

tution (passed in 1849 and amended in several points subsequently), but also because the people have more direct control over legislation through a convention making a Constitution than they have over the action of a legislature. The delegates to a convention go straight from the election to their work, have not time to forget, or to devise means of evading, their pledges, are less liable to be "got at" by capitalists. They constitute only one house, whereas the legislature has two. There is no governor to stand in the way with his veto. The rarity and importance of the occasion fixes public attention. Thus a new Constitution became the object of the popular cry, and a heavy vote in favour of having it was cast by the country farmers as well as by decent working-people in the towns, just because it promised a new departure and seemed to get behind the old parties. As often happens, the "good citizens," who ought to have seen the danger of framing a new Constitution at a time of such excitement, were apathetic and unorganized.

Next came, in the summer of 1878, the choice of delegates to the convention which was to frame the new Constitution. The Working man's party carried many seats in the convention, but its nominees were mostly ignorant men, without experience or constructive ideas.¹ Among the lawyers, who secured a large representation, there were some closely bound by business ties to the great corporations and therefore disposed to protect the interests of these corporations, as well as those of the legal profession. In justice to many of them it must be added that their respect for the principles of the common law and for sound constitutional doctrine made them do their best to restrain the wild folly of their colleagues. However, the working men's delegates, together with the more numerous and less corruptible delegates of the farmers, got their way in many things and produced that surprising instrument by which California is now governed.

¹ Anecdotes were still current three years afterwards of the ignorance of some of the delegates. When the clause prohibiting any "law impairing the obligation of contracts" (taken from the Federal Constitution) was under discussion, a San Francisco delegate objected to it. An eminent lawyer, leader of the Californian bar, who recognized in the objector a little upholsterer who used to do jobs about his house, asked why. The upholsterer replied, that he disapproved altogether of contracts, because he thought work should be done by hiring workmen for the day.

III. THE NEW CONSTITUTION

An able Californian writer gives the following account of the Constitution of 1879:—

"The new Constitution adopted in May, 1879, made radical changes in almost every department of the Government. It completely changed the judicial system, and thereby rendered necessary an alteration of almost all the laws relating to civil and criminal procedure. It revolutionized the working, and to a great extent the scope of the legislative department, lopping off special and local legislation, and obliging the objects heretofore obtained by such legislation to be covered by general law. As a part of this revolution, it required a new plan of county, township, and city organization, with the idea partly of forcing the same general laws upon all local governments, and partly of investing such local governments with power to legislate for themselves. But the main underlying spirit of the new instrument was an attack upon capital under the specious name of opposition to monopolies. To use an expressive Californian phrase, capital, and especially accumulated capital, wherever it was found, was to be 'cinched.'¹ With this object in view, cheap labour was to be driven out of the country, and corporations so restricted and hampered in their operations as to be unable to make large profits. The cry was that there were unjust discriminations on the part of the railroads, and extortionate rates on the part of water and gas companies; that vicious practices were indulged in by mining corporations; that fair day's wages for fair day's labour could not be obtained; that rich men rolled in luxury, and that poor men were cramped with want. It may be admitted that there were some grounds for these complaints. But it does not follow that capital was any more tyrannical or corporations are more unconscionable than by their very nature they are compelled to be."²

Some of the above points, and particularly the changes in local government and in the judicial system, lie rather outside the scope of the present narrative, and I therefore confine myself to inquiring how far the objects aimed at by the Sand Lot party were attained through the Constitution whose enactment it had secured. They and the Grangers, or farmers' party, which made common cause with them, sought to deal with four questions in which lay the grievances chiefly complained of by discontented Californians.

These were —

The general corruption of politicians, and bad conduct of State, county, and city government.

¹ "Cinching" is drawing tight the girths of a horse.

² Mr. Theodore H. Hittell in the *Berkeley Quarterly* for July, 1880.

Taxation, alleged to press too heavily on the poorer classes. The tyranny of corporations, especially railroads. The Chinese.

Let us see what remedies the Constitution applied to each of these. The cry of the Sand Lot party had been: "None but honest men for the offices." To find the honest men, and, having found them, to put them in office and keep them there, is the great problem of American politics. The contributions made to its solution by the Convention of 1879 were neither novel nor promising. I have noted at the end of this chapter a few of some of its more important provisions, and some sections of the Constitution itself will be found printed in full at the end of the preceding volume. Here I will merely sum up its main results under the four heads above-mentioned.¹

1. It restricts and limits in every possible way the powers of the State legislature, leaving it little authority except to carry out by statutes the provisions of the Constitution. It makes "lobbying," *i.e.* the attempt to corrupt a legislator, and the corrupt action of a legislator, felony.
2. It forbids the State legislature or local authorities to incur debts beyond a certain limit, taxes uncultivated land equally with cultivated, makes sums due on mortgage taxable in the district where the mortgaged property lies, authorizes an income tax, and directs a highly inquisitorial scrutiny of everybody's property for the purposes of taxation.
3. It forbids the "watering of stock," declares that the State has power to prevent corporations from conducting their business so as to "infringe the general well-being of the State"; directs the charges of telegraph and gas companies, and of water-supplying bodies, to be regulated and limited by law; institutes a railroad commission with power to fix the transportation rates on all railroads and examine the books and accounts of all transportation companies.

¹ As to the nature of State constitutions in general, and the restrictions they now impose on legislatures, see Chapters XXXVII. *sqq.* in Vol. I.

4. It forbids all corporations to employ any Chinese, debars them from the suffrage (thereby attempting to transgress the fifteenth amendment to the Federal Constitution, forbids their employment on any public works, annuls all contracts for "coolie labour," directs the legislature to provide for the punishment of any company which shall import Chinese, to impose conditions on the residence of Chinese, and to cause their removal if they fail to observe these conditions.

It also declares that eight hours shall constitute a legal day's work on all public works.¹

When the Constitution came to be submitted to the vote of the people, in May, 1879, it was vehemently opposed by the monied men, who of course influence, in respect to their wealth, a far larger number of votes than they themselves cast. Several of the conservative delegates had, I was told, abstained from putting forth their full efforts to have the worst proposals rejected by the convention in the belief that when the people came to consider them, they would ensure the rejection of the whole instrument. Some of its provisions were alleged to be opposed to the Constitution of the United States, and therefore null. Others were denounced as ruinous to commerce and industry, calculated to drive capital out of the country. The struggle was severe, but the Granger party commanded so many rural votes, and the Sand Lot party so many in San Francisco (whose population was then nearly a third of that of the entire State), that the Constitution was carried, though by a small majority, only 11,000, out of a total of 145,000 citizens voting. Of course it had to be enacted as a whole, amendment being impossible where a vote of the people is taken.

The next thing was to choose a legislature to carry out the Constitution. Had the same influences prevailed in this election as prevailed in that of the Constitutional Convention, the results might have been serious. But, fortunately, there was a slight reaction, now that the first and main step seemed to have been taken. The Republicans, Democrats, and Sand Lot party all ran "tickets," and owing to this division of the working men's and the Granger vote between Kearneyite candidates and the

¹ For some further remarks on the new Constitution see note in Appendix.

Democrats, the Republicans secured a majority, though a small one. Now the Republicans are in California, as they would themselves say, the moderate and conservative party, or as their opponents said, the party of the rich and the monopolists. Their predominance made the legislature of 1880 a body more cautious than might have been expected. Professing hearty loyalty to the new Constitution, the majority showed this loyalty by keeping well within the letter of that instrument, while the working men and farmer members were disposed to follow out by bold legislation what they called its spirit. Thus the friends and the enemies of the Constitution changed places. Those who had opposed it in the Convention posed as its admirers and defenders; while those who had clamoured for and carried it now began to wish that they had made its directions more imperative. The influence and the money of the railroad and the other great corporations were of course brought into play, despite the terrors of a prosecution for felony, and became an additional "conservative force" of great moment.

Thus a series of statutes was passed which gave effect to the provisions of the Constitution in a form perhaps as little harmful as could be contrived, and certainly less harmful than had been feared when the Constitution was put to the vote. Many bad bills, particularly those aimed at the Chinese, were defeated, and one may say generally that the expectations of the Sand Lot men were grievously disappointed.

While all this was passing, Kearney had more and more declined in fame and power. He did not sit either in the Constitutional Convention or in the legislature of 1880. The mob had tired of his harangues, especially as little seemed to come of them, and as the candidates of the W. P. C. had behaved no better in office than those of the old parties. He had quarrelled with the *Chronicle*. He was, moreover, unfitted by knowledge or training to argue the legal, economical, and political questions involved in the new Constitution, so that the prominence of these questions threw him into the background. An anti-Chinese agitation, in which the unemployed marched about San Francisco, calling on employers to discharge all Chinese workmen, caused some alarm in the winter of 1879-80, but Kearney was absent at the time, and when he returned his party was wavering. Even his prosecution and imprison-

ment on a rather trivial charge gave only a brief revival to his popularity. The W. P. C. was defeated in a city election in March, 1880, by a combination of the better class of Democrats with the Republicans, and soon after expired.

When I was in San Francisco in the fall of 1881, people talked of Kearney as a spent rocket. Some did not know whether he was in the city. Others said that the capitalists had rendered him harmless by the gift of a new dray and team. Not long afterwards he went East, and mounted the stump on behalf of the Labour party in New York. He proved, however, scarcely equal to his fame, for mob oratory is a flower which does not always bear transplantation. Since 1880 he has from time to time taken some part, but never a conspicuous part, in Californian politics, and was, indeed, in 1883, no longer deemed a force to be regarded. And now, as the Icelandic sagas say, he is out of the story.

After the session of 1880, Californian politics resumed their old features. Election frauds are said to have become less frequent since glass ballot boxes were adopted, whereby the practice of stuffing a box with papers before the voters arrive in the morning has been checked. But the game between the two old parties goes on as before. What remained of the Sand Lot group was reabsorbed into the Democratic party, out of which it had mainly come, and to which it had strong affinities. The city government of San Francisco is much what it was before the agitation, — a few years ago, under Boss Buckley, it was even worse, — nor does the legislature seem to be any purer or wiser. When the railroad commission had to be elected, the railroad magnates managed so to influence the election, although it was made directly by the people, that two of the three commissioners chosen were, or soon afterwards came, under their influence, while the third was a mere disclaimer. None of them possessed the practical knowledge of railway business needed to enable them to deal, in the manner contemplated by the Constitution, with the oppressions alleged to be practised by the railroads; and the complaints of those oppressions seemed in 1883 to be as common as formerly. I enquired in that year why the railroad magnates had not been content to rely on certain provisions of the Federal Constitution against the control sought to be exerted over their under-

taking. The answer was that they had considered this course, but had concluded that it was cheaper to capture a majority of the Commission. The passing of the Inter-State Commerce Act by Congress was expected to bring about a change in the situation, but that act has disappointed its promoters; and the tyranny of the Southern Pacific Railroad (as it is now called, though it controls the Central Pacific line also) remains severe. In July 1894, when the dispute between the Pullman Company and their employés in Illinois gave rise to a railway strike over large parts of the West, the mobs which attacked the depots and wrecked the trains in California seem to have been regarded by the mass of the people with a sympathy which can be attributed to nothing but the general hostility felt to the railroad company which has so long lain like an incubus on the State.

Some of the legislation framed under the Constitution of 1879 has already been pronounced by the Supreme Court of the State invalid, as opposed to that instrument itself or to the Federal Constitution, and more of it may share the same fate. The condition of the people at large has not substantially changed, though the restrictions imposed on the legislature (as regards special legislation) and on local authorities (as regards borrowing and the undertaking of costly public works) have proved beneficial. The net result of the whole agitation was to give the monied classes in California a fright; to win for the State a bad name throughout America, and, by checking for a time the influx of capital, to retard her growth just when prosperity was reviving over the rest of the country; to worry without seriously crippling, the great corporations, and to leave the working classes and farmers where they were. No great harm has been done, and the Constitution, pruned and trimmed by the courts, is now (1893) reported to be working fairly well. Nevertheless, a mischievous example has been set, and an instrument remains in force which may some day be made the basis of further attacks upon the capitalist class.

IV. OBSERVATIONS ON THE MOVEMENT

I would leave the reader to draw a moral for himself, were he not likely to err, as I did myself, till corrected by my

Californian friends, by thinking the whole movement more serious than it really was.

It rose with surprising ease and swiftness. The conditions were no doubt exceptionally favourable. No other population in America furnished so good a field for demagoguery. But the demagogue himself was not formidable. He did not make the movement, but merely rode for a moment on the crest of the wave. Europeans may say that a stronger man, a man with knowledge, education, and a fierce tenacity of fibre, might have built up a more permanent power, and used it with more destructive effect. But Californians say that a strong man would not have been suffered to do what Kearney did with impunity. Kearney throve — so they allege — because the solid classes despised him, and felt that the best thing was to let him talk himself out and reveal his own hollowness.

The movement fell as quickly as it rose. This was partly due, as has just been said, to the incompetence of the leader, who had really nothing to propose and did not know how to use the force that seemed to have come to his hands. Something, however, must be set down to the credit of the American party system. The existing parties are so strong, and are spread over so wide an area, that it is very difficult to create a new party. Resting on a complex local organization, and supported by the central organization for the purposes of Federal politics, they can survive a temporary eclipse in a particular State, while a new party cannot count itself permanent till it has established some such organization, central as well as local. This may operate badly in keeping old parties alive, when they deserve to die. But it operates well in checking the growth or abridging the life of mischievous local factions. That fund of good sense, moreover, which lies at the bottom of nearly every native American mind, soon produces a reaction against extreme measures. When the native voters, especially those who owned even a little property, had relieved their minds by voting for the new Constitution, they felt they had gone far enough in the direction of change, and at the election of a legislature voted for moderate men. Support from this class having been withdrawn, the Sand Lot rabble ceased to be dangerous; and although threats of violence were abundant, and sometimes bloodthirsty, there was little sedition or disorder.