.) and in the successive Constitutions of the several States as the proper method to be employed when a new constitution is to be prepared, or an existing constitution revised throughout, it has now become a regular and familiar part of the machinery of American government, almost a necessary part, because all American legislatures are limited by a fundamental law, and therefore when a fundamental law is to be repealed or largely recast, it is desirable to provide for the purpose a body distinct from the ordinary legislature. Where it is sought only to change the existing fundamental law in a few specified points, the function of proposing these changes to the people for their acceptance may safely be left, and generally is left, to the legislature. Originally a convention was conceived of as a sovereign body, wherein the full powers of the people were vested by popular election. It is now, however, usually an advisory body, which prepares a draft of a new constitution and submits it to the people for their acceptance or rejection.[2] And it is not deemed to be sovereign in the sense of possessing the plenary authority of the people, for its powers may be, and now almost invariably are, limited by the statute under which the people elect it.[3]

[1] It is found in a private letter of Alexander Hamilton (then only twenty-three years of age) of that year.

[2] The only recent exception to the now unvarying rule that conventions merely draft constitutions was furnished in 1890 by the State of Mississippi, where a convention, convoked under a statute, not only prepared, but actually enacted, the present Constitution of the State. The circumstances were peculiar, and the same thing would not happen in any Northern State. As to Kentucky, see p. 433.

[3] The State Conventions which carried, or rather affected to carry, the seceding Slave States out of the Union, acted as sovereign bodies. Their proceedings, however, though clothed with legal forms, were practically revolutionary.

Questions relating to the powers of a Constitutional Convention have several times come before the courts, so that there exists a small body of law as well as a large body of custom and practice regarding the rights and powers of such assemblies. Into this law and practice I do not propose to enter. But it is worth while to indicate certain advantages which have been found to attach to the method of entrusting the preparation of a fundamental instrument of government to a body of men specially chosen for the purpose instead of to the ordinary legislature. The topic suggests interesting comparisons with the experience of France and other European countries in which constitutions have been drafted and enacted by the legislative, which has been sometimes also practically the executive, authority. Nor is it wholly without bearing on problems which have recently arisen in England, where Parliament has found itself, and may find itself again, invited to enact what would be in substance a new constitution for a part of the United Kingdom.

An American Constitutional Convention, being chosen for the sole purpose of drafting a constitution, and having nothing to do with the ordinary administration of government, no influence or patronage, no power to raise or appropriate revenue, no opportunity of doing jobs for individuals or corporations, is not necessarily elected on party lines or in obedience to party considerations.[1] Hence men comparatively indifferent to party are sometimes elected; while those who seek to enter a legislature for the sake of party advancement or the promotion of some private gainful object do not generally care to serve in a convention.

When the convention meets, it is not, like a legislature, a body strictly organized by party. A sense of individual independence and freedom may prevail unknown in legislatures. Proposals have therefore a chance of being considered on their merits. A scheme does not necessarily command the support of one set of men nor encounter the hostility of another set because it proceeds from a particular leader or group. And as the ordinary party questions do not come up for decision while its deliberations are going on, men are not thrown back on their usual party affiliations, nor are their passions roused by exciting political issues.

Having no work but constitution-making to consider, a convention is free to bend its whole mind to that work. Debate has less tendency to stray off to irrelevant matters. Business advances because there are no such interruptions as a legislature charged with the ordinary business of government must expect.

Since a convention assembles for one purpose only, and that a purpose specially interesting to thoughtful and public-spirited citizens, and since its duration is short, men who would not care to enter a legislature, men pressed by professional labours, or averse to the "rough and tumble" of politics, a class large in America and increasing in Europe, are glad to serve on it, while mere jobbers or office-seekers find little to attract them

[1] The questions of practical importance to the States which a State Convention deals with are very often not in issue between the two State parties, seeing that the latter are formed on national lines.

in its functions.[1] Thus the level of honesty, even more than of ability, is higher in conventions than in legislatures.

The fact that the constitution when drafted has to be submitted to the people, by whose authority it will (if accepted) be enacted, gives to the convention a somewhat larger freedom for proposing what they think best than a legislature, courting or fearing its constituents, commonly allows itself. As the convention vanishes altogether when its work is accomplished, the ordinary motives for popularity-hunting are less potent. As it does not legislate but merely proposes, it need not fear to ask the people to enact what may offend certain persons or classes, for the odium, if any, of harassing these classes will rest with the people. And as the people must accept or reject the draft *en bloc* (unless in the rare case where provision is made for voting on particular points separately), more care is taken in preparing the draft, in clearing it of errors and repugnances, than a legislature capable of repealing or altering in its next session what it now provides, bestows on the details of its measures.

Those who are familiar with European parliaments may conceive that as a set-off to these advantages there will be a difficulty in getting a number of men not organized by parties to work promptly and efficiently, that a convention will be, so to speak, an amorphous body, that if it has no leaders nor party allegiance it will divide one way to-day and another way to-morrow, that the abundance of able men will mean an abundance of doctrinaire proposals and a reluctance to subordinate individual prepossessions to practical success. Admitting that such difficulties do sometimes arise, it may be observed that in America men quickly organize themselves for any and every purpose, and that doctrinairism is there so uncommon a fault as to be almost a merit. When a complete new constitution is to be prepared, the balance of convenience is decidedly in favour of giving the work to a convention, for although conventions are sometimes unwise, they are usually composed of far abler men than those who fill the legislatures, and discharge their function with more wisdom as well as with more virtue. But where it is not desired to revise the whole frame of government, the simpler and better plan is to proceed by submitting to the people specific amendments, limited to particular provisions of the existing constitution; and this is the method now most generally employed in improving State constitutions.

The above remarks are of course chiefly based on the history of State conventions, because no national constitutional convention has sat since 1787. But they apply in principle to any constitution-making body.

[1] Many of the men conspicuous in the public life of Massachusetts during the succeeding thirty years first made their mark in the Constitutional Convention of 1853. The draft framed by that Convention was, however, rejected by the people. The new Constitution for New York, framed by the Convention of 1867, was also lost at the polls. That Convention was remarkable as being (according to Judge Jameson) the only one in which the requirement that a delegate must be resident in the district electing him was dispensed with (*Constit. Conventions*, § 267).

NOTE TO CHAPTER IV

WHAT THE FEDERAL CONSTITUTION OWES TO THE CONSTITUTIONS OF THE SEVERAL STATES

The following statement of the provisions of the Federal Constitution which have been taken from or modelled upon State constitutions, is extracted from a valuable article by the late Mr. Alexander Johnston in the *New Princeton Review* for September 1887: —

"That part of the Constitution, which has attracted most notice abroad, is probably its division of Congress into a Senate and a House of Representatives, with the resulting scheme of the Senate as based on the equal representation of the States. It is probably inevitable that the upper or hereditary House in foreign legislative bodies shall disappear in time. And it is not easy to hit on any available substitute; and English writers for examples, judging from the difficulty of finding a substitute for the House of Lords, have rated too high the political skill of the Convention in hitting upon so brilliant a success as the Senate. But the success of the Convention was due to the antecedent experience of the States. Excepting Pennsylvania and Vermont, which then gave all legislative powers to one House, and executive powers to a governor and council, all the States had bicameral systems in 1787.[1]

"The name 'Senate' was used for the Upper House in Maryland, Massachusetts, New York, North Carolina, New Hampshire, and South Carolina and Virginia; and the name 'House of Representatives,' for the Lower House, was in use in Massachusetts, New Hampshire, and South Carolina, as well as in Pennsylvania and Vermont.

"The rotation, by which one-third of the Senate goes out every two years, was taken from Delaware, where one-third went out each year, New York (one-fourth each year), Pennsylvania (one-third of the council each year), and Virginia (one-fourth each year). The provisions of the whole fifth section of Art. i., the administration of the two Houses, their power to decide the election of their members, make rules and punish their violation, keep a journal, and adjourn from day to day, are in so many State constitutions that no specification is needed for them.

"The provision that money-bills shall originate in the House of Representatives is taken almost word for word from the Constitutions of Massachusetts and New Hampshire, as is the provision, which has never been needed, that the President may adjourn the two Houses when they cannot agree on a time of adjournment. The provision for a message is from the

[1] Georgia, however, had not till 1789 a true second chamber, her constitution of 1777 having merely created an executive council elected by the Assembly from among its own members.

Vermont was not one of the thirteen original States, but was a semi-independent commonwealth, not a member of the Confederation of 1781, not represented in the Convention of 1787, and not admitted to the Union till 1791.

Constitution of New York. All the details of the process of impeachment as adopted by the Convention may be found in the Constitutions of Delaware, Massachusetts, New Hampshire, New York, Pennsylvania, South Carolina, Vermont, Virginia, even to the provision in the South Carolina system that conviction should follow the vote of two-thirds of the members present. (It should be said, however, that the limitation of sentence in case of conviction to removal from office and disqualification for further office-holding is a new feature.) Even the much-praised process of the veto is taken *en bloc* from the Massachusetts Constitution of 1780, and the slight changes are so evidently introduced as improvements on the language alone as to show that the substance was copied.

"The adoption of different bases for the two Houses — the House of Representatives representing the States according to population, while the Senate represented them equally — was one of the most important pieces of work which the Convention accomplished as well as the one which it reached most unwillingly. All the States had been experimenting to find different bases for their two Houses. Virginia had come nearest to the appearance or the final result in having her Senate chosen by districts and her representatives by counties; and, as the Union already had its 'districts' formed (in the States), one might think that the Convention merely followed Virginia's experience. But the real process was far different and more circuitous. There were eleven States represented in the Convention, New Hampshire taking New York's place when the later withdrew, and Rhode Island sending no delegates. Roughly speaking, five States wanted the 'Virginia plan' above stated; five wanted one House as in the Confederation with State equality in it; and one (Connecticut) had a plan of its own to which the other ten States finally acceded. The Connecticut system since 1699, when its legislature was divided into two Houses, had maintained the equality of the towns in the Lower House, while choosing the members of the Upper House from the whole people. In like manner its delegates now proposed that the States should be equally represented in the Senate, while the House of Representatives, chosen from the States in proportion to population, should represent the people numerically. The proposition was renewed again and again for nearly a month until the two main divisions of the Convention, unable to agree, accepted the 'Connecticut compromise,' as Bancroft calls it, and the peculiar constitution of the Senate was adopted.

"The President's office was simply a development of that of the governors of the States. The name itself had been familiar; Delaware, New Hampshire, Pennsylvania, and South Carolina, had used the title of President instead of that of Governor. In all the States the governor was commander-in-chief, except that in Rhode Island he was to have the advice of six assistants, and the major part of the freemen, before entering upon his duties. The President's pardoning power was drawn from the example of the States; they had granted it to the governors (in some cases with the advice of a council) in all the States except Connecticut, Rhode Island, and Georgia, where it was retained to the legislature, and in South Carolina, where it seems to have been forgotten in the Constitu-

tion of 1778, but was given to the governor in 1790. The governor was elected directly by the people in Connecticut, Massachusetts, New York, and Rhode Island, and indirectly by the two Houses in the other eight States; and in this nearly equal division we may, perhaps, find a reason for the Convention's hesitation to adopt either system, and for its futile attempt to introduce an electoral system, as a compromise. The power given to the Senate of ratifying or rejecting the President's appointments seems to have been an echo of New York's council of appointment; the most strenuous and persistent efforts were made to provide a council to share in appointments with the President; the admission of the Senate as a substitute was the furthest concession which the majority would make; and hardly any failure of details caused more heart-burnings than the rejection of this proposed council for appointments.

"The President's power of filling vacancies, by commissions to expire at the end of the next session of the Senate, is taken in terms from the Constitution of North Carolina.

"Almost every State prescribed a form of oath for its officers; the simple and impressive oath of the President seems to have been taken from that of Pennsylvania, with a suggestion, much improved in language, from the oath of allegiance of the same State. The office of vice-president was evidently suggested by that of the deputy, or lieutenant-governor (in four States the vice-president) of the States. The exact prototype of the office of vice-president is to be found in that of the lieutenant-governor of New York. He was to preside in the Senate, without a vote, except in case of a tie, was to succeed the governor, when succession was necessary, and was to be succeeded by the President *pro tempore* of the Senate.

"The provisions for the recognition of inter-State citizenship, and for the rendition of fugitive slaves and criminals, were a necessity in any such form of government as was contemplated, but were not at all new. They had formed a part of the eighth article of the New England Confederation of 1643. Finally the first ten amendments, which were tacitly taken as a part of the original instrument, are merely a selection from the substance or the spirit of the Bills of Rights which preceded so many of the State constitutions.

"The most solid and excellent work done by the Convention was its statement of the powers of Congress (in § 8 of Art. i.) and its definition of the sphere of the Federal judiciary (in Art. iii.). The results in both of these cases were due, like the powers denied to the States and to the United States (in §§ 9 and 10 of Art. i.), to the previous experience of government by the States alone. For eleven years or more (to say nothing of the antecedent colonial experience) the people had been engaged in their State governments in an exhaustive analysis of the powers of government. The failures in regard to some, the successes in regard to others, were all before the Convention for its consideration and guidance.

"Not creative genius, but wise and discreet selection was the proper work of the Convention; and its success was due to the clear perception of the antecedent failures and successes, and to the self-restraint of its members.

"The (presidential) electoral system was almost the only feature of the Constitution not suggested by State experience,[1] almost the only feature which was purely artificial, not a natural growth; it was the one which met with least criticism from contemporary opponents of the Constitution and most unreserved praise from the *Federalist;* and democracy has ridden right over it."

NOTE TO CHAPTER X

EXTRACTS FROM THE RULES OF THE SENATE

A QUORUM shall consist of a majority of the senators, duly chosen and sworn.

The legislative, the executive, the confidential legislative proceedings, and the proceedings when sitting as a Court of Impeachment, shall each be recorded in a separate book.

When the yeas and nays are ordered, the names of senators shall be called alphabetically; and each senator shall, without debate, declare his assent or dissent to the question, unless excused by the Senate; and no senator shall be permitted to vote after the decision shall have been announced by the presiding officer, but may for sufficient reasons, with unanimous consent, change or withdraw his vote.

When a senator declines to vote on call of his name, he shall be required to assign his reasons therefor, and on his having assigned them, the presiding officer shall submit the question to the Senate, "Shall the senator for the reasons assigned by him, be excused from voting?" which shall be decided without debate.

In the appointment of the standing committees, the Senate, unless otherwise ordered, shall proceed by ballot to appoint severally the chairman of each committee, and then, by one ballot, the other members necessary to complete the same. A majority of the whole number of votes given shall be necessary to the choice of a chairman of a standing committee, but a plurality of votes shall elect the other members thereof. All other committees shall be appointed by ballot, unless otherwise ordered, and a plurality of votes shall appoint.

At the second or any subsequent session of a Congress, the legislative business which remained undetermined at the close of the next preceding session of that Congress shall be resumed and proceeded with in the same manner as if no adjournment of the Senate had taken place.

[1] But it is well observed by Mr. J. H. Robinson (*Original and Derived Features of the United States Constitution*, p. 29) that this system may have been suggested by the Constitution of Maryland (1776), which provided for a choice of the State Senators by a body of electors chosen every five years by the people for this purpose. Mr. Robinson rightly disapproves Sir H. Maine's comparison of the electoral system of the Romano-Germanic Empire.

On a motion made and seconded to close the doors of the Senate, on the discussion of any business which may, in the opinion of a senator, require secrecy, the presiding officer shall direct the galleries to be cleared; and during the discussion of such motion the doors shall remain closed.

When the President of the United States shall meet the Senate in the Senate chamber for the consideration of executive business, he shall have a seat on the right of the presiding officer. When the Senate shall be convened by the President of the United States to any other place, the presiding officer of the Senate and the senators shall attend at the place appointed, with the necessary officers of the Senate.

When acting upon confidential or executive business, unless the same shall be considered in open executive session, the Senate chamber shall be cleared of all persons except the secretary, the chief clerk, the principal legislative clerk, the executive clerk, the minute and journal clerk, the sergeant-at-arms, the assistant doorkeeper, and such other officers as the presiding officer shall think necessary, and all such officers shall be sworn to secrecy.

All confidential communications made by the President of the United States to the Senate shall be by the senators and the officers of the Senate kept secret; and all treaties which may be laid before the Senate, and all remarks, votes, and proceedings thereon, shall also be kept secret until the Senate shall, by their resolution, take off the injunction of secrecy, or unless the same shall be considered in open executive session.

Any senator or officer of the Senate who shall disclose the secret or confidential business or proceedings of the Senate shall be liable, if a senator, to suffer expulsion from the body; and if an officer, to dismissal from the service of the Senate, and to punishment for contempt.

On the final question to advise and consent to the ratification of a treaty in the form agreed to, the concurrence of two-thirds of the senators present shall be necessary to determine it in the affirmative; but all other motions and questions upon a treaty shall be decided by a majority vote, except a motion to postpone indefinitely, which shall be decided by a vote of two-thirds.

When nominations shall be made by the President of the United States to the Senate, they shall, unless otherwise ordered, be referred to appropriate committees; and the final question on every nomination shall be, "Will the Senate advise and consent to this nomination?" Which question shall not be put on the same day on which the nomination is received, nor on the day on which it may be reported by a committee, unless by unanimous consent.

All information communicated or remarks made by a senator, when acting upon nominations, concerning the character or qualifications of the person nominated, also all votes upon any nomination, shall be kept secret. If, however, charges shall be made against a person nominated, the committee may, in its discretion, notify such nominee thereof, but the name of the person making such charges shall not be disclosed. The fact that a nomination has been made, or that it has been confirmed or rejected, shall not be regarded as a secret.

NOTE (A) TO CHAPTER XVI

PRIVATE BILLS

In England a broad distinction is drawn between public bills and local or private bills. The former class includes measures of general application, altering or adding to the general law of the land. The latter includes measures intended to apply only to some particular place or person, as for instance, bills incorporating railway or gas or water companies or extending the powers of such bodies, bills authorizing municipalities to execute public improvements, as well as estate bills, bills relating to charitable foundations, and (for Ireland) divorce bills.[1] Bills of the local and personal class have for many years past been treated differently from public bills. They are brought in, as it is expressed, on petition, and not on motion. Notice is required to be given of such a bill by advertisement nearly three months before the usual date of the meeting of Parliament, and copies must be deposited some weeks before the opening of the session. The second reading is usually granted as a matter of course; and after second reading, instead of being, like a public bill, considered in committee of the whole House, it goes (if opposed) to a private bill committee consisting (usually) of four members, who take evidence regarding it from the promoters and opponents, and hear counsel argue for and against its preamble and its clauses. In fact, the proceedings on private bills are to some extent of a judicial nature, although of course the committee must have regard to considerations of policy.

Pecuniary claims against the Government are in England not raised by way of private bill. They are presented in the courts by a proceeding called a petition of right, the Crown allowing itself to be sued by one of its subjects.

In America no such difference of treatment as the above exists between public and private bills; all are dealt with in substantially the same way by the usual legislative methods. A bill of a purely local or personal nature gets its second reading as a matter of course, like a bill of general application, is similarly referred to the appropriate committee (which may hear evidence regarding it, but does not hear counsel), is considered and if necessary amended by the committee, is, if time permits, reported back to the House, and there takes its chance among the jostling crowd of other bills, Fridays, however, being specially set apart for the consideration of private business. There is a calendar of private bills, and those which get a place early upon it have a chance of passing. A great many are unopposed, and can be hurried through by "unanimous consent."

Private bills are in Congress even more multifarious in their contents,

[1] The official distinction in the yearly editions of the Statutes is into Public General Acts, Public Acts of a local character (which include Provisional Order Acts and Local Acts), and Private Acts. But in ordinary speech, those measures which are brought in at the instance of particular persons for a local purpose are called private.

as well as incomparably more numerous, than in England, although they do not include the vast mass of bills for the creation or regulation of various public undertakings within a particular State, since these would fall within the province of the State legislature. They include three classes practically unknown in England, pension bills, which propose to grant a pension to some person (usually a soldier or his widow), bills for satisfying some claim of an individual against the Federal Government, and bills for dispensing in particular cases with a variety of administrative statutes. Matters which in England would be naturally left to be dealt with at the discretion of the executive are thus assumed by the legislature, which is (for reasons that will appear in later chapters) more anxious to narrow the sphere of the executive than are the ruling legislatures of European countries. I subjoin from the private bills of the session of 1880–81 some instances showing how wide is the range of congressional interference.

IN THE HOUSE OF REPRESENTATIVES

Read twice, referred to the Committee on Invalid Pensions, and ordered to be printed.

Mr. Murch introduced the following bill: —

A BILL

For the relief of James E. Gott.

Be it enacted
By the Senate and House of Representatives of the
United States of America in Congress Assembled.
That the Secretary of the Interior be, and he is hereby,
Authorized and directed to increase the pension of James E.
Gott, late a member of Company A, Fourteenth Regiment,
Maine Volunteers, to twenty-four dollars per month.

Read twice, referred to the Committee on War Claims, and ordered to be printed.

A BILL

For the relief of the heirs of George W. Hayes.

Be it enacted,

That the proper accounting officer of the Treasury be, and he is hereby, directed to pay to the heirs of George W. Hayes, of North Carolina, the sum of four hundred and fifty dollars, for three mules furnished the United States Army in eighteen hundred and sixty-four, for which they hold proper vouchers.

Read twice, and referred to the Committee on Naval Affairs.

A BILL

For the relief of Thomas G. Corbin.

Be it enacted, etc.

That the President of the United States be, and is hereby, authorized to restore Thomas G. Corbin, now a captain on the retired list of the

Navy, to the active list, and to take rank next after Commodore J. W. A. Nicholson, with restitution, from December twelfth, eighteen hundred and seventy-three, of the difference of pay between that of a commodore on the active list, on "waiting orders" pay, and that of a captain retired on half-pay, to be paid out of any money in the Treasury not otherwise appropriated.

Read twice, referred to the Committee on Ways and Means, and ordered to be printed.

Mr. Robinson introduced the following joint resolution: —

JOINT RESOLUTION

Authorizing the remission or refunding of duty on a painted-glass window from London, England, for All Souls' Church, in Washington, District of Columbia.

Resolved by the Senate and House of Representatives of the United States of America in Congress Assembled.

That the Secretary of the Treasury be, and he is hereby, authorized and directed to remit or refund, as the case may be, the duties paid or accruing upon a painted-glass window from London, England, for All Souls' Church, in Washington, District of Columbia, imported, or to be imported into Baltimore, Maryland, or other port.

NOTE (B) TO CHAPTER XVI

THE LOBBY

"THE Lobby" is the name given in America to persons, not being members of a legislature, who undertake to influence its members, and thereby to secure the passing of bills. The term includes both those who, since they hang about the chamber, and make a regular profession of working upon members, are called "lobbyists," and those persons who on any particular occasion may come up to advocate, by argument or solicitation, any particular measure in which they happen to be interested. The name, therefore, does not necessarily impute any improper motive or conduct, though it is commonly used in what Bentham calls a dyslogistic sense.

The causes which have produced lobbying are easily explained. Every legislative body has wide powers of affecting the interests and fortunes of private individuals, both for good and for evil. It entertains in every session some public bills, and of course many more private (*i.e.* local or personal) bills, which individuals are interested in supporting or resisting. Such, for instance, are public bills imposing customs duties or regulating the manufacture or sale of particular articles (*e.g.* intoxicants, explosives), and private bills establishing railroad or other companies, or