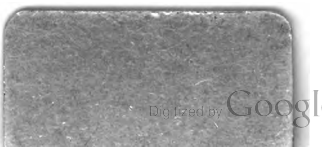

LOCAL GOVERNMENT IN COUNTIES, TOWNS AND VILLAGES

The American State Series

LOCAL GOVERNMENT IN COUNTIES, TOWNS AND VILLAGES

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PREFACE

THIS book deals mainly with local institutions of the present time. For this reason the historical discussion occupies a much smaller share of space than has been usual in previous accounts of American local government. And since the historical aspects of the subject have been so thoroughly considered before, what is given here in that branch is largely a condensed summary of earlier writings. But an attempt has been made to show the process of development more clearly as a continuous movement; and, particularly in dealing with the events of the nineteenth century, it is believed that the various steps in the extension of local institutions throughout the country are presented in a more comprehensive and connected way than heretofore.

In describing the institutions of to-day a somewhat different method of treatment has been followed from that which has become traditional. It has seemed clear that in regard to county government, the classification by geographical divisions must give an inadequate account without a large amount of

repetition. As usually presented this method overlooks some of the main resemblances in county government throughout the country; and at the same time underestimates the points of difference between different states in the same geographical group. For these reasons the county has here been considered as essentially a similar institution in practically all of the states; while the variations between different states are presented in dealing with each of the various county authorities.

On the other hand, the geographical grouping still forms the best basis for describing the smaller units of local government. But it will perhaps be a surprise to many to learn that the westward movement of the township has stopped, for the present at least, with the arid plains; and that the region beyond may be compared institutionally with the Southern states.

An explanation may be necessary for some of the terms used for groups of states with similar institutions. The New England states form, of course, a well-known group. For the main classification the whole body of Southern states from Maryland to Texas are grouped together; but there are many variations within this group which, however, do not mark off any well-defined smaller groups. The largest and most important class includes the states from New York and New Jersey westward to the Dakotas and Kansas.

These are called collectively the Central states; while the eastern and western sections are sometimes referred to as the Middle-Atlantic and Middle-West or North Central groups. The Western states are those from the Rocky Mountains to the Pacific.

Some states are partly in two divisions. The southern part of Illinois belongs with the Southern states; and the northern part of Missouri with the Central states. And the westward counties of Nebraska and the Dakotas may be classed with the Western group.

The fourth part, on State Supervision, draws attention to recent centralizing tendencies affecting local government. Fifty, or even twenty-five years ago these tendencies were so insignificant as to be hardly discernible. To-day, however, they are important factors in local administration, and the most significant of recent developments. In all probability, too, they have not yet reached their maximum.

In preparing for this book an examination has been made of the state constitutions and the latest available editions of the revised statutes or compiled laws of each of the states and territories. This has been supplemented by a study of the more important statutes enacted since the various general collections. But it has not been possible to make an exhaustive analysis of this material or of the great volume of minutely detailed and special legislation, and some

recent changes of considerable importance may have been overlooked.

This study of constitutions and statutes has been further supplemented by an examination of most of the printed writings on local government, by correspondence with officials and many others, and by a good deal of personal observation in different parts of the country. The bibliography at the end of the book includes only the more general works. The footnotes are far from exhaustive, and are intended mainly to supplement the general bibliography and to make some acknowledgment to the many friends who have furnished information and suggestions. To economize space these references have been restricted to one for each person, although some have given assistance on many pages.

It may not be amiss to note that my opportunities for personal observation have covered a number of widely separated states, including residence for several years each in one of the Southern states, Massachusetts, New York and Michigan, and brief visits to most of the states east of the Mississippi River and a number of those further west.

Further thanks are also due to my colleagues, Professors A. C. McLaughlin, C. H. Van Tyne and A. L. Cross, who have read the historical chapters and given valuable suggestions; to Mr. Charles V. Chapin

of Providence, R. I., for permission to use a paper of his as Chapter 14; and to the American Political Science Association for its consent to the reprinting of two papers read at its meeting in December, 1904.

J. A. F.

UNIVERSITY OF MICHIGAN,
Ann Arbor, June, 1906.

In this new edition, a few corrections have been made; and the more important changes in local government since 1906 have been noted. The most significant of these are the tendencies towards further centralization, especially in the fields of charities and correction, finance and road administration. It is hoped this revision will make the book more serviceable in connection with the recent discussion of proposals for the reorganization of county government in the United States.

J. A. F.

UNIVERSITY OF ILLINOIS,
Urbana, January, 1914.

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PART I
HISTORICAL

LOCAL GOVERNMENT IN COUNTIES, TOWNS AND VILLAGES

CHAPTER I

LOCAL INSTITUTIONS IN ENGLAND

Local government in the United States has developed from institutions established in the colonies, which institutions were in many respects similar to those existing at the time in England. The origin and early history of these English institutions are difficult to trace. In many important features the later Anglo-Saxon system bears close analogies to the Germanic system in the first century A. D., as described by the Roman historian, Tacitus, and it is evident that the one has developed from the other. But in the historical records there is a long gap which makes it impossible to describe the process of evolution. Also there are many unsettled questions in connection with the extent of the early Roman influence on the development of institutions in England during the first centuries of the Anglo-Saxon period. It will be sufficient for our purpose here to sketch briefly the growth of English local institutions from the time when they can be clearly understood, in the latter part of the

Anglo-Saxon period, describing somewhat more at length the system of local government existing at the time of the first settlements in America.

When in the ninth century the various Anglo-Saxon kingdoms had been united in the kingdom of England, the country was divided for purposes of local government into shires, these into districts, known as hundreds, and these again into townships. The township, whether a development from the so-called Teutonic mark, or from the Roman villa, was a social and economic, rather than a political, district. It was a small rural community composed mainly of peasants. Local affairs were managed by an assembly of the inhabitants, who elected a president, known as the town-reeve, a tithing man, constable, and four men, who with the reeve and priest represented the township in the courts of the hundred and the shire. After the organization of the Church, parishes had also been established, usually coterminous with townships; and ecclesiastical affairs were managed by a similar assembly of inhabitants under the name of the vestry.

The hundred was a district composed of several townships. Here the management of affairs was in the hands of a court held monthly, composed of all individual landlords within the district and the representatives from the various townships noted above. As executive officials there were a deputy of the shire-reeve, an elected hundreds-ealdor, and (at any rate towards the close of Anglo-Saxon times) a standing committee of twelve senior thegns. The main functions of this court were judicial in character, includ-

ing both civil and criminal jurisdiction. In theory justice was administered by the whole body of lawful attendants or suitors at the court; but in practice this function fell very largely to the committee of twelve, whose further duty it was to present persons accused of more serious crimes in the shire court.

Above the hundreds were the shires. These were, in the south and extreme north, the districts of older kingdoms or distinct bodies of the Teutonic peoples which retained certain features of self-government after their absorption into the larger kingdom. In the midlands the shires were artificial districts created for convenience of administration. Whatever its origin, the affairs of each shire were managed by a semi-annual court, composed of the representatives from each township and the individual landowners, though later the place of the latter may have been taken by the twelve senior thegns from each hundred. The principal function of this court, as in the hundred, was the administration of justice.

The initative and active control of business rested in three officials: the ealdorman or earl, the shire-reeve or sheriff, and the bishop. The ealdorman represented the extinct royalty in the earlier kingdoms; and although later nominated by the King, he retained much of the dignity suggested by the origin of the office. Several shires were grouped under each ealdorman, who was preëminently the leader of the military forces. The sheriff originally had been the steward of the royal estates and chief representative of the Crown, but became also the president and chief execu-

tive of the shire court. In ecclesiastical cases, however, the bishop presided over the court.

After the Norman conquest the earls retired from the active administration of shire business, and the position became merely a title of nobility and highest dignity. At the same time the separation of civil and ecclesiastical jurisdiction led to the disappearance of the bishop from the shire court. These changes paved the way for the supremacy of the sheriff in the county, as the shire came to be called. This officer became the King's representative in military affairs; as police magistrate he was responsible for maintaining the peace and supervising the elaborate system of securities for good behavior; as steward of the royal estates, his financial powers were increased; and for a time his judicial functions gained in importance with the development of the shire court and the decline of the hundred court. The jurisdiction of the shire court was extended, and its sessions became more frequent, until they were held as often as once a month. This led to a falling off in attendance of the local representatives, with a corresponding increase in the influence of the sheriff. Criminal courts in each hundred were also held by the sheriff twice a year. In fact the sheriff became the chief agent in a strongly centralized prefectoral administration.

Another result of the Norman conquest was the development of feudal manorial courts, at the expense of the hundred courts. Even in Saxon times many thegns had judicial jurisdiction within their estates, covering one or more townships; and these were exempt from the hundred court. This system was

now extended with other features of the feudal régime. In each manor, courts or assemblies of the inhabitants were held, different sessions being known as the court customary, the court baron, and the court leet. Here, as in the hundred and shire courts, the judgments were rendered by the whole body of attendants, but under the supervision of the lord's steward, who occupied in a smaller way a position similar to that of the sheriff in the shire court.

Arbitrary exercise of his enormous powers made the sheriff an unpopular official, and at the same time the tendency for the office to become hereditary in powerful local families caused it to be distrusted by the Crown. As a consequence his authority was gradually reduced by the development on the one hand of the itinerant royal courts, and on the other of the justices of the peace, until he became simply a ministerial officer of the courts, a conservator of the peace, and returning officer in elections.

Special royal commissioners had occasionally been sent throughout the kingdom from the time of Alfred. A regular system of circuit judges was established under Henry I; and under Henry II this developed into the common law courts, which took over the most important judicial business from the sheriffs and the shire courts.

During the thirteenth century a new class of peace officers were appointed from time to time, with executive police powers of rather more importance than the old constables. Those appointed were landowners, who served without salary. In the reign of Edward III judicial powers were given to these magistrates;

and in the next century many of the functions of the sheriff were transferred to the new justices of the peace; in other respects they replaced the manorial courts, while still more powers were added. Most of the remaining jurisdiction of the shire court was transferred to the quarter sessions of the justices, and the former remained in existence mainly for the election of coroners and members of Parliament. The hundred as an administrative district almost disappeared. The old local officials—sheriffs, coroners, constables, and manorial bailiffs—became the servants of the justices and often their nominees. The justices at their quarter sessions also constituted the fiscal board of the shire, which assessed, levied and managed the expenditure of county funds and maintained county roads and bridges, prisons and public buildings.

Under the Tudors there was a further development in the power of the justices of the peace, with other changes in county government; and at the same time the establishment of new organs of local government in the parishes made the town of much greater relative importance than before.

Additions to the authority of the justices may be noted in three directions: They became charged with the duty of preliminary investigations in criminal cases of all kinds. They were given control over the administration of a vast mass of statutory poliee legislation, both old and new, including laws against vagabonds and beggars, the regulation of wages, apprenticeship and prices, licensing beer-houses and other trades, and, after the Reformation, ecclesiastical laws against

papists and non-conformists. Lastly they were given important powers of supervision over the newly established parish system, in reference to police matters, poor relief, highways and local taxation. These, with their former powers, gave the justice of the peace the position well described as "the state's man-of-all-work."

Other changes in county government affected the militia system, the local administration of which was placed in the hands of a new official, known as the lord-lieutenant. Most of the important judicial business was now in the hands of the royal judges, although the sheriff's county court and in some places the manorial courts lingered on as decaying institutions.

While in earlier times the township had never been an important unit of civil administration, on its ecclesiastical side the parish had always an active and a continuous existence. With the separation from Rome, the priest was replaced by the rector as the ecclesiastical head of the parish, assisted in financial matters by two churchwardens chosen by the parish vestry—which had the power to levy a local tax or church rate for the maintenance of the church property.

This ecclesiastical organization was now made the basis of a distinctly civil administration. Under Mary, the parish vestry was authorized to elect a surveyor of highways, and levy a highway rate; but local roads continued to be maintained for the most part by a labor tax. Poor relief had always been considered an ecclesiastical affair, administered through

the parish or in later times largely by the monasteries. But the dissolution of the monasteries and economic changes made necessary a new system; and a long line of Parliamentary statutes, beginning in the reign of Henry VIII and culminating in the Poor Law of 1601, definitely established a system of parish taxation for the care of the poor, to be administered by the churchwardens and a new class of officials, known as overseers of the poor. It may also be noted that whatever was done in the way of popular education was also done through the parish officials, but this was as yet considered a purely ecclesiastical matter.

As has been seen, the parish officials in the exercise of these new functions were placed under the active supervision of the justices of the peace. The justices, in turn, and other executive officers, were controlled in all their functions by the statutes of Parliament enforced by the royal judges. There was also an active administrative control exercised by the Privy Council. Also, as a means of central control, sheriffs, justices and local executive officers, down to village constables, were subject to dismissal from office.

Few changes of importance were made in English local government under the first two Stuarts, and those made can be best noted in a description of the whole system as it existed in the early part of the seventeenth century, at the time when the first permanent English settlements were being made in America.

At the head of the county or shire were now two officials, the sheriff and the lord-lieutenant. The sheriff was the more important and was still an official of considerable power and much dignity, although

the requirement of constant residence in the county and the expenditures made necessary by law and social customs were heavy burdens. Sheriffs in most cases were chosen by the King, each from a list of three, selected by the Privy Council, and by law the same man could not be appointed for two successive years. The duties of the sheriff were many and varied. Each month he held a county court for small civil cases, although this was a fast-waning institution. He presided also at the sessions of the county court for the election of members of Parliament, and here often wielded considerable influence on the result. At the semi-annual assizes of the royal judges, the sheriff summoned juries, executed the judgments of the courts, had charge of the jail, and acted as local host to the visiting representatives of the Crown.

More dignified was the position of lord-lieutenant, which in some sense revived that of the Anglo-Saxon earl. This post was usually given to the highest nobleman with estates in the county, and appointments were not frequently changed. It was the main duty of the lord-lieutenant to supervise the local militia, which was called into service to suppress riots and the like, but other duties were added under the Stuarts.

Much less dignified and less powerful than either of these was the ancient office of coroner, filled by election in the county court. His functions were now mainly confined to the duty of investigating sudden deaths, and binding over for trial those indicated by the inquest jury. As a survival of his former importance the coroner under some circumstances took the place of the sheriff.

But the real work of county administration was now performed by the justices of the peace. There were from twenty to sixty of these in each county, chosen by the lord chancellor from the rural gentry. They were usually men of good family and of some ability and education, who discharged the burdensome duties practically without pay, but were recompensed by the social dignity and sense of authority conferred in the office.

The powers and duties of the justices of the peace were so multifarious as to defy classification or simplicity of statement. A writer of the time names 293 statutes passed before 1603 in which justices are mentioned and given some jurisdiction and duties; and 36 more were added in the reign of James I. Legal textbooks on the subject required 500 or 600 pages to enumerate the list. Some of their functions were performed by individual justices, others by two or more acting jointly, and the most important by the justices in each county in their regular quarter sessions, held four times a year.

At the quarter sessions all of the justices in the county were presumed to attend, but in practice attendance was irregular and incomplete. One justice at least had to be from those known as the "quorum," presumably those learned in law. There had also to be present the *custos rotulorum,* or keeper of the rolls, who was apt to be the lord-lieutenant; but he was usually represented by a deputy. In addition there was necessary the sheriff or his deputy, the jailor with his prisoners, the high constable and bail-

iffs, the coroners, jurors, and all persons committed for trial.

Primarily the quarter session was a court of criminal jurisdiction for the trial of all but the most petty and the most serious crimes. It was also the administrative board for the county, charged with the care of roads and bridges, county property and the levy of county taxes.

In petty sessions of two or more, the justices also performed both judicial and administrative functions. They had summary jurisdiction in petty cases, and single justices committed accused persons to trial before the higher courts. They granted licenses to ale-houses, regulated wages and apprenticeship, and punished ecclesiastical recusants. They were frequently called in to give special relief or to take other action in emergencies, while, in addition, they were constantly subject to the instructions of the Privy Council, whose communications became more frequent and more drastic from the end of the sixteenth century.

Some important functions which were to come within the sphere of civil administration in America, were under the control of the ecclesiastical courts, held in each diocese by the bishop or a judge ordinary appointed by him. These functions included substantially all matters connected with marriage and divorce, the proof of wills, the granting of letters of administration and of guardianship, and the administration of personal estates.

The hundred had become the least important admin-

istrative division of England. The sheriff continued to hold a desultory semi-annual "tourn" in each hundred, and the district was also used for the purposes of taxation, military organization and in the maintenance of peace. The high constables, chosen annually at the quarter sessions, were the only officers of the hundred.

For the smallest administrative district the use of terms was confusing and often indiscriminate. Town or township was the most general term, applying to either manor or parish. Manors with their special privileges and duties were fast becoming obsolete; but courts leet and courts baron continued irregularly in a few places. The parish was now the most usual name for the smallest unit of local government; and the development of its functions, already described, made it an important district.

The most active and conspicuous officer of the parish was the constable, chosen in some places by the steward or lord of the manor, elsewhere by the court leet, by the vestry, or by the justices of the peace. Although charged with a long list of duties as peace officer on his own initiative, practically the constable was now simply the agent or instrument of the justices, for making arrests and executing warrants and judicial sentences, for collecting taxes, or for other purposes.

Other parish officials of some importance were the churchwardens chosen at a vestry meeting of the parishioners in Easter week of each year. They levied the local taxes imposed by the justices and those for parish purposes and were *ex officio* overseers of the poor.

A vestry clerk existed in some parishes, the prototype of the American town clerk. And there were many other petty officers such as beadles, sextons, haywards, ale-conners, way-wardens, sidesmen, synodomen, and questmen.

All of these parish officials were drawn from a lower social rank than the gentry who filled the posts in the county government. The offices in the rural parishes were usually given to copyholders, small retailers, artisans or even laborers. Their duties were simple and in most cases took but little time, so that, except for constables and a few others paid by fees, there was no payment attached to the offices.

It remains to describe the vestry meeting or general assembly of the parish. All inhabitants were ordinarily entitled to attend these meetings,—landowners, free tenants, copyholders, laborers, and even those who held land in the parish but lived elsewhere. But there is little evidence as to the actual practice. What records exist do not suggest an active assembly. The attendance consisted only of the more substantial members of the community and of the officers who had to present reports. The name vestry, taken from the small room where the meetings were held, indicates that only a few persons were usually present. Early in the seventeenth century it was customary to appoint in the open vestry a select committee to advise the parish officers, which suggests the selectmen of the New England towns. In England, however, in many parishes this committee came to fill vacancies in its own membership, and the select vestry—as it was called—developed into a close corporation,

whose powers were later recognized as legal by prescription.

The whole system of local administration was under the control of an energetic national government; the bulk of active administration was performed by the county officials drawn from the propertied classes, but acting largely under instructions from above; while at the bottom was the parish with indefinite, but unutilized powers of self-government. It differed from the decentralization of the Anglo-Saxon period, and the feudal disorganization of the Plantagenet era, and also from the extreme centralization under the Norman kings. In form it was highly centralized, with sheriffs and justices appointed by the central government, and under the active supervision of the Privy Council. But the hierarchy of control was not systematically organized, as it might have been had the former authority of the sheriff been revived. Moreover the local officers, instead of being trained and salaried, were usually unpaid and the most important were drawn from an independent class—the rural gentry—while the traditions of the offices went back to a time of large local autonomy.

Such were the local institutions with which the English colonists in America were familiar; and as was natural, most of them were introduced in the new colonies. But different conditions led to many important changes. The central government of England could not exercise direct control over minor officials at such a distance, and indirect control through the colonial governors was very ineffective. Many of the most important functions of local government in England,

such as poor relief, were of no importance in the colonies. Other functions, such as education, became important. The class of rural gentry did not exist in America, and even with similar laws a different class of officials appeared. And as time went on additional changes were introduced from various causes. But the development of American local government is a continuous process from the English institutions of the first part of the seventeenth century.

CHAPTER II

THE COLONIAL PERIOD

In the European settlements established within the limits of the thirteen colonies, there was at first no distinction between the local and central government of each colony. But as population increased and spread over a larger area, special local institutions became necessary; and those established were naturally similar to those of the mother country. There were, however, important modifications of the English institutions almost from the beginning; and other changes developed during the colonial period.

Virginia followed the English system most closely. The first subdivisions of this colony were styled plantations and hundreds, but there was no revival of the organization of the old English hundred. These early districts soon became *de facto* parishes; and before long the latter name became the more common, and new parishes were established from time to time. Each parish, as in England, was both an ecclesiastical and civil district, with a vestry, minister and churchwardens for the management of local affairs. The vestry consisted usually of twelve "selected men," chosen at first by the parishioners, but later the practice of coöptation became established as in the "select vestry" of England.

But on the large scattered plantations which physical conditions made the economic unit in Virginia, many local matters were attended to by the owners; there was little opportunity for political activity; and before long the parish was overshadowed by the county as a district for local administration. In 1634 Virginia was divided into eight shires and new shires or counties were gradually organized. The county became the unit of representation in the colonial assembly, and the unit of military, judicial, highway and fiscal administration. The officers were the county lieutenant, the sheriff (who acted as collector and treasurer), justices of the peace and coroners. All were appointed by the governor of the colony on the recommendation of the justices, and the latter thus became a self-perpetuating body of aristocratic planters controlling the whole county administration. The justices also appointed the clerk of the monthly county court, who acted also as recorder of deeds; and each county had also a land surveyor, appointed by the surveyor-general of the colony.

Maryland was originally organized for purposes of local government, like the county palatine of Durham in England, with hundreds and manors as the subdivisions. But in 1650 three counties were established; and new counties were organized from time to time. At the same time the hundred as a subdivision of the county was continued, and new districts of this name were organized for election, fiscal and military purposes. The erection of manors also continued until towards the close of the seventeenth century, but very soon after the transfer to a royal province the coun-

ties were subdivided into parishes. And during the eighteenth century a number of towns were created by special acts.[1] Thus, while the organization of hundreds and manors delayed the development of counties and parishes in Maryland, toward the end of the colonial period the local institutions tended to become more nearly like those in Virginia.

Outside of Maryland hundreds and manors had little permanent influence on local government. The name hundred appears in the early records of Virginia and Maine; and was permanently established in Delaware, where it was in fact a modified township. Manors were established in New York, and were provided on paper for Carolina.

In New England the main unit of local government was the town, although the county was also organized as in England. The notable development there of the town was due to various causes. It has been described as a revival of the early Germanic and Anglo-Saxon institutions, and analogies can be drawn in many features. But the historical connection is through the later English parish and manor, and there is no evidence of conscious imitation of older institutions. The recurrence of primitive conditions explain the reappearance of some similarities, but a more important factor was the system of settlement in compact communities (partly as a means of protection against Indian attacks) by groups of small landed proprietors, each of which formed at the same time a church congregation, while an underlying cause was the democratic philosophy of the Puritans, which affected

[1] Mereness, "Maryland as a Proprietary Province," Ch. 6.

alike their economic, ecclesiastical and political organization.

The New England town has been described as a manor without a lord. But its activities included those of the English manor, the civil functions of the parish and many others. In addition to maintaining highways and caring for the poor, it supported public schools, regulated private business of every sort in most minute fashion, and was the unit for the assessment and collection of taxes, for militia organization and for representation in the colonial assemblies, and in some colonies, also for land records and judicial purposes. In most of the New England colonies some of the towns were older than the central government; and in Connecticut and Rhode Island the latter was considered more as a federation of towns than as a superior sovereign authority.

Control of town affairs was in the hands of the town meeting of the inhabitants, held in the early days with great frequency. Each town meeting organized itself by the election of a moderator. At the annual meeting a long list of town officers were elected,—but these were limited by the appropriations made, taxes levied, and by-laws passed by the town meeting, which thus retained an active supervision over every branch of local administration. The meeting resembled the assembly of freeholders and tenants in the manorial courts, without the presence of the lord's steward. It was clearly more democratic than the "close vestry," and probably was more democratic in practice than the open vestry.

In England and Virginia large landed estates and

the Episcopalian Church system encouraged the rule of a small class, while in New England the small freeholders and Congregational Church system promoted a more popular participation. At the same time even in the New England towns there were leading families which exercised a large measure of influence in town affairs.

Most important of the town officers were the selectmen or townsmen, a committee of three to thirteen members, annually elected at the town meeting. This feature of the town government seems to have been a development from the committee or "selected men," which formed a stage in the evolution of the select vestry in England and Virginia. But the New England selectmen were simply an executive body for the town meeting, and never became a close corporation, taking the place of the open meeting of all the inhabitants. Even where the same persons continued to fill the office from year to year, they were regularly elected at the town meeting, which issued instructions and formed an active center for discussion of their actions. In Rhode Island the body corresponding to the selectmen was known as the town council.

For the most part the functions of the selectmen were regulated by the town meeting; and on this account their duties were so varied that exact statement is impossible. Nearly everything that could be done by the town meeting was at times performed by the selectmen. In general they were "to manage the prudential affairs of the town." More specifically, they conducted the financial administration, acted as legal agents of the town, had charge of the common

lands, summoned the town meeting, and acted as election officers. At times they appointed minor town officers, and even assessed taxes and enacted by-laws, under authority from the town meeting. To some extent duties were imposed by the general court or assembly of the colony; and they were in this way made direct agents of the central government and in a slight degree of the English Crown. Thus in Connecticut and Plymouth they were given judicial powers; and in Connecticut and Rhode Island they had probate jurisdiction.

A constable was a necessary officer in every town; but in New England he was preëminently the agent of the town meeting, and freed from the active tutelage of the justices of the peace. Of more importance and higher social rank was the town clerk, who far surpassed his prototype, the English vestry clerk. He was not only secretary to the town meeting and the selectmen, but also a register of deeds and a recorder of vital statistics. Other officers of some importance were the treasurer, assessors, collectors, surveyors of highways, fence viewers and clerks of the markets. Besides these a long list of additional petty functionaries were chosen, such as hog reeves, field drivers, pound keepers, overseers of the poor, tithing men, town criers and many others. Not all of these were chosen by every town; but the list in each case was numerous enough to give a public position to a good proportion of the inhabitants.

In emphasizing the development of the town, many writers have neglected or ignored the county as a local government district in New England. But in

Massachusetts the county was early established and became an important institution, which influenced the development of the county system throughout the country. And in the neighboring colonies counties were organized, at least for judicial purposes.[1]

The first steps in the development of the Massachusetts county were taken in 1636, when the colony was divided into four judicial districts, in each of which a quarterly court was provided. At the same time three militia districts were created. In 1643 four shires or counties were definitely organized, both as judicial and militia districts; and additional counties were afterwards established. Local magistrates for the county courts and town commissioners for trying petty cases were at first appointed by the general court; but after 1650 they were nominated by local election, subject to the approval of the higher authorities.

Fiscal administration was also of some importance. While the town was the primary unit for the assessment of taxes, there was established before 1650 a system of representative commissioners from each town, who met at the shire town to equalize the apportionment of taxes between the various towns,—a plan which foreshadows the boards of supervisors that later developed more fully in New York. And since as yet there was no sheriff, the elective office of county treasurer was created in 1654, to look after fiscal affairs.

Other county functions and officials were soon added to these. The county was a militia district;

[1] Howard, "Local Constitutional History," Part III, Ch. 7.

but in place of an appointed lieutenant, the chief militia officer in each district was made elective. The county became further the district for the system of registering land titles, which had been originally established as a duty of town officers. In 1642 it was enacted that the clerk of every shire town should record deeds; and later the county clerk was given the additional title of county recorder. And in the absence of the ecclesiastical courts of the Anglican church, probate duties became a function of county administration. This jurisdiction was at first vested in the governor and council; but in 1652 the clerks of the county courts were made registers of wills, and in 1685 the county courts were authorized to act as probate courts.[1]

Minor changes were made in this county system from time to time; and under the provincial charter of 1691 there was a general reorganization more on the lines of the English system. Sheriffs, justices and militia officers were henceforth appointed by the governor or the general court; and the justices exercised administrative as well as judicial functions, as in England, acting singly and in petty and quarter or general sessions. The justices also had some supervision over the town officers and the joint meetings of town commissioners for equalizing taxes. For the trial of civil cases four justices in each county were named as an inferior court of common pleas.

In three of the other New England colonies the development of the county was largely influenced by

[1] Extracts from the Massachusetts Records in C. D. Wright's "Public Records of . . . Massachusetts," pp. 365, 370.

Massachusetts. New Hampshire was under its jurisdiction from 1641 to 1679, and Maine after 1652; and the county system was applied to these districts. Plymouth in 1685 was divided into three counties, and in a few years these became part of Massachusetts.

Connecticut first established county courts, with judicial and probate jurisdiction, in 1666, soon after the charter uniting New Haven and Hartford. Each court was held by one of the assistants and two commissioners appointed by the general court, but the term justices of the peace was introduced in place of commissioners by Governor Andros, and continued in use thereafter. In connection with these county courts there developed an important change in methods of criminal prosecution, which has extended throughout the United States. In England there had been no system of local prosecuting officers, but the magistrates in Connecticut assumed the power of investigating crime; and in 1704 there was authorized for each county an attorney "to prosecute all criminal offenders. . . and suppress vice and immorality."[1] From this has developed the important American office of prosecuting attorney, which exists under various titles in all of the states. The Connecticut county was used in militia as well as judicial administration; but as a whole it was of less importance than in Massachusetts.

Not until 1703 were counties organized in Rhode Island, and in this colony they served only as judicial districts.

[1] Hammersley, *Connecticut Courts*, in "The New England States," I, 489.

In the Middle colonies, the early Dutch settlements established by the "patroons" were manors, similar to the feudal institutions of continental Europe. But a little later there grew up a number of self-governing village communities along the Hudson, and on Long Island. After the English conquest of New Netherlands, in 1664, a system of local government was prescribed by the "Duke of Yorke's Laws," which combined features of the English and New England system with some novel developments. Existing institutions and customs were recognized by making the town the basis of local government. Here authority was vested in a constable and several overseers, who were elected by the freeholders, and had power to adopt by-laws, to levy taxes, and to act as executive and judicial officers. Two overseers were to act as churchwardens. There was a town meeting, but its functions seem to have consisted simply in the election of officers. At the same time rudimentary counties were established. The name Yorkshire was given to Long Island, which was divided into three "ridings," as was the English county of that name. In each riding there was a court of sessions held several times a year by justices of the peace; and a high sheriff was provided for the whole district.

From Long Island where they were first applied, these provisions were extended with some amendments to other parts of New York, New Jersey and Pennsylvania. County courts were established in New Jersey in 1675, and courts of session for the settlements on the Delaware in 1676, the latter exercising fiscal and administrative as well as judicial functions. Towns

were also organized in New Jersey, but as yet were of little importance, and in many regions the parish was the smallest unit of local government.[1]

A few years later the English county system was more definitely introduced. In 1682 new counties were established or old counties reorganized in New Jersey, Pennsylvania and Delaware. A year later New York was divided into ten counties. For these were established the usual appointed sheriffs and justices, the latter having both judicial and administrative functions, while probate or orphans' courts were also provided in each county.

In 1691, following the establishment of an elective legislative assembly in New York, came a most important change in the local government of that province. This was the creation of elective county boards of town supervisors, which were to become the principal feature in the local institutions of leading states. This action at that time was the more striking in contrast to the contemporaneous legislation in Massachusetts, limiting somewhat the sphere of local elections. The new body established for New York counties consisted of a freeholder elected from each town to supervise, levy and assess the local taxes for county purposes. This did not do away with the justices of the peace, nor even take away at once all of their administrative functions; but during the next half century, the latter powers were gradually transferred from the justices to the supervisors, and the justices remained with only judicial powers, which

[1] H. L. Osgood, "The American Colonies in the Seventeenth Century," II, 285.

in turn were limited by the development of other courts.[1]

New Jersey developed a similar system. In 1693 provision was made for the election of town assessors to assist the justices in each county in the assessment of taxes; and from these were developed the county boards of chosen freeholders.

In Pennsylvania a special administrative county authority also developed, but the absence of strong town governments led to a different organization, which was to spread through a large part of the United States. Assessors to assist the justices in tax matters were provided as in New Jersey, at first chosen by the local members of the assembly, but after 1696 elected by the county at large. Nearly thirty years later the place of the justices in tax assessments was taken by three elected commissioners in each county, who became the chief county administrative authority, corresponding to the New York board of supervisors. Meanwhile, too, as early as 1705, the office of sheriff had, for the first time, been made elective, while in 1715 there had been established the new county office of recorder of deeds, filled by appointment by the governor.

Even without these changes the county in the middle colonies would have been a more important administrative district than in New England. With the development of these elective officers, however, the county, which was also the district for electing members of the colonial assemblies, became the center of political activity. In New York and New Jersey the towns had

[1] Fairlie, "Centralization of Administration in New York State," pp. 114, 151.

important powers of local government and were recognized in the county organization. But in Pennsylvania the towns were of little importance, and the machinery and functions of town government were vague and indefinite.

Active settlement in the colonies south of Virginia did not set in until the eighteenth century, and the development of an organized system of local government could only come after this had begun. Locke's Constitution for Carolina had provided an elaborate scheme; but this was never carried out, and the institutions established were for the most part the familiar ones of England.

In North Carolina justices of the peace and county courts with judicial, probate and administrative powers had been established before it became a royal province.[1] In 1746 the system was re-organized, and the county courts more fully developed. Quarterly sessions were to be held, and the system of public prosecutions, previously established in Connecticut, was introduced, a deputy attorney-general for this purpose being appointed in each county by the attorney-general of the province.[2] Counties were rapidly multiplied, and by 1765 there were thirty-two in the province.

South Carolina was divided into three counties as early as 1682; but although county courts were ordered to be established, there are no records of them, and all important cases were tried at Charleston. Jus-

[1] The extant records of one county court begin as early as 1693. Osgood, "American Colonies," II, 284.

[2] Raper, "North Carolina," 160, 166.

tices of the peace for the arrest of offenders and the trial of small cases were, however, in existence by the end of the seventeenth century. In 1706 the province was divided into parishes for ecclesiastical purposes, each with a rector, seven vestrymen and two churchwardens. A few years later the care of the poor was given to the parish officers, and the parishes were made election precincts for members of the assembly.[1] But no strong local government developed under this system.

In 1721, soon after the transfer of the province from the proprietors to the Crown, another act was passed providing for county courts. But as their jurisdiction was limited, and the judges were not trained in the law, the tendency still was for the central court at Charleston to absorb all business. The disadvantages of this became more pressing as the back districts became settled; but it was not until after a long struggle that an act providing circuit courts became law in 1769, and not until four years later that the courts were opened.[2]

There was less development of local government in Georgia during the colonial period than in any of the other colonies. The only court of general jurisdiction was held at Savannah, although justices for petty cases were provided after the transfer to the Crown in 1754. Parishes were erected in 1758 for ecclesiastical purposes, the care of the poor, and the election

[1] McCrady, "South Carolina under the Proprietary Government," pp. 193, 447, 559, 693.

[2] McCrady, "South Carolina under the Royal Government," pp. 43, 642.

of members of the assembly, as in South Carolina. But the large element of dissenters in the population prevented the Anglican parish system from becoming an active center of local political life.[1] Counties were not organized until after the Revolution.

[1] C. C. Jones, "History of Georgia," I, 465, 524; Stevens, "History of Georgia," I, 391, 444.

CHAPTER III

UNDER STATE GOVERNMENTS

WITH the organization of state governments following the Declaration of Independence, there came some significant changes in American local institutions, but there was no radical revolution, and the main features of the old systems continued in the different states. Towns in New England and the Middle states and parishes in the Southern states remained unaltered; and in fact are not mentioned in most of the constitutions of the Revolutionary period. That of New Jersey is exceptional in specifying that constables should be elected in townships "at their annual town meetings for electing other officers;" and to this extent the township was given a constitutional basis.

More frequently the revolutionary constitutions contained provisions about county government, and here were the important departures from colonial methods. In Virginia no change was made: as theretofore county officers were to be commissioned by the governor on the nomination of the county justices; and this self-renewing system was established in the constitution. In Massachusetts, New Hampshire and Maryland, the governor and council continued to appoint most of the county officers, but the justices were given a short definite term, while county treasurers and registers of deeds were elective as before. New York entrusted the selection of county officers, for-

merly appointed by the governor, to a council of appointment, consisting of the governor and four members of the state senate chosen by the assembly; while the supervisors continued to be elected in the towns.

Somewhat more striking changes were made in other states. Justices of the peace were to be chosen by the legislature in New Jersey, South Carolina and Georgia[1]; and were to be appointed on the nomination or recommendation of the legislature in Delaware and North Carolina. Definite terms were given to the justices in New Jersey, and Pennsylvania, while they were to continue during pleasure in South Carolina and on good behavior in North Carolina. Sheriffs and coroners in New Jersey and sheriffs in Maryland were made elective; in Pennsylvania, two nominees for each of these offices were to be chosen by popular vote, one to be commissioned by the governor; while justices, commissioners and assessors were directly elected.[2] The Georgia constitution established counties and county courts in that state and provided that all civil officers not otherwise provided for should be elected.

To summarize, it may be said that there was a distinct tendency in most states towards decentralization or an increase of local influence in choosing county

[1] Also court clerks in New Jersey and registers of probate in Georgia. By the constitution of 1798, justices of the peace in Georgia were to be nominated by the county courts, thus establishing the same self-renewing system as in Virginia.

[2] By the constitution of 1790 justices in Pennsylvania were made appointive by the governor. After 1792 sheriffs and coroners in Delaware were chosen by the popular nomination of two candidates, as in Pennsylvania.

officials, but this was to be exercised mainly through the members of the legislature, and direct election of the old appointive officials was established in only a few cases. The right to vote for such officers or for members of the legislature was still restricted by a freehold or tax-paying qualification, except in Vermont. Perhaps the most important decentralizing measures, especially during the war with Great Britain, were the constitutional provisions in most states in regard to the militia. Company officers were elected by the enlisted men, regimental officers by the company officers, and only the highest officers were chosen by the governor or legislature.

As the tide of settlement moved westward, the local institutions of the older states were introduced in the new communities roughly following parallel lines of latitude. But sometimes in the earlier stages some of the more primitive institutions were revived for a time, while democratic tendencies often developed more rapidly in the newer states. In Kentucky, the Virginia county system had been introduced before the separation of the new state; and while the first constitution provided for elective sheriffs and constables, the second constitution in 1799 practically restored the older methods. All county officers were made appointive by the governor from double lists of nominations submitted by the county courts of justices of the peace. In Tennessee almost the same system was established, the county courts being given the power to appoint outright the sheriffs, coroners and trustees (a novel title for the treasurer) as well as constables.

In the Northwest Territory the development of local government was influenced more largely by the institutions of other states. Under the ordinance of 1787, the appointment of local officers was vested in the governor of the territory. In 1790 the first county was established and appointments were made of sheriff, coroner, treasurer, recorder of deeds, probate judge and justices. At the same time provision was made for rudimentary townships, for each of which a constable, clerk and overseers of the poor were to be appointed by the county court. The court of quarter sessions was also the fiscal and administrative board, as in the Southern states; but before the end of the century, county boards of three appointed commissioners had been created for the levy and assessment of taxes and the audit of claims.

Town meetings were instituted, but only for purposes of election; and each town was to elect a board of three or more trustees, a clerk, overseers of the poor, fence viewers, assessors, constables and road supervisors. The geographical townships marked out by the rectangular land surveys of the national government provided automatically the districts for new civil townships; and it may be questioned whether the artificial nature of these areas has not been an important factor in preventing the township in these regions from attaining the social unity and political importance of the New England town. Moreover settlement was largely on isolated farmsteads rather than in compact communities; and this again hindered the development of a strong township government.

As soon as Ohio was admitted as a state, in 1802,

further changes were made in the county system. The local courts were reorganized; sheriffs, coroners and justices of the peace were made elective; and in 1804 there were established boards of elective county commissioners, with the fiscal and administrative powers of the former quarter sessions. These changes, with the township system previously inaugurated, established the main outlines of the "county-township" system, similar to that of Pennsylvania, which was to predominate throughout the Middle-West.

Indiana followed Ohio closely in the development of local institutions. During the territorial period, townships with elective officers were organized, but county officers were appointive. The first state constitution (1816) provided for the election of sheriffs, coroners, clerks of courts, recorders and justices; and before long an elective board of county commissioners was established for each county.

In Illinois the early settlers came largely from the South, where there was no organized township government; and as a result county government preceded the township. But the county system established was similar to that in Ohio and Indiana, and not like that in Kentucky, as might have been expected. When Illinois became a state it was divided into fifteen counties. For each there was a board of elective commissioners, with power to levy local taxes and appoint election officers, road supervisors and overseers of the poor. Sheriffs, coroners, clerks, treasurers, surveyors and recorders were all made elective. By the first constitution, justices of the peace and constables were appointed by the governor; but in 1826 the justices

were made elective by precincts. Before long the geographical township was made a corporation for school purposes; and the same district came to be used as a precinct for elections, roads, justices and poor relief.

Mississippi and Alabama, which became states in 1817 and 1819, did not follow closely the local government of the states immediately to the North, but were largely influenced by the more democratic institutions of Georgia. In that state the elective method had already been further extended to clerks of courts and justices of the peace. Both of the new Southern states provided for elective sheriffs, and Alabama also for elective clerks of courts. But in both justices of the peace were appointive, as prescribed by the general assembly.

In Missouri, admitted in 1821, the local institutions were much the same as in the states just mentioned. Sheriffs and coroners were made elective; justices of the peace were appointive.

It will be noticed that in all of the states admitted after 1800, the tendency was strongly in the direction of exending the rule of local elections, notably for the old offices of sheriff and coroner. South of the Ohio river, and in Missouri, justices of the peace continued to be administrative as well as judicial officers. North of the Ohio, the Pennsylvania plan of a special administrative county board had been regularly adopted; while two of the three new states in this section had also established township government.

Most of the older states had thus far shown few signs of changing their local government from the arrangements made at the end of the eighteenth cen-

tury. The Connecticut constitution of 1818 continued the choice of sheriffs by the legislature; and the Maine constitution of 1820 carried on the plan of the former Massachusetts government.

But the second constitution of New York, adopted in 1821, made important changes in the local government of that state. The council of appointment was abolished. District attorneys were to be appointed by the courts. Sheriffs and county clerks were made elective. Justices of the peace were to be nominated by the boards of supervisors and county judges, but in a few years they too were made directly elective. During the decade following the adoption of the new constitution there was also a significant transfer of poor relief administration in New York from the towns to the counties, which altered the balance of power between these two local districts, and affected the later development throughout the Central states.

In the same decade several New England states established elective county administrative authorities. Before 1820 Massachusetts had passed several experimental acts transferring powers and reorganizing the county courts. In 1826 commissioners of highways were established in all but two counties; and in 1828 these were abolished and elective county commissioners were provided, as in Pennsylvania, to exercise the administrative powers formerly vested in the courts of sessions.[1] About the same time (1827), New Hampshire established direct local control over county taxation, by giving this power to county conventions composed of the representatives in the legislature from the

[1] C. D. Wright, "Public Records," p. 378.

towns in each county. And in 1831 Maine established elective boards of commissioners for each county.

In the Virginia convention (1829-30) which framed the second constitution of that state, there was a long discussion over the system of local government. A strong effort was made to overthrow the self-perpetuating power of the unpaid county justices, chosen from the well-to-do landowners. The justices were charged with undue family influence and lack of legal training; and Jefferson was quoted in opposition, and as favoring an elective system with township government. In answer, the administration of the justices was defended for its honesty and its practical success; and the influence of Marshall and Madison (both members of the convention) won the day for the retention of the old system.[1]

Within the next decade a few other states adopted the elective system more largely. Delaware (1831) made sheriffs and coroners directly elective. Mississippi (1832) made justices of the peace and constables elective, and provided for a probate judge and board of police (both elective) in each county. Tennessee (1834) made court clerks, sheriffs, county trustees, registers, justices and constables elective, while coroners and rangers were to be appointed by the justices. And Pennsylvania (1838) made coroners, clerks of courts, registers of wills, registers of probate and justices of the peace elective.

With these changes the elective system was well established in the Middle-Atlantic states, the new states to the westward and the most southerly states. New

[1] "Debates of the Virginia Convention 1829-30," pp. 502-516.

England had its well developed town government, but important county officers were still appointive. From Maryland to South Carolina and westward in Kentucky the only effective local government, that of the county, was still administered by appointive officers.

In the states thus far noticed, where an elective county board was established apart from the justices, it was organized on the Pennsylvania model. But, beginning with Michigan, the New York method was introduced into a number of states. The county system of the Northwest Territory had been extended to the Michigan settlements; and when Michigan was organized as a separate territory a similar county government was continued. In 1825 townships were established with town meetings and elective officers; and at the same time Governor Cass brought about the election of candidates, whom he appointed to the county offices. Two years later boards of elective town supervisors were established for each county, in place of the small boards of county commissioners,—a change doubtless due to the immigration from New York which had begun after the opening of the Erie canal. When Michigan became a state (1835-7) the elective system was definitely established for all township and county officers.

Early settlements in Wisconsin had been organized under the Illinois system, and later under that of Michigan. When Wisconsin territory was organized (1837) the small board of county commissioners was revived, and a year later townships were organized for judicial, police and road administration. Later (1841) an optional system was provided, by

which each county was allowed to choose between the small board of commissioners and the larger board of town supervisors. The state constitution (1848) required the legislature to establish a uniform county system; and the New York and Michigan plan was then made general. Township and other county officers were made elective as a matter of course.

Meanwhile immigration from the Northern states into Illinois had led to a demand for a more complete township government in that state. Accordingly the second state constitution (1848) authorized an optional system, providing that where the township system was established, the county board should be composed of town supervisors, as in Michigan and Wisconsin. The northern counties rapidly adopted the township system; while those in the southern part of the state adhered to the older form of county government.

West of the Mississippi, both county and township government was established in Iowa, Minnesota and Kansas, but with a small county board as in Ohio and Indiana, instead of the large board of town representatives as in Michigan and Wisconsin. Iowa was for a brief period part of Michigan territory, and later was part of Wisconsin territory. But the earliest settlers seem to have ignored much of the statutory legislation of these territorial governments and for a time formed their own local institutions.[1] After a

[1] Jesse Mary, *Institutional Beginnings of a Western State*, in "Johns Hopkins University Studies in Historical and Political Science," vol. 2.

[2] B. F. Shambaugh, *Constitution and Records of the Claim*

time, however, counties were organized with small boards of elective commissioners exercising both judicial and administrative functions, and with other elective officers. Townships were also established. This system continued after Iowa became a state until 1851, when a single elective county judge was substituted for the board of commissioners. Ten years later county boards of town supervisors were introduced; but after another decade the county board was reduced again (in 1871) to three members.

Parts of Minnesota had been at different times under nine territorial governments, before the organization of Minnesota territory in 1848. But the local institutions of most of the early jurisdictions were not effectively established in the outlying regions; and as in Iowa there were instances of voluntary extra-legal local organizations.[1] In Minnesota territory a county system was established, with no incorporated townships. On admission as a state, 1858, the Illinois system was adopted as a whole; after two years a return was made to the simple county system, but soon the township was re-established as an organ of local government.

In Kansas, too, the earliest settlers formed their own local organizations. The first territorial legislature, in 1855, defined the bounds of thirty-three counties and organized seventeen of these at once with officers appointed by the legislature, which gave

Association of Johnson County, Iowa, in Publications of the Iowa Historical Society, 1894.

[1] Charles E. Flaudrau, "History of Minnesota," p. 406.

control to the pro-slavery party. After admission as a state, in 1861, an elective county and township system was established. The county officers consisted of a board of three commissioners elected by districts, sheriff, coroner, probate judge, county clerk, register of deeds and county attorney.

Turning to the later Southern states, local government was organized, as in the older states of that region, with the county as the basis. Arkansas, in its first constitution (1836), made the older county officers—sheriff, coroner, treasurer and surveyor—elective. It also provided for the election by "townships" of justices of the peace and constables; and established in each county a county court of the justices as the fiscal authority, the presiding judge having also probate functions. This arrangement, while preserving the terminology of the older Southern system, practically organized the county board on lines similar to the boards of supervisors in New York and other Northern states; but the townships were little more than election and judicial districts.

In the first Florida constitution (1845) the only section on local government is one providing that justices of the peace may be either elected or appointed, as determined by the general assembly.

When Texas became an independent republic in 1836, the American county system was substituted for the earlier Mexican local government. Those controlling the government, however, did not introduce the decentralized system of local elections that had already become established throughout the United States. Sheriffs, coroners, justices of the peace and

constables were appointed; and on admission as a state (1845) the same system was continued.

California, like Texas, was first organized as a part of Mexico. Under a law of 1836 the whole department of California, including the lower peninsula, was divided into three districts, and these into sub-districts (*partidos*), with a centralized hierarchy of officials similar to the French administrative system. Over each district was a prefect, nominated by the governor of the department and confirmed by the central government of Mexico, for a term of four years. In each sub-district was a sub-prefect, nominated by the prefect and approved by the governor. The urban communities were organized as ayuntamientos, while in the country regions there were petty justices proposed by the sub-prefects, nominated by the prefects and confirmed by the governor.[1]

As soon as the state government was organized (1850), the legislature superseded this Mexican system by organizing twenty-seven counties. Each county was provided with a full quota of officials,—sheriff, district attorney, treasurer, assessor, recorder, clerk, surveyor and constables,—all elective. Justices of the peace and county courts were also established.[2]

But in the mining camps, which appeared rapidly after the discovery of gold, local government was carried on for many years with little reference to the statutory system. Each camp formed its own local institutions, and there developed a considerable body

[1] H. H. Bancroft, "History of California," III, 585; IV, 533. Hittell, "History of California," II, 258.

[2] Bancroft, *op. cit.*, VI, 317; Hittell, *op. cit.*, II, 793-7.

of customary law, governing especially crimes and land titles. The "camp legislation" on mining claims was later ratified by the United States Government. The criminal law was harsh and tended to degenerate into lynch law; frequently there were serious disturbances; and it was many years before order was well established.[1]

During the twelve years from 1844 to 1856 most of the older states made important changes in their systems of local government, either in connection with general revisions of their constitutions, or by specific constitutional amendments. New Jersey adopted a second constitution in 1844, Louisiana its second in 1845 and a third in 1852, New York its third in 1846, and Illinois its second in 1848. In 1850 and 1851 new constitutions were adopted in Maryland, Virginia, Kentucky, Ohio, Indiana and Michigan. Constitutional amendments affecting local government were adopted by Connecticut and Vermont in 1850, Massachusetts in 1855, and Maine in 1856.

One very definite purpose ran through all of these constitutional changes in local government,—the more extended application of the formula of popular election. Old appointive offices were made elective, and new elective offices were established; while in some cases other significant changes in local institutions were effected. In Virginia and Kentucky there was a complete revolution, from the appointive system controlled by the self-renewing justices to the election of all county officers and justices of the peace. At the

[1] Bancroft, "Popular Tribunals"; Hittell, *op. cit.*, III, Ch. 11; Josiah Royce, "California," Ch. 4.

same time the county court in these states was reduced to a small body of judges specially elected for that purpose, while in Virginia provision was made for elective commissioners of revenue in each county.

In the New England states, sheriffs, probate officers, and sometimes other officers, became elective;[1] and justices of the peace were made elective in Connecticut and Vermont, but remained appointive in Massachusetts, Maine and New Hampshire. In the last named state elective boards of county commissioners were established in 1855.

In the other states the elective method had previously been largely introduced, and was now extended to other offices: in New Jersey to county clerks, surrogates and justices; in New York to county judges and district attorneys; in Ohio to court clerks and probate judges; in Indiana to the new office of county auditor; and in Illinois to county judges and justices.

Thus before the Civil War the main features in the development of local institutions had been established. Throughout the country the states were divided into counties, each with a considerable number of elective offices, but with important differences in the organization of the fiscal authority. Everywhere, too, the county was subdivided into smaller districts; but these varied in importance from the New England town, through the township of the Middle-West, to the election and judicial precincts in the South. The basis of the suffrage for local elections was the

[1] Except in New Hampshire, where they were appointive until 1879.

same as for state elections; and had been steadily extended during the half century before 1860, until the general system was one where every free white male citizen could vote.

Since 1860 there have been some further changes in local institutions. Features of the Northern systems have been introduced in the Southern states; while the development of local government in the newest states of the far West has some points of interest.

As a result of the adoption of the fourteenth and fifteenth amendments to the national constitution, negroes throughout the country received the suffrage; and in the Southern states, where this addition to the voting class was of the greatest significance, the extended suffrage was confirmed by the reconstruction state constitutions. Nevertheless within a decade the negro vote was practically eliminated in most of the Southern states; and more recently this exclusion of negroes from the franchise has been practically confirmed by constitutional provisions establishing educational and property qualifications for the suffrage, which apparently avoid technical violation of the national constitution.

Next in importance was the attempt to transplant the Northern township to the Southern states. When West Virginia was formed into a separate state (1863), its constitution provided for dividing the counties into townships with a number of elective officers; and the county board was to be composed of the township supervisors.[1] In 1864 a new Maryland constitution

[1] "Sewanee Review," 10: 134.

required the general assembly to provide for township government. The reconstruction constitutions of North Carolina and Alabama provided for townships for the election of justices and constables, and also in the former state of school committees. And in 1870 a new Virginia constitution established an elaborate township system, similar to that of West Virginia.

But these measures had only a slight permanent result. In three years Maryland again revised her constitution, and in the new document the provision for township government disappeared. In 1872 West Virginia abolished the boards of supervisors and townships; and revived the county court of justices elected by districts. Two years later Virginia replaced townships by magisterial districts for the election of justices, supervisors, constables and overseers of the poor. In a number of states the name "township" has replaced the former "precinct;" subdivisions of the counties have become local districts for school administration; and in a few states there has been some addition to the number of elective officers in these districts; but no fully organized township system has developed as in the Northern states.

Some other changes were made in the reconstruction constitutions. In the Carolinas and Texas the elective system was finally instituted for the old county officers, and elective boards of county commissioners were also established. Georgia provided for a probate judge under the old ecclesiastical title of ordinary, and gave to this single official all of the administrative powers of the county court over roads and finances. Missis-

sippi changed the title of the county boards of police to boards of supervisors, but they remained small boards of five members elected by districts.

Florida (1868) established boards of county commissioners and at the same time started what seems at first sight like an astonishing reaction from the decentralizing movement that had thus far marked the history of local government throughout the country. The governor was empowered to appoint the new commissioners, all the other county officials and justices of the peace, leaving constables as the only elective local officers. In practice, however, the formal method of appointment was a device for preventing negro control of local offices in the "black counties." On election day, democratic primary elections were held in separate polling places for nominating candidates for the various appointive offices, and the candidates thus chosen were regularly appointed to the positions. When the negro vote had been eliminated, the elective system was restored.

In other Southern states there have been similar centralizing measures, many of which are still in force. In 1876 the North Carolina legislature was authorized to appoint county commissioners and justices of the peace. In South Carolina the governor appoints justices and county commissioners, and in Georgia county judges and solicitors. In Mississippi county health and education officers are appointed by state boards; and in Virginia the state educational authorities have an important voice in the selection of local school officials.

In the most recent states of the West a striking fea-

ture of local government is the development of the county to a position of much greater importance than in any other part of the country.

New counties were organized in the Western regions by the territorial governments as rapidly as population advanced. Even before 1850 counties had been established in New Mexico, Utah and Oregon; by 1860 in Nebraska and Washington; and by 1870 in Colorado, Dakota, Montana, Idaho, Wyoming, Nevada and Arizona. By the latter date the whole territory included in the United States, except Indian Territory, Indian reservations elsewhere, and Alaska, had been formed into counties; and since then new counties have been formed by sub-dividing and re-arranging the boundaries of the older counties.

Township government has also been established to some extent in the most easterly of these later states. In 1872 Missouri had introduced an optional plan of county government modeled on that of Illinois;[1] and in 1875 the state of Nebraska established a similar arrangement. When Dakota territory was formed into two states (1889), South Dakota provided for the organization of township government, and North Dakota adopted the optional plan. And the territory of Oklahoma has also established both township and county government.

But in the states and territories west of the 104th

[1] This first Missouri law was repealed the following year, but another law was enacted in its stead, under which 20 counties adopted township organization. The law was again repealed in 1877, but again renewed in 1879, and under this 14 counties have organized townships. Data from Professor Isidor Loeb, University of Missouri.

meridian, while counties are divided into judicial, election and school districts, township government has not yet been fully developed. This is doubtless due in part to the fact that these regions are only sparsely settled, and to the organization of municipal corporations in the small village communities. At the same time an analysis of county expenditure shows that the county government is much more active than in any of the older states.

Another development since the Civil War, affecting local government in all parts of the country except New England, has been the organization of large numbers of incorporated towns, villages and boroughs. The special incorporation of small villages within the townships of the Northern states and the counties of the South, began in the colonial period, and has been steadily gaining throughout the last century. But the movement has been accelerated very rapidly during the past forty years, aided by the transportation and industrial development which has promoted the growth of small as well as large urban communities. In 1900 there were over 10,000 incorporated communities in the United States. In the New England states small municipal corporations are not numerous; but in all the other states they are to be found in abundance.

This separate incorporation of the small villages is one of the most important factors to be considered in explaining the relative importance of the town and county in different parts of the country. It is due in large measure to them that the township of the Middle-West is of so much less importance than the New England town; and in much the same measure

these village corporations have enabled the states of the South and far West to do without township organization.

Finally there may be briefly noted here the gradual development in all the states of some central administrative supervision over certain branches of local government. In some lines the first steps in this direction are to be seen even before 1850, but it is since that time, and more noticeably during the last thirty years, that the tentative steps have become a distinct tendency. Beginning with school administration, and extending to public health, charities and corrections, and the assessment and collection of revenue, state officers and boards have been established with varying powers of supervision and control over local officials; and in some cases with power to exercise direct administration in fields formerly left entirely to the local authorities.

As yet the movement is very far from establishing a completely centralized system of local administration in any of the states, but it is at least a significant reaction from the extreme decentralization that had become established by the tendencies in force up to the middle of the nineteenth century.

PART II
THE COUNTY

CHAPTER IV

GENERAL CHARACTERISTICS

In all of the states and organized mainland territories of the United States, the major district for purposes of local administration is that known, with a single exception, as the county. There are larger districts for the election of members of congress and the state legislatures and judges of the higher courts, but these officials belong to the national and central state governments, while the judges carry out their functions in direct connection with the county organization. The exception to the term county is in Louisiana, where the corresponding districts are known as parishes. Indian reservations are usually distinct districts, outside of the county system, and under the direct control of the national government.

Before examining the administrative organization and functions of counties, it is important to note some of the general characteristics of this district, such as the methods of formation and the social factors which underlie the political structure.

A county is one of the civil divisions of a state or territory for judicial and political purposes, and at the same time a district of a quasi-corporate character for purposes of local civil administration. Counties are created by the sovereign power of the state, and

may be established without the consent of the inhabitants. Sometimes new counties are created and existing counties are recognized by the state constitution; and in such cases there are no restrictions on the power to create. Ordinarily the legislature has power to establish counties and may do so without express grant of authority. In the North-Atlantic group of states and some others, this power is not limited by the state constitutions; and in these states the legislature may create new counties, divide or consolidate them, alter their boundaries or abolish them, at its discretion, without the consent of the people. But most constitutions of the states in other sections of the country impose various restrictions on the power of the legislature.

In many states a minimum area for counties is named, and in some also a minimum population limit. The most usual limit of area is about 400 square miles; in several states it is 600 square miles, and in Texas 700 square miles for counties created from existing counties, and 900 square miles for counties created in other territory.[1] Exceptions are sometimes specified, as in Ohio, where a county with over 100,000 population may be divided, although the area of one of the counties thus formed may be less than

[1] In Tennessee 275 square miles for new counties, 500 square miles for existing counties; 400 square miles in Maryland, Ohio, Indiana, Illinois, Minnesota, Nebraska and Oregon; 410 square miles in Missouri; 12 congressional townships (approximately 432 square miles) in Iowa and Kansas; 16 congressional townships in Michigan; 600 square miles in Virginia, Alabama and Arkansas; 625 square miles in Louisiana; 24 congressional townships in North and South Dakota.

the usual minimum; and in Michigan, where any city of 100,000 population may be made a separate county. Minimum population limits vary from 1,000 in North Dakota to 10,000 in Maryland.

In a few states counties may be formed only with the consent of the voters, and in a larger number changes in the boundary lines of existing counties may be made only after popular approval in the districts concerned on a referendum vote.[1] Louisiana authorizes the dissolution of a parish and its absorption in another only if a referendum vote has two-thirds in favor of the proposal. Where an existing county is divided, several state constitutions require the new county line to be at least a certain number of miles (usually ten or twelve) from the county seat.[2]

A small group of neighboring states (North and South Dakota and Wyoming) require the legislature to provide by general law for the organization of new counties. The Minnesota constitution provides for the formation of new counties by petition and popular vote without the action of the legislature.

In the states east of the Mississippi River the creation of new counties and changes in county boundaries are now seldom made, and the counties in these states may be considered as permanent local districts. In the states farther west the subdivision

[1] Maryland, Ohio, Michigan, Illinois, Wisconsin (except for counties over 900 sq. miles), Minnesota, Iowa, Nebraska, North and South Dakota, Louisiana, Arkansas, Missouri, Texas, Colorado and Washington.

[2] Illinois, Tennessee, Arkansas and Texas.

of old counties and the creation of new counties is still of frequent occurrence.[1]

At the census of 1900 there were 2,852 counties in the United States. The least number are in the smallest states, Delaware with three counties, and Rhode Island with five. Massachusetts, with only fourteen counties, has less than any other state in proportion to population. Texas has the largest number, 243. Most of the more important states have from sixty to a hundred counties each.

In area the counties show great differences. Excluding the cities of Virginia, the smallest is Bristol county, Rhode Island, covering 25 square miles. The largest, Custer county, Montana, embraces 20,490 square miles. The average area is 1,050 square miles, but this does not represent the typical county, as the average is greatly increased by the large sparsely settled counties in the West, 128 having each an area of over 4,000 square miles. A more significant figure is the median area, which is 615 square miles. Nearly two-thirds of the counties are between 300 and 900 square miles in area; and the most usual areas are between 400 and 650 square miles.

While there are considerable variations in area within each state, the largest counties are in the less settled Western states. In the older and more densely

[1] From 1900 to 1910, there were 16 counties organized in Texas, 10 in North Dakota, 8 in New Mexico, and 9 in Georgia. Most of the 76 counties in Oklahoma were established in 1907. The county with the largest area in 1910 was San Bernardino county, Cal., with 20,157 square miles. Cochran county, Texas, with 65 inhabitants, had the least population in 1910.

populated regions east of the Mississippi River (except in the New England states) the average area of counties is less than 600 square miles. And in some of the Southern states the average is notably less than this,—in Virginia and Georgia about 425 square miles, and in Kentucky 340 square miles.

In population counties show even greater differences than in area. At one extreme is Brown county, Texas, with 4 inhabitants in 1900. At the other is New York county, New York, with 2,050,600 population. The average population is 26,646, and the median population is about 18,000. More than half of the whole number of counties have a population from 10,000 to 30,000; but there are important variations in this respect between the states in different sections of the country. In the Western states, nearly two-thirds of the counties have less than 10,000 population. In the Southern states the larger number have from 5,000 to 20,000 inhabitants. While in the North-Atlantic group of states nearly one-half of the counties have over 50,000 population; and in Massachusetts eight of the fourteen counties have each over 100,000 inhabitants.

By far the greater number of counties are exclusively rural in character. Perhaps a sixth of the whole number contain one or more cities of over 8,000 population; but even in most of these the rural population predominates over the urban. In a few cases, however, a single large city contains the great bulk of a county's population, while in a still smaller number of instances counties are coterminous with cities.

New York City includes four counties within its present limits. Philadelphia, St. Louis, Baltimore, San Francisco, New Orleans, Denver and the eighteen cities of Virginia have each coincident boundaries for the city and county. Boston is almost identical with Suffolk county. Chicago, Cleveland, Buffalo, Cincinnati, most of the other cities with over 100,000 population, and some below that limit have much the larger part of the population of the counties within which they lie; although in these cases the larger part of the county area is outside of the city.

Comparing the American county in area and population with the districts in European countries most nearly similar, it will be seen that the former is a less important administrative division. English counties average nearly a thousand square miles in area, and (omitting the large cities, which for administrative purposes are considered as separate counties) 300,000 population. French departments average over 2,000 square miles in area, and 400,000 population. Prussian provinces average over 10,000 miles in area and nearly 2,000,000 population; and even the circles, although smaller in area (averaging about 300 square miles), have an average population of over 50,000.

It is almost a necessary result of its smaller social importance that the American county has not become a center for certain branches of public administration which are assigned to such districts as those above noted. Notably such specialized charitable institutions as insane hospitals, which form an important part of local administration in European countries,

belong in the United States to the field of state administration. It also follows that even in the spheres of public activity which are undertaken, the scope of public action in an American county is of less importance than in the corresponding European districts. While in some lines, such as road building, public action has been so limited that the work of an American county is of even less importance than can be explained by the smaller population.

On the other hand the extremely decentralized methods of administration within the American states makes the county in this country much more important than the districts noted in foreign countries as an area of local self-government and local elections. In the countries of continental Europe much of the public administration which centers in the province or department is performed by officials appointed by the central government, and the locally elected authorities are subject to a large measure of control by such appointed officials. In the United States practically all the officials whose jurisdiction is defined by county lines are elected within the county, even where the officials are most clearly considered in law as subordinate agents of the state government. And while there is now some supervision by state officers over a few county officials, it is very limited in its operation and is far from exercising an effective control over their actions.

The powers and functions of counties and county officers in the main are conferred by acts of the state legislatures, but in part they are of common law origin, and in most of the states there are now consti-

tutional provisions of more or less importance controlling this matter. The constitutional provisions are the most fundamental and overrule both older common law customs and inconsistent statutory enactments. Subject to the constitutional provisions the legislature can exercise full control over county affairs. It can require any public duties or functions to be performed by county officials. It can to a large extent exercise control over the property and revenue of a county, and it can validate irregular and unauthorized acts of county officers, if they do not violate constitutional provisions.[1]

By constitution or statute counties are usually created bodies "politic and corporate." This has been said to mean that they have both political and business functions; and the two terms at least mark an important legal distinction in their powers.

As corporations their powers are limited and less than those of a full municipal corporation. In England until recently counties were not corporations; and in the United States they are commonly called quasi-corporations. They have however most of the powers of juristic personalities. They may bring suits in the judicial courts, and they may be sued on contracts, but are usually not liable for damages due to negligence. They have power to make contracts necessary to execute authorized purposes; but the power to contract indebtedness is in many states limited by constitutional provisions. And they may

[1] California in 1911 adopted a constitutional amendment authorizing counties to frame and adopt home rule charters of local government.

acquire and hold both real estate and personal property in connection with other powers.

But these corporate powers are for the most part incidental and secondary to the governmental functions of counties. The latter are so prominent that it has been said in a judicial opinion that counties "exist only for the purpose of the general political government of the state. They are the agents and instrumentalities the state uses to perform its functions. All the powers with which they are entrusted are the powers of the state, and the duties imposed on them are the duties of the state."[1] And at least it can be safely stated that "a county organization is created almost exclusively with a view to the policy of the state at large."[2]

County powers and functions are not uniform in all the states; and the general importance of the county varies considerably in different states. But most descriptions of American local government by discussing only some variable elements have overemphasized them; and have underestimated the common factors in county government throughout the country.

Everywhere and above all the county is a district for the administration of justice. Courts of general civil and criminal jurisdiction are held at frequent intervals in each county. And while the presiding judges are often selected from a larger district, the administrative officers of the courts (clerical and executive)

[1] Madden *v.* Lancaster County, 65 Fed. Rep., 188, 191; 12 C. C. A., 566.

[2] State *v.* Downs, 60 Kans., 788.

are regularly county officers. In connection with the administration of justice court-houses and jails are provided and maintained in each county. In all of the states, too, the county is to some extent a police and militia district. In almost every state the county is the district for probate administration and the public record of land titles.

Outside of the New England states, the county has important functions in the construction and maintenance of roads and bridges, and sometimes of other public works. In most states it is the district for the administration of poor relief. Generally there is some county school officer, and in many of the Southern states the county is the primary unit for school administration. In some states it is a district for sanitary administration.

Almost everywhere the county is a district of considerable importance in finance administration. It levies taxes for its own purposes. In most states it not only collects its own taxes but also acts as agent for the collection of state revenues, and sometimes also for towns and other districts; and in the states of the South and far West, and to some extent in other states, it is a district for the assessment of taxes.

In all of the states the county is an important district for election purposes. Most county officers are elective; the county is always a unit for canvassing the returns for state officers; and in most states it is the district for electing members of the state legislature. The position of the county as an election unit is indicated by the importance of the county committee in the party organizations of many

states,[1] and by the centering of campaign activity within this district.

To some extent the county may be said to exercise legislative power, mainly through the device of referendal local option votes on certain measures passed by the state legislature. The principal use of this method has been for prohibiting locally the sale of intoxicating liquors. Most of the Southern states and some others provide for a popular vote on this question in any county, usually on petition; and in this way many counties have prohibited the traffic.[2] County boards are also usually given power to enact police regulations in enumerated classes of cases, but there is no general authority to enact laws or ordinances vested in any county official.

Measured by the number of functions and the relative distribution of local administration between the county and minor districts, the county is of most importance in the Southern states and the Mountain and Pacific Coast states of the West. By the same tests, it is of least importance in New England, where the county is weakened by the centralization of the judiciary on the one hand, and the importance of town government on the other. In the Middle-Atlantic and North-Central states it occupies an intermediate position.

But if a quantitative standard of the intensity of county administration is applied, the results are somewhat different. Judged by the *per capita* rate

[1] Macy, "Party Organization and Machinery," 107, 115, 128, 168, 170, 173, 182.

[2] Oberholtzer, "The Referendum in America," ch. 12.

of expenditure, the county is of much the greatest importance in the Western group of states. Second rank is taken by the North-Central and Middle-Atlantic states, while by this standard the Southern states fall in the same group with three of the New England states, Massachusetts, New Hampshire and Maine. In two of the remaining New England states, Connecticut and Vermont, county finances are almost negligible; while in Rhode Island the county expenses are entirely included in the state budget.

In the organization of county government there has been only a very limited application of the doctrine of the separation of powers, or, indeed, of any other theoretical political principle. In every state but two[1] there is a county board, which levies taxes and determines matters of local administrative policy; and this has sometimes been referred to as the legislative branch of the county government. But the legislative functions are narrowly restricted, while the board is also an executive authority in many matters, thus placing the power of levying taxes and expending appropriations for these purposes in the same hands.

In some of the Southern states the members of the county board are also local justices, and the chairman is sometimes a county judge.

Besides the county board there are a varying number of other officials, mostly elective, with executive and administrative functions. These are usually independent of each other; and most of them are, to

[1] Rhode Island and Georgia.

a large degree, independent of the county board; and there is no single officer who can be considered as the chief officer of the county, corresponding to the governor of a state or the mayor of a city.

These county officers in most states include a county judge or judge of probate, prosecuting attorney, sheriff, clerk of court, county clerk, recorder of deeds, assessor, auditor, treasurer, school commissioner, surveyor and coroner. The precise titles vary in different states, and sometimes the duties of two offices are combined in one position. Thus the county clerk may be also clerk of court, recorder of deeds or auditor.

In many states there are no distinctively county judges even for probate administration; and the courts are held by judges either elected for larger districts than the county or appointed for the state at large. The prosecuting attorney is also in some of the Southern states elected, not in each county, but in each judicial district.

Additional officers are also found in some states. Several Southern states have a tax collector in each county. A number of states have county health authorities, court commissioners, jury commissioners and public administrators. Pennsylvania has a mercantile appraiser in each county; Michigan, county drain commissioners; and Alabama, tax commissioners and pension examiners.

On the other hand some of the officers named are wanting in certain states. The county assessor is found regularly only in the Southern and Western states. There are no county school officers or sur-

veyors in the New England states; and in Vermont, Connecticut and Rhode Island probate officers are chosen by towns or other subdivisions of the county. In Connecticut most of the county officers are appointed; and the sheriff is the only elective official. In Rhode Island the only county officers are the sheriff and clerk of court, who are chosen annually by the general assembly.

County officers serve for terms varying from two years to six years. In the states east of the Mississippi River the terms of different officers in the same state often vary, so that a complete list is seldom elected at one time. West of the Mississippi most of the states have a uniform term of two years for county officers, and all terms expire at the same time. A number of the Southern states have adopted the four-year term to a large extent.

There can be no doubt that there are too many elective county officers. Their very number makes a popular election impossible in practice. Even the most intelligent voters cannot become acquainted with the merits and demerits of the numerous candidates; and perforce must vote on the basis of a party ticket or on vague impressions for most of the offices. The effective choice is necessarily made in most cases by party leaders; and the attempt to apply the elective principle universally has the paradoxical effect of defeating its own purpose. Moreover, elections for short terms promote frequent changes in purely ministerial offices which have no political functions, and where permanence of tenure is necessary to efficient administration.

COUNTY OFFICERS

States	County Board	County Judge	Probate Judge	Register of Probate	Prosecuting Attorney	Sheriff	Coroner	Clerk of Court	County Clerk	Register of Deeds	County Auditor	County Assessor	County Treasurer	County Surveyor	Supt. of Schools	Supt. of Poor	Health Officer
Maine	3	...	X	X	X	X	A	X	—	X	...	...	X	...	...	...	...
New Hampshire	3	...	A	X	X	X	A	A	—	X	A	...	X	...	...	...	...
Vermont	2	X	D	...	X	X	...	A	—	...	A	...	A	...	...	A	...
Massachusetts	3	...	A	X	O	X	—	X	—	X	...	...	X	...	...	...	...
Rhode Island	...	...	...	...	...	A	...	A	—	...	...	...	...	...	...	...	...
Connecticut	A3	S	D	...	A	X	A	A	—	...	...	A	...	...	...	...	A
New York	X	X	X	...	X	X	X	—	X	S	...	X	...	D	X	...	...
New Jersey	X	A	X	...	A	X	X	X	S	A	...	A	...	A	S	...	...
Pennsylvania	3	...	X	X	X	X	X	X	—	X	X	X	X	A	S	...	...
Delaware	7-10	...	X	X	...	X	X	X	—	X	...	...	X	...	A	...	A
Ohio	3	...	X	...	X	X	X	...	—	X	X	—	X	X	A	X	...
Indiana	3	S	S	...	X	X	X	...	—	X	X	X	X	X	A	A	...
Michigan	X	...	X	...	X	X	—	X	—	X	S	...	X	X	X	A	...
Illinois	X	X	S	...	X	X	X	X	—	X	...	S	X	X	X	A	...
Wisconsin	X	X	—	...	X	X	X	X	—	X	X	X	X	X	X	...	...
Minnesota	3-5	...	X	...	X	X	X	—	—	X	X	...	X	X	X	A	—
Iowa	3-7	...	...	...	X	X	X	—	—	X	X	...	X	X	X	A	...
North Dakota	3-5	X	X	...	X	X	X	—	—	X	X	S	X	X	X	...	A
South Dakota	3-5	X	—	...	X	X	X	—	—	X	X	S	X	X	X	...	A
Nebraska	X	X	—	...	X	X	X	X	S	...	...	...	X	X	X	...	—
Kansas	3	...	X	...	X	X	X	X	—	X	S	...	X	X	X	...	...
Maryland	3-5	...	X	...	X	X	A	X	—	—	...	...	X	X	A	...	A
Virginia	X	...	—	...	X	X	A	—	X	—	...	X	X	A	A	A	...
West Virginia	3	...	...	...	X	X	A	X	X	...	...	X	...	X	X	A	A
North Carolina	3-5	...	...	...	O	X	X	—	—	X	...	...	X	X	A	...	A
South Carolina	X	...	X	...	O	X	X	—	—	S	A	...	X	...	X	...	...
Georgia	—	S	X	...	O	X	X	...	—	...	X	X	X	A	S	—	—
Florida	5	X	—	...	O	X	...	X	—	...	X	X	X	X	...	A	A
Kentucky	X	X	—	...	X	X	X	X	—	...	X	A	X	X	...	A	A
Tennessee	X	X	—	...	O	X	A	X	—	X	—	S	X	A	A	A	A
Alabama	5	—	X	...	O	X	X	X	—	—	...	X	X	A	X	...	A
Mississippi	5	...	—	...	O	X	X	X	—	X	X	X	X	X	X	...	A
Louisiana	X	...	...	...	X	X	X	—	X	—	...	X	A	X	A	...	A
Texas	4	X	—	...	X	X	...	X	X	—	...	X	X	X	X	...	A
Arkansas	X	X	—	...	O	X	X	X	—	—	...	X	X	X	A	...	...
Missouri	X	...	X	...	X	X	X	X	S	S	X	X	X	X	X	...	A
Oklahoma	3	...	X	...	X	X	X	...	X	X	...	X	X	X	X	—	...
New Mexico	3	...	X	X	O	X	—	X	...	—	...	X	X	X	X	...	—
Arizona	3	...	X	...	X	X	X	S	X	...	S	X	X	X	S	...	A
Colorado	3-5	X	—	...	O	X	X	—	X	—	...	X	X	X	X	—	—
Utah	3	...	...	...	X	X	...	—	X	X	S	X	X	X	X	...	...
Wyoming	3	...	—	...	X	X	X	S	X	—	...	X	X	X	X	...	—
Montana	3	...	...	...	X	X	X	X	X	—	S	X	X	X	X	...	...
Idaho	3	...	X	...	X	X	X	X	—	—	X	X	X	X	X	...	...
Washington	3	...	—	...	X	X	X	—	X	—	X	X	X	X	X	...	A
Oregon	2	...	—	...	O	X	X	—	X	S	1	X	X	X	X	...	...
Nevada	3	...	—	...	X	X	—	—	X	X	X	X	X	X	X	...	...
California	3-7	X	—	...	X	X	X	—	X	S	X	X	X	X	X	...	A

X = An elective office.
S = A county office in some counties.
O = Usually elected for a larger district than a county.
D = Chosen for a smaller district than a county.
A = Appointed.
— = Duties performed by some other officer.

County officers in most states are still paid mainly or largely by fees, which are often regulated by old statutes enacted in primitive times and unsuited to modern conditions. As a result the offices are often conducted so as to secure the largest amount of fees rather than for the public interest; and in populous counties many county officers receive very large incomes, sometimes more than the salary of the President of the United States. Such offices are the goal of unscrupulous politicians; and are a constant incentive to corrupt political methods. Some of the Western states and a few others have in recent years placed all county offices on a salary basis.[1]

Every county has a county seat, where the courts are held and most of the county officers have their offices. Here a court-house and jail are provided, the former including quarters for different officers; and usually other county establishments, such as the poor-house, are located in the neighborhood. In rural counties the court-house is often the most imposing building in the county.

Where a county contains a city of considerable size the county seat will generally be located there. But there are cases where a small village near the center is the capital of a county containing a much larger city. This is the case in Calhoun county, Michigan, containing the city of Battle Creek, where the county seat is the much smaller city of Marshall.

[1] California, Colorado, Idaho, Montana, Nevada, Kentucky, New Jersey and Ohio. *Cf.* J. K. Urdahl. "The Fee System in the United States."

In new agricultural sections the location of the county seat, concentrating there the public business, will often determine what is to be the principal community in the county. On this account there is an eager rivalry between different places to secure this position. Ordinarily the legislature determines the county seat and may change it; but in about half of the states, mostly west of the Alleghanies, there are constitutional provisions requiring a local popular vote for these purposes.[1] In Illinois a majority vote may move the county seat nearer the center; but it requires a three-fifths vote to transfer it to a place further from the center. In Tennessee, Missouri and South Dakota a two-thirds vote is necessary to make any change; and in Texas the same is required if the existing county seat is within five miles of the center. In Kansas, the county seat can be changed only with the consent of "a majority of the electors," instead of the usual majority of those voting. Several states limit the frequency with which the question of removal can be raised. In Illinois a vote for changing the county seat can be taken only once in ten years, in Missouri once in five years, in Colorado and Washington, once in four years. In older states the county seats remain stationary, and the problem of removal seldom arises.

As a general rule the county seat is not merely the

[1] Arkansas, California, Colorado, Georgia, Idaho, Illinois, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Ohio, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington and Wisconsin. Oberholtzer, "Referendum in America," pp. 231-232, 377-380.

lot and buildings used for public purposes, but the city or village in which they are located. But in several cases it has been held by the courts that territory annexed to such a city or village after the location of the county seat is not included; and that to erect new county buildings in the annexed territory would constitute a removal of the county seat, for which a popular vote was necessary.[1]

Some counties have more than one county seat. In several New England states courts are held at two or more places in most counties. At least two Iowa counties have two county seats, and Sebastian County, Arkansas, has two court-houses.

Since 1910 increased attention has been given to county government, and proposals for important changes in organization have been urged, notably in New York, New Jersey, Illinois and California. In the latter state, under the constitutional amendment of 1911, the county of Los Angeles established in 1913 a new system of county government. The only elective officers are the supervisors, sheriff, district attorney, assessor and justices of the peace. Other county officers are appointed by the supervisors, and constables are appointed by the sheriff, all from civil service lists. The board of supervisors is given substantial legislative powers, to prescribe the number of deputies and clerks in each office, to fix salaries, and to provide rules regulating the duties of all county officers.[2]

[1] Marengo County *v.* Martin, 134 Ala., 275; State *v.* Harwi, 36 Kans., 588.

[2] Annals of the American Academy of Social and Political Science, vol. 47, p. 229.

CHAPTER V

THE COUNTY BOARD

With a considerable variety of structure and name, there exists in every state, except Rhode Island, a local authority in each county, which levies taxes, performs certain administrative functions and has some powers of supervision over other county officers These county boards have sometimes been called the legislative branch of the county government; and it is the only one in the list of county organs to which the term could be applied in any degree. But an examination of their authority will show that they exercise legislative power only to a very limited extent, while they have in addition administrative and in some cases also judicial functions.

It has been customary to speak of two types of county boards;—the small board of commissioners elected at large for each county, and the much larger board of supervisors elected by townships and cities within each county. But in some states the organization of the county board is the result of a compromise between these two typical forms; while in other states it contains features foreign to both. Moreover the use of the terms has been interchanged, so that boards organized on the "commissioner" type are sometimes

known as boards of supervisors; and especially in some of the Southern states other names are still in use, such as the county court, the levy court, or the fiscal court. It is, therefore, necessary to examine in some detail the various forms of organization in the different states.

In the five New England states which have such county boards, they usually consist of three members, who are elected at large in each county, except in Connecticut, where they are chosen by the state legislature. In four of these states the board is known as the board of county commissioners; but in Vermont the duties of commissioners are performed by the assistant judges of the county court. In New Hampshire and Connecticut the commissioners do not exercise the power of taxation or of making appropriations. These are entrusted to biennial conventions of the members of the state legislature from each county. This arrangement reduces the importance of the county board, but avoids the danger which exists in most other states from placing in the same body the authority to levy taxes, to make appropriations and to disburse the proceeds. In Massachusetts, county appropriations and tax levies are made by the legislature; but the estimates of the county commissioners are regularly adopted, and there have been some cases of extravagance if not of corruption.[1]

In the Middle-Atlantic and North-Central states two distinct groups can be recognized in the organization of county boards. In New York, New Jersey, Michigan, Wisconsin, and most of the Illinois coun-

[1] G. Bradford, "The Lesson of Popular Government," II, 80.

ties,[1] they are composed of representatives from the townships and cities, known usually as boards of supervisors, but in New Jersey as boards of chosen freeholders.

Such boards of supervisors range in distinctly rural counties from fifteen to twenty-five members. But in counties containing a large city the number is larger, and in some cases is as high as fifty, and in a few cases, usually very sparsely settled districts, counties with only four or five organized townships have a correspondingly small county board.

These boards it may be noticed are formed on the basis of representing local districts, and only in a small degree is population considered. Each township has ordinarily one representative, irrespective of population. Cities are given some additional representation, frequently one member from each ward; but this is not in proportion to their population, and in many cases a city with the larger part of the population of a county will be in a hopeless minority in its representation in the county board. Detroit, Michigan, is an exception in having more than a majority of the board of supervisors for Wayne county. Chicago, by a special arrangement, elects ten of the fifteen county commissioners of Cook county, Illinois. But Buffalo, with eighty per cent. of the population of Erie county, New York, has exactly one-half of the members on the board of supervisors.

In these large county boards local representation is

[1] Formerly also in some counties of Nebraska; but in 1895 boards of 7 members were substituted for the larger boards of township representatives.

more fully secured than in the small boards; and there seems some reason to believe that the representatives elected feel a greater degree of popular responsibility. This form of organization would therefore seem to be the better, in so far as the boards act as legislative and taxing authorities. But they are also executive and administrative authorities; and for these purposes the large board is unwieldy, especially in counties where the number of members runs up to forty or fifty. Judge T. M. Cooley criticised the working of the large boards in Michigan; and recently there have been some complaints in Wisconsin that the frequent sessions of the boards of supervisors in large counties to transact minor business involved a good deal of unnecessary expense. A recent study of county government in Illinois shows a good deal of dissatisfaction with the large boards of supervisors. The two largest counties of New Jersey have now boards of nine members.

To obviate such difficulties and criticisms there have been in some cases modifications in the organization of these large county boards. Probably the most frequent change is the development of a system of committees to which the detailed work of the board is referred, while the board acts mainly as a ratifying authority. But this tends to weaken the chain of responsibility, while it fails to make a distinct separation between the spending and appropriating authorities. Another change introduced in several Michigan counties has been the establishment of boards of county auditors, to relieve the supervisors of the duty of examining claims. This partially separates two

incompatible functions: but in Wayne county, where the system has been in existence longest, the powers of the auditors have been gradually increased, until they are practically the county board, and the supervisors merely register their wishes.

Still another method has been recently introduced in Cook county, Illinois. An act of 1893 created for that county the office of county president, elected as a member of the county board, who is given a limited veto over the acts of the board and the power to appoint the county officers not elected by popular vote.[1] Through these powers, analogous to those given to the national, state and city executives, the county president is made the effective and responsible head of the county administration (so far as that is not under independent elective officers), and the county board becomes the representative organ for voting supplies and determining the general policy of the county. In some New Jersey counties there is a chief executive officer, the county supervisor, who has a limited veto power.[2] And formerly in Kings county, New York, there was a supervisor at large, who presided over the board and exercised some executive functions.[3]

In the other states of this geographical group from Pensylvania west to Kansas and Minnesota, the county board is a small body of three to seven members.[4] In Pennsylvania, Maryland, Ohio and South

[1] S. E. Sparling in "Political Science Quarterly," 16, p. 437.
[2] Laws of 1900, ch. 89.
[3] F. J. Goodnow, "Administrative Law of the U. S.," 192 n.
[4] In Delaware from seven to ten members elected by districts.

Dakota, the members are elected at large in each county. In Indiana, Iowa, Minnesota, North Dakota, Nebraska and Kansas, they are elected by districts into which the counties are divided, a compromise with the system of town representation used in the states previously noted. In Iowa and Nebraska these small county boards are called boards of supervisors.

These small county boards in some states meet more frequently than the larger boards of town supervisors, and are thus more active administrative bodies. At the same time they are the taxing and appropriating authority for the county, with no clear distinction between their executive and legislative functions. But it may be noted that most of the states in this group have county auditors, who relieve the county board of the detailed examination of claims and act as a check to keep expenditures within the formal appropriations.

A few years ago Indiana made important changes in its county system, so as to separate the power of making appropriations from the spending authority. There was ample evidence of carelessness and extravagance, if not of dishonesty, in the conduct of county business under the former system; and this led to the new law of 1899. This law established in each county a county council of seven members, four to be elected by districts and three at large. To this council were given the fiscal powers of the old county board, notably the exclusive right to vote all appropriations for county expenses on a carefully prepared budget, to borrow money and issue bonds, or to pur-

chase and sell real estate. The former county board remains as the executive authority for carrying out the policy determined by the appropriations.[1] It may be noted that these county councils occupy a somewhat similar position to the county conventions in Connecticut and New Hampshire.

In the Southern states there is no longer a uniform organization for county boards. In Kentucky, Tennessee and Arkansas the quarterly court of the justices of the peace still constitutes the fiscal and general administrative authority of the county. But with the popular election of the justices by county districts this system has become one of local representation similar to the boards of town supervisors in the Northern states; and in two of these states the number of justices on the county boards approximates to the number of supervisors in such states as Michigan and Wisconsin. In Kentucky, however, by recent legislation, the number of magisterial districts in each county has been reduced to eight, and this determines the size of the county board. Governor Beckham believes the reduction in numbers has been beneficial, in tending to improve the character and qualifications of the justices.

Virginia has adopted some of the terminology of the Northern system. Each county is divided into from three to eight magisterial districts, and each district, besides other local officers, elects a supervisor to the county board. In Louisiana the parish authority corresponding to the county board is known as the police jury, which is elected by wards, and is thus also

[1] "Political Science Quarterly," 16, p. 437.

a body organized on the principle of local representation.

In the other Southern states the county board is a small body of three to five members. In West Virginia and Missouri it is known as the county court. In Mississippi (where it consists of five members elected by districts) it is called the board of supervisors. Elsewhere the board is composed of county commissioners, sometimes elected at large (Alabama), sometimes by districts (Florida and Texas), and in most of the counties in South Carolina appointed by the governor on the recommendation of the local members in the legislature.

Two special characteristics in some of the Southern states should be noted: One is the continued combination of judicial and administrative functions in the same hands. This is true not only in Kentucky, Tennessee and Arkansas, but also in Alabama, where the probate judge is a member of the county board, and in Georgia, where the probate judge or ordinary himself performs most of the duties of the county board, limited in some matters by the grand jury. The second notable feature is the tendency towards a definite chief county officer. This reaches its maximum in the case of the ordinary in Georgia, and the county judge in Arkansas, who is probate judge and also the executive and chairman of the county court. To a smaller degree the county or probate judge in Tennessee and Alabama is the leading member of the county court.[1]

[1] Professor Thomas C. McCorvey of the University of Alabama writes: "The judge of probate, who in most cases has had

In the Mountain and Pacific states of the West the county board is always a small body. In most cases it has three members, called county commissioners, in some states elected at large, in others by districts. In Oregon there are two commissioners constituting the county court with probate and administrative functions. In California, each county has a board of supervisors, consisting of three to seven members, except in San Francisco.

Counties which are coterminous with or contained within a city do not have both a county board and a city council. Usually the city council acts in place of the county board, as in Boston and Philadelphia. But in San Francisco there is a board of twelve super-

some legal training (although the law of Alabama does not require that he shall be, like judges of other courts of record, 'learned in the law'), is usually recognized by the other members of the board as better informed than they upon all matters, fiscal and otherwise, that come before the board, and they naturally look somewhat to him for guidance and leadership. In a state where the population is still largely rural and agricultural, it is natural that a majority of the commissioners should be well-to-do planters or farmers—men who are chosen by their county constituencies for their supposed good sense, sound judgment, and honesty, but who are not supposed to be authorities upon questions of law and finance. In many of the counties the commissioners employ a county attorney, upon whom they call for advice upon the legal phases of matters coming before them, while in other counties the commissioners rely more or less upon the advice of the judge of probate. But while the probate judge usually has great influence in shaping the action of the board, it sometimes happens that he cannot lead the action of the commissioners—not infrequently a majority of the commissioners voting down propositions which he favors."

visors, elected at large, which acts in both capacities. Most of the other elective county officers are, however, provided in these counties or cities, in addition to the city officers.

Comparing the two main types in the organization of county boards, the larger bodies have the advantage of more direct local representation and popular responsibility, the smaller bodies are likely to be more active and efficient in executive administration. But under either system as it exists in most states there is at least a possible danger in the union of the powers of appropriation and expenditure in the same body.

This is avoided by the separate taxing authorities in Connecticut, New Hampshire and Indiana; and also by the development of a chief executive in Georgia, Arkansas, and Cook county, Illinois. The latter method, concentrating executive authority in a single official, is more in accord with the methods employed in national, state, city and even to some extent in township organization. If to the powers of the president of Cook county or the county judge in the Southern states noted were added the sheriff's responsibility as peace officer, there would be established a chief county officer, exercising supervision over the less important offices, and limited by the financial control of the county board. Such an arrangement would bring the county system into harmony with the accepted principles of American governmental organization.

The union of judicial and administrative functions in some of the Southern states does not seem to involve any serious danger; and has practical advantages as an economical measure, which might make a similar ar-

rangement advisable in the smaller counties of other states.

COUNTY boards can exercise only such powers as are expressly conferred on them, or as are necessary to the performance of their public trusts and duties. Their authority is, therefore, determined by statute; and even the provisions of general application are so numerous and so scattered throughout the volumes of collected laws as to make impossible a comprehensive analysis of their varying powers in the different states. Special legislation for particular counties in many states increase the difficulties in making general statements.

They may, however, be called the general public agents by which the powers of counties are exercised. And it has been said from the bench that such a county board "is clothed with authority to do whatever the corporate or political entity, the county, might, if capable of rational action, except in respect of matter the cognizance of which is exclusively vested in some other officer or person. . . . It is in an enlarged sense the representative and guardian of the county, having the management and control of its financial interests."[1] "In legal contemplation the board of commissioners is the county."[2]

More specifically county boards manage the county finances and property, have varying powers in regard to highways and other public works, and the care of

[1] West, J., in Shanklin *v.* Madison County, 21 Ohio St., 583 (1871).

[2] State *v.* Clark, 4 Indiana, 316.

the poor, in some states have a limited ordinance and police power, usually have some supervision over county officers, and sometimes over townships and other subdivisions of the county.[1] A brief notice of their activity in each of these fields may be given.

Control of the county finances constitutes the most important function of county boards. In four states —Connecticut, New Hampshire, Indiana, and Arkansas—this power is given to bodies separate from those exercising the administrative powers; but in other states the two functions are combined in the same boards. These levy taxes for county purposes and for

[1] The following extract from the statutes of Arkansas is exceptional in giving most of the powers in one brief statement: "The county court of each county shall have the following powers and jurisdictions: Exclusive original jurisdiction in all matters relating to county taxes, in all matters relating to roads, the appointment of viewers, reviewers and overseers of roads, to order the erection of bridges, and directing the repairing of the same; to superintend all ferries, paupers, bastardy cases, vagrants and the apprenticeship of minors; to fix the places of holding the elections; to designate apportioning justices; to audit, settle and direct the payment of all demands against the county; to have the control and management of all the property, real and personal, for the use of the county; to have full power and authority to purchase or receive, by donation, any property, real or personal, for the use of the county, and to cause to be erected all buildings and all repairs necessary for the use of the county; to sell and cause to be conveyed any real estate or personal property belonging to the county, and to appropriate the proceeds of such sale for the use of the county; to disburse money for county purposes, and in all other cases that may be necessary to the internal improvement and local concerns of the respective counties." Arkansas, "Digest of Statutes," §1375.

the county share of the state taxes on general property. The extent of this taxing power is however limited to authorized purposes and is often further restricted by a maximum rate.[1] In some states additional revenue is received from licenses issued by the county board, the largest item coming from liquor licenses. County boards in some states can raise money by issuing bonds after popular ratification of a proposed loan, and in all special authority to make loans for particular purposes is given from time to time by the state legislatures.

In many states the county boards have power to equalize the aggregate assessment of property for taxation in the townships or other subdivisions of the county. This does not give them control over the valuation of individual holdings of property; but enables them to apportion the taxes among the various divisions of the county. The county boards do not have this power in the New England states, nor in most of the Southern states, where assessments are made by a county officer. And in Indiana and Oregon this power of equalization is given to a special board distinct from the general county authority.

Power to levy taxes ordinarily includes power to appropriate the revenue to particular purposes. In the case of county boards this authority is usually restricted by statutory provisions fixing the compensation of certain county officers and requiring other payments. But outside of these the county boards can

[1] In New York, the county board also levies town taxes; in Michigan, the county board passes on all local tax levies; and in Ohio a county budget commission passes on all local tax levies.

make appropriations within the limits of their taxing power.

County boards are also the final authority for the allowance of claims and accounts and the disbursement of county funds, and in most cases every payment must be specifically authorized by the board. But the detailed examination of bills is usually performed by the county auditor or county clerk.

The United States census reports on local finances [1] show the relative importance of county expenditure in the various states, and indicates, as has been noted before, that by this standard the importance of county administration in the different geographical groups of states does not agree with the customary accounts of local government. In the states of the Central group, notably in Ohio and Indiana, county expenditure is larger than in the Southern states; while in three of the New England states, including Massachusetts, county finances are of considerable importance. But the highest *per capita* county expenditure is in the most westerly states.

An analysis of county expenditure shows that the largest items are for courts, roads and bridges and poor relief. The payments for courts are the most general, and include not only the salaries for the officers of the courts but also the cost of court-houses,

[1] *Per Capita County Expenditure*

	1890	1902
New England States	$0.97	$1.05
Central States	2.30	2.77
Southern States	1.20	2.69
Western States	6.25	9.91

Compiled from Census Reports on Wealth, Debt and Taxation.

jails and other necessary accommodations. County boards are required to provide these; they have power to erect, repair and have custody of public buildings for such purposes, and in most counties public buildings have been constructed. In Virginia, however, the county court-houses are not entrusted to the boards of supervisors, but to the judges of the circuit court.

Over roads and bridges the authority of county boards varies in different states. In almost every state they have at least power to locate the more important roads; usually they build the principal bridges; and in some states they have direct supervision over the construction of certain roads. Judging by expenditures, county roads are of most importance in Ohio, Indiana, Iowa, Missouri and California. In New England, county roads are of some importance only in Maine. In Massachusetts the county commissioners have power to regulate grade crossings of highways and railroads.

Connected with the control over highways is the power of county boards in many states to license ferries over rivers. In a few states they have authority to undertake other public works: levees or dykes in Louisiana and Nebraska; drains in Arkansas and North Dakota; and irrigation works in South Dakota.

Poor relief is still a function of town government in five of the New England states, and to a considerable extent in New Jersey and Pennsylvania. But in Maine, Massachusetts and Connecticut there is some county expenditure for this purpose, and in New Hampshire almshouses are county and not town in

stitutions. In the other states throughout the country poor relief is an important object of county expenditure, although there is sometimes also town or city payments for the same purpose. In most states county almshouses have been erected, where formerly all classes of paupers were maintained; but with the development of state institutions for special classes, such as the insane, county administration is of less relative importance. In some cases counties including a large city, such as Cook county, Illinois, containing the city of Chicago, have established various special institutions; and in Virginia and California all county boards have authority to establish county hospitals. More generally they have power to appoint county physicians.

Outside of New England, county boards usually have some limited police power. In the Southern and far Western states they frequently license and regulate inns, taverns, liquor saloons, auctioneers, peddlers and other kinds of business. In some of the Central states the licensing of the liquor traffic is still in the hands of the county board. In Pennsylvania, however, the old licensing powers of the justices are now exercised by the single salaried judge who holds criminal court under the old title of quarter sessions.

In some states county boards are authorized to offer bounties for the destruction of wild animals or noxious weeds; and in some they may regulate fishing. These are almost the only powers of legislation, as distinct from financial authority, possessed by these county boards. In several states the constitutions authorize the legislatures to confer local legislative

power on the county boards; but the custom of special acts by the legislatures seems to be too firmly established to allow of any important delegation of power.

While county boards are considered the general county authority, the number of officers whom they appoint are few. In most cases they appoint the superintendent of the poor, and sometimes the superintendent of the workhouse. In Michigan they appoint drain commissioners; and in Connecticut, Vermont, New Jersey, Kentucky, and Louisiana, they have the more important power of choosing county treasurers.[1]

Over elective officers the county boards have some means of supervision. In many states they must approve the bonds of these officers, and examine their accounts. In a few states, as Wisconsin and Iowa, they have the power to fix their salaries. Occasionally their power goes further. In Indiana the county commissioners may remove a county treasurer for cause; and in Nebraska they may hear complaints against any county officer, and remove him for official misconduct.[2] But in the main there is no effective control over the elective county officers.

Except in the New England states, county boards usually have power to organize townships or establish county precincts for various purposes. In Massa-

[1] In New Jersey each county board appoints a county counsel, county physician, county engineer, wardens of the penitentiary and county jail, superintendent of the almshouse, superintendents of county hospitals, and physicians for county institutions.

[2] Howard, "Local Constitutional History," 445.

chusetts and Michigan they form districts within the county for the election of members of the legislature. But they seldom have any effective control over township officers. Exceptional cases are in New York, where boards of supervisors vote the town taxes, and in Indiana, where county commissioners audit the accounts of township trustees.

In most states, outside of New England, county boards have duties in regard to elections. In the Southern and Western states, they establish polling places and provide for ballots; and in most states they act as county boards of canvassers, to declare the results of elections. Other powers are conferred on these boards with great diversity. For example in a number of states they act as jury commissioners; in several they have sanitary powers; in Massachusetts they conduct truant schools; and in Wisconsin they can incorporate literary and benevolent societies.

An interesting problem in connection with county boards is how to classify them under the doctrine of the separation of powers. In historical origin a judicial body, their functions are now for the most part executive, but with some powers which have led them to be considered the legislative authority of the county. The courts have been forced to recognize that they cannot be placed exclusively in any one of the three divisions; and in some cases have used the term administrative to include all of their various functions.

One question which has arisen in some of the Northern states is whether they have the power to compel witnesses to testify before them. In the states where

they are called courts the problem may settle itself, but in other states very different answers have been given. In New Jersey a board of freeholders has no authority to summon a witness or to examine him.[1] In Michigan, a board of supervisors may subpœna a witness, but may not punish for contempt if he refuses to testify.[2] In New York the boards of supervisors are authorized by statute to summon witnesses; and on refusal to answer pertinent questions any judge may commit the defaulting witness to jail.[3] And in Massachusetts, by statute, county commissioners may administer oaths, and impose petty punishments for disturbing their meetings.[4]

It is difficult to make any general statement as to the character of the members of county boards. Conditions in the three thousand counties throughout the country undoubtedly vary to a great degree; while even in the same county better or worse men will be elected at different times. In counties containing large cities there has frequently been much dissatisfaction with the county boards and sometimes serious charges have been made against them. And in some communities movements for political reform are directed as much at the county boards as at municipal authorities.

In rural counties such complaints are not frequent. But this may be due in part to a less active spirit of investigation. In the later months of 1905 serious com-

[1] Brown *v.* Morris C. & B. Co., 27 N. J. Law, 648.
[2] *In re* Blue, 46 Mich., 268.
[3] County Law, §27; Code Civ. Proc., §§855, 856.
[4] Revised Laws, 1902, ch. 20, §22.

plaints and charges have been noticed from such counties in New York, Pennsylvania, Michigan and California.[1] The chief justice of a Southern state writes that county commissioners there "are incorruptible, but as a rule weak. The voters regard almost anybody as competent for such a place, and, therefore, vote from personal predilection, rather than from a motive to subserve the public good." And this statement would probably apply to conditions in most parts of the United States.

[1] Sacramento Record-Union, Sept. 24; Utica Herald-Dispatch, Sept. 28; Philadelphia Public Ledger, Oct. 28; Detroit Free Press, January, 1906.

CHAPTER VI

JUSTICE AND POLICE

In another volume of this series,[1] the organization and functions of the judiciary in the American system of government has been discussed. It is necessary, however, in this account of local government to pay some attention to judicial administration in the local districts. The degree of centralization and decentralization in this field is an important factor in the relative importance of local government in different states; while the administrative officers of the courts are for the most part elective county officers.

Thirteen states centralize the selection of judges for courts of general jurisdiction. These include all of the New England states, two in the Middle-Atlantic group, and five in the South. In the four largest New England states and in New Jersey, Delaware, Mississippi and Florida, the governor makes nominations subject to the approval of the council, the senate or (in Connecticut) the legislature. In Rhode Island, Vermont, Virginia, South Carolina and Georgia, the legislature elects,—a somewhat less centralized method, as the tendency is to distribute the places among the members of the legislature from different parts of the state. In three of these states (Massachusetts, New Hampshire and Rhode Island) the judges have a life

[1] Baldwin, "The American Judiciary."

tenure; in the others they are chosen for a term of years.

In the other thirty-two states all judges are elected by popular vote for definite terms, usually from six to twelve years, but in three states for longer periods.[1] As a general rule the judges for courts of general jurisdiction are chosen for a district including several counties; and are usually called circuit or district judges.[2] Thus Illinois with 102 counties is divided into 18 judicial circuits, Wisconsin with 70 counties has 17 circuits, and Michigan with 85 counties has 38 circuits. Often, however, the largest county in the state constitutes a judicial district, and the judges are elected in the same way as county officers. Thus New York county, although only part of New York City, is one of the eight districts into which the State of New York is divided for the election of supreme court judges. Cook county forms one of the judicial circuits in Illinois, and the City and County of St. Louis one of the circuits in Missouri. In Ohio five counties, and in Pennsylvania 42 of the 57 counties, are districts for the election of common pleas judges. In Michigan fourteen counties are districts for the election of circuit judges. In such cases, too, there are often a number of judges elected for the county, while in general there is only one judge for each district.

Although elected in districts and usually holding court within the districts, judges of circuit, superior

[1] New York, 14 years, Maryland, 15 years, and Pennsylvania, 21 years.

[2] The latter term in states west of the Mississippi River.

and district courts are always considered as state officers, and may exercise jurisdiction in any part of the state. Not infrequently when a judge is personally interested in a case to come before his court, a judge from another district will be called in to try the case. And in the populous counties, even with a number of judges, the courts sometimes become overcrowded, and judges from the country districts are designated to relieve the crowded calendars.

Whatever the district in which judges are chosen, courts are held in each organized county, and as a rule the county is the smallest district for which judges with general jurisdiction are chosen. In large cities, however, special municipal courts are established with an enumerated jurisdiction, which sometimes is practically as extensive as the circuit courts.

In about a third of the states local courts are established in each county, usually in addition to the courts of general jurisdiction just noted; and in other states county courts are established in some counties. The states having such courts do not fall into any geographical or population group, but include both large and small states scattered throughout the country. The jurisdiction of these county courts varies a great deal. In California they are the superior courts of general original jurisdiction; and in Pennsylvania the common pleas judges, who are for the most part elected in single counties, have a similar jurisdiction. More usually the jurisdiction is limited. In New York, county courts may try civil cases where not over $2,000 is involved, and must try all criminal cases arising in the county, except murder. In Illinois the

county judges have original jurisdiction in tax, assessment and inheritance cases, and appellate jurisdiction over the justices of the peace.

County courts in some states have more than judicial functions, while in other states the non-judicial duties are their only functions and they are courts only in name. In Kentucky and Tennessee the county court has administrative as well as judicial functions, as was general in the Southern states in former times. In three widely separated states, Georgia, Arkansas and Oregon, the county court or judge has probate jurisdiction and administrative powers, but no jurisdiction in civil and criminal cases. In most of the Wisconsin counties and in North Dakota the county judge has jurisdiction only in probate matters; and in West Virginia and Missouri the county court is a purely administrative body, and has no judicial functions.

In a few states where there is no general system of county courts, provision is made for one or more court commissioners in each county. These act as deputy judges in matters which can be acted on out of court. Such officers are found in Michigan, Wisconsin, Minnesota, Wyoming and Washington.

In two of the New England states the counties are divided into judicial districts, each with a district court. Massachusetts with fourteen counties has forty-four of these districts; and Rhode Island with four counties has twelve judicial districts.

To summarize, it may be said that, outside of New England and a few other states, the selection of judges is decentralized in local districts. To a considerable extent the county is a district for such elections, but

in less densely populated regions a larger district is often used. In any case the administration of justice is decentralized to the extent of being carried on in the counties. But judicial administration differs from most other county administration in that it is subject to a recognized superior authority, the Supreme Court or Court of Appeals. Through the system of appeals the decisions of the lower courts are brought into harmony with each other, and general rules of law are established for each state.

PROBATE administration is somewhat more decentralized than the ordinary civil and criminal jurisdiction. In most states the settlement of estates is a county function. Where a regular system of county courts has been established, they are usually invested with this authority; and, as has been noted, in some cases the probate administration is their only function of a judicial nature. In most other states special probate courts have been established in each county, sometimes in addition to the county courts, as in New York, New Jersey and the larger Illinois counties. Usually these are known as courts of probate and the judges as probate judges. But in New York and New Jersey the probate judges are called surrogates; in Pennsylvania, Delaware and Maryland probate courts are known as orphans' courts; and in Georgia there has been revived the title of ordinary, taken from the judge of the old English ecclesiastical courts.

In some of the New England states probate jurisdiction is exercised in districts smaller than a county. In Vermont six counties are each divided into two

probate districts. In Connecticut there are over a hundred probate judges, each with jurisdiction in a small district containing one or more towns. And in Rhode Island each town is a probate district. On the other hand in some of the Southern and Western states probate jurisdiction is vested in the judges elected in districts embracing a number of counties. In some of these states commissioners may be appointed in the counties to act in probate matters.

Special probate judges are nearly always elected by popular vote, even where other methods of selection are used for judges in the regular courts. Thus county probate judges in Maine, and probate judges for smaller districts in Connecticut, are elected. But in Massachusetts, judges of probate, like all other judges in that state, are appointed by the governor and council.

In some states there has been established the office of public administrator, to take charge of the estates of persons without known relatives or friends. In Missouri, California and Montana this is an elective county office. In Alabama and Tennessee the incumbent is appointed by the probate judge or county court. And in some other Southern states the sheriff acts *ex officio* in this capacity.

PROSECUTING ATTORNEYS [1]

An important officer in the higher courts throughout the United States is the official attorney who conducts

[1] "American Law Review," 17:529.

criminal prosecutions and represents the public authorities in civil suits. In most states he is an elective county officer, but in some he is chosen for judicial districts larger than a county. He is variously designated in the different states as prosecuting attorney,[1] state's attorney[2] district attorney,[3] county attorney[4] or solicitor;[5] and each title is used in widely separated states.

This office marks a striking development in American criminal procedure in contrast to the English common law, at which criminal prosecutions were instituted and carried on by private persons. But, at the same time, it is an expansion of the old English office of attorney-general, who conducted suits in the courts on behalf of the central government. Each of the colonies had an attorney-general; and beginning with Connecticut in the early part of the eighteenth century there were established local assistants to these officers, from whom have developed the present officials. North Carolina was one of the first to follow Connec-

[1] Ohio, Indiana, Michigan, Missouri, Arkansas, West Virginia, Wyoming, Idaho and Washington. In New Jersey, his title is prosecutor of the pleas.

[2] Vermont, Connecticut, Illinois, North and South Dakota, Maryland and Florida. In Virginia and Kentucky, attorney for the commonwealth.

[3] Massachusetts, New York, Pennsylvania, Wisconsin, Mississippi, Louisiana, Colorado, New Mexico, Arizona, California and Oregon.

[4] Maine, Minnesota, Iowa, Nebraska, Kansas, Oklahoma, Texas, Utah and Montana.

[5] New Hampshire, South Carolina, Georgia, Florida and Alabama. Pennsylvania has county solicitors for civil suits in addition to district attorneys.

ticut. In New York assistant attorneys-general were established in 1796, and the system of local public prosecuting officers has long been firmly established in all of the states.

While the jurisdiction of these officers is generally confined to single counties, in a number of states it extends to judicial districts which are usually of larger size. Most of these are in the South,—North and South Carolina, Georgia, Florida, Tennessee, Alabama, Mississippi and Arkansas,—but the same system is followed in Massachusetts (for some cases), Colorado, New Mexico and Oregon. In a few of these states, too, —Georgia, Florida, Alabama and New Mexico,—the office is filled by the appointment of the governor, and in Connecticut by appointment of the superior court judges, while elsewhere it is an elective position.

In Maryland and Kentucky the state constitutions require public prosecuting officers to be practising attorneys at law, and in some other states this qualification has been established by statute, or is held by the courts to be involved in the nature of the office.[1] But in other states the courts have held that such a requirement is not essential, and even that the legislature has no power to add to the qualifications prescribed in the constitution.[2] Whatever the law, it is certainly necessary for the competent discharge of the duties of the office that the incumbent should have a legal training.

These official attorneys are paid sometimes by fees

[1] People *v.* May, 3 Mich., 598; People *v.* Hallet, 1 Colo., 358.

[2] People *v.* Dorsey, 32 Cal., 302; State *v.* Clough, 23 Minn., 17; Howard *v.* Burns, 14 S. Dak., 283.

and sometimes a fixed salary. In some cases their fees depend on the cases in which they secure convictions. This is an incentive to vigorous prosecutions, but one which may sometimes be carried too far, and lead to the conviction of innocent persons.

Most important among the duties of these officers are those connected with criminal prosecutions. They must decide whether or not to commence a prosecution. There are cases of technical violations of law where no public interest would be served by pressing the charge; and there are many criminal cases where the evidence is clearly insufficient to secure conviction. Under such circumstances the prosecuting officer should not institute proceedings. On the other hand, they have no power to make an agreement not to prosecute a particular person, and they are not justified in declining to prosecute because they disapprove of the law, or believe the accused should be pardoned.

In most of the states criminal prosecutions, except for petty crimes, must be based on an indictment by a grand jury. The prosecuting attorneys, however, usually collect the evidence and prepare most of the cases that come before grand juries, and give advice which has much influence in determining what indictments shall be brought. But they cannot compel the bringing of an indictment, nor prevent a grand jury from considering charges by declaring that the government will not prosecute.

Some of the North-Central states[1] have dispensed with grand juries in ordinary cases; and in these the influence and importance of the prosecuting attorneys

[1] Michigan, Wisconsin and Minnesota.

are greatly increased. Criminal trials are begun on what is called an information, presented by the prosecuting attorney; and it thus rests with him alone to determine whether any particular case shall be brought to trial.

Formerly public prosecutors could discontinue a criminal trial, by entering a *nolle prosequi*,[1] a step which does not prevent subsequent prosecution on the same charge. In some states this rule is still followed, but in others this action can be taken only with the approval of the court.[2]

In the conduct of a prosecution the attorney for the public is not supposed to act as counsel for those who bring complaints against a prisoner; but as a public official aiding in the administration of justice. He should treat the prisoner with judicial fairness. "The prosecuting officer represents the public interest, which can never be promoted by the conviction of the innocent. His object, like that of the court, should be simply justice; and he has no right to sacrifice this to any pride of professional success."[3]

Criminal prosecutions are brought in the name of the state, and the prosecuting attorney in such cases is acting as agent of the state, rather than as a local officer. At the same time the most direct results of his activity are in relation to the people of the community. He can prevent malicious prosecutions, and bring promptly to punishment those who violate the criminal law. Or, if he is negligent and inefficient, the guilty

[1] A declaration that he will no further prosecute the particular indictment. Abbreviated *nol. pros.*

[2] State *v.* Moise, 48 La. Ann., 109.

[3] Hurd *v.* People, 25 Mich., 405.

may escape and innocent parties may be put to serious annoyance.

The criminal jurisdiction of the prosecuting attorney extends to public officials as well as to private individuals.[1] These officials are not only subject to the ordinary criminal law, but misconduct in connection with their official duties often subjects them to criminal penalties. The effectiveness of this judicial control over public officers depends very largely on the activity of the prosecuting attorneys. And the frequent charges of corruption on the part of municipal and other local officials have made this side of the prosecutors' duties of special importance. Unfortunately in many cases the close political relations of prosecuting attorneys to accused officials have led them to ignore or neglect such cases. In other cases vigorous action in prosecuting cases of this kind has redounded to their credit. It may be noted that in the states where grand juries are not used in ordinary criminal cases, they are usually summoned to present indictments against public officials.

In addition to criminal cases these public attorneys also act in civil matters. As attorneys for the state, they may be called on to represent the state in any civil suit to which it is a party, and, at least in the states where they are elective county officers, they represent in the same way their counties or other county officers in civil suits, and also act as their legal advisers. In such civil suits the prosecuting attorney may appear on either side of a case.

[1] Goodnow, "Administrative Law of the United States," 298, 411.

Of recent years the importance of this office has come to be more fully recognized in the larger communities, and effective service has brought the officers into political prominence. Governors Deneen of Illinois and Folk of Missouri were elected on their records as prosecuting attorneys in Cook county and St. Louis, respectively. Mayor Weaver of Philadelphia was formerly district attorney, and District Attorney Jerome of New York is known through the length and breadth of the land.

In rural counties the office is apt to go to a young attorney of little experience. The work to be done is less burdensome, and certain forms of opposition to the faithful performance of the duties are less active. Yet even in these districts there is need for honest and efficient officials.

THE SHERIFF [1]

EVERY county has a sheriff; and the office may be called the constituent office of the county. "Without a sheriff there is no shire."[2] He is defined as a county officer representing the executive power of the state within his county.[3] More specifically he is the chief conservator of the peace and chief executive agent of the judicial courts for his county, while some traces of his fiscal powers remain with other duties varying to some extent in the different states. The position

[1] "American Jurist," 2:1; "Albany Law Journal," 8:398; 22:146; "Central Law Journal," 10:81; "Edinburgh Review," 13:170; "Century," 14:39.

[2] Howard, "Local Constitutional History," 455.

[3] Bouvier, "Law Dictionary."

has lost much of the dignity and importance of the all-powerful Norman sheriff, and is of less significance in the United States than in England at the present time, but is nevertheless one of the principal county offices.

With the exception of a single state sheriffs in this country are elected by direct popular vote in each county. In Rhode Island they are chosen annually by the general assembly of the state. The prevailing term of service is two years; in a few states it is three years;[1] and in a few others four years.[2] In many states re-election is restricted. In Maryland, Delaware, West Virginia and Missouri, no sheriff may be re-elected for two terms in succession; in Michigan a sheriff can serve for only two successive terms; and in Tennessee no person may act as sheriff for more than six years in any period of eight years.

In England a sheriff must be a landed proprietor, and this requirement establishes his responsibility for damage suits in connection with his ministerial functions. But in the United States the only qualifications required are of citizenship, adult age and residence in the county. As a substitute for the security of the landed estates in England, the American sheriff is required to furnish bonds for the faithful discharge of the duties of the office.

Every sheriff is assisted by a number of deputy sheriffs. They are appointed by the sheriff and act under his control. Deputy sheriffs may perform any

[1] Massachusetts, New York, New Jersey and Pennsylvania.

[2] Connecticut, Illinois, Virginia, West Virginia, Kentucky, South Carolina, Alabama, Mississippi and Florida.

ministerial act within the powers of the sheriff; and the latter, as a general rule, is held personally liable for the errors and mistakes of his deputies.

At the common law there was no compensation allowed to sheriffs. But statutes now authorize the payment either of fees or a fixed salary to the sheriff and his deputies. Under either system the office is among the best paid of the county posts; and where the fee system is retained in counties with a large city the net compensation is often excessive. In New York county the position is said to yield $50,000 a year. In Cuyahoga county, Ohio, the sheriff receives $15,000 a year. In other Ohio counties under the fee system the total income of the sheriffs ranged from $890 to $39,175 in 1904; and the net income, after paying clerks and deputies, varied from $658 to $7,557. In eight counties the net compensation of the sheriff was over $4,000; and in eight others it was less than $1,000.[1]

While the sheriff is considered in law as an agent of the state government, and not as a local official, there is no effective supervision and in most states no means of control by the higher state officials. In a few states, however, including New York, Michigan and Wisconsin, sheriffs may be removed for cause by the governor. And within a few years the sheriffs of two of the largest counties in the State of New York (Kings and Erie), and of the largest county in Michigan have been removed on serious charges. These removals are an indication of the decline in the character of those elected as sheriffs under our political methods, rather

[1] Ohio, "Auditor of State's Report, 1904," p. 600.

than a sign of any strong centralizing influence. Unless there is a clear violation of law or some notorious abuse, each sheriff is allowed to conduct his office as suits himself.

Sheriffs in the United States do not exercise the judicial functions which formerly were an important part of their powers in England, and constitute his principal duties in Scotland at the present time. And in other respects the sheriff's authority has been diminished by changes in conditions and methods of government. The most general powers of American sheriffs may be considered in two classes: as conservators of the peace, and as ministerial agents for executing the decrees of the courts of justice.

As conservator of the peace in his county, the sheriff is the representative of the sovereign power of the state for that purpose. "He may upon view, without writ or process, commit to prison all persons who break the peace or attempt to break it; he may award process of the peace and bind any one in recognizance to keep it. He is bound, *ex officio*, to pursue and take all traitors, murderers, felons, and other misdoers and commit them to jail for safe custody. For this purpose he may command the *posse comitatus*, or power of the county; and this summons, every one over the age of fifteen years is bound to obey."[1] "His power is largely a discretionary one. In all times of great emergency, or in a crisis of unusual danger, the limits under which his discretion may be exercised have been held by the courts not to be fixed."[2]

[1] South *v.* Maryland, 18 Howard (U. S.), 396, 402.

[2] Commonwealth *v.* Martin, 9 Kulp (Pa.), 69, 73, 74.

This power becomes of special importance in times of serious disturbance and threatened riot. It rests with the sheriff to decide what measures to take to suppress an outbreak. And if the disorder becomes too great to control by his deputies and the *posse comitatus,* he may call on the governor of the state for militia; and in extreme cases through the governor may ask for national troops.

In ordinary times the authority of the sheriff as chief peace officer in the county is of less significance. There are no organized bodies of county police in any of the states; and neither the police in cities nor constables in rural districts are under his active supervision. Nevertheless a good deal depends on the sheriff in the maintenance of order and the enforcement of statutes against gambling and imposing restrictions on the liquor traffic. In the Southern states disturbances of the peace are more frequent in the rural districts and sheriffs are more active in arresting violators of the law on their own motion. But in some Southern counties it is not uncommon for mobs to lynch those suspected of serious crimes, especially if they are negroes; and occasionally a lynching takes place in other parts of the country. These instances show the need for an effective system of rural police.

Most of the work of the sheriff's office is as executive agent of the courts. At each session of the higher courts he must be present in person or by deputy, and maintain order in the court room. He carries into execution the various orders of the courts in connection with the cases before them. These are classed

under two heads, as mesne process and final process. The former includes all writs and orders from the beginning of a case up to, but not including, the final decree or judgment; and embraces summons to defendants, warrants of arrest, subpœnas to witnesses, writs of attachment and other orders. All of these must be served by the sheriff or his deputies. Final process in civil suits involves the collection of the amounts awarded by the judgment, if necessary by the seizure and sale of property. Here the responsibility of sheriffs is great. "They must perform their whole duty promptly and faithfully, but they must not exceed their authority and there must be no error in the discharge of their duties."[1] Failure in either respect renders them liable for damages to the party aggrieved.

In criminal cases the sheriff is keeper of the county jail, has custody of the prisoners confined there, and delivers to state institutions prisoners sentenced to them. He has charge of hanging criminals sentenced to death in most states; but in a few states the death sentence is no longer used, and in New York death by electrocution, which has been substituted for hanging, is carried out at the state prisons.

The sheriff must exercise reasonable care for the preservation of the life and health of prisoners under his charge. He is liable to a suit for damages for the death of a prisoner by mob violence where he has failed to take proper safeguards, and in a few states he may be removed from office for negligence in protecting prisoners.

[1] J. G. Crocker, "Duties of Sheriffs," p. 125.

In several states there is a survival of the old fiscal powers of the sheriff by designating him *ex officio* as tax collector. This arrangement exists regularly in North Carolina, Louisiana, Mississippi and Arkansas, for small counties in Texas and California, and for counties without township organization in Illinois. In some other states he may be called on to enforce the collection of delinquent taxes.

Another survival of his former powers as returning officer of elections is his duty in many states to make official announcement of forthcoming elections.

In some Southern states the sheriff acts *ex officio* as public administrator, a function probably derived from his earlier power to look after estates which escheated to the Crown. And still other duties are often imposed on him by statute in the various states.

With the transfer of many powers formerly possessed, and the development of new offices, the sheriff has lost his position as chief county officer. But the powers retained and the traditions of the position stand in the way of any other office attaining that rank. One of two changes in the situation would seem to be advisable. Either the sheriff should again become the chief executive of the county, transferring the ministerial functions to an under-sheriff, or some other officer should become the chief executive, and the sheriff be confined to his ministerial duties as court bailiff.

CORONERS [1]

NEXT to the sheriff the coroner is the oldest of our county offices, and it is the oldest elective county office.

[1] "American Law Review," 11: 480; "Medico-Legal Jour-

But its importance has been greatly reduced from that of the English coroner of the thirteenth century, who had jurisdiction over a wide range of criminal matters and also over some civil pleas. In modern times the principal function of the coroner is to hold inquests on the bodies of persons whose deaths are supposed to be due to violence or other unlawful means.

While in England the old method of electing coroners has recently been changed to appointment by the county councils, in this country popular election for terms of two to four years is still the prevailing rule. But in some states other methods are now used.

In Maine, New Hampshire and Maryland, coroners are appointed by the governor with the consent of the executive council or senate, as are also the medical examiners who take the place of coroners in Massachusetts.

In Connecticut and Virginia coroners are appointed by judges of the higher courts; and in West Virginia and Tennessee they are appointed by the county courts. In Rhode Island coroners are town officers and are appointed by the town councils. In New Mexico justices of the peace act as coroners. In California the offices of coroner and public administrator are sometimes held by one person.

Usually there are no qualifications required by law for coroners other than those of age, citizenship and residence. But the medical examiners in Massachusetts must be licensed physicians; in Connecticut cor-

nal, 7: 500; 8: 127; 13: 57; "Massachusetts Medico-Legal Society," 1: 25; "New York State Bar Asso.," 1896, p. 131; "Political Science Quarterly," 7: 656.

oners must be "learned in the law"; and in Louisiana the statute provides that a coroner must be a lawful citizen, of fair education, good moral character, possessed of general business qualities, and have a medical or surgical education.

It is the duty of the coroner to hold an inquest when the circumstances surrounding a death are of such a character as to make it seem probable that it resulted from violence or other unlawful means. The inquest must be held upon a view of the body. The coroner empanels a jury, usually of six persons, and summons witnesses, and as a general rule a physician or surgeon, to give expert testimony. The procedure is distinctly different from a trial. It is not necessary that any person accused of murder be present, and such a one has no right to produce witnesses or to cross-examine those who testify, nor even to be represented by counsel unless at the pleasure of the coroner. The coroner instructs the jury on the law; and the jury gives a verdict as to the facts. Any person accused by the verdict is liable to arrest; and if not already in custody, the coroner should issue a warrant for his arrest and commit him to jail for trial.

Expenses connected with an inquest are not chargeable to the estate of the deceased, but are usually paid by the county or town. In Michigan, and perhaps in other states, the expenses of an inquest over one not a resident of the county is borne by the state.

In addition to holding these inquests the coroner under certain circumstances may act as sheriff. He does this in cases where the sheriff may be personally

interested in a suit, and he usually succeeds to the office of sheriff, if it is vacated during a term.

Coroners' inquests have been a subject of derision since the time of Shakespeare,[1] and in this country efforts have been made for nearly fifty years to reform the antiquated procedure.[2] To perform the duties properly a coroner should be both a criminal lawyer and a specialized medical expert. But those elected can usually lay claim to neither qualification, and there is little doubt that more satisfactory results would be secured by the general adoption of the new methods established in Massachusetts in 1877. This provides for the appointment of competent medical examiners; and where their reports show evidence of crime requires further action to be taken by the regular prosecuting officers.[3] In the absence of a system of public prosecutors, the coroner served in that capacity to a very limited degree; but with the methods of prosecution now established in this country, there is no occasion for retaining the primitive and less effective machinery.

COURT CLERKS AND COUNTY CLERKS

Most courts of record have a clerk or secretary to keep the record of its proceedings. Under the old English system where the court of quarter sessions was also the administrative board of the county, the clerk of the court acted also as secretary in administrative matters. The separation of the judicial from administrative business in most of the American states has

[1] *Cf.* Hamlet, Act V. Sec. 1; "Albany Law Journal," 14: 336.
[2] "American Law Register," 6: 385 (1858).
[3] "Forum," 7: 694.

led to some variation in different states in dividing the duties of the former clerk of the sessions, and in the terminology of the office.

In most states the duties of court clerk and secretary to the county board are combined in one official, who often has other duties not covered by either of his two main functions. A clerk is chosen for each county even where the judicial district includes more than one county. In rather more than half of the states, the title of clerk of the court is used for this officer; and in some of these states his duties are confined to those of a court clerk. In a few cases court clerks have different titles. In Pennsylvania and Delaware the clerk of the common pleas court is called a prothonotary; and in these states there are sometimes special clerks for other courts. In Massachusetts and Maine the clerks of the probate courts are known as registers of probate. Sometimes there are separate clerks for the circuit and county courts; and in Mississippi each county has a clerk of the circuit court and a clerk of the chancery courts.

In rather less than half of the states the office of county clerk has been established, this officer usually acting as a clerk of courts, but having also other duties. In a few scattered states there is a county clerk and also a clerk of courts, the former having no duties in relation to the courts; while in Minnesota the county auditor acts as clerk of the county board, and the clerk of courts is simply an officer of the courts.

With very few exceptions county clerks and court clerks are elective for short terms, most often for two years, in some cases for four years and in one or two

instances for a longer period.[1] In New Hampshire, Vermont and Connecticut they are appointed by the judges and hold during the pleasure of the appointing power. In Rhode Island the clerks of the courts are elected annually by the general assembly. As the duties of the office are in no sense political, there seems no good reason for making it elective, while more efficient service would be secured if the tenure were indefinite, subject to removal by the appointing power.

As court clerks these officers open and adjourn each session of the court, keep the minutes of the proceedings and orders, and have custody of the records and seals. They docket all cases for trial, filing all papers in each case together. They issue proper processes or writs at the beginning, during and at the end of each suit; and enter judgments rendered by the court. They certify to the correctness of transcripts from the records of the court; and preserve the property and money in the custody of the court. Their duties are for the most part purely ministerial; but some functions imposed by statute, such as the taxation of costs, the approval of bonds and the assessment of damages in cases of default, are quasi-judicial. A court may not, however, delegate any of its judicial functions to its clerk.

As secretary to the county board, the clerks keep a record of its proceedings. Where there is no county auditor they act in some degree in that capacity, examining bills and preparing them for approval by the county board.

[1] Massachusetts, five years, Maryland, six years, Virginia, eight years.

In a number of states, the clerks act also as recorders of deeds. In most states they prepare election ballots and receive election returns, issue marriage licenses, and perform other functions prescribed by statute. In Kansas the county clerk is "substantially the auditor of the county, and the assessor of the county for all property that may be omitted by the regular assessor; and he may administer oaths and affirmations and take acknowledgments of deeds and mortgages."[1]

In Illinois, the county clerk is tending to become the *de facto* chief executive officer of the county, as his numerous functions bring him in official contact with all branches of county administration. He is custodian of the county records, clerk and accountant of the county board, clerk of the county court, and, in most counties, clerk of probate; he has important duties under the primary and election laws, and in the assessment of property and the extension and collection of taxes; he issues hunters' and marriage licenses and performs many other duties. The suggestion has been made that county administration would be improved by giving the county clerk some of the legal powers of a chief executive.

[1] Amrine *v.* Kansas Pacific Ry. Co., 7 Kans., 178, 181.

CHAPTER VII

OTHER COUNTY OFFICERS

In addition to the financial powers of county boards there are other county finance officials,—assessors, treasurers and auditors. Still other county officials are the recorders of deeds, school officials, surveyors and road officers, and appointive poor relief and health officials. Each of these may be briefly noted.

FINANCE OFFICIALS

County assessors who value property for taxation are provided in most of the Southern states and all of the Western group. In some other states there are special county assessing officers. And in most of the states where the original valuations are made by township officers, there is a county authority with power to equalize assessments.

Usually county officers who have direct charge of original assessments are known as assessors, but in Virginia they are called commissioners of revenue, and in Georgia tax receivers. They are elected by popular vote, except in Louisiana and Arizona, where they are appointed by the governor and boards of supervisors respectively. Their term is uniformly two years in the Western states; and in the Southern states two and four year terms are about equally common.

Exceptions to the system of county assessments in the South are North and South Carolina and most of the Tennessee counties, where there are township or district assessors. In California, too, a separate valuation of property for city taxes is made by city officers, entirely distinct from the valuation by the county assessors for county and state taxes. On the other hand among the North-Central states tax assessment is a county function in Ohio and Kansas, and in some Illinois, Nebraska and South Dakota counties.[1]

The powers and duties of tax assessors are prescribed by statute and thus differ in detail in the various states. But the main features of their official actions are similar. They must prepare a list of persons subject to taxation, with a description and valuation of their property, classified usually as real estate and personal property. On the valuations determined the taxes are determined at the rate levied by simple arithmetical calculation. In many states taxpayers are required to submit an itemized list of their property for the information of the assessor; but such statements are only evidence for the information of the assessors and do not limit their valuations. In many states the requirements as to the names of persons assessed are merely directions, so that errors do not render the assessment void; and this tends to make such assessments, especially for real estate, against the property rather than against the owner. Personal property in most states may be valued in

[1] In Ohio, by act of 1913, county assessors are appointed by the governor.

gross, but in some the separate items must be specified. Real estate must be described so that each parcel may be identified, and a separate value given to each. In fixing values assessors act in a judicial capacity; but administrative appeals are usually provided, and in cases of arbitrary and grossly unequal valuations the courts will sometimes review their decisions.

Sometimes tax-assessors perform other functions not directly related to the assessment of taxes. Thus in Virginia the commissioners of revenue collect statistics of births and deaths. In Georgia the tax-receiver compiles a register of children of school age and statistics of agriculture and manufactures.

In many of the states where original assessments are made by township officers there is some county supervision, and in some of these states a special county assessing officer. In Indiana each county has an assessor who instructs and advises the township assessors, can examine their books and enter valuations for property omitted. The assessor, with the auditor and treasurer and two freeholders appointed by the circuit judge form the county board of review, which equalizes the aggregate valuations for the different townships. In Illinois counties with township organization the county clerk prepares the assessment books for the town assessors, the county treasurer acts as supervisor of assessments, and the local assessments are subject to revision by a county board of review; in Cook county, there is an elected county board of assessors and a county board of review. In Alabama, besides the elected tax-assessor, there is in each county a tax commissioner, appointed by the state

tax commissioner to assist in administering the tax laws. In Pennsylvania each county has a mercantile appraiser, appointed by the county commissioners, who may be considered an assessor for business licenses. He investigates the sales by dealers in merchandise, and classifies the dealers with reference to their license fees.

As already noted, in a number of states the county board acts to a limited extent as an assessing authority in equalizing the valuations of township officers. And generally in the North-Central states the county clerk or county auditor compiles the tax lists.

County treasurers are provided in every state of the Union except Rhode Island. They are receivers of state and county taxes, and in some states of other local taxes; they have custody of the county funds; and they disburse authorized county payments. In a few states a separate office of tax collector is established, or some other official than the treasurer acts as collector. Special tax collectors are provided in Missouri, Alabama, Georgia, Texas, Arizona and California; the sheriffs act as collectors in Louisiana and Arkansas, and the smaller counties of Texas and California; and the county assessor is *ex officio* tax collector in Idaho. In Tennessee the collector and treasurer is called the county trustee; and in New Jersey he is called the collector.

These officers are usually elected, but in Connecticut, Vermont, New Jersey, Kentucky and Louisiana they are appointed by the county boards,

and in South Carolina by the governor. Their term is usually two years, even in some states where other county officers are chosen for four years; but in a few Southern states the treasurer serves for four years. Moreover it is frequently provided that no person can serve as treasurer for more than four years in succession,—a rule established as a means of insuring an exact examination of the county funds on the transfer from one officer to his successor. Treasurers are regularly placed under heavy bonds to protect the county in case of defalcations, which are more frequent among these elective local officers than among the appointive financial agents of the national government.

County treasurers in many states now receive a salary determined by statute or by the county board. But sometimes they have an additional income from fees and commissions; and in some states they are still paid entirely in this way. Moreover it is a common practice for treasurers to reserve for themselves the interest received from banks on deposits of public funds; and sometimes this is done even where the law forbids deposits in banks. The excuse given for this practice is the heavy personal responsibility of the treasurer for all funds in the treasury. But it would certainly be to the advantage at least of the larger counties to adopt the methods of most of the state governments, and deposit county funds, when properly secured, in designated banks, which should pay the interest to the county. In Cook county, Illinois, the treasurer recently agreed publicly to pay over such interest and commissions to the county treasury. In 1904 the amount turned over was more than

$500,000, while the expenses of the treasurer's office, formerly paid by the treasurer, was $312,000, which left a net addition to the county treasury of $200,000.[1] In Cuyahoga county, Ohio, the net compensation of the county treasurer in 1904 was $23,000. Under either the salary or fee system the remuneration of the county treasurer is generally larger than for any other county office; and for this reason the position is much sought after by political candidates.

It is the duty of county treasurers to receive and receipt for all money coming to their respective counties. The largest part of this is in the form of taxes, which may be collected directly from the taxpayers or turned over by county or township collectors. The receipts include much more than county revenues. The county treasurers act as agents of the state treasury for the collection of state taxes; and in some states taxes for townships and other local districts pass through the county treasuries. In some states the county treasurers also collect delinquent taxes.

Money received by county treasurers must be disbursed as provided by law. State taxes are forwarded at stated intervals to the state treasury. Taxes for local districts are paid over to their treasurers. And payments for county expenses are made on the authority of the county board or county auditor.

[1] A legislative investigation in Hamilton County, Ohio, in 1906, led to the payment of $200,000 to the county by former county treasurers, for gratuities received by them from banks in which county funds were deposited.

Statutes usually require treasurers to keep accounts so as to show the amount in each fund, and to hold their books subject to inspection by the county board. Financial statements must be made annually. In many states there is provision for an annual examination and audit of their books; but this is often superficial, while in most states the accounting methods are inadequate.

County auditors have been established as regular county officers in one-third of the states; and in a few other states they are provided in some counties. They are most common and of most importance in the North-Central states; but are found also in some states in each of the other geographical groups. In states where auditors are not established the county clerks act in some respects as auditing officers.

Three New England states have county auditors, but the office is of less significance there than in other sections. The auditors are appointed in New Hampshire by the Supreme Court, in Vermont by the judges of the county court, and in Connecticut by the convention of members of the legislature. Their duties are confined to a brief examination of the accounts and financial reports of other county officers at the close of the fiscal year; and there is no systematic audit of current expenditures. In Massachusetts, the city auditor of Boston audits also the Suffolk county accounts, and for other counties the accounts are examined by the state controller of county accounts.

In New York most of the counties have no auditors and the only examination of claims is that made by

the board of supervisors, but the comptroller of the City of New York acts as auditor for the four counties within the city, and there is a county auditor for Erie county. In New Jersey each county has an auditor appointed by the board of freeholders. In Pennsylvania each county has a board of three elected auditors, who make an annual examination and audit of the accounts of the county officers. Philadelphia and Allegheny counties each have a controller.

In the North-Central states, elective county auditors are provided in most of the states having small county boards,—Ohio, Indiana, Minnesota, Iowa, and South Dakota—, and it is in these states that the office is most important. The county auditors keep the accounts of the county receipts and expenditures; they prepare the tax lists and issue warrants for payments authorized by the county boards; and they are also the secretaries of the county boards. In Ohio and Indiana they are also sealers of weights and measures.

A few counties in Michigan have boards of auditors. That in Wayne county practically determines appropriations as well as audits claims, and thus has for most purposes the powers of a county board. In the other counties auditors have been established only within the past few years. In Kansas, auditors are appointed by the district court in counties with over 45,000 population. In other North-Central states the county clerks act to some extent as auditors. In Cook county, Illinois, the county clerk is *ex officio* comptroller, appointing a special deputy, and in other Illinois counties with over 75,000 population a county auditor is elected.

In the Southern and Western states the office of

county auditor is seldom found. It is provided in South Carolina, Mississippi, Nevada, Washington, and California, and for some counties in Utah and Montana. In Wyoming there is an audit of county accounts by the state examiner.

County auditors are paid sometimes at a *per diem* rate, sometimes by fees, and sometimes a fixed salary. In the important counties of the North-Central states it is a well-paid office. In Miami county, Indiana, the auditor receives a salary of $17,500 a year.[1] In Cuyahoga county, Ohio, under the fee system the net compensation for 1903 was over $50,000.[2]

With the increasing importance of county finances there is a growing need for more efficient methods of accounting, and it is probable that auditing officers will be provided before long in many of the states that now lack them. A competent official of this kind, giving all of his time to public business, is essential to a thorough audit of current accounts, and should give better results than the examination by a board acting at intervals. It may be pointed out, however, that in counties of small population, it is hardly necessary to employ an official for this purpose alone. The combination of auditor and clerk to the county board in such cases seems a satisfactory one.

REGISTERS OF DEEDS

In all of the states a public record is kept of documents affecting titles to real estate, and in about half of them this record is in charge of a special elective

[1] Rawles, "Civil Government of Indiana," p. 78.
[2] Report of the Auditor of State, 1903.

county official, known as the register or recorder of deeds. In other states the land records are kept by county clerks or county auditors, except in Connecticut, Vermont and Rhode Island, where the town clerks act as recorders.

This system of public land records has developed in America. At common law in England there was no obligation to record publicly conveyances affecting title to land. After the Statute of Uses,[1] which authorized the transfer of estates by deed without actual delivery of possession, there was passed the Statute of Enrollments,[2] for the registry of bargains and sales. But this measure was evaded; and while several recording acts were passed for local districts in England early in the eighteenth century[3] no general system was established in that country until 1875. The ownership of land so generally in large estates and the infrequency of transfers renders public records less necessary, while the land owners oppose a registration system from a dislike to publishing the details of family settlements and domestic arrangements.[5]

In America, however, land registration was introduced in New England with the early settlements;[5] and the system was well established in many colonies before the first of the English local acts.[6] Before the

[1] 27 Henry VII, C. 10.

[2] 27 Henry VIII, C. 16.

[3] Yorkshire Acts, 5 Anne, C. 18; 6 Anne, C. 35; 8 George II, C. 6. The Middlesex Registry Act, 7 Anne, C. 20.

[4] Webb, "Record of Title," pp. 17-20.

[5] C. D. Wright, "Public Records of Massachusetts," p. 370.

[6] Plymouth, 1636; Massachusetts, 1640; Connecticut, 1639; New Jersey, 1676, and Virginia.

Revolution public land registers were almost universal in all of the colonies.[1] Such a system was more necessary in this country on account of the mobility of population and the frequent transfers of land, so as to safeguard purchasers against previous alienation or encumbrances. Everywhere in the United States these public records are now the basis for land titles and conveyancing, and the old "livery of seisin" has disappeared.

As the practice of recording is regulated entirely by statute, there is some variety in the instruments required to be recorded in different states. An early Massachusetts act provided that "no mortgage, bargain, sale, or grant made of any houses, lands, rents, or other hereditaments, shall be of force against any other person except the grantor and his heirs, unless the same be recorded."[2] It is now the definite policy in most states that the title to all interests in land shall be apparent on the records; and practically all documents affecting title to real estate must be recorded to be valid against an innocent third party. This includes warranty and quit-claim deeds of sale, mortgages and satisfaction of mortgages, notices of liens, easements, and other instruments.

Some documents of importance in determining land titles are recorded in other places than the county recorders' offices. The record in a United States land office of the original patent to land in the public land states is sufficient to establish title. The record of un-

[1] Pennsylvania, North Carolina and Maryland, 1715; Georgia, 1755.

[2] Massachusetts Records, I, 306, 307 (1640).

paid taxes, judgments and legacies are to be found in the treasurers', court and probate offices.

Instruments recorded take effect from the time of filing in the recorder's office and the date and hour of filing are noted in case of conflict between different documents. The records are exact copies of the documents entered in large bound volumes, which form a bulky collection, especially in counties containing cities where there are many transfers of small parcels of land.[1] The records are made in ink, and are usually written in long hand, but sometimes blank forms for documents of the same character are printed in the record books. In many states separate books of record are required for different classes of instruments.

Usually recorders are required to prepare indexes of the land records, but the statutes vary as to the details prescribed. In Michigan indexes show only the parties to the instruments. In Illinois abstract books are prepared summarizing the records for tracts of land. But at best the task of searching the records to verify the title to any parcel of land is a tedious and expensive process. Moreover as the recorded documents only establish a presumptive title and are not conclusive evidence, those relying on them take the risk of defects being disclosed at a later time.

To avoid the expense and delay of repeated examinations of the records for each purchase or mortgage and to escape the uncertainty of the results, there have developed abstract and title guaranty companies.

[1] In Suffolk County, Mass., there were nearly 2,000 volumes in 1890, and 60 volumes were added each year. Cook County, Ills., had 4,200 volumes from 1871 to 1894.

And as a result of much discussion there has recently been established in a few states a system of public registration of land titles, known as the "Torrens system."[1] This provides for an official examination of the recorded instruments and an investigation of titles by the recorders, and the issuance of certificates of title by a court, while subsequent transactions affecting land so certified must be duly entered on the new registry of titles. This important extension of the recording system has been introduced in Massachusetts, Illinois, Minnesota, Colorado, Oregon and California; but it will take many years before it covers most of the real estate even in these states.[2]

In some states the recorders keep other records than those in reference to land titles. Thus in Indiana they record certificates of incorporation, articles of association, articles of apprenticeship, certificates of dentists, descriptions of fence-marks and of ear-marks and brands of live stock; and they also preserve a file of county newspapers. In Wisconsin they keep a record of vital statistics, and in Minnesota a record of trade-marks and brands.

The office of recorder is clearly an important one. The protection of property rights is in large measure dependent on the accuracy and honesty of the records, but the duties can hardly be considered political or

[1] From Robert Torrens, who secured the adoption of a system of land registration in Australia, from where the idea has spread to England, Canada, and the United States. In parts of Continental Europe a similar system has been in use for centuries.

[2] J. H. Brewster, "Conveyancing," ch. 29; American Law Review, 36, p. 321.

such as to make necessary the present system of popular election to the position. Indeed, the elective method by promoting frequent changes in the personnel, prevents the development of the most efficient expert service.

SCHOOL OFFICIALS

ALL of the states except the six in New England have county officials with some powers of educational administration. In about half of the Southern states such county authorities have full control over the local management of schools. In the remaining states the powers of the county authorities are those of supervision over officers elected in the minor districts.

The county system of school administration still prevails in the states bordering on the Atlantic from Maryland to Florida, and in Louisiana and Mississippi. Even in these states there have been established school-districts within the counties, but the district trustees are appointed by the county authorities and are thus their agents rather than officials of the local districts.

In this group of states the county school management is in the hands of two classes of officers: boards of education and school-superintendents. The boards usually control the school property, appoint district trustees and sometimes the teachers, and make appropriations. The superintendents, who generally have had experience in teaching, act as executive agents of the boards, visit schools, and exercise general supervision over the courses of study and methods of teaching.

There is no uniformity in the methods of constituting these county boards of education. Some states show a strong centralizing tendency. In Maryland the county school-boards are appointed by the governor of the state. In Virginia they are composed of a division superintendent appointed by the state board of education, and appointed district trustees. In Missouri and South Carolina some members are appointed by the state board of education. In other states county school boards are appointed by other county authorities: in Kentucky, Mississippi and Texas by the county superintendents, in Tennessee by the county court and in Georgia by the grand jury. In Florida they are elected by popular vote.

County school-superintendents are elected in South Carolina, Florida and Mississippi. They are appointed by the county board of education in Maryland, North Carolina and Louisiana.

In the remaining Southern states, and in all the Middle-Atlantic, North-Central and Western states, rural school administration is in the immediate control of trustees or directors elected in school-districts within the counties; but there are also in all of these states county superintendents or commissioners of education and in some states other county school authorities. In most of these states the county superintendents are elected by popular vote; but in some states they are appointed,— in Vermont and Delaware by the governor, in Pennsylvania and Indiana, by the local school trustees, in New Jersey and Virginia by the state board of education, and in four Southern states by the county board of education. In

New York district commissioners are chosen by directors elected by the voters in supervisory districts. An unusual feature in connection with these offices is the general requirement of educational qualifications, even where the position is elective.

The duties of county superintendents vary to some extent according to the statutes of the different states. In most states they examine candidates for appointment as teachers, and issue licenses authorizing them to teach; and in Ohio this seems to be the only function of the county school officers. But in some states [1] county examiners are provided for this work in addition to the county superintendents. They visit the schools in their jurisdiction, to inquire into educational methods and standards, and to inspect the material condition of school-houses and grounds. They advise the teachers and district trustees; in some states have power to decide appeals on questions of school law; and sometimes can require the district authorities to take action for the improvement of the schools. They organize teachers' institutes. In many states they act as agents for the state department of education in the distribution of state funds to the schools, and in general are the means of communication between the state superintendent and the local authorities. They collect information as to the schools and make reports to the state authorities.

These county superintendents seldom exercise any supervision over schools in large cities. But in the rural sections their authority and influence is often

[1] New Jersey, Michigan, Kansas, Oklahoma, Nevada, Washington, Oregon and California.

an important factor in school management, and taken in connection with the state supervision over educational administration, to be examined later, this county superintendence limits to no little extent the autonomy of the local districts, and it seems no longer open to question that these tendencies work for the more efficient administration of the schools than the extreme decentralization of earlier times.

ROAD OFFICERS

County surveyors are provided in nearly all of the states. Exceptions are the six New England states, New York, New Jersey, and Delaware. The office is usually elective, but in Virginia, Tennessee and Alabama it is filled by the county boards. Surveyors are usually paid by fees, including states where other county officers are given fixed salaries.

These officers make surveys of lands, but only in special cases, on the order of a court on the application of private owners; and these duties are now of minor importance. In some states, however, surveyors have other duties in connection with establishing and building county roads, and in Indiana have charge of drainage ditches. In Michigan the boards of supervisors appoint county drain commissioners.

Road officers are regularly appointed by the county boards in the Southern states; and in many of the other states under the road laws of recent years provision is made for county road superintendents or

engineers. Such county road officers are now (1913) authorized or required in three-fourths of the states; but in some states — as Michigan and Wisconsin — they are provided only in some counties. In most of these states, the county road officers are appointed, usually by the county board; but in eight states — including Ohio, Michigan and California — they are elective officers. Several states provide definitely for road engineers; while in a few states the county surveyor is the county road officer.

MINOR OFFICERS

For the administration of county poor relief special officials are provided, in many states, under the financial control of the county boards. These officials are variously known in different states as superintendents, directors, overseers, or commissioners of the poor. Usually they are appointed by the county boards, but in Pennsylvania and New York they are elected, and in Ohio each county has three elected infirmary directors, who appoint a superintendent.

The duties of these officers are to superintend the county almshouse and poor farm. In many counties the aged poor and young children are still kept in the same institution with insane, diseased, and even vicious paupers. In some cases, however, there are separate hospitals and homes for the aged, while dependent children are placed with private families or in separate institutions.[1] Usually the inmates of county asylums are required to assist so far as they are able in the house or farm.

[1] Fifty of the eighty-eight counties in Ohio maintain children's homes.

In Ohio and Indiana there are unpaid county boards of visitors, appointed by the judges, who examine the local charitable and correctional institutions and report to the board of state charities. In Michigan, the governor appoints for each county an agent of the state board of charities and correction, who looks after juvenile offenders and dependent children.

Many counties in the South and some in other parts of the country still lease out paupers on contract to the highest bidder. In Alabama the governor appoints a board of examiners in each county, to investigate applications for state aid from Confederate soldiers or their widows.

County health officers or boards of health are established in many states, or the county boards are authorized to act in this capacity. These arrangements are established for the most part in the Southern and Western groups of states,[1] but also in Minnesota, Nebraska, and North and South Dakota in the North-Central group, and in Connecticut. In the last named state, the county health officers are appointed by the judges of the superior court, and they appoint and supervise the town health officers. In Mississippi they are appointed by the state board of health, and in Florida county boards of health are appointed by the governor. In other states appointments are made by the county boards. The powers of these county health authorities are most important in the Southern states.

[1] Maryland, Delaware, West Virginia, North Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Tennessee, Kentucky, Missouri, Texas, Arizona, New Mexico, Wyoming, Washington and California. *Cf.* Chapin, "Municipal Sanitation," p. 24.

PART III

MINOR DIVISIONS

CHAPTER VIII

NEW ENGLAND TOWNS

In all of the states there are smaller areas within the counties for various political and administrative purposes. Each county is usually divided into towns, townships, or districts, which together make up the county, while the more densely populated districts are separately organized as villages, incorporated towns, boroughs or cities.

This chapter and those immediately succeeding will deal with these minor civil divisions, except the cities which are described in another volume of this series.[1] These districts in the first named group differ so much from each other in various parts of the country that they cannot well be considered as a single subject, and separate chapters will, therefore, be given to the New England towns, to townships in the Central states, and to county districts in the South and West. Villages, incorporated towns and boroughs, as well as the small cities in some states, are essentially similar institutions, and all will be considered together in one chapter.

In New England, the towns still remain the principal units of local government. Their importance is due in part to their exercise of functions elsewhere

[1] F. J. Goodnow, "City Government in the United States."

performed by county officers, but at least as much to the complete combination of the functions of rural townships and semi-urban villages in the same organization, while interest in the institution is increased by the continued active exercise of the purely democratic form of government.

The powers and influence of the towns reach their maximum in Connecticut and Rhode Island. This is due in part to the historic independence of the older towns. In part it is due to the system of representation in the state legislatures, which gives the rural towns an excessive influence in their respective states, and at the same time enables the towns to secure a free hand in their own affairs. In Connecticut "it is the belief and practice of the towns that they may exercise any authority not expressly delegated to some other part of the body politic." And "there is a tendency to regard the provisions of statutes that are permissive in form as not really conferring powers upon the towns—of these they are already possessed—but as calling attention to things desirable and as prescribing a uniformity of procedure that is of advantage."[1]

In view of this opinion, it is of special importance to recognize that the towns have no constitutional basis for their autonomous position, and that in law they are dependent on the state legislatures. "Towns in Connecticut as in the other New England states," says Justice Gray of the United States Supreme Court, "are territorial corporations, into which the state is

[1] C. H. Douglas, "The Civil Government of Connecticut," pp. 59, 60.

divided by the legislature, from time to time, at its discretion, for political purposes and the convenient administration of government; they have those powers only which have been expressly conferred upon them by statute, or which are necessary for conducting municipal affairs."[1]

In Rhode Island the older towns continue to exercise peculiar local privileges, which exist as unwritten law. The town of Bristol recently had a controversy over the attempt to regulate the running of automobiles, on the ground that the tenure of highways in that town is different from that in other towns of the state.[2] A few years ago an attempt was made in the courts to secure legal recognition for the autonomy of the Rhode Island towns, on the basis of their historic position.[3] But the Supreme Court of the state—the judges of which are appointed by the legislature—upheld the authority of the state.[4] And whatever one may believe as to the soundness of the argument, the legal supremacy of the legislature seems to be clearly established in this state also.

In former times New England towns had a corporate character only to a limited extent. In some states, at least, at common law the property of any individual inhabitant might be taken in execution

[1] Bloomfield *v.* Charter Oak Bank, 121 U. S., 121, 129, quoting Connecticut decisions. *Cf.* Also 82 Me., 39; 66 Vt., 570; 67 N. H., 591; 108 Mass., 142.

[2] Communication from Professor William MacDonald of Brown University.

[3] Amasa M. Eaton in Harvard Law Review, 13: 441, 570, 638; 14: 20, 116.

[4] Newport *v.* Horton, 22 Rhode Island, 196.

upon a judgment against the town. But with the development of their functions, the corporate capacity of towns has been increased; and they now often approach in character the municipal corporation proper.[1]

In four of the New England states the whole area has been organized into towns, and in these new towns are established only by the division of those already in existence. But in the northern regions of New Hampshire and Maine there are tracts of unsettled land as yet unorganized, where new towns are formed from time to time. In Maine the new districts pass through a preliminary stage in which they are known as plantations, before they are fully organized as towns.

New England towns, for the most part, are irregular in form and usually contain from twenty to forty square miles. In the northern part of Maine the rectangular survey into townships six miles square has been followed, but this is distinctly different from other parts of New England. Most of the towns are predominantly rural in character, but all have one or more "villages," where houses are more compactly built, and in many cases towns are at least semi-urban and some can be classed as small urban communities.

In population these towns show large variations. The larger places have been incorporated as cities, and in Massachusetts, Connecticut, and Rhode Island the cities now contain more than half the population of these states. Generally the city government absorbs the town government, but in Connecticut the

[1] *Cf.* Commonwealth *v.* Roxbury, 9 Gray (Mass.) 451, note p. 511.

town organization is separately maintained even in the case of the largest cities of that state. Thus the town of New Haven has over 100,000 population, and the town of Hartford 80,000.

Omitting these exceptional cases, there are a good number of towns of considerable size. Five towns in Massachusetts and three in Rhode Island had each over 12,000 inhabitants in 1900. Twenty other towns in these two states and one in Connecticut (besides the towns containing cities) had from 8,000 to 12,000 each. Ninety-three towns scattered through all the New England states had from 4,000 to 8,000 population. In the aggregate the population of these 122 towns of over 4,000 each amounted to more than 850,000.

Moreover most of these towns have no separate government for the villages, and the semi-urban and rural portions of the towns alike come under the control of the town government. Indeed in three states—Massachusetts, New Hampshire, and Vermont—the term village has no legal significance, and is simply used as a convenient term for the more compactly built section of the town. In the other states—Maine, Vermont and Connecticut—there are a small number (twenty-six in all) of villages or boroughs incorporated within these larger towns.

Smaller towns are more numerous. Altogether there are nearly 1,400 towns of less than 4,000 inhabitants, with an aggregate population in 1900 of 1,650,000. Here, too, the town government nearly always includes the villages and there are only 76 separately organized villages, all in the three states

previously noted. Thus the New England town performs both the functions of township and of village government in states further west. And this combination adds much to the importance of town government.[1]

The functions and powers exercised by these town governments are manifold and varied. A Massachusetts manual of town law enumerates nearly fifty general subjects on which towns may act.[2] The most important are roads and drains, schools, poor relief, and taxation for the different local purposes. But to the simple requirements of the colonial towns in these fields, the modern New England town adds the construction and maintenance of street pavements, sewers, water-works, electric light plants, public baths, parks, libraries, high schools, hospitals and other public works and institutions. They have also some power to enact police ordinances, and notably the power to determine whether or not the retail liquor trade shall be licensed in the community. In Rhode Island and Connecticut the town is also the authority for land records, and in Rhode Island for probate matters.

In addition to their local functions the town officers are more and more called on to act as agents of the state government in performing duties imposed on

[1] NEW ENGLAND TOWNS AND CITIES, 1900.

	CITIES		TOWNS OVER 8000		TOWNS 4000-8000		TOWNS UNDER 4000	
Maine.....	20	225,022	..	.....	5	26,663	529	442,781
New Hampshire.	11	171,789	..	.....	4	20,451	232	219,348
Vermont.....	6	52,845	..	.....	3	19,203	245	271,593
Massachusetts..	33	1,880,087	23	252,536	54	304,371	232	367,352
Rhode Island...	5	283,233	5	64,659	8	44,617	20	36,047
Connecticut.....	[15	472,467]	16	483,068	19	112,182	133	313,170

[2] Austin DeWolf, "The Town Meeting," Ch. 9.

them by the legislature. They assess and collect state taxes; they keep records of vital statistics; they enforce state health laws; and perform many other important functions. Except in Maine, the towns are the usual districts for electing members to the state legislature,[1] and in all the New England states they are election districts for state and national elections.

In connection with these matters, and also with much of the business usually considered local (such as schools and poor relief), the state laws require the town officers to act. In case of neglect the state courts will issue various writs to compel obedience to the law, and sometimes town officers may be removed for neglect of duties imposed.

For the exercise of their various powers the system of organization established in all the New England states is almost identical. The principal authority is the town meeting, or primary assembly of the electors in each town. For executive work there is a long list of elective officials. The most important are the selectmen, the town clerk, and the school committee.

TOWN MEETING

A TOWN MEETING is an assembly, duly summoned, of the qualified voters in the town, which elects officers, makes appropriations, levies taxes and passes local legislative measures. An annual meeting is held in each town in the spring months, except in Connecticut, where the annual meeting generally comes in

[1] In Massachusetts and New Hampshire small towns are sometimes united to form a legislative district.

October. Special meetings are called from time to time as may be deemed necessary, and several of these are usually held each year. A meeting for the election of national, state and county officers is not, strictly speaking, a town meeting.

Formal notice must be given of each town meeting, specifying not only the day, hour and place of meeting, but also the business to be transacted. A meeting not properly summoned is not a legal meeting; and business not mentioned in the warrant cannot be legally transacted. The various subjects mentioned are, however, of a general nature, and are not strictly construed.

The persons entitled to attend are those qualified to vote under the state laws. Briefly, this is a system of manhood suffrage, with a residence requirement and disqualification for insanity or pauperism, while in Massachusetts and Connecticut voters must be able to read and write. Women are allowed to vote for school officers, but not to take other part in the meeting.

Attendance at these meetings usually includes a good proportion of the voters. A part of those who appear to vote for officers do not remain for the business sessions; but a fair number is present during this part of the proceedings. In the larger towns the relative attendance is somewhat less than in small towns, but even in the former an active interest is maintained. In Brookline, Massachusetts, with about 2,500 votes cast, there are from 300 to 500 at the business sessions. In Hyde Park, Massachusetts, with 2,500 voters, and 1,500 votes cast, from 500 to 600 at-

tend the annual appropriation meeting. In Leominster, Massachusetts, with 1,400 voting, the normal attendance is about 800.[1]

Meetings are usually held in a large town hall. This is frequently in the village, but in many towns with several villages it is erected near the geographical center of the town, sometimes a mile or two from any village.

The meeting is called to order by the town clerk, or, in his absence, by one of the selectmen, and proceedings begin with the election of a moderator as presiding officer. In many towns the same man is chosen year after year to this office. This action serves to make the town meeting, in form at least, free from the control of the town officers, whom it is supposed to supervise. The town clerk, however, acts as secretary of the town meeting.

An organization being effected in the morning, the polls are opened and the election for the principal town officers proceeds by secret ballot. The business sessions usually begin early in the afternoon, before the polls are closed; but in some of the large towns these are held in the evening. At the annual meeting one or more adjourned sessions are usually necessary to transact all the business in the warrant.

As an illustration of the business discussed and determined at a town meeting, the following warrant for the annual meeting in the town of Belmont, Massachusetts, is inserted. This is a town near Boston, and between the cities of Cambridge and Waltham.

[1] Data furnished by Professor George H. Haynes of Worcester Polytechnic Institute.

At the time (1896) it had about 3,000 inhabitants, and was still outside of the suburban district, into which it has since been drawn by the extension of street railway lines.

TOWN MEETING

COMMONWEALTH OF MASSACHUSETTS.

MIDDLESEX, ss.

To FRANK D. CHANT, *or either of the Constables of Belmont, in said County,* GREETING:

In the name of the Commonwealth of Massachusetts, you are hereby required to notify and warn the inhabitants of the town of Belmont, qualified as the law requires to vote in elections and town affairs, to meet at the Town Hall, in said town, on Monday, the second day of March next, at one o'clock in the afternoon of said day, to act on the following articles, viz.:

FIRST.—To choose a Moderator for said meeting.

SECOND.—To choose the following town officers:

Three Selectmen for one year.
One Assessor for three years.
A Town Clerk for one year.
A Town Treasurer for one year.
One Auditor for one year.
Four Constables for one year.
One Water Commissioner for three years.
Two School Committeemen for three years.
Two Trustees of the Public Library for three years.
One Member of Board of Health for three years.
One Member of Board of Health fo two years.
One Member of Board of Health for one year.
One Commissioner of Sinking Funds for three years.

Also to vote "Yes" or "No" on the question, "Shall licenses be granted for the sale of intoxicating liquors in this town?" All the above to be voted on one ballot. Also to choose all other necessary town officers for the ensuing year.

THIRD.—To hear the reports of the Selectmen and other town officers, also of any committee heretofore appointed, and act thereon.

FOURTH.—To see if the town will accept the revised list of jurors as prepared by the Selectmen for the ensuing year.

FIFTH.—To determine what sum of money shall be granted to pay town expenses the ensuing year and to make the necessary appropriations of the same for the support of schools and other town purposes, and to determine how the same shall be raised and act thereon.

SIXTH.—To determine what compensation the Town Treasurer and Collector of Taxes shall receive for his services the ensuing year.

SEVENTH.—To see if the town will raise and appropriate a sum of money for the observance of Memorial Day.

EIGHTH.—To see if the town will continue to allow the use of one of the rooms in the Town Hall building to the Belmont Savings Bank.

NINTH.—To see if the town will authorize its Treasurer to borrow money in anticipation of the taxes of the current year.

TENTH.—To see if the town will appropriate a sum of money for the maintenance of a free bed or beds in the Waltham Hospital for the ensuing year.

ELEVENTH.—To see if the town will appropriate a sum of money to build Sycamore street as ordered by the County Commissioners, determine how the same shall be raised, or act thereon.

TWELFTH.—To see if the town will authorize the Selectmen to bring and defend actions for and against the town when they deem it for the interest of the town.

THIRTEENTH.—To see if the town will authorize the Selectmen to employ counsel and defend a suit of Patrick Quigley *vs.* the Inhabitants of Belmont.

FOURTEENTH.—To see if the town will appropriate a sum of money to purchase land for hose houses in Belmont and Waverley, or in any way act thereon.

FIFTEENTH.—To see if the town will authorize its Water

Commissioners to extend the water mains, raise money for the same, or in any way act thereon.

SIXTEENTH.—To see if the town will take any action relative to the adoption of a system of sewers and sewer assessments.

SEVENTEENTH.—To see if the town will accept a sewer in Concord avenue and Leonard street as laid out by the Selectmen, raise money for the same, or act thereon.

EIGHTEENTH.—To see if the town will accept sewers in Myrtle, Goden, Oak, School and Orchard streets as laid out by the Selectmen, raise money for the same or act thereon.

NINETEENTH.—To see if the town will accept the provisions of Chapter 51 of the Public Statutes, and Chapter 170 of the Acts of 1891, as asked for by M. Abbott Frazar and others.

TWENTIETH.—To see if the town will purchase that portion of the plant of the Somerville Electric Light Company which lies within the limits of the town or which at the time of its construction was within the limits of the town as then existing.

TWENTY-FIRST.—To see if the town will authorize the Selectmen to renew its contract with the Somerville Electric Light Co., for lighting the streets of the town or make a contract for the same purpose with any other corporation, or in any way act thereon.

TWENTY-SECOND.—To see if the town will take any action relative to revising or adding to its code of by-laws.

The polls will be opened at 1.15 o'clock and closed at 6 o'clock P. M., unless otherwise ordered by a vote of the town.

Hereof fail not, and make due return of this warrant, with your doings thereon, to the Town Clerk, on or before said day and hour of meeting.

Given under our hands, this seventeenth day of February, in the year of our Lord eighteen hundred and ninety-six.

THOMAS L. CREELEY,
JOSEPH O. WELLINGTON,
THOMAS W. DAVIS,
Selectmen of Belmont.

N. B. The Registrars of Voters will be at the Selectmen's room on Saturday, February 22, 1896, from 12 M. to 10 o'clock P. M., for the purpose of revising the List of Voters.

Registration will cease on Saturday, February 22, 1896, at 10 o'clock P. M. After the close of registration, no name will be entered on the List of Voters.

And the following warrant for a special town meeting in the town of Reading, Massachusetts, will further illustrate the activity of this institution during the interval between annual meetings. Reading is a town of over 5,000 population, on the outskirts of the metropolitan district, but still to a considerable extent a farming community.

TOWN WARRANT

COMMONWEALTH OF MASSACHUSETTS.

MIDDLESEX, SS.

To either of the Constables of the Town of Reading, GREETING:

In the name of the Commonwealth of Massachusetts, you are hereby required to notify and warn the inhabitants of the Town of Reading qualified to vote in elections in Town affairs, to meet in Lyceum Hall, in said Reading, on Wednesday, the 28th day of June, A. D. 1905, at eight o'clock in the evening, to act on the following articles, viz.:

ART. 1. To choose a Moderator to preside at said meeting.

ART. 2. To hear and act on the report of the committee of the new High School building.

ART. 3. To see if the Town for the purpose of providing funds for the erection of a High School building, will authorize its Treasurer to borrow under the direction of the Selectmen the sum of eighty-five thousand dollars and issue the bonds or notes of the Town therefor, payable at such times as will extinguish the debt within twenty years.

ART. 4. To hear and act on the report of the Selectmen in regard to the discontinuance of the Tower gate house at the Main-Ash St. crossing of the Boston & Maine Railroad.

ART. 5. To see if the Town will raise or otherwise provide and appropriate the sum of nine hundred and twenty-five ($925.00) dollars to be expended under the direction of the Tree Warden for the purpose of exterminating the Brown Tail Moth, the Gypsy Moth, and other injurious pests, or what they will do in relation thereto.

ART. 6. To see if the town will vote to change the water rates or what they will do in relation thereto.

ART. 7. To hear and act on the report of the Committee on Building Laws, which was appointed at the annual Town Meeting, March, 1901.

Hereof fail not and make due return of this warrant with your doings thereon to the Town Clerk at or before the time appointed for said meeting.

Given under our hands this nineteenth day of June, A. D. 1905.

JAMES W. KILLAM,
OLIVER L. AKERLEY,
HENRY R. JOHNSON,
Selectmen of Reading.

A True Copy,
ATTEST: FREDERIC D. MERRILL,
Constable of Reading.

"The thing most characteristic of a town meeting is the lively and educating debate; for attendants on town meetings from year to year become skilled in parliamentary law, and effective in sharp, quick argument on their feet. Children and others than voters are allowed to be present as spectators. In every such assembly, four or five men ordinarily do half the talking, but anybody has a right to make suggestions or propose amendments; and occasionally even a non-

voter is allowed to make a statement; and the debate is often very effective."[1]

In many places the town meeting is being undermined by the caucus, held beforehand, to nominate candidates for office. Here a small group of persons not only narrow the choice for officers but often arrange the other business to be determined at the town meeting. Sometimes everything is "cut and dried" before it comes up for popular discussion; and that discussion thus becomes a mere formality.[2]

Other factors also affect the working of town government for the worse. Immigration from Europe and French Canada has introduced in some towns racial elements that do not harmonize with the old New England stock. And these disturbing groups are most numerous in towns where factories and other industrial pursuits have developed, emphasizing the social distinctions between employees and capitalists that were lacking in farming communities.[3] Even in rural towns the influx of summer residents, although without votes, gives rise to disagreements between the new-comers and the older inhabitants.

Nevertheless the town meeting retains its hold on the people of New England. Even in the largest towns there is more hesitation in recent years than formerly about changing to a city form of government. Nearly a dozen towns in Massachusetts have now sufficient

[1] A. B. Hart, "Actual Government," p. 171; *cf.* "The Nation," 56, p. 343; 60, p. 197.

[2] Communication from Professor H. M. Bowman of Dartmouth College, Hanover, N. H., confirmed from other quarters.

[3] C. F. Adams, "Three Episodes of Massachusetts History," pp. 965-974.

population (12,000) to become cities, but there is no active effort to abandon the town system. The most noted is Brookline, with a population of over 20,000, entirely surrounded by the two cities of Boston and Newton.[1] Other examples are Hyde Park, Adams, Natick, Leominster and Clinton.

But the size of these towns is forcing to the front the question of some modification in the town meeting. Only a small part of the voters can be admitted to the town hall, and while it accommodates all who usually attend, there have been occasions in some towns when the hall has been filled and many voters turned away. Under these conditions decisions may be made that are disapproved by a majority of those who sought to attend, while in such large gatherings debate and deliberation become impossible.

To meet these conditions there has been proposed a plan of a limited town meeting. This would consist of delegates elected by the voters in districts, forming a body of two or three hundred members, which should exercise the business functions of the existing town meeting. Town officers would continue to be elected by the whole body of electors; and certain questions would also be submitted to a general referendum vote.[2] Some such plan may soon be adopted for large towns.

TOWN OFFICERS

MOST important among the town officers is the committee or board known as the selectmen[3] or (in Rhode

[1] "New England Magazine," August, 1893.

[2] A. D. Chandler, "Limited Town Meetings."

[3] The native New Englander accents the first and last sylla-

Island) the town council. The number of selectmen varies from three to nine, three being the more frequent. Generally they are elected annually, but in Massachusetts they are sometimes chosen for three years, retiring in rotation so that one or more is elected each year. Re-elections are rather frequent, and one selectman in Brookline, Massachusetts, has occupied the position from 1867 to 1905. In Connecticut one of the selectmen is designated as agent of the town, but elsewhere no one has any special powers as chief executive, although a chairman may be selected.

The selectmen may be called the general administrative board of the town. But they differ from the county boards in having no authority to levy taxes, and their powers are limited to those conferred by statute or the town meeting. Their functions are manifold and vary from town to town. They issue warrants for holding a town meeting; they lay out highways and drains; they grant licenses; they make arrangements for elections; and they have charge of the town property. They may act as assessors, overseers of the poor and health officers. They appoint some minor town officers; and can fill vacancies in most of the elective town offices.[1] They adjust claims against the town and draw orders on the treasurer for payment. In Rhode Island the town councils exercise

bles; and an outsider is readily detected by his dictionary pronunciation.

[1] In New Hampshire, in case of a vacancy on the board of selectmen, the other members must choose some one who has previously held the office by election; and where there are only two selectmen who fail to agree on a person for the vacancy, the appointment is made by a judge of the Supreme Court.

jurisdiction in probating wills and granting letters of administration. They submit an annual report of their actions to the town meeting.

Next in importance to the selectmen is the town clerk, who performs many duties imposed on the county clerk in states outside of New England. He keeps the record of the proceedings at the town meeting, and has general charge of the town archives. He issues marriage licenses and registers births, marriages and deaths. In Connecticut and Rhode Island he is a recorder of deeds, mortgages and other conveyances affecting title to land, as well as other legal documents; and in Maine he keeps a record of bills of sale and mortgages on personal property.

Although elected for only a year at a time, the town clerk is likely to be continued in office for a long period. One town clerk in Brookline served from 1852 to 1898; and the present town clerk of Hyde Park, Massachusetts, has held the position since 1870. Evidently the New England town democracy appreciates the advantages of permanent tenure for this non-political office.

Assessors of taxes are elected in the larger towns, where the duties of the selectmen are considered too onerous. The duties of these officers, and of the selectmen where they act as assessors, are to value real estate and personal property, and to assess the taxes levied by the town meeting and for state and county purposes.

The town treasurer receives and has charge of the money collected by taxes, for state, county and town purposes, and also of other funds belonging to the

town. He forwards the state and county taxes to the proper officers, and makes payments for town expenses on orders signed by the selectmen. He keeps accounts of receipts and disbursements, and makes an annual report to the town meeting, which is subject to examination and audit.

Overseers of the poor may also be elected. These, or the selectmen acting as such, look after town paupers, and supervise the management of the town almshouse or workhouse, where these institutions are established. The recent tendency is towards the centralization of poor relief. Besides the development of state charitable institutions for special classes, in New Hampshire county almshouses have been regularly established, and in Massachusetts it has become common for several neighboring towns to unite in maintaining a single almshouse for the district. These steps secure greater economy and also more intelligent treatment in the work of poor relief.

Justices of the peace are not considered as town officers in New England, but in New Hampshire, Vermont, Connecticut, and Rhode Island they are elected by the towns. In Massachusetts and Maine they are appointed by the governor and council, and in Rhode Island the governor appoints justices in addition to those elected in the towns.

In the three states where the system of appointment is used, the ordinary justices are not in fact judges. They summon witnesses and hold preliminary inquiries in criminal cases, and commit accused persons for trial before a judicial court. And they may perform the marriage ceremony, and take acknowledg-

ment of deeds. Trial or district justices are, however, appointed, usually for more than one town, to try the minor civil and criminal cases.

In Connecticut, New Hampshire and Vermont the elected justices exercise limited judicial powers. Their jurisdiction in civil cases is restricted to suits for less than $200 in Vermont, $100 in Connecticut and $13.33 in New Hampshire, while they cannot decide cases where the title to real estate is involved. In criminal cases their jurisdiction applies to minor misdemeanors enumerated in the statutes, or limited by the penalty imposed.

None of the New England states gives the justices any active part in other branches of local administration, such as they exercise in many of the Southern states and sometimes in the Central and Western states.

Constables are elected in every town, but the office has lost its old dignity and importance as the head official of the town. They are the peace officers of the town, corresponding to the sheriff in the county, and it is their duty to arrest violators of the law. But in practice they act mainly as ministerial officers to execute the writs and warrants of selectmen, justices of the peace and sometimes other judges. They often act as collectors of taxes, or special collectors may be appointed and sworn in as constables.

A school committee or school-board is elected in every town, to which women are eligible in some states. In five of the New England states and in more than half the towns in Connecticut, the town committee has direct control of all the town schools. It establishes

schools, appoints teachers, and regulates the course of instruction. Generally a superintendent of schools is elected or appointed either for each town or sometimes for several towns in common. Truant officers are also appointed to enforce attendance on the schools. Recent tendencies are towards further centralization in school administration. Small schools in the outlying districts are abandoned, and the pupils are taken at public expense to a central town school, where a more efficient graded system of instruction can be maintained. Many of the New England towns also maintain high schools.

In Connecticut nearly one-half of the 168 towns are divided into small school-districts, each containing a single school. These schools are under the management of trustees elected by the inhabitants of the district, while taxes are voted by a district meeting of the voters. In these cases the town committee supervises the district schools. Formerly this district system was in general use, and marks the furthest development of decentralized administration in the United States.

Highway officers with various titles are regularly elected in each town, except in Connecticut, where surveyors of highways are appointed by the selectmen. In recent years a great deal of attention has been given to the construction of substantial roads; and in this work the towns have been aided by the county and state authorities.[1] These developments have been most notable in Massachusetts and Connecticut.

[1] See Chapter XVI.

Park commissioners, library trustees and boards of health are elected in many towns; and in large towns watchmen are appointed as a police force, and a fire brigade is organized. There is also a long list of old minor officers, some elected, but most of them now appointed by the selectmen. These include sealers of weights and measures, field drivers, pound keepers, fence viewers, surveyors of lumber, keepers of almshouses, forest fire-wards, fish wardens, inspectors, weighers and measurers of grain, oil, upper leather, beef, boilers, coal, lime, vessels, and many other officers.

Most of these functionaries serve without compensation or receive only trifling fees, and this is an important factor in explaining the multiplication of insignificant places. But another factor is doubtless the craving for public position; and in small towns a large proportion of the voters can be given some titular honor. Popular election, which is still employed for a large number of offices, seems to work more satisfactorily in small towns than in more populous districts. The voters are personally acquainted with the various candidates, and the town meeting provides a means for supervising the conduct of the officers. But in the larger towns difficulties arise. Many of the officials who no longer perform any active functions might well be abolished. And there is room for extending the domain of technical expert service, which it is difficult to secure under a system of popular election.

While the town retains an important position, the tendency is towards larger areas of local administra-

tion and state supervision of the local authorities. This movement is noticeable in school management, public charities, sanitary affairs and most recently in road building.[1] It is being realized that greater efficiency can be secured through the employment of well-paid officials with specialized technical training, than under the unpaid decentralized methods. And in this respect the recent tendencies in New England are but a branch of the general movement throughout the United States and the world away from the radical individualistic ideas of the first part of the nineteenth century.[2]

[1] See Part IV.

[2] *Cf.* Dicey, "Law and Public Opinion in England."

CHAPTER IX

TOWNSHIPS IN THE CENTRAL STATES

In the great Central group of states, extending from New York to Nebraska, towns (or townships as they are more usually called) are local districts of considerable importance, but of a good deal less importance than in the New England group. And the conditions in this group may be taken as the most representative or typical of the United States as a whole. Not only do these states occupy geographically a central position; but together they contain more than half the population of the country; while in wealth and business and political activity, they occupy an even more important place.

Towns in New York, New Jersey, Pennsylvania and the eastern part of Ohio, are irregular in form and vary a good deal in area. Throughout the rest of this group the land before settlement belonged to the United States government, and was marked off by surveys into geographical townships, approximately six miles square. These geographical or congressional townships, as they are often called, have usually been taken as the district for the organized civil township. But there are many exceptional cases. In sparsely settled regions several congressional townships are combined to form a civil township. Sometimes physical

features are followed to a limited extent in the boundaries of the civil district; and cities and other incorporated places are often carved out of the geographical township. But in the main the township of the Middle-West is a square with straight line boundaries, containing an area of about thirty-six square miles.[1]

In most of these states the whole area is organized into civil townships, except for some urban districts organized as municipal corporations. But in a few states there are counties not subdivided into organized townships. In Illinois 17 counties in the southern half of the state, out of 102, do not have township organization. In Nebraska only 25 of the 102 counties have organized townships. These are in the easterly part of the state, and contain about one-third of the total population. In Missouri there are 20 of the 114 counties with township organization. In North and South Dakota townships in some counties are organized only for school purposes.

The relations between the townships and the urban municipal corporations established within their original limits vary in the different states. Generally the cities are entirely independent of the townships; and in a few states all or most of the villages or boroughs have the same position. In Pennsylvania boroughs as well as cities are independent of the townships, and in New Jersey, Wisconsin, Minnesota and the Dakotas most of the boroughs and villages are independent.

[1] The north and south lines of the surveyed townships follow the meridians, and are thus not exactly parallel, but converge a little towards the north; and the area is thus somewhat less than the full thirty-six square miles.

More commonly villages, while specially organized for certain purposes, remain part of the townships, as in New York and Michigan, while in some states all or most of the cities as well as the villages are parts of the townships. This is the case with all municipal corporations in Illinois and Indiana, and with nearly all in Ohio and Nebraska.

But in all of these states the compactly-built districts are separately organized as villages, boroughs or cities for certain purposes of local government. This reduces the importance of the township government, which deals only with rural problems. And as at the same time the county is more important than in New England, the result is to make the township of considerably less significance than the New England town.

Most of the townships are rural districts with a small population. But there are also a considerable number of populous townships, especially where villages and cities are included within their limits. By far the largest are the six towns comprising the city of Chicago, but the town governments of these have recently been consolidated with that of the larger community. Other large townships in Illinois are Peoria, with 57,000 population, Joliet, with 40,000, and twenty others over 12,000 each. In Indiana, Center township, Marion county, which includes the city of Indianapolis, has 167,000, and sixteen other townships have over 12,000 each. In Ohio the largest township is Youngstown, with 48,000, containing the city of the same name; and sixteen others have each over 12,000. New York and Iowa have each twelve towns with more than 12,000 population. Pennsylvania has four townships of

this size, and Michigan a single instance, that of Calumet in the northern peninsula.

In most of these cases the township government is unimportant compared with that of the cities or villages within their limits. But the four Pennsylvania townships[1] and two of the towns in New York[2] do not include urban municipal corporations; and the township government is the only local organization. Several other large New York towns have the greater part of their population outside of the incorporated villages.[3]

Organized townships in the Central states are bodies corporate and politic. They may sue and be sued in the courts, may purchase and own land for corporate purposes, and can make contracts in the exercise of their legal powers. But their corporate capacity is limited, and they are more properly classed as quasi-corporations.

They are districts for purely local affairs and at the same time subordinate agencies for county and state business. Strictly local matters are of less relative importance than in the New England towns. To be sure the three main objects of local administration —highways, poor relief, and schools—are matters of township concern; but even in these the county plays a more active part in the Central states than in New

[1] Hazel, 15,143; Lower Merton, 13,271; Coal, 12,473; and Mifflin, 12,366.

[2] Islip, 12,545, and North Hempstead, 12,048, both on Long Island.

[3] Hempstead, 27,066; Oyster Bay, 16,334; Brookhaven, 14,592. These and several others are also on Long Island, where the New England influences seem to be still prevalent.

England, while the special local needs of the urban parts of the townships are looked after by the village and not by the township governments.

As administrative districts for the county and state, the townships assess and collect taxes for these larger political units as well as for local purposes. They are also election districts for national, state and county, as well as township, officers, and they are the primary district for the administration of petty justice and the enforcement of state laws. Even in matters that are often considered local in character—such as education and poor relief—the townships are subject to state laws and state and county supervision.

In organization the townships of the Central states differ to a considerable extent, and show some marked departures from the New England system. Township meetings of the electors are provided for by law in some of those states, but they seldom display the same activity as in New England. While in about half of these states there is no assembly of voters for the discussion and decision of public business. The township officers are a numerous list, mostly elective. But in a number of states one officer stands out prominently as the chief official of the township.

TOWNSHIP MEETINGS

TOWNSHIP meetings are established by statute as the central organ of township government in New York, New Jersey, Michigan, Illinois, Wisconsin, Minnesota, Nebraska, and the Dakotas. These form the northern tier of the Central group, lying due west of New Eng-

land. And the extension of the system of direct democracy is evidently due to the general movement of population from the older states westward along parallel lines.

But the authority of a township meeting is usually less than in New England. In New York, where the meeting is held biennially, it has no taxing power, as the town taxes are levied by the county board of supervisors. And apart from the election of town officers, its powers are few and comparatively unimportant.[1] Appropriations for more than $500 are made by ballot of the property owners; and a township meeting may be held in a number of election districts instead of at one place, which means that the so-called meeting becomes simply an election by ballot. In other states the township meeting has power to levy taxes and enact local by-laws, subject to statutory limitations. But in Michigan the township board is authorized to levy taxes for ordinary township purposes in case of the refusal or neglect of the township meeting.

These township meetings and township elections in other Central states are usually held in the spring.[2] But in New York they may be held at the time of the biennial state elections in November; and in Ohio township elections are now regularly held in November. In New York,

[1] It can fix the number of constables (not exceeding five); can direct suits in which the town is interested; provide for the destruction of noxious weeds and animals; abate public nuisances that affect the public health; and care for the town property. Town Law, §22.

[2] February in Pennsylvania; elsewhere usually in March or April.

Michigan, and Wisconsin one of the town officers acts *ex officio* as chairman of the meeting. In the other states where township meetings are held, the New England rule of electing a moderator from those who are not officers is followed.

It is difficult to generalize in regard to the attendance at the meetings held in thousands of townships throughout these states. But replies to a considerable number of inquiries confirm the impression of personal observation that in many cases the number of persons present is meagre compared with the practice in New England. In townships with 500 to 600 voters an attendance of 10 to 20 is often reported, while in many cases the business is transacted by the members of the township board. Under these conditions there can be little of the active popular debate, which makes the New England town meeting an interesting object of study.

Some townships, however, follow the New England customs, and show a larger attendance at the township meeting. In Boonville, N. Y., with 1,200 voters, the average attendance is reported as 850; and in Olean, N. Y., with the same number of voters, from 300 to 400 attend the township meeting. In Wisconsin a good attendance seems to be more common than in the other states. Even in small towns an attendance from 50 to 100 is frequently reported; while in Buchanan, with 500 voters, 150 usually appear, and in Franklin, with 420 voters, the average is about 300.[1] In other places the decision of an important question will bring out a large attendance once in a while.

[1] Replies to circular letters of inquiry sent to town officers.

TOWNSHIP GOVERNMENT

NAME OF TOWN OR TOWNSHIP	NUMBER OF VOTERS	AVERAGE NO. OF VOTES	AVERAGE NO. AT TOWNSHIP MEETINGS	NORMAL TOWNSHIP APPROPRIATION
New York:				
Cortlandt	5087	4400	town board	$ 30,000
Hempstead	7000	5000		20,000
Fishkill-on-Hudson	3000	2700		18,000
Southampton	2800	1600	none held	35,000
Boonville	1200	950	850	
Olean	1200	850	350	1,500
Bethlehem	1250	1100	none held	8,000
Ovid	650	550	6	1,500
Plattsburgh	607	600	4	10,000
New Jersey:				
North Bergen	2200	1700	20	25,000
Northampton	1545	1200	5	10,000
Michigan:				
Calumet	4000	2500	none held	160,000
Osceola	1200	250	12	6,000
South Arm	800	400	200	7,500
Portland	800	650	tp. board	6,500
Sylvan	800	725	4	2,900
Otsego	780	575	12-60	4,000
Avon	750	600	5	2,500
Wright	600	450	well attended	4,000
Warren	500	440	4	1,400
Bethany	460	300	4	700
Masonville	400	200	4	9,500
Emerson	400	280	100	430
Illinois (1912)				
Joliet	....	3140	200	
Rockford	....	9820	22	
Danville	....	....	3	
Elgin	....	747	26	

Proviso	....	2500	9	
Galesburg	....	....	23	
Oak Park	....	1911	...	
Mattoon	....	2000	50	
Urbana	....	....	1	
Dwight	....	625	100	
Forreston	....	411	335	
Rock Creek	....	368	225	
Rosemond	....	125	125	
Wisconsin:				
Buchanan	500	300	150	3,000
Maple Grove	500	400	25	7,000
Franklin	420	340	10-50	1,500
Plymouth	400	200	4	1,000
Somers	400	175		
Jefferson	400	275	175	900
Darlington	300	275	50	2,500
S. Lancaster	280	170	100	2,000
Vinland	250	125	125	1,000
Washburn	150	110	75	10,000
Minnesota:				
Belle Plaine	400	300	15	1,500
Inver Grove	325	165	15	
Pleasant Hill	200	125	100	700
Fremont	150	50	40	1,200
Utica	150	80	80	1,200
Norton	150	90	80	
Mt. Vernon	120	75		1,800
Knife Falls	83	30	10	1,050
Ninth Judicial Dist.[1]	80		25	
Nebraska:				
Creighton	400	400	tp. board.	
Henderson	300	225	25	

1 Estimated averages of townships in this district, data furnished by W. T. Eckstein, of New Ulm, Minn.

In the southern tier of the Central states—Pennsylvania, Ohio, Indiana, Iowa, Kansas and Missouri—there are no deliberative township meetings. Town officers are elected, and questions are submitted for popular approval, but there is no assembly of the town voters in one place as the official organ for debating and deciding local business.

Several factors explain the absence or weakness of the town meeting in these states. In the southern tier immigration from New England has been limited; and the representative town system of Pennsylvania was thus introduced and extended rather than the direct democratic assembly. In the northern tier New England influences led to the establishment of the town meeting by statute. But immigration from Europe and from states to the south has brought into the rural districts of these states as well as the cities large numbers of voters with no experience in government by popular assembly. And these seem to prefer the representative to the directly democratic system.[1]

Again the artificial form of the township in the Middle-West has been of no little influence. Certainly in these states the township often lacks the social unity of the New England town. A village may develop in one corner of a township, and become the local market for two or three adjacent townships, while the distant farmers of its own township trade in the village of another. In other cases, a village may grow up across a township line, and the political line of demarcation

[1] Sometimes, however, and notably in Wisconsin and Minnesota, the Germans and Scandinavians take a very active interest in township affairs.

must be followed, although there is no separation of real interests between those who live on either side. In states where the villages are entirely independent of the townships, the incorporation of a village leads to the location of the hall for township meetings in an out of the way place.[1] Under these conditions the political unit does not accord with the economic and social centers of activity.

Lastly, the special organization of villages removes from the township meeting many of the important problems of local government. An examination of the New England town meeting warrants, in the previous chapter, will show to how great an extent the problems of the village are the vital subjects of discussion. When these are taken away, what remains is hardly enough to arouse the active interest of the voters.

TOWNSHIP OFFICERS

NOWHERE in the Central states do we find the New England title of selectmen. In their place are two distinct types of organization, and, curiously enough, the type which corresponds closely to that of New England is found most generally in those states which have no township meeting. In Pennsylvania, Ohio, Iowa, Minnesota and the Dakotas the principal authority is a committee or board of supervisors or trustees. In the other states there is a well defined head officer of the township with specific powers and duties, but assisted and checked in some matters by a township board.

[1]Professor W. A. Schaper, University of Minnesota.

This head officer is called the supervisor in New York, Michigan and Illinois, and the town chairman in Wisconsin. In these states, in addition to his duties as township officer, he is also the township representative on the county board, and this dual function adds to the importance of the office. In Indiana, Missouri, Kansas and Oklahoma the chief officer is called the township trustee.

The duties of these officers are not uniform in the different states. In New York and Illinois the supervisors primarily act as town treasurers. They receive the town funds (except those for highway purposes) and pay out authorized charges, keeping accounts of receipts and expenditures. They can also prosecute in the name of the town for penalties due the town; and in New York can sell town property when authorized by the town meeting. In Michigan they are the township assessors of property for taxation and overseers of the poor, and they represent the township in legal proceedings. In addition many other duties are imposed on the supervisors in these states.

Still more important are the township trustees in Indiana. Each trustee has charge of the township finances, is overseer of the poor and *ex officio* trustee, treasurer and clerk of the school township. He is also election officer, preparing a list of voters and acting as inspector of elections. And he is authorized to re-arrange road districts, to supervise drains and act as fence viewer. In Kansas, the township trustee assesses property and levies the township tax, is overseer of the poor, divides the township into road districts and has charge of township property. In Missouri town-

ships the trustee is treasurer and has charge of the finances of the town.

Township boards are variously constituted in different states. Where there is a chief township officer he is usually a member, and the board is composed of township officers. In New York, Illinois, and Michigan, the members are the supervisor, clerk and justices of the peace; and in Kansas, the trustee, clerk and treasurer. But in Missouri the board is composed of the trustee and two elected members, and in Indiana of three resident freeholders specially elected for this purpose, while the trustee is not a member. In other states the board consists of three members, distinct from the other town officers. They are called supervisors in Pennsylvania, Wisconsin, Minnesota, and the Dakotas, and trustees in Ohio and Iowa.

A primary function of these township boards is to audit the accounts of the township officers and authorize the payment of claims; and in Illinois where they are called boards of auditors this seems to complete their legal powers. In Kansas they act as auditors and as boards of highway commissioners.

In other states their powers are larger. In New York they license peddlers, can establish water, lighting and sewer districts within the town, and act as boards of health. In Michigan they can fill vacancies in township offices, are local boards of health, and can levy township taxes when the town-meeting has failed to act. In organized townships in Missouri they regularly levy township taxes. In Indiana the boards examine and approve township appropriations, fix the rate of taxation, and can borrow money. In Wis-

consin they audit accounts, order payments, have charge of town property, form and alter school and road districts, and fill vacancies in town offices.

Where there is no single head officer of the townships, the township boards are the general administrative authority, and usually have also the power to levy taxes. Thus in Pennsylvania they supervise the township roads and bridges, act for the townships in their corporate capacity, and sometimes serve as overseers of the poor. In Ohio they levy township taxes and act as road commissioners and overseers of the poor. In Iowa they act as boards of equalization, overseers of the poor, highway commissioners and election officers. In several states they form the local boards of health. Other minor powers are granted and duties imposed in all the states; and often important additions are made by special legislation.

Township clerks are elected in all the Central states except Indiana. They act as secretaries of town meetings where these are held, and as clerks of the township boards. In some states they are also clerks of the township school-boards,[1] and in some they keep records of chattel mortgages and stray animals. In Iowa the clerk is treasurer of the township. The office is less important than in New England; and continued re-elections of the same person to the office are less frequent.

Assessors are also elective township officers in most of these states. In most states a special official is chosen, but in Michigan the supervisor acts as the assessing officer of the town. In New York towns

[1] Michigan and Ohio.

there are three assessors. In Pennsylvania two assistant assessors are elected in the third and last year of the assessor's term; and in that year a general revaluation of property is made. In Michigan a board of review is established in each township, consisting of the supervisor and two other elected members, which decides on complaints and corrects errors in the assessment roll. As has been noted in a previous chapter there is often some county supervision or equalization of the township assessments; and in many states there is a state authority with larger powers of control over local assessors.[1]

Treasurers are elected in all of the states in this group, except where another officer acts in this capacity, as the supervisors in New York and Illinois[2] and the clerk in Iowa. They receive township, county and state taxes within their townships, and pay over the latter to the county treasurers. They have charge of township funds, and make payments on orders of the township boards.

While poor relief for the most part is a county function in the Central states, some duties in this field are performed by town officers. In Pennsylvania and New Jersey many towns support almshouses and look after the ordinary cases needing relief; and in these towns overseers of the poor are elected. Elsewhere township officers determine who are entitled to admission to the county poorhouse, and sometimes they have power to

[1] See Chapter XV.

[2] Town collectors are, however, elected in New York and Illinois. In Pennsylvania town collectors are elected in all towns, and town treasurers in a few towns.

grant temporary outdoor relief. Usually these matters are attended to by the supervisors or trustees, acting as overseers of the poor. But in New York one or two overseers of the poor are elected in each town.

Roads in the country districts have been for the most part constructed and repaired by a labor tax, worked out under the supervision of highway overseers, often elected by road districts into which the townships are divided. In the public land states the roads for the most part run along section lines, with but slight avoidance of grades or attention to the shortest lines of traffic. Within recent years, however, the use of money taxes and technical experts in road building has been extended. At the same time the tendency has been to substitute the town for the minor district as the primary administrative unit. Progress has also been made in the building of county roads; and in some states the movement for better roads has been promoted by state aid and state supervision.[1] New Jersey has been the most active in this work; and New York ranks second. In Ohio, Indiana, Kansas and South Dakota district overseers are still in use, but in some cases they are elected by the town instead of by road districts. In Pennsylvania the township supervisors appoint district road-masters; and in Michigan township highway commissioners are elected, who appoint district overseers. In New York and Illinois town highway commissioners are elected, and in New Jersey, Wisconsin, Iowa and North Dakota the town board has control of road matters.

[1] See Chapter XVI.

Justices of the peace are elected by townships, the number varying in the different states from two to five for each township. Technically they are still considered, in most states, as county officers. But they usually act only within the township for which they are elected, and in some states they are now classed as township officers.[1]

In all of the Central states justices of the peace exercise judicial powers in minor cases. Their jurisdiction is, however, strictly limited in various ways. In civil cases they can conduct a trial in certain classes of cases where the amount involved is not over a certain sum, varying from $100 to $300 in different states. In England they seem to have had no civil jurisdiction; and in this country this power was at first confined to actions on contracts. It now usually applies also to certain actions in tort; but does not include civil actions for assault and battery, slander or seduction. They have no jurisdiction in cases where title to real estate is involved; sometimes their jurisdiction is limited to certain prescribed forms of judicial proceedings; and usually they have no equity powers. Their criminal jurisdiction is less than it was in England; and is limited, sometimes by the nature of the offense, and sometimes by the extent of the penalty. It is confined to petty crimes and misdemeanors, where the penalties are small fines and brief periods of imprisonment. It never extends to felonies or crimes punishable by a penitentiary sentence.

For more serious criminal cases justices of the peace have power to issue warrants of arrest, to hold pre-

[1] *E. g.*, New York and Indiana.

liminary hearings, and to commit prisoners for trial before a higher court or release them on bail. In some states they may act as coroners, usually where the coroner is not available. They have also other powers not of a judicial nature. They can take acknowledgments of legal documents and perform the marriage ceremony. In New York, Michigan and Illinois justices of the peace are members of the town boards,—a survival of their administrative functions. But in none of the Central states do they have any part in county administration.

Justices of the peace in Indiana are generally limited to cases arising within their township. In New York and Michigan they may hear cases from their own or adjoining townships. But in other states they may try cases from any part of the county.[1] Sometimes the latter arrangement leads to abuses, as where defendants are summoned to out-of-the-way townships which are not at all involved in the case.

No legal training is required of justices; and outside of the cities they are often not qualified to practice before the higher courts. In this respect they resemble the English county justices, but the latter usually have a clerk who is trained in the law, while the American justice is his own clerk. Moreover the English requirement that a justice must be a landed proprietor does not apply to the American office. And as the net result of the change in his functions and in the kind of men selected for it, the position is of but slight importance compared with that of the English or colonial justice, or the justices in some of the Southern states.

[1] Illinois, Iowa, Kansas and Missouri.

Constables are elected in all townships, and perform duties similar to those of the constables in New England towns. They are peace officers, and as such are specially charged with the duty of arresting known felons or any one committing crime in their presence. But ordinarily they act only as ministerial agents of the justices on specific warrants to make arrests, subpœna witnesses and execute the judgments of the court. They also publish notices of elections.

The long list of minor functionaries of the New England towns does not reappear in the townships of the Central states. In Michigan provision is made for drain commissioners and path masters. And in several states town officers already mentioned act as fence viewers, to settle disputes about boundary fences. But the multiform surveyors and inspectors are entirely absent.

SCHOOL-DISTRICTS

SCHOOL-DISTRICTS in the Central states are local corporations distinct from the townships.[1] But they usually either correspond in area with townships or are subdivisions of townships. In five states[2] each township generally constitutes a school-district, although special districts are often established for villages or cities within the townships in some of these states. In four other states[3] townships may constitute school-dis-

[1] Even in Indiana, where the township trustee is also school trustee, the two corporations are separate legal entities. 62 Ind., 230.

[2] New Jersey, Pennsylvania, Ohio, Indiana and Iowa.

[3] Wisconsin, Minnesota, North and South Dakota.

tricts as a whole or may be divided into small districts. In the remaining five states[1] school-districts are ordinarily subdivisions of townships. Special legislation, however, causes many exceptions to all general statements.

Under the township system the tendency is to discontinue outlying schools and concentrate attendance at a single graded school, the school authorities furnishing transportation for the children. But in many cases this concentration has not been accomplished, and there are a number of small schools in different parts of the township. In Pennsylvania and sometimes in Ohio such townships are divided into sub-districts, which, however, are not separate corporations. The petty school-districts generally have only a single school with one or two teachers. They vary in area; but in settled agricultural regions contain from six to nine square miles. Sometimes such districts are formed which include parts of two or more townships.

In about half of these states provision is made for school meetings of the voters in each district. These are direct democratic assemblies, corresponding to the New England town meeting. They not only elect school officers, but vote school taxes, locate school sites and decide other questions of school management. They are found not only in states where township meetings are authorized, such as Michigan, Wisconsin and Minnesota; but also in other states, like Indiana, Iowa and Kansas, where there are no township meetings. In most of these states women vote at the school meetings. Attendance at these meetings is irregular. In

[1] New York, Michigan, Illinois, Kansas and Nebraska.

some places, and on special occasions in other districts, there will be a good attendance and active interest and discussion. More often the voters simply attend to vote for officers and the business is transacted by the latter.

District officers are generally three in number, known as trustees. These act to some extent as a board, while special duties are often assigned to individual members, one acting as chairman or director, another as treasurer and the third as clerk. In New York school-districts, there are three trustees and also a clerk, collector and treasurer. In Pennsylvania each district has six school directors. In Ohio each district has a board of education of five members. In Indiana the township trustee is school trustee, and there is also a school director elected in each district. Where there are no school meetings of voters these officers have full local control. Where there are such meetings they carry out the votes passed, appoint teachers, determine the course of study and manage the finances of the schools. But state aid and control and county supervision in school matters are much more important in the Central states than in New England; and the local autonomy is thus less complete.

Township and school officers are elected for terms varying from one to four years; and different terms are often provided for the various offices in the same state. In New York town elections occur only every other year. In Indiana the most important township officers are elected for four years. Members of town boards are usually elected for more than one year, the terms of the members expiring in different years.

Re-elections are frequent; and sometimes in the states where township supervisors are members of the county boards, this gives the rural districts an advantage in these boards, on account of the larger experience of their members over those from the cities. In most townships the officers give only a small part of their time to public business; and they are paid at a *per diem* rate or by fees. In the larger towns some officers receive fixed salaries.

Little is known of the character of township government in general; and the absence of complaint seems to indicate that on the whole it satisfies the people of the various communities. But it may be noted that the decline of the town meeting leaves no active control over the officers; and it is likely that in sparsely settled districts there is a good deal of carelessness in the management of local affairs. A correspondent from northern Minnesota[1] writes that many irregularities occur in connection with the management of township and school-district matters in that state. An attempt to compile statistics of township finances in an Illinois county disclosed the lack of any accounts other than cash books, with no effort to classify expenditures and with frequent errors in the extensions of figures.[2] State supervision over township accounts has been established in Ohio and Indiana; and might well be introduced in other states.[3]

[1] District Judge W. A. Cant of Duluth.

[2] J. A. Fairlie, "A Report on Town and County Government in Illinois," pp. 146, 208.

[3] See chap. XV.

CHAPTER X

COUNTY DISTRICTS IN THE SOUTH AND WEST

In the Southern and Western states, and in some counties in states already noted, there is no general system of local corporations corresponding either to the New England towns or the organized townships of the Central states. But even in these sections the counties are divided into districts for various purposes of local government, such as elections, the administration of petty justice, roads and schools. These districts differ from towns and townships of the North in two important points. In the first place, instead of using one district for all local administration below the county, different districts are established for various purposes; and these are sometimes neither coterminous nor inclusive in area, but may overlap each other. In the second place, with the exception of school-districts in some states, these county districts have no corporate capacity, and no power of taxation, but are simply convenient subdivisions for performing the functions of county government. Some officers are, however, elected in and for these districts; and in a slight degree they take the place of the towns and townships of the Central states.

SOUTHERN STATES

USUALLY one class of districts is somewhat more important than the others; and is sometimes used for several distinct purposes. The names of these show a great deal of variety. In Virginia, West Virginia and Kentucky they are called magisterial districts, and in Tennessee civil districts. In North and South Carolina, Arkansas and Missouri the name township is used, and in the two latter the congressional townships are the areas for the civil districts; but they are not corporate organizations except in a few of the Missouri counties. In Maryland, Florida and Alabama they are known simply as election districts or precincts, and in Mississippi as supervisor's districts[1] which are in turn subdivided into school-districts and election precincts. In Georgia the principal county divisions are called militia districts. In Delaware the old English term the hundred is still retained. In Louisiana the subdivisions of the parishes are known as wards. And in Texas the counties are divided into commissioner's precincts, and these again into justice's precincts.

Generally the number of such districts in a county is smaller than the average number of townships in a county of the Central states.[2] And as a corollary the average area is larger than that of the congressional

[1] In Alabama and Mississippi the term "beat" is also sometimes used unofficially.

[2] In Virginia and West Virginia there are from three to ten districts in each county, in Kentucky from three to eight, in Mississippi always five, in Louisiana from five to ten, in Texas four commissioner's districts and eight justice's districts. In the other states the districts are more numerous.

township. The population of these districts is usually somewhat more than that of a rural township in the Central states. In most of these states cities and villages are regularly included within these county districts. But a few large cities, such as Wilmington, Del., Charleston, S. C., Mobile, Ala., and New Orleans either form districts in themselves, or are not included in the county districts, as is the case with all the cities in Virginia.

Magisterial districts in Virginia are the most important of these county divisions. In each there is elected one supervisor to serve on the county board, three justices of the peace, a constable, and an overseer of the poor. In Mississippi, Louisiana and Texas the county divisions are districts for electing members of the county boards, justices of the peace and constables. In North and South Carolina the townships are districts for assessing taxes. In the other states they are mainly districts for electing justices and constables; but in Kentucky, Tennessee and Arkansas the justices are at the same time members of the county boards. In Tennessee most of the civil districts also elect assessors, and in Arkansas each township may become a road district and elect an overseer of highways. In West Virginia a deputy sheriff is often appointed for each magisterial district, and there is some tendency to appoint deputy assessors for one or more districts.[1]

These officers exercise similar functions to those of the same name in the states already examined. The jurisdiction of the justices is generally

[1] Professor J. M. Callahan, University of West Virginia.

about the same as in the Central states. But in Georgia their authority in criminal cases is confined to the preliminary stages, and they cannot conduct trials and impose penalties. On the other hand, in Tennessee their civil jurisdiction is more extensive than usual. They can try some cases where as much as $1,000 is involved, and others up to $500, and have also equity powers in cases up to $50. Likewise in Mississippi and other states, where there are no county courts, the justice's court is an important part of the judicial machinery.

Usually the law allows them to deal with cases arising anywhere in the county, but in Mississippi they are for the most part confined to cases within their district. In Kentucky, justice's courts are classed as courts of record; and in other states they are required to keep a docket showing the cases brought before them.

In the three states where the justices are also members of the county boards the combination of functions makes them the general public agents for their districts in local matters. And in these cases the office is doubtless of more importance than that of township supervisor in the Central states. In other Southern states the justices are also of more importance than in the Northern states. Thus in Alabama, where county commissioners are elected at large, the justices are the chief officials of their precincts, and besides their judicial powers, they recommend persons for admission to the poorhouse.

Justices of the peace are appointed by the governors in Maryland and South Carolina; and in Alabama, besides the elected justices, the governor may appoint

a notary public in each precinct with all the powers of a justice. In some North Carolina counties, justices are chosen by the general assembly, and besides their usual powers the justices in each township of this state constitute a board of road supervisors.

Election officers are usually appointed for each county district, or, in states where the principal district is large, for subdivisions. Overseers or supervisors of roads are appointed for road districts, which may be subdivisions of the larger districts, or may be formed without reference to them. Road work in the rural districts of the Southern states has generally been performed by a labor tax and by convicted prisoners, but in recent years county boards have been authorized to levy money taxes for road purposes, and there have been some improved roads built by contract.

In all of the Southern states provision is now made for the subdivision of the counties into school-districts. But in the states bordering on the Atlantic and in Louisiana the district officers are appointed by the county school authorities and in a few of these states the appointment is optional.[1] In the states west of the Alleghany Mountains the system resembles that in the Northern states. In West Virginia and usually in Tennessee the school-districts are co-extensive with the magisterial or civil districts. In the other states they are smaller districts, generally including only a single

[1] In Georgia and Louisiana. In Florida the creation of districts within a county is optional, but if established the district trustees are elective.

school.[1] District trustees or directors are locally elected; and in Kentucky, Alabama and Arkansas there are provisions for district meetings of the electors at which negroes are not permitted to attend. In Kentucky women are allowed to vote for school trustees. In Mississippi there is a regular school-district, but without corporate powers, wherever sufficient educable children can be found to justify the establishment of a school. The trustees, whose principal duty is to select the teachers, are elected by the patrons.[2] Many of the larger towns and villages form school-districts with power to levy taxes for school purposes. In all the Southern states separate schools are maintained for the white and black races.

Steady advance is being made in the school systems of the Southern states, but they are still much behind those in other sections of the country. The motive force for improvement comes mainly from the higher authorities. And conditions in the states having the county system of administration are slightly better than where the petty school-district is the unit.

Why do these county districts in the South play such a small part in local government compared with the New England towns or the townships in the Central states? It has been usual to explain this situation by the larger development of county administration; and this in turn has been explained by the conditions of early colonial settlements along the seaboard. But

[1]In Alabama the congressional township has been the school-district; but an act of 1904 provides for redistricting the counties without reference to township lines.

[2]Professor J. W. Garner of the University of Illinois.

while these factors have had some influence, they are not entirely adequate to an understanding of the present situation. We have already noted that the importance of county administration in the Southern states, as measured by *per capita* expenditure, is less than in the Central states. And it thus appears that the total volume of local administration in the South is much less than in the Northern states. Moreover the failure of the reconstruction attempts to introduce the Northern township in the South indicates that the underlying conditions were not favorable to the experiment.

Up to the time of the Civil War local government in the South was profoundly affected by the system of slavery and large plantations. On the large estates such road building and poor relief as were imperative were provided by the land owners. Public schools were unknown. The slaves had no votes, and the poor whites little political influence. The whole government was essentially aristocratic and feudal in its tendencies. The county was perhaps the smallest district where there was a sufficient number of persons with political power to make possible any collective public activity.

At the present time the situation is in one sense simply a survival of the system inherited from the earlier period; and the force of inertia, or conservatism in adhering to established institutions, stands in the way of a change, even if conditions were favorable.[1] But the conditions are still in large measure

[1] A factor in the abandonment of the reconstruction townships was the opposition to Northern institutions developed in the long sectional conflict.

those which have continued or developed from those of ante-bellum days.

Slavery is gone, but the negro population remains, and in most of the Southern states is effectually disbarred from political activity. Anything like a New England town meeting would involve a revolution in social ideas. And in large sections the number of white people living in districts corresponding to the Northern township are too few for any effective popular government.

Moreover land in the South is still owned in much larger tracts than in New England and the Central states. In Texas two-thirds of the farm area is in farms of over 1,000 acres. In the other Southern states about one-third of the farm area is owned in lots of more than 500 acres by 70,000 persons. Many of these are no longer cultivated entirely by the owners, but are rented in small tracts to tenant farmers. Nearly half of the farmers in the Southern states are tenants, with farms averaging less than eighty acres each, and in many cases of forty acres and less.[1]

These economic factors must affect the political system both directly and indirectly. The owners of large estates have larger political influence than the small tenant farmers, while the latter are likely to be less active in demanding or exercising political privileges than the freeholders with larger farms in the Northern states. On the large estates, too, some private roads and drains are built which would be constructed as public works where land is owned in smaller lots. And while poor relief is of small importance in the South,

[1] U. S. Census of 1900. Statistics of Agriculture.

some assistance is given to dependents on these estates without any appeal to the public authorities.[1]

Of more importance, perhaps, is the fact that the South is still for the most part a strictly rural country. Population is scattered, the industrial organization is simple, and as a consequence the needs and opportunities for public activity are few. Moreover the compactly settled districts are organized as villages and cities; and there provision is made for the more pressing public needs, which form a large part of the activity of the New England towns.

Still another factor in the slight development of local functions is the smaller relative wealth of the Southern states. The population of the Southern states is about the same as that of the Northern states of the Middle-West. But the value of farm property in the Southern group is little more than one-third of that in the Northern, while the latter has a much larger proportion of other property than the former.[2] This restricts the amount of taxation for purposes of local government. And the scope of public activity is thus kept within narrow limits.

But some of these conditions are changing. Mining in West Virginia and Alabama, the establishment of cotton factories as well as other manufacturing industries in a number of Southern states, and immigration from Northern states and foreign

[1] Mr. A. H. Stone of Greenville, Miss.

	Population	Value of Farm Property
[2] Southern states	24,523,527	$ 4,270,000,000
North-Central states	26,333,004	11,504,000,000

countries are adding greatly to the wealth of these communities and altering the economic basis of political institutions in many ways. And the general result will be to increase the importance of local government, both in the counties and the county districts.

It would, however, be unwise, and perhaps futile to attempt again to import bodily the institutions of the Northern states. The former effort failed because the fundamental conditions of economic and social life in the Southern states were different from those in the Northern states. The new conditions in the South will still be different from those in the North. And the local institutions should be developed to suit their own environments.

WESTERN STATES

In the Western states the principal subdivisions of the counties are most commonly called precincts. But in Montana and some parts of Nevada they are known as townships, and in California as judicial townships. In these sparsely settled states the average area of these districts is much larger than the congressional township or than the districts in the Southern states. And at the same time their population is often very scant. Cities and villages are, however, generally included in the county districts, except in Oregon, where some cities are co-extensive with one or more precincts.[1]

One or more justices of the peace and constables are elected in each of these precincts or townships. The

[1] In California the city of San Francisco constitutes a county, and the city of Sacramento forms a principal division of the county.

powers and duties of these officers are much the same as in the Central states. The civil jurisdiction of the justices generally includes cases where as much as $300 is involved, which is higher than in most of the states to the east. Their criminal jurisdiction covers the usual minor breaches of the peace and other misdemeanors. Constables have the customary ministerial duties in executing justices' warrants; and in Utah are also called on to act as pound-keepers for stray animals. Ordinarily each justice's district is also an election precinct, for which election officers are appointed. But in California townships may be divided into election precincts.

School-districts are established by the county boards or the county superintendents of schools. Rural districts usually contain only a single school, but city districts may have a number of schools. In each district there is elected a board of trustees or directors, which employs the teachers and has control of the school property. In some states the trustees levy taxes for schools; or, as in Colorado, they certify the rate of tax to the county commissioners, who levy a county school tax. In other states, as Wyoming, the power of taxation rests with the district meeting of voters.[1]

In California the school-district meeting elects the trustees, and may instruct them in regard to the location of the school-house, the sale and purchase of school sites, and litigation. A county school tax is levied by the county board of supervisors, but the electors in each district may vote for a special district tax, which is also levied by the county board. The dis-

[1] Grace R. Hebard, "The Government of Wyoming," 148.

trict boards of trustees have limited corporate power to hold property and to sue and be sued. They build, rent and repair school-houses, manage school property, employ teachers and janitors, prescribe courses of study and furnish text books.

Road districts are also formed by the county boards. In Idaho and Washington district overseers are elected; in the other states they are appointed by the county board. But in either case the county board has general control as in the Southern states, and each member of the county board acts as a road supervisor over the overseers within his district. The usual labor or poll tax for road purposes is required, while the county board may also levy a property tax, which is apportioned among the road districts.

These school and road district officers are more often locally elected in the Western than in the Southern states. But this decentralizing tendency has not reached the point of establishing a general system of organized townships in any of these states. In 1895 the State of Washington enacted an optional law for the organization of civil townships, but none have as yet been established. Throughout the Western states the county is the main unit of local government, and the county officials are the all-important local authorities. And in proportion to population the activity of the county in this section is far beyond that in any other section of the United States.

Social and economic conditions are very different in the West from those in the South, and the same explantations will not serve to account for the absence of the organized township in both regions. One factor

the two sections have in common,—the ownership of land in large tracts. But neither tenant farming nor negro population is present in any large degree in the Western states.

Probably the most important factor in these states is the sparse and scattered population. Their average density of population in 1900 was 3.5 per square mile; and the highest average density for any state in the group was 9.5 in California. Under these conditions the number of people within a geographical township or any district of similar area is much too small to form the basis for any effective organized government. Nor can a larger district be taken without departing from the essential idea of the town as a district whose inhabitants can come together conveniently. And with the widely scattered population each person is necessarily more independent of others, and there is less opportunity for common interests or the development of public activities.

Moreover a large proportion of the limited population is in mining and other compactly-settled communities, for which city and village governments have been organized. And with the needs of these provided for, there is comparatively little that could be done by township governments in the strictly rural districts. Perhaps the absence of the surveyed rectangular township in the mountain regions explains why there has not been any serious attempt to introduce the organized township. But in view of the other conditions any such attempt would have been bound to fail.

Whether population will so increase as to make a

township system feasible, and if so whether it will be introduced, are problems for the future. The first problem depends largely on the extent to which irrigation works can be successfully established. So far as they can be, they offer a new field for public activity, which might form the basis for important local institutions. The second problem is likely to be affected by the development of city and village corporations. It is at least conceivable that these may so expand their activities that there will be little left which cannot be better performed by the county than by a township government. On the other hand the use of the name township in Montana and California is likely to suggest to legislators its organization as a local district. And if established in one of these Western states, it will probably be introduced in others.

CHAPTER XI

VILLAGES AND BOROUGHS[1]

SCATTERED throughout the United States are more than 10,000 small municipal corporations, called variously villages, boroughs, and incorporated towns, and in some states included in the title cities. These are compactly built districts specially organized for certain purposes of local government, differing from cities, in the more ordinary use of the term, in their size, in the smaller range of functions, and in the simpler system of government. They differ from towns in New England and townships in covering only small detached areas where population is compactly settled, and in dealing for the most part with the special needs of such semi-urban districts.

During the colonial period a number of boroughs were established in Pennsylvania and New Jersey, modeled after the boroughs in England. After the Revolution the name city came to be applied to urban municipal corporations of some size, but small communities in these two states continued to be called boroughs, and new corporations with this title were established from time to time. In 1794 the legislature of New York incorporated the village of Waterford,

[1] "Harper's Monthly," Vol. 83, p. 111.

in 1798 the three villages of Troy, Lansingburgh and Utica, and others in subsequent years. In 1800 the borough of Bridgeport was organized in Connecticut; and a few other boroughs were later established in that state.

For a time such villages and boroughs were incorporated by special acts of the state legislatures, in the same manner as cities after the Revolution. But in 1834, when there were 137 boroughs in Pennsylvania, a general law providing for the organization of boroughs was enacted. And in 1847 a general law was passed for the incorporation of villages in New York.

From these neighboring states the organization of small semi-urban corporations has extended to the South and West. Throughout the Central states they have modified to a considerable extent the importance of township government, and in the South and far West they are important factors in explaining the absence of the organized townships. In New England a few villages have been organized in Maine and Vermont, as well as boroughs in Connecticut.

In many states the New York title of villages has been given to these districts. But in a number of states they are known as towns or incorporated towns.[1] And in some states the minimum population for the incorporation of cities is so low that many of the small cities should more properly be classed as villages.[2]

Nearly every state has now a general law for the

[1] Indiana, Iowa, Delaware, Virginia, Georgia, Alabama, Colorado, Wyoming and generally in the Southern and Western states.

[2] All municipal corporations are called cities in Kansas.

organization of villages, boroughs or incorporated towns. But special acts are frequently passed establishing such corporations, and still more frequently amending the powers and system of government for certain places. And in Connecticut all boroughs are incorporated by special act. It is impossible to consider here all of the variations caused by this method of legislation; and only the more general provisions will be noted.

Usually the procedure for incorporation requires a petition from inhabitants of the proposed village and a popular vote on the proposition. Sometimes the petition is presented to the judge of the principal local court, as the circuit judge in Wisconsin and the quarter sessions judge in Pennsylvania. In other cases it goes to the county board, as in Indiana and Minnesota. In New York the petition is presented to the town supervisor, or supervisors if the proposed district includes parts of more than one town. The officer or board to whom the petition is presented orders an election, which determines whether the village will be established. In Ohio, villages may be organized by petition to the township trustee and a popular vote, or on petition by the county commissioners without a popular vote. In Missouri and some other states villages are established by the county board without a formal vote of the electors in the district.

Frequently the statute establishes a minimum population for new villages. In Alabama only one hundred inhabitants are required. More generally the number

There are many small cities as well as villages in most of the states of the Middle-West, the far West and some in the South.

is from two hundred[1] to three hundred.[2] Sometimes it is provided that the required population must be within a specified area, as a square mile in New York, and two square miles in Michigan.

In New York and Pennsylvania the minimum population for cities is 10,000; and all municipal corporations below that figure are villages and boroughs. Sometimes, however, a village or borough increases in population a good deal beyond this limit before the change is made to a city. In other states the maximum village population is much lower. In Ohio, Virginia, and Louisiana it is 5,000, and that is about the usual maximum for villages and boroughs in the three New England states where such corporations are established. In Missouri and Alabama the maximum is 3,000. In a number of states it is 2,000.

A comparison of the number of villages and boroughs in different sections of the United States on the basis of legal definitions would not indicate with any exactness the relative extent to which small urban districts are incorporated. For this purpose, it is better to ignore the technical titles of the districts with varying population limits; and to consider all municipal corporations of whatever name within uniform limits. And the table below presents the data on this point according to the census of 1900

[1] In New York, Vermont, Wisconsin and Texas.

[2] In Michigan, Illinois and Wisconsin. In Kansas and Louisiana 250.

[3] Indiana, Minnesota, Iowa, South Dakota, West Virginia and Georgia. This is also the limit for the smallest class of cities in Kansas.

SMALL MUNICIPALITIES

	4000–8000		1000–4000		UNDER 1000		TOTAL UNDER 8000	
	NO.	POP.	NO.	POP.	NO.	POP.	NO.	POP.
New England States	29	173,131	43	81,658	33	17,260	105	272,049
Middle-Atlantic "	123	673,030	513	1,028,061	718	364,825	1354	2,065,916
North-Central "	231	1,287,707	1305	2,396,356	3581	1,628,084	5117	5,312,147
South-Atlantic "	52	271,894	272	510,367	1080	410,889	1404	1,193,150
South-Central "	63	339,324	392	761,249	1022	408,792	1477	1,509,365
Western "	34	192,241	209	423,714	385	177,225	628	793,180
	532	2,937,327	2734	5,201,405	6819	3,007,075	10,085	11,145,807

The most striking fact disclosed in this table is the small number of these corporations in New England, while three of these states have none. This is due not to the absence of small compact settlements, but to the development of the town governments, which serve the needs of the villages as well as the rural sections of the towns. But even in New England there is a slight tendency towards the separate incorporation of the villages. Nearly half of the village and borough corporations in that section were established between 1890 and 1900.

In all the other sections there is a large and rapidly increasing number of village incorporations. Nearly a third of the whole number in 1900 were organized in the preceding decade. In the Southern states the number of incorporated villages and their aggregate population is less in proportion to the total population than in the Central and Western states. But this is not due to any hesitation about incorporating. It is caused by the more scattered nature of the population in strictly rural districts. In fact the tendency is for smaller places to become incorporated in the South than elsewhere, owing to the absence of any general system of township government. More than half of

these village corporations in the Southern states have less than 500 inhabitants, as compared with a third of the total number in the Central and Western states.

This development of village corporations goes hand in hand with the decline of township government. Common causes affect both movements, while by the mutual interplay of forces the rise of one institution means the weakening of the other. Various factors have been already noted in the chapters on township government and county districts. The limited powers of the townships in the Central states and the absence of this institution in the South and West has made necessary some organ of local administration to meet the common needs of the compact settlements. The larger needs of the village districts as compared with the rural regions, and the opposing interests of those living in the different sections have promoted the demand for a special village organization even where the township system is established. Owing to the artificial nature of the township area in the Middle-West, villages have developed which cross township lines; and a single organization for the whole village in such cases can accomplish more than two or more township authorities who might often have conflicting purposes.

Again the decline of the town meeting in the Central states has been both cause and effect of village incorporation. On the one hand it has left no adequate authority to deal with village problems. On the other hand, the separate organization of the villages has lessened the activity of and interest in the popular assembly. Another factor in developing village incor-

poration has been the general tendency towards greater specialization and more minute division of labor. While in some cases the desire to establish more public offices has doubtless promoted the creation of separate institutions.

The functions and importance of village and borough government vary considerably in the different sections of the country. They are relatively least in the New England states, where the village supplements an already active town government. Special local needs for compact populations here comprise their whole activity. Fire protection, police, street pavements and sidewalks, sewers, water works and street lighting are the main purposes of village organization. In those Central states where the villages remain part of the township[1] the general purposes of village government are the same as in New England. But in practice the townships are less important and the villages relatively more important. In some cases the villages take over some township functions, as in Michigan and Iowa, where village assessors are chosen.

In other Central states the villages and boroughs are usually independent of the townships.[2] In these cases the village government adds the usual township functions to those of the villages in the states previously noted. While throughout the South and West,

[1] New York, Ohio, Indiana, Michigan, Illinois, Iowa, Kansas and in those parts of Missouri and Nebraska where the township system is established.

[2] Pennsylvania, New Jersey, Wisconsin, Minnesota and the Dakotas.

although villages are generally included within the county districts, the latter are so unimportant that the village government in fact deals with all the local problems except those performed through the county officials.

Village organization is comparatively simple. The principal authority is a board of trustees or village council.[1] This usually consists of from five to seven members elected at large. But in some states the number may be as small as three,[2] and in some as many as nine.[3]

In Missouri, Texas and other states the class of small cities which are in fact villages, elect the members of the council by wards. The term of these village trustees or aldermen is usually one or two years, in the latter case one-half of the number is elected every year. In Iowa the councilmen are elected for three years, two every year.

Such village councils have power to pass ordinances on many subjects enumerated in detail in the statutes. These include ordinances affecting the general public, and ordinances establishing and regulating village officers and their duties. In Michigan, for example, village councils are authorized to pass police and health ordinances on twenty-seven specified subjects. They may prescribe the terms and conditions

[1] Trustees in New York and generally in the Middle-West; council in Pennsylvania, New Jersey, Ohio, Iowa, Kansas and generally in the South; burgesses in Connecticut; commissioners in Maryland.

[2] Connecticut, New York, Indiana, Minnesota, Maryland, Missouri, Texas.

[3] New York, Maryland, Missouri.

for licensing taverns, peddlers and public vehicles. They have control of streets, bridges and public grounds; and have authority to construct bridges and pavements, and to regulate the use and prevent the obstruction of the highways. They may establish and maintain sewers and drains. They may construct and control public wharves, and regulate and license ferries. They may establish and regulate markets. They may provide a police force and a fire department. They may construct or purchase and operate water works and lighting plants. They may own cemeteries, public pounds, public buildings and parks.[1]

To make these powers effective requires important financial authority. Village councils regularly have a limited power of taxation; and generally may authorize special assessments for street improvements. The power to issue bonds for permanent improvements is seldom of importance in the general laws; but many of the larger villages have such power by special legislation. In New York any village may issue a loan for furnishing a water supply to the extent of ten per cent. of the assessed valuation. In Michigan villages by popular vote may borrow up to five per cent. of the assessed valuation for water works and to the same extent for lighting plants. In Ohio all villages have the same power as cities to issue bonds for a long list of specified purposes. Village councils in that state may borrow not over one per cent. of the assessed valuation in one year and not over four per cent. altogether; while additional loans may be made with the approval of the voters.

[1] "Compiled Laws of Michigan," ch. 87.

Everywhere the village councils control the appropriation and expenditure of village funds. But in New York all extraordinary expenses, which include any expenditure of more than $500 for one object, must be voted by the taxpayers. The councils make contracts, and audit claims and accounts against their villages. And in general they control the village finances and property.

In most states the village councils have more effective control over the executive officers than the councils in large cities. Often some of these officers are established by statute and elected; but generally the councils have some power to establish officers and to make appointments; and in some states they appoint most of the village officers, notably in the Southern states. Sometimes the councils have power to remove officers for misconduct. In New York they have this power over officers whom they appoint; in Ohio they have the same power over both elective and appointive officers. In any case the councils can limit the activity of the village officers by their control over appropriations.

Every village has a chief officer, generally called a mayor[1] or president,[2] but in Connecticut styled the warden, in Alabama the intendant, and in the villages of Indiana and Missouri simply chairman of the board of trustees. When called chairmen they are selected by the village boards from their own members;

[1] Pennsylvania, New Jersey, Ohio, Iowa, Kansas, Virginia, West Virginia, Georgia, Texas and others.

[2] New York, Vermont, Michigan, Illinois, Wisconsin, Minnesota.

but elsewhere they are elected by direct popular vote for one or two years. Their legal powers have not been of much importance; but in some states there is now a tendency to invest them with the special authority of mayors in large cities. They preside over the meetings of village councils, and in most states have the full rights of members. But in Michigan and Ohio they have only a casting vote in case of a tie. In Illinois, Minnesota, Kansas and Louisiana they have a limited veto power over the acts of the councils. They are generally considered as the chief executive officers of the villages, with a vague supervision over other village officers, and a more definite responsibility for the enforcement of local police ordinances. Frequently they can appoint policemen; and in Michigan and Ohio they have a somewhat larger power of appointment of minor officials. In some of the Southern states the mayors of incorporated towns and villages act as local police justices.

Other village officers may be briefly noted. Every village has a clerk or recorder and a treasurer or collector. There is always a head police officer, sometimes called constable, sometimes by the more dignified title of marshal, and occasionally sergeant or bailiff. Nearly every village has a street commissioner. In some states there are village assessors and attorneys or solicitors provided for in the general law. These statutory officers are usually elective in the states of the Middle-West, and some of them are elective in other states. But in Illinois and other sections of the country they are more generally appointive.

Sometimes each village has a justice of the peace; in other states the township or district justices act within the villages. Very often villages are established as school-districts, with the usual elected school officers. In larger villages still other officers are provided, often being authorized by special legislation. The New York village law makes provision for boards of health, fire commissioners, water commissioners, lighting commissioners, sewer commissioners, and cemetery commissioners. In every Ohio village where water works, electric light plants or other public utilities are operated by the municipality, there must be established a board of trustees of public affairs.

Mining villages in the Western states exhibit some striking peculiarities. In many of these a single mining corporation may own and control the whole town site, regulating all of the business of the place by license or rental. The mobile population and the control of the companies over their employees also tend to increase the influence of the companies in local affairs.

Such proprietary towns are common in Arizona; and are often well governed. The administration is efficient, sanitary conditions are good, and the vice of frontier communities is effectively controlled. Thus in Morenci, the copper company has eliminated saloons and gambling dens from its property; and such establishments have been moved more than a mile from the center of the town. In other cases, such as Bisbee and Douglas, the mining company has allowed its chief officials to become interested in gas, electric light and banking companies. In many towns the companies, through the influence of their officials, are prime fac-

tors in school administration. Some companies have provided schools, churches, gymnasiums and other institutions for the benefit of their employees.[1]

A recent article on Village Government in New England describes the development in that section of the country, and notes also the creation in these states of numerous special fire, water, lighting, sewer, highway and improvement districts.[2]

[1] K. C. Babcock, President of the University of Arizona.

[2] F. G. Bates, in "American Political Science Review," VI, 367.

PART IV

STATE SUPERVISION

CHAPTER XII

PUBLIC EDUCATION

A DESCRIPTION of local government in the United States at the present time would be incomplete without some notice of the tendencies towards state supervision over the local authorities, and direct state administration in many fields formerly left entirely to local control. These centralizing tendencies are but slightly developed in comparison with the central control in the same branches of administration in European countries. But they form notable departures from the earlier régime of local independence; and are an earnest of developments yet to come in the same direction.

STATE supervision of local administration began in the field of public education. And in no other field has the movement developed so far. As early as 1647 the general court of Massachusetts required each town to establish a school; and general school laws were passed in the other New England colonies during the colonial period. After the Revolution, the states in other parts of the country one by one enacted school legislation. And at the present time every state constitution contains provisions in regard to public education, while these are supplemented by statutes governing the local school systems and other educational institutions. And the courts have uniformly held that

local schools are not simply local institutions, but are parts of a state system and the local school officials are agents of the state for the administration of a state system of education.[1]

New York was the first state to establish a state educational authority. The board of regents, established in 1784, was at first little more than an advisory board for Columbia College; but as re-organized a few years later it became a supervising authority over the secondary and higher educational institutions. The same state also introduced state administrative supervision over elementary schools, by creating, in 1813, the office of superintendent of common schools, who had charge of the distribution of state aid to the local schools, then established on a permanent basis. After eight years, however, the office was abolished and the duties transferred to the secretary of state, whose other functions prevented the development of any effective supervision, until the office of superintendent was revived in 1854.

In 1825 North Carolina established a state educational board, composed of other state officials. In the same year Maryland provided for a state superintendent of schools, as did Vermont two years later; but in both cases the office was at first only temporary.

A more effective and more permanent movement began in the next decade. Pennsylvania established a school-superintendent in 1833, and Michigan in 1836. Missouri provided a state board of education in 1835, and Massachusetts one in 1837; and the secretary of the latter, Horace Mann, became the leader in a great

[1] *Cf.* "N. Y. State Reporter," 72, 155.

educational movement which spread throughout the country. Before 1840, Kentucky, Ohio, and Connecticut had established state school officers. During the succeeding ten years similar action had been taken in the remaining New England states, and also in Iowa, New Jersey, Louisiana and Wisconsin. By 1860 such officers had been provided in all of the Northern states, and also in North Carolina and Alabama. After the Civil War they were rapidly introduced in the Southern states, and in the new territories and states of the West. Arkansas in 1874 and New Mexico in 1890 were the last to create a state educational authority, and every state and organized territory now has such an office.[1]

There is a great deal of variation in the organization and powers of these state educational officers. And these variations do not correspond with the groups of states where local institutions are similar. New York has the most systematic organization and the most effective powers of supervision. As reorganized in 1904, there is a board of eleven regents, one member elected by the legislature each year, and a commissioner of education elected by the regents,—the first appointment, however, being made by the legislature. The regents are unsalaried and meet at occasional intervals to determine questions of general policy. Their executive agent and the effective authority is the commissioner, who receives a salary of $10,000 a year, the largest paid to any state officer except the governor and some judges. His authority over local school officials is larger than any other one educational officer

[1] Dexter, "History of Education in the U. S.," 199, 615.

in the country. He apportions the state school funds; he has general control over the twelve normal schools of the state; he directs the examination and certification of teachers; he regulates the actions of the school commissioners in the assembly districts of the state; and, most important of all, he can hear and decide appeals from any local school officer, and his decisions in such cases are final and cannot be called in question in any court or any other place.

In Massachusetts and Connecticut the principal authority is the state board of education, appointed by the governor in Massachusetts and the general assembly in Connecticut. These boards have the management of the state normal schools, the examination and certification of teachers, the control of teachers' institutes, and the collection and publication of statistics. The secretaries of the boards are their executive agents; but these do not occupy the independent position of the New York commissioner of education, and they do not have his important appellate jurisdiction. But their permanent tenure gives them larger influence in educational matters than is indicated by their statutory powers.

All of the other states have a salaried executive school officer; and most of them have also an unsalaried board of education. But the powers and inter-relations of the two authorities differ a good deal in the various states. The salaried executive officer is usually called the superintendent of public instruction; but in some cases the commissioner of common schools,[1]

[1] Rhode Island.

superintendent of schools,[1] or superintendent of education.[2] This officer is usually elected by popular vote, but in some states is appointed, by the governor[3] or the state legislature.[4] The system of popular election makes the nominations depend on the party conventions, and sometimes political factors determine the choice. The salary ranges from $1,800 to $7,500, and in most cases is too low to secure the most competent officials; and the short term, from two to four years, prevents the development of any consistent policy.

These state superintendents have generally much smaller powers than the commissioner of education in New York. They usually apportion school funds to the local districts, collect and publish school reports, direct to some extent the county supervision and teachers' examinations, and have a larger control over the training of teachers in teachers' institutes and sometimes over the state normal schools. In some states they have more authority. In Pennsylvania and West Virginia the state superintendents, like the commissioner in New York, appoint the trustees of the normal schools. In Vermont and Alabama they appoint the county school-superintendents. In about half of the states they have an appellate jurisdiction over the decisions of local school officers. But this is often subject to a further review in the judicial courts; and in

[1] Maine, West Virginia and Washington.

[2] South Carolina, Alabama and Louisiana.

[3] Maine, New Hampshire, New Jersey, Pennsylvania, Minnesota, Tennessee, Oklahoma, New Mexico and Arizona.

[4] Vermont, Rhode Island and Virginia.

practice is of less importance than in New York.

All the state boards of education, except in New York and New Jersey, have *ex officio* members, usually including some of the elected state officers. In a number of states, the presidents of state educational institutions are members;[1] and in several states some or all of the members must be engaged in educational work. Appointed members are usually named by the governor,[2] but in some states by the legislature.[3] In Michigan the members are elected by popular vote.

The powers and duties of these boards vary widely. In some cases, as in Texas and Idaho they are few and unimportant. But in a number of states the state boards have general supervision over public schools, including the management of the state school fund, the examination and certification of teachers and the selection of uniform text-books.[4] In several states they have the management of normal schools,[5] and in Iowa and Kansas control of all state educational institutions. The New York and Connecticut boards are the most important. The New Jersey board appoints county superintendents.

An important factor in the development of state administrative control over local schools has been the distribution of state funds to the local authorities. By making these grants dependent on the adoption of

[1] Indiana, Kansas, California, Utah and New Mexico.

[2] Massachusetts, Maryland, New Jersey, South Carolina, Tennessee, Louisiana, Montana and Washington.

[3] New York, Connecticut and Rhode Island.

[4] Final Report of the Illinois Educational Commission.

[5] Massachusetts, Connecticut, New Jersey, Maryland, Michigan.

certain educational standards, the local schools have been improved more easily than by more drastic compulsory provisions. These state funds are collected in various ways, generally in large part by direct taxation; and are distributed in most states in proportion to the number of children of school age in each district. This method of apportionment gives the rural districts a larger share than their proportion of direct taxes. Some states use other methods of apportionment, which increases the assistance given to the rural schools;[1] and the tendency is to go further in this direction.

Another means of supervision has been through the examination of teachers. These examinations are conducted by county or other local officers; but in nearly half of the states uniform examination questions are prepared by the state authorities. In New York this state control is most highly developed. After the examinations, all the papers are sent to the central department, and are graded by a state board of examiners. Many states which have not established a uniform examination system provide for state teachers' certificates to those who pass a special examination under the state officers.

Further centralizing influences are established through state control over the training of teachers. Almost every state now maintains one or more normal schools; and the graduates of these form a large and increasing proportion of the local school teachers. And by varying degrees of supervision over teachers'

[1] E. P. Cubberley, *School Funds*, "Columbia University Contributions to Education," No. 2.

institutes, the state authorities wield an influence over the further training of teachers, after their appointment.

Not only do all of the states require the local authorities to provide schools, but most of them within the past fifty years have enacted laws for compulsory attendance at school. The enforcement of these laws, however, usually depends on the local officers; but increasing attention is being given to this matter.

Most states have now more or less central regulation of the course of study in local schools. In about one-third of the states, the state authorities are authorized to prescribe a uniform course of study for the elementary schools; and in another third certain subjects are required to be taught. In some respects this form of control has been carried to an extreme, as in the legislation specifying instruction in physiology and hygiene "with special reference to the effects of alcohol and narcotics on the human system."

Even in the matter of text-books state control has been developed to a considerable degree. Most states have laws providing for uniformity in text-books within certain local districts, and prescribing a period during which the books in use cannot be changed. About one-third of the states—mostly small states—have established compulsory state uniformity in text-books. A number of states have centralized the purchase of text-books by contract; in California and Kansas the state publishes school text-books.

Still another factor in the state supervision of local schools is the influence exercised by the state universities and other higher educational institutions

over the secondary schools. The requirements for admission to the higher institutions set standards for the preparatory schools. While in connection with the system of admission by diploma, many state universities have a regular inspection of schools on their diploma list, which serves to improve the curriculum and work in these schools.

These centralizing tendencies are generally recognized as important forces in the steady improvement of public education throughout the United States. This does not mean that every step taken has been a wise one; and it is doubtless true that mistakes have been made in attempting to regulate too many details by legislation rather than by rules and decisions of expert administrators. Nor does it mean that the states where central control is strongest—as New York and some of the Southern states—have the best school systems. For in many places intelligent local initiative goes far beyond the state requirements; and in general the city school systems are so much better than the state requirements that they seldom feel the existence of any state control. But there is no question that the central control established has made educational conditions, particularly in rural districts, much better than they would be without this state supervision. And in most states a higher degree of central control than now exists would lead to further marked improvements in the local schools.

ANOTHER branch of state supervision in educational matters has been in promoting the establishment of public libraries. Beginning with Massachusetts in

1890, more than thirty states have now public library commissions to encourage the establishment of public libraries in towns and cities. In New York a similar work is undertaken by a special bureau in the state educational department. The powers and resources of these state library authorities are usually very limited. In most cases they send out traveling libraries to small towns; and in some they have small grants which can be given in money or books to local libraries. The work of these commissions has been most effective in Massachusetts and Rhode Island, where practically every town now has a public library.

In most states these library commissions with such limited powers are established as distinct bureaus independent of any other state office,—an extreme example of the lack of organization in state administration. It would seem clear that much more effective work could be done, if this work were officially related to the state library, and the whole educational machinery of the state government combined into one educational department with various bureaus, as is now the case in New York. In this way the various branches of educational work could be more effectively correlated, and the different bureaus brought into active co-operation, so as to secure the largest results.

CHAPTER XIII

CHARITIES AND CORRECTION

WHEN the thirteen colonies first became states there was practically no state administration in the field of charities or correction. The only public charity was the relief of the poor by the towns. The only correctional institutions were county and town jails; while other forms of punishment, which were then more common than imprisonment, were also under the control of the local authorities.

Some centralizing tendencies appeared even before the end of the eighteenth century; and others have developed, especially in the latter half of the nineteenth century. This development has been in two main directions. On the one hand state institutions have been established for special groups of the dependent, defective and criminal classes. On the other hand a limited degree of central administrative supervision has been established in many states over the local officials and even over some private institutions dealing with these classes.

State prisons were the first of the special institutions to be established. In 1785 Massachusetts, where there had been no central prison since 1692, made

Castle Island in Boston harbor a prison for convicts of the worst class, and in 1803 built a state prison at Charlestown. In 1796 New York began the construction of two state prisons in New York City and Albany.[1] Later state prisons were gradually established in the other New England and Middle-Atlantic states. In 1816 Ohio provided a state penitentiary at Columbus; in 1839 Michigan established its first state prison at Jackson; and similar institutions have been erected in the other states of the Middle-West, and in some of those farther westward. In most of the Southern states and some in the Western group there are yet no state prisons; but convicts are sentenced to hard labor and leased by the state to contractors, who work them in convict camps.

In 1846 Massachusetts established the first state reform school for juvenile offenders, removing this class from the local jails and state prisons. Other states soon established similar institutions. By 1872 they had been organized in most of the Northern states east of the Mississippi River. And since that they have been provided in still other states. Usually each state has separate institutions for boys and girls; and moral and industrial education, rather than punishment, is the object of the schools.

New York in 1877 established the first reformatory for adult convicts, committed under an indeterminate sentence and treated under a system of progressive classification and conditional release, based upon their conduct and character while in prison. Many other

[1] These have since become county penitentiaries; but other state prisons have been established.

states have followed this example; while the methods of these institutions have been adopted, more or less, in the older state prisons.[1]

In the field of public charities the earliest state institutions were those for the care of the insane; and these constitute by far the most important class of state charitable institutions at the present time. The first insane hospital to be established was at Utica, in New York, in 1843; and from that time other states gradually provided similar institutions. These state asylums were at first intended only for acute and violent cases, and were for a time considered rather as police than charitable institutions. Later the idea of medical treatment was developed; and with this came a great increase in the number of inmates and a multiplication of state institutions. Chronic cases, however, were mostly left to the care of local authorities until in recent years several states have undertaken to care for all indigent insane persons. In New York and Minnesota local insane hospitals have been abandoned or taken over by the state authorities. The larger states each maintain a number of insane hospitals. New York has twelve; Pennsylvania, Illinois, Ohio and Massachusetts have each six; Indiana and Michigan each have four.

State institutions have also been established for other defective classes, such as the blind, the deaf and dumb and the feeble-minded. Such institutions are provided mainly for children; and educational features are always an important branch of the work. Every state

[1] National Conference of Charities and Correction, 1893, pp. 140, 148.

makes some provision for deaf-mutes, either through a state institution, or by grants to a private establishment. Nearly every state makes provision for the care of the blind. The first state institution for the feeble-minded was established by Massachusetts in 1848. New York followed in 1851, and Pennsylvania in 1852. And half of the states now have special institutions for this class.

A few states have established hospitals for other classes. Pennsylvania, beginning in 1883, has provided seven state hospitals for the treatment of those injured in the coal mines. Massachusetts has a hospital for dipsomaniacs (established in 1893), and one for consumptives; and several other states have within the past year or two established hospitals for consumptives. Louisiana has a state hospital at Shreveport. And a number of the state universities maintain public hospitals in connection with their medical schools.

Even in the simpler forms of poor relief there has been some development of direct state administration. The strict settlement laws in New England early forced the central government of these colonies to furnish aid to paupers not chargeable to any town. For a long time this was done by grants to the towns for the care of these persons. But in 1854 Massachusetts established three state almshouses for the care of the state poor. New York and a few other states also have a small class of state poor; but this work is much less important than in New England.

Two-thirds of the states in all parts of the country maintain homes for soldiers and sailors of the Civil

War.[1] A few states have institutions for the care of orphan children and widows of soldiers and sailors. State homes for dependent children in general have been established in Michigan (in 1871) and Colorado.[2] In many other states, the state boards of charities give special attention to the placing of dependent children in private institutions and private homes.

As first organized the management of these state institutions was largely influenced by the decentralized methods of administration previously in force. Each institution was placed in charge of a separate board of trustees, appointed by the governor and senate. These trustees usually resided near their respective institutions, which were scattered in different sections of each state. And as there was no machinery for general supervision, the administration was in practice distinctly localized, although the institutions were supported entirely from the state treasuries. Moreover the work of public poor relief and other charities and correctional institutions still in the hands of counties, cities and towns remained subject to no state oversight.

Under simple conditions, when the volume of public administration in these lines was small, the results were perhaps as satisfactory as could be expected. But as the demands for public activity increased, it became evident that the decentralized management was frequently inefficient, and at times seriously negligent and extravagant. Investigations disclosed intolerable

[1] Including homes for Confederate soldiers in nine Southern states.

[2] U. S. Census, Special Report on Benevolent Institutions, 1904.

conditions in county jails and poorhouses. Serious abuses appeared in some of the state institutions. While a growing sentiment for the more humane treatment of the weaker elements in society called for improved methods of administration, which the rapidly increasing wealth of the country furnished means to supply.

Reforms and improvements would doubtless have come in any event, through the gradual enlightenment of the local communities and local authorities. But they came more rapidly and have been more completely established as the result of a new centralizing tendency which began after 1860. State boards of charities and correction were established, at first with only limited powers of inspection and advice, but with an increasing tendency towards effective powers of supervision over both state and local institutions; and in some cases powers of direct administration have been granted. More recently, in some states, the management of the state institutions has been more thoroughly centralized, by uniting them under a single authority.

Massachusetts, the leader in establishing many of the state institutions, was the first to organize a state board of charities in 1863. New York and Ohio followed in 1867. By 1880 ten other states had established supervisory boards; five more were organized during the next decade; and since 1890 twelve additional states have provided supervisory or administrative boards. Meanwhile several states have reorganized the boards previously established,—Massachusetts on three different occasions, and Wisconsin twice.

Nearly all the New England, Central and Western states[1] now have such central state boards with powers of supervision or administration over public charities, and in some cases also over correctional institutions. In the Southern states such central boards are not general; but they have been established in North Carolina, Tennessee and Louisiana.

In about two-thirds of these states these central boards are composed of unpaid members, appointed by the governor and senate; and their powers are mainly those of inspection and advice, covering state, local and private institutions. In a few states such supervisory boards have been given some functions of direct administration, notably in Massachusetts, Pennsylvania and Illinois. In about half of these states one supervisory board has jurisdiction over both charitable and correctional institutions; New York and Massachusetts have separate authorities for each of these two classes of institutions; and in the other cases the central board is confined to charities. Georgia has a board of supervision over prisons alone.

Some further attention may be given to these boards in a few of the more important states. In Massachusetts the state board of charities has direct executive functions in the care of the state paupers and dependent children; its supervisory powers extend to a few state institutions, and to county truant schools, town almshouses and private charities. A state board of insanity has supervision over all public and private institutions for the insane, the feeble-minded, the epileptic

[1] The exceptions are Maine, Vermont, New Jersey, North Dakota, Montana, Idaho and New Mexico.

and dipsomaniacs. A state prison commission has supervision over state and local correctional institutions.

In New York the state board of charities has administrative powers in regard to state paupers and dependent children; and has supervisory powers over all state charitable institutions except insane hospitals and over some private institutions receiving state aid, local charitable institutions, and more limited supervision over other private charities. The inspections under the direction of this board are unusually thorough. All county and municipal institutions are visited at least once each year, and the state institutions twice. The management of insane hospitals is centralized under a lunacy commission; and a prison commissioner has supervisory powers over state and local correctional institutions.

The former Ohio board of state charities was considered one of the most successful examples of a purely advisory authority, which brought about many improvements both in state charities and local institutions. In a recent investigation of methods of control of state institutions, it is stated that Indiana secures an economical administration and satisfactory results, under the supervision of the Board of State Charities.[1]

A more centralized administration of state institutions has been established in a number of states. New York in 1877 consolidated the management of the state prisons under one superintendent of prisons. In 1889 a lunacy commission was established in the same

[1] H. C. Wright: *Report of an Investigation . . . of State Institutions* (1911) pp. 245, 343.

state with large powers of control over the state insane hospitals; and in 1902 this commission was given full powers of management over these institutions. In the latter year there was also created the office of fiscal supervisor of state charities, with effective powers of control over the expenditures of the state institutions other than insane hospitals. In addition there remain in New York the supervisory boards already noted.

Rhode Island and a number of more westerly states have gone further, and centralized the management of all the state charitable and correctional institutions under a single board of control. Some of these—South Dakota, Wyoming, Washington and Arizona—are small and sparsely settled states where there are only a few institutions. Of more importance are the boards of control in Kansas, Wisconsin, Iowa, Minnesota, Illinois and Ohio.

The Kansas board was established in 1873, and has the management of all the state charitable institutions, but has no control over correctional or local institutions. Wisconsin had a supervising board of charities from 1871; and in addition after 1881 had a central board of control for state institutions. In 1890 the two boards were consolidated, and one salaried board established with the executive and supervisory powers of both the former boards. This board consists of five members, each receiving $2,000 a year, besides a paid secretary. It has direct management of nine charitable and correctional institutions, appointing the superintendents and controlling the expenditures. It inspects three other private institutions largely sup-

ported by the state; and has supervisory powers over county jails, poorhouses and asylums for the chronic insane, and also private charities.[1]

In Iowa up to 1898 there had been no central board with powers of supervision over either state or local institutions. In that year a single salaried board of control was substituted for the local boards in charge of the fourteen state charitable and correctional institutions. The board consists of three members, not more than two from one political party, each of whom receives $3,000 a year. It appoints the chief executive officer of each state institution, has full control over finances and accounts, and other powers of administration, while it also has some supervision over the finances of the state educational institutions.[2]

Minnesota established a supervisory board of corrections and charities in 1883, covering both state and local institutions. In 1901 this board and the local boards over most of the state charitable institutions were superseded by one central board of control of state institutions, similar to the Iowa board.[3]

Central boards of control in place of unsalaried boards for each institution have also been established in Kentucky, Illinois, Ohio and Maine.

There is general agreement in support of those centralizing tendencies in the field of charity and correction illustrated by the establish-

[1] S. E. Sparling, in "Annals Am. Acad. Soc. and Pol. Science."

[2] H. M Bowman: "The Iowa Board of Control." (Pubs. Mich. Pol. Science Assn. vol. 4.)

[3] Report of F. H. Wines to the Board of Managers of the State Charities Aid Association of New Jersey, 1903.

ment of special state institutions and the exercise of supervision over local authorities. "The leaders in charitable thought and action see that local interest in charity is often weak and ignorant of the best standards, and that on the sovereign state rests the solemn duty of insuring that the forms and powers of administration are the best available ones."[1] And there is no question but that the central supervision has been largely responsible for great improvements in public charity and the management of penal and reformatory institutions.

On the other hand there has been much discussion and wide differences of opinion as to the relative merits of the completely centralized boards of control and the unpaid boards of supervision. It seems clear that centralized management promotes more economical and efficient business management. But many fear that salaried officials may be inclined to secure a good financial result at the expense of the humanitarian aspects of their functions; and that such posts are liable to become involved in the degrading influences of spoils politics. Under the boards of control supervision over the local institutions is usually neglected, while the unpaid boards secure the services of citizens of the highest intelligence on account of their philanthropic interest in the work.

The experience of Kansas under one system and Illinois under the other indicates that the dangers of spoils politics may be incurred under either method. But political conditions in certain states may make dangers less under the system of unpaid boards. At

[1] "Conference on Charities and Correction," 1902, p. 127.

the same time the experience of Iowa with its board of control and of New York in the unified management of its prisons demonstrates the advantages of centralized administration.

A compromise suggestion may be offered as a possible solution. In the larger states, the direct administration of groups of related institutions—such as the insane hospitals, other charitable institutions, and correctional institutions—might be centralized under a single salaried official, resembling the New York superintendent of prisons. This should secure more efficient administration at less expense than with the local boards of unpaid trustees for each institution. A single unpaid board could be given powers of supervision over all charitable and correctional institutions, both state and local; while, as a step towards the better organization of state administration, this board of supervision could be made responsible to one of the chief executive officers of the state. In the smaller states one administrative authority for all of the state institutions would probably be sufficient; and this might also exercise supervision over the local institutions.

CHAPTER XIV

PUBLIC HEALTH [1]

In our colonial history, and also in the early part of our national existence, public sanitation was almost exclusively a function of local government. As occasion arose from the presence of epidemics, the towns through their regular officers, or more often through special committees, would take such preventive measures as in each case seemed to them best. It was not until the close of the eighteenth century that permanent boards of health were established, and for three-quarters of a century such boards were confined almost exclusively to the larger cities.

If we except Louisiana, where a state board of health was established in 1855, almost exclusively for the purpose of maintaining quarantine at New Orleans, the first state to establish a state board of health was Massachusetts in 1869. This marks the beginning of the states' activity in sanitary affairs. The idea of a central control in such matters has grown so rapidly that during the 35 years that have since elapsed, central boards of health have been established in all the states and territories except

[1] A paper written by Charles V. Chapin, Supt. of Health, Providence, R. I., and read before the American Political Science Association, Dec., 1904.

Idaho, and also in Hawaii, Porto Rico and the Philippine Islands. It was undoubtedly at first intended, as shown by the act establishing the Massachusetts board, that these central boards should be purely advisory, and they were required merely to investigate the causes of disease and report thereon. But it was inevitable from the problems confronting sanitary officials, and from the trend of public opinion in regard to the functions of the state, that the work of the state board of health should undergo a progressive and rather rapid enlargement. Perhaps the best way to consider the subject is to review as rapidly as possible the various sanitary duties which the legislatures have placed upon these state officials.

Research work. Oddly enough the prime object for which most state boards of health were established has been generally neglected by those organizations. The Massachusetts board was required to make "inquiries in respect . . . to the causes of disease, especially epidemics, and the sources of mortality and the effects of localities, employment, conditions and circumstances on the public health." Substantially the same phraseology is found in the acts establishing boards in many other states. It was evidently intended that the principal work of the central board should be of a scientific and educational nature, and should consist in the study of the causes of disease and the publication of results. But the progress of epidemiology and sanitary science is under little obligation to our state boards. It is true there are some exceptions, notably the work of the state board of health of Massachusetts upon water supplies and

sewage, a work which has a world-wide reputation; but in the main the state boards have become more and more interested in purely administrative matters and have neglected the research work for which they were primarily established.

Control of local sanitary organization. Home rule has for some time been the shibboleth of many political reformers, but the state has meanwhile been exercising a progressive control over local sanitary affairs. This has shown itself in various ways, the most notable being in the appointment or removal of local officials. In eleven states the central board controls the appointment of one or more of the members of the local boards or of the local health officers, and in three others it has the power of removal. Besides these, in Florida, where there are few local boards, agents appointed by the state health officer perform the necessary executive duties. In Montana the state board is to organize local boards in every city and village, and in Arizona and South Carolina it is to direct and supervise the local boards. In at least a dozen states, when the local authority fails to appoint a board of health, or such board fails to act, the state board may assume full executive control, and in many states it is provided that all expenses incurred shall be a charge upon the local government. Sometimes, as in New York and Pennsylvania, state-appointed inspectors co-operate with the local officials.

Besides direct control over the local executive, the influence of the state officials makes itself felt in other ways. Thus many states make the establishment of boards of health obligatory upon counties, townships,

cities or other local units, but of course such laws, if there was no authority to enforce them, would in many, if not in most of the smaller communities, be disregarded. Hence it is that the very existence of a local sanitary organization depends in a vast number of instances upon the energy and administrative ability of state officials. A study of public sanitation in our smaller communities will convince any one that it is almost entirely dependent upon the activity of state officials in keeping the local authorities up to their duty, and instructing them in proper procedures.

Under the lead of the state board, or of some of the more efficient local officers, there have been organized in many states conferences of sanitary officials. These have existed for many years and from them have developed the more formal "schools for health officers" which have recently been established in New Jersey, New Hampshire, Indiana, New York and Vermont. In some of these, attendance by one delegate from each local board is made compulsory by statute, and his expenses become a charge upon his township or city. It is evident that by means of these conferences or schools, the state board can exert a powerful influence upon the local boards and secure much greater uniformity of practice than would otherwise exist. In New Jersey still another method for securing uniformity and making the influence of the state board felt, has been put on trial. Since January 1, 1905, no health officer or sanitary inspector can be appointed, who has not passed an examination prescribed by the state board of health.

Thirty-five years ago there were no state boards of

health and only a few local boards. Now state and local boards are provided for in almost every state and territory, and the latter are in many cases under the direct control of the former. So far as immediate sanitary results are concerned there can be no doubt that the movement has been decidedly beneficial. Rural and village sanitation is almost entirely a product of state administrative work, and genuine sanitary progress is hardly possible without central direction. In regard to the specific question of the advisability of the state control of local appointments, there is some difference of opinion. So far as the writer has been able to learn, such control, so far as at present exercised, has been for the good. The state seems to be more successful than are the local governments in selecting properly qualified health officers. One objection to state appointments is the danger of too great uniformity. But in the smaller communities uniformity should usually be promoted. In the larger cities with their varied problems, initiative and independence on the part of the health officer are often desirable, and indeed necessary, for progress. Therefore the exemption of the larger municipalities of Connecticut, from the state appointment of health officers, is perhaps a wise one. The objection that state appointments may be made for political reasons, seems to be of little moment, as local appointments are perhaps quite as likely to become corrupt. Judging from the success of state appointments in Connecticut and Vermont it would appear that the plan is worthy of more extended trial.

Control of communicable disease. The earliest

form of state sanitary control was that of quarantine. The advantage of uniformity in quarantine regulations is very great, and the evils due to the struggle of cities and towns among themselves in such matters are unbearable. Hence the states have very generally come to reserve to themselves quarantine powers. Until very recently all but seven of the 22 seaboard states either administered quarantine through state officers, or reserved the right to interfere in local quarantine. Since 1893 a further step in centralization has been taken, for seven states have transferred the control of maritime quarantine to the national government. In 1905 the State of Louisiana asked the national government to take over the management of the yellow fever outbreak in that state. At present a large number of the inland states also have empowered their state health officials to prevent the introduction of contagious disease, and in some states the governor may proclaim quarantine. Quite a number of states have set aside epidemic funds of from $3,000 to $50,000 to carry on the proposed preventive measures. The quarantining of one city or town against another in the same state has often been productive of great and unnecessary hardship, particularly in the South. Consequently many of the Southern states have of late taken the right of quarantine from the local governments, and conferred it upon state officials.

In the general management of communicable diseases, many of the states authorize their officials to interfere in local affairs, but usually only when the local authority fails to act, or there are local disputes. The state boards of health are very generally author-

ized to make regulations concerning contagious diseases—whether constitutionally or not is perhaps open to question—and by these rules often very directly control local management. Of late years also the states have begun to build and maintain hospitals, for several states have already constructed sanatoria for the cure of consumptives, and several more are considering the matter. A great many of the states have for some time maintained bacteriological laboratories to aid physicians in the diagnosis of various diseases, and some states have begun the manufacture and free distribution of vaccine virus and antitoxins.

Food control. This is usually considered within the domain of public health work, though it has closer relations with morals and economics than with health. So far as the prevention of general food adulteration is concerned little has been or can be accomplished by local effort. Much has, however, been done by state officials. The first efficient state action was taken in New York in 1881, and the state board of health was entrusted with the enforcement of the law. At present most of the states have pure food laws, and in some their execution is entrusted to the state board of health, but usually to food or dairy commissions, or to agricultural or experiment station officials. Although much has been accomplished by state inspection, it is generally admitted that national control is necessary to secure the best results. In one line of food control, namely, the inspection of meats, the national government has already taken an active part, and is doing more than is accomplished by the states.

The protection of milk supplies has had a different

history. This inspection has been largely local, and was undertaken by many cities before there was any state inspection of food at all. In most cities this method is still pursued, though there are manifest difficulties in a city controlling producers and dealers living in many different municipalities, and perhaps in different states. It is on account of these difficulties that a few states have placed the whole control of the milk supply in the hands of the state dairy commissioners. In Iowa, at least, where this plan has been followed for some years, it is said to have proved very successful.

Protection of the purity of public waters. If it is difficult for a community to protect its milk supply because it is drawn from such a wide territory, it is even more difficult to protect its water supply, which is drawn from an equally large territory, and is frequently menaced by very powerful interests. Hence the state has been called upon for aid. In quite a number of states, among which are Massachusetts, Minnesota, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island and Vermont, the state board of health has been given very great power, and is authorized to prevent by the most stringent measures, the pollution of potable waters. This power has been widely exercised to the great advantage of the users of these waters. An important part of river pollution is the sewage from municipalities, and any efficient control of the pollution must consist in control of sewage disposal, which necessitates more supervision of local administration by the state. Thus in some of the above-named states no sewerage works can

be undertaken without the approval of the state board of health as to the method of disposal.

The gross pollution of rivers not used for domestic supply, often causes great nuisance, which can best be abated or prevented by the state. Such control has sometimes been exercised by the state board of health and sometimes by especially constituted state commissions.

Control of professions and trades. The practice has gradually grown up of requiring a license before pharmacists, physicians, undertakers, barbers, plumbers and others whose business is supposed to affect the public health, are permitted to follow their vocations. At first such licenses were issued by local governments, and only in the larger cities, but now the general practice is to establish state licensing boards. Special boards to control the above trades and many others, have been established in most of our states, though in many instances the state board of health is made the licensing agent. The writer believes that this practice has already led to grave abuses. There seems to be excellent reason for licenses in some kinds of work as that of engineers, physicians and pharmacists. On the other hand, there does not seem to be sufficient reason for the state licensing of plumbers, barbers or undertakers. Unless great care and discrimination is exercised, the extension of licensing to all sorts of trades and business will remove the whole question of state control from the domain of public health and safety, to the domain of labor problems, and will perhaps cause a reaction against licensing in any trades. Sanitary officials

should certainly be on their guard against being drawn into any licensing scheme, unless such is plainly required for public health reasons.

Control of vital statistics. While the collection of vital statistics has only an indirect relation to the preservation of public health, yet it is a fundamental record of sanitary practice and progress. But the collection of vital statistics can only be accomplished under central control. It is true that the cities were pioneers in this field, and some of them have done excellent work, but it is just as necessary that the births, marriages and deaths of the whole state or nation should be uniformly recorded, as it is that the census should be taken. As yet only about a dozen states have provided for an adequate system of registration, but it is hoped that under the guidance of the national census bureau the others will rapidly be induced to take up the work.

It is thus seen that during the last quarter of a century the states have gradually undertaken a vast amount of sanitary work which was formerly not done at all, or done imperfectly by the local governments. From a sanitary standpoint most of the work thus done has been extremely beneficial. The control of local appointments thus far seems to have been satisfactory, and it may fairly be said that the more the local officials, at least in small communities, are subject to state supervision, the better are their duties performed. The systemizing of quarantine, the preparation for epidemics, the establishment of diagnostic laboratories, the control of food, milk, and water

supplies, and sewage disposal, and the registration of vital statistics, would all have largely been left undone if it had not been for the part taken by the state. Some matters, such as the construction of state hospitals for consumptives, and the production of antitoxins, have not yet passed the experimental stage, though both seem promising fields for state work. About the only specific criticism which the writer would make of state sanitary administration, is concerning trade licenses. On the whole, then, the direct results of centralization have been good.

The arguments which can be most effectively advanced against this centralizing tendency are academic rather than practical. Coming from a section[1] where the towns came first, and the state afterwards, and where the local units have always been intensely jealous of any invasion of their sphere of activity, the writer was formerly much impressed by arguments for home rule and which would put as many administrative duties as possible on the towns, and as few as possible on the state. But even if the state should take a still larger part in municipal affairs, there would, with the rapid increase which is taking place in municipal functions, be plenty of administrative work left to be done, so that there would be no danger of the atrophy of the civic virtues from lack of opportunity. Moreover, there is more to be said in favor of centralization in sanitary affairs than in some others. Public health work is directly dependent upon the police power, and this power is vested in the state, and in order that it may be exercised uniformly,

[1] Rhode Island.

and that it may not be interfered with by local interests, there is good reason why all forms of police administration should be retained by the state. At all events the writer has of late years been so impressed with the practical benefits of state administration in sanitary affairs, and so little impressed with theoretical arguments against it, that he would not oppose its extension wherever it promised to give good results.

Since 1905 the powers, appropriations and activities of state boards of health have been increased in a number of states. More attention has been given to the control of water supplies and the prevention of pollution; and in several states (New York, New Jersey, Pennsylvania and Illinois) special bureaus have been created for this purpose. Since the passage of the United States Foods and Drugs Act in 1906, a number of states have revised their laws on this subject, and strengthened the state system of food inspection. Examining and licensing boards have also been multiplied.

Improvement in the registration of mortality statistics is shown by the increase in the registration area (where the local records are considered satisfactory) from states and cities with 40 per cent. of the total population in 1900 to nearly 60 per cent. in 1910.

CHAPTER XV

LOCAL FINANCE[1]

STATE administrative control has also been established to a noticeable extent in the field of local finance. This has been mainly in the assessment of property for taxation, and in the accounting for receipts and expenditures.

TAXATION

LOCAL authorities in this country have only such power of taxation as is conferred by the legislatures. And as yet no local authority in this country has been given power to determine for itself what kind of taxes it should levy, but may levy only those taxes specifically authorized by statutes. There is, therefore, no room for administrative supervision in this direction, since the local authorities have no sphere of independent action.

As to the rate of taxation local discretion is also closely limited. For some taxes, notably the tax or license for the sale of liquors, the state law often specifies the rate as well as the nature of the tax. For the general property tax more leeway is given; but on the one hand the local authorities are compelled by

[1] Reprinted with revisions from a paper read before the American Political Science Association, December, 1904.

statute to levy taxes to meet certain expenditures, and on the other hand are usually restricted as to the aggregate tax rate; and between this Scylla and Charybdis a narrow course must often be steered. Under these circumstances again there is little opportunity for administrative supervision; and none has developed.

When, however, we turn to the assessment of property for the general property tax, we find a wide field for local discretion, and in recent years significant steps in the direction of administrative supervision. Under the methods prevailing in the early part of the nineteenth century, local assessors had complete freedom in the valuation of property, not only for local taxes but also for state taxes. It was in reference to the state taxes that the first step was taken in the direction of administrative supervision.

Beginning apparently in Ohio in 1825, state boards of equalization have been established in most states, with power to change the aggregate valuation of counties so as to equalize the apportionment of the state tax. These state boards of equalization differ widely in their organization; but none of them have the necessary means to perform their work satisfactorily. In some states they have been composed only of *ex officio* members, elected to other positions, and, therefore, unable to give much attention to their duties in regard to assessments. In several states the boards are composed of a large number of members elected in local districts, who give only a small part of their time to this service,— the extreme case being found in Illinois, where it is composed of twenty-six members, elected

by districts. In a few states, as New York and California, there is a small number of salaried members, giving most of their time to this work and that of direct assessment; but even in these cases it is impossible for the board to make a complete investigation of the local assessments that would be necessary for an accurate equalization.

Tax commissioners and economists have discussed at length the failures and defects of these boards of equalization. Moreover they do not come strictly within the subject of this work; and have been noted simply as the first stage of supervision which paved the way for later centralizing developments. We may, therefore, proceed to consider the latter, considering them in their logical rather than in their chronological order.

It may be noted here that these centralizing tendencies in relation to local taxation have been but one aspect of more general changes in the tax laws. And it may be said that it was only after the states had introduced some control over the administration of assessments for state revenue, that the importance and complexity of the work of local assessors and the need for effective supervision over their local duties was understood.

Effective state supervision over local assessing officers was first established in Indiana. In 1891 there was established in that state a state board of tax commissioners, consisting of two salaried members in addition to the *ex officio* members of the former board of equalization, with power to prescribe forms of books and blanks used in the assessment and collection of

taxes; to construe the tax and revenue laws of the state and give instructions to local officers when requested; to see that all assessments of property were made according to law; and to visit each county in the state at least once a year to hear complaints, collect information and secure compliance with the law. Besides carrying out these mandatory powers, the state tax commissioners have since 1894 annually called the county assessors of the state to an annual conference.[1]

In 1896 a board of tax commissioners was established in New York with somewhat less authority, including the power to investigate and examine methods of assessment within the state; to furnish local assessors with information to aid them, and to ascertain whether the local assessors faithfully discharged their duties.

A Michigan statute of 1899 provided for a board of tax commissioners with power: to exercise general supervision over the local assessing officers; to confer and advise with them as to their duties; to visit each county in the state once a year, to hear complaints and secure the full assessment of all property in the state. They were also empowered to summon and examine witnesses under oath, to inspect the local assessment rolls, to change the assessment and to add to the rolls property not assessed.

And a Wisconsin statute of the same year provided for a tax commissioner with two assistant commissioners to have general supervision over the system of taxation throughout the state, with specific authority to require reports from local officers. Two years later

[1] Rawles, "Centralizing Tendencies in the Administration of Indiana," 273, 276.

added powers were conferred: to supervise local assessors and boards of review; to advise and direct local assessing officers, and to initiate proceedings to enforce the laws against negligent or delinquent officials; and to visit the counties and investigate the methods of local assessors.

State Tax Commissions with similar powers have also been established since 1905 in New Jersey, Alabama, Minnesota, Kansas, Washington and Oregon. In Ohio, a state tax commission was established in 1910; and in 1913 the assessment of property for taxation was more thoroughly centralized in the hands of county assessors appointed by the Governor. Twenty-seven states had established state tax commissions in 1913, including all the more important states except Pennsylvania and Illinois.

These administrative measures have not solved all of the difficulties connected with the assessment of property for taxation; but in most of these states they have brought about a decided improvement both in methods and results. In Indiana the assessed valuation of real estate was increased by 44 per cent. in one year after the new system went into effect.[1] In Michigan the assessed valuation of property increased over 60 per cent. from 1899 to 1903.[2] And in Wisconsin local assessments more than doubled in three years.[3] And it may be further noted that in each of

[1] $553,937,744 in 1890; $898,600,323 in 1891. Rawles, *op. cit.* 276.

[2] $968,189,097 in 1899; $1,537,355,738 in 1903.

[3] $648,035,848 in 1899; $1,369,811,147 in 1902. Report Wisconsin Tax Com., 1903, p. 10.

these three states the aggregate assessed valuation of property is from thirty to fifty per cent. larger than in the neighboring State of Illinois, whose population and wealth is more than double that of the other states, but where there is no efficient system of supervision.

Years before these recent measures for the supervision of local assessors there began the policy in many states of a more complete centralization in the assessment of special classes of property, especially railroads and more recently other transportation companies and also telegraph and telephone companies. In fact only in Rhode Island, New Mexico and Texas are railroads still assessed only by local authorities. In some cases this centralization of assessment has been part of the movement to secure such taxes for the state treasury; but in a number of states—notably in Indiana and Illinois since 1872—the state assessment of such property has been used for purposes of local taxation.

Usually this centralized state assessment has been established only for the property of corporations extending over a large number of local taxing districts; but in New York, under a law of 1899, the state tax commissioners assess for local taxation the value of special franchises in the public streets, which are for the most part held by local companies; in 1901 the Indiana tax commission was given charge of the assessment of street and electric railways; and the Illinois state board of equalization values the capital stock of local franchise corporations. The New York franchise tax law has been of great value in drawing attention to a large amount of wealth that had previously escaped taxation; but it may be questioned whether the separa-

tion of the franchise from other property elements or the complete centralization in the assessment of distinctly local property is necessary or altogether advisable. In other states the value of such special franchises is now often included (without additional legislation) in the general assessment of the owners in the ordinary course of valuing property for taxation.

AUDITING AND ACCOUNTING

STATE supervision over local accounts is as yet less developed than state supervision over local assessments. This is perhaps not surprising in view of the fact that in most states the accounts of state finances are very far from satisfactory. It is true there have been state auditors and comptrollers since the establishment of state governments—and in some cases similar officers in colonial times. But the functions of such officers have often been limited; while primitive methods of bookkeeping established in the days of insignificant financial transactions have remained in use after expenditures have come to be counted in millions of dollars, and in the face of the development of systematic accounting in private and corporate business. Indeed the imperfect and inadequate accounting methods of the larger cities have often been somewhat better than those of the states within which the cities are located.

But within recent years there have been significant measures taken both to establish satisfactory accounting systems for the state finances, and also to establish state supervision over the accounts of local officers. It

is only the latter part of this development that can be here considered.

Minnesota seems to have been the first state to have undertaken any effective control over local accounts. In 1878 the office of state examiner was established, with power to inspect the accounts of county officers. A year later Massachusetts also inaugurated a system of supervision over county expenditures. Appropriations and tax levies for each county except Suffolk have long been voted by the legislature, although this is largely a matter of form and the estimates and proposals of the county commissioners are regularly adopted. In 1879, however, the commissioners of savings banks were authorized and required to inspect the books and accounts of most of the county officers, with power to require uniformity in methods of keeping accounts and financial reports in accordance with prescribed forms. In 1887 the state supervision was made more effective by placing it in the hands of a newly established office of controller of county accounts, whose duties included the accounts of some officers previously exempted.

Valuable results have come from this supervision of county accounts. Irresponsible methods disclosed in the 70's have been corrected; and important reforms have been introduced. Governor Bates has testified to the good that has been devised from the uniform system of accounting established in the counties;[1] and endorsed a similar supervision over municipal accounts.

[1] R. H. Whitten, "Administration in Massachusetts," 149-151 (Columbia University Studies in Political Science, vol. 8). Annual Message of Governor Bates, January 8, 1903.

One of the youngest states in the far West was the next to follow up these partial measures, by establishing a comprehensive system of state supervision over local accounts. The constitution of Wyoming, adopted in 1890, provided for the office of state examiner to examine the accounts of certain state officers, clerks of courts, county treasurers and such other duties as the legislature might prescribe. This was followed by the enactment of statutes, which before long placed under the supervision of this officer the accounts of every public officer in the state handling public funds; authorized him to establish a uniform system of bookkeeping by the state and local officials, and to examine their accounts; and made provisions for further action in cases of defalcation discovered through his examinations. The same officer has also supervision over banks and other private financial institutions.

"The examination of public accounts is technical and embraces the checking of every item whether great or small, the subsequent footing of the cash accounts, and finally their summation. Every account paid is closely examined, the nature of the expense ascertained, the legality of the bill inquired into, and the amount is finally checked to the stub of the warrant issued, and also entered in the proper column of the expense register. Whether or not the officer conducted the affairs of his office in conformity with the statute is also made a subject of inquiry.

"The examination made, a written report setting forth the results accompanied with criticisms, requirements and recommendations is prepared and filed with the governor and a copy thereof filed with the officer or officers whose accounts were the subject of investigation. Should it appear that there had been violations of law in the conduct of any office, the examiner must report thereon, and he

has authority to enforce his rulings. In case of defalcation or embezzlement, his findings are absolute, until reversed by the district or other court having jurisdiction.

"In case of the default of any treasurer and the inability of such officer to replace funds illegally used within the time designated by the examiner, the examiner shall at once assume charge and in all respects he becomes the legally constituted treasurer of the state, county, municipality, or school-district, as the case may be.

"Another important feature is the meeting of the examiner with the constituted boards authorized to make the annual tax levy. At such time the expense budget for the ensuing year is carefully canvassed and reductions made wherever possible. This paves the way for a reduced levy of taxes, and frequently the total levy may be reduced from one-fourth to one mill or more as compared with the previous year."[1]

Striking evidence may be adduced of the benefits resulting from this system of supervision in Wyoming. In 1892 the expenditures of the twelve counties in the state were $412,000, while only two counties were on an approximate cash basis, the others generally allowing their expenses to exceed their revenues and issuing illegal warrants to pay bills. In 1899, with thirteen counties, the total expenditures had been reduced to $295,000; and every county was on a cash basis with a surplus at the end of the year.[2] Several governors of the state have specially commended the work of the state examiner in their messages to the state legislature.[3]

[1] H. B. Henderson, in Nat. Mun. League, Conference for Good City Govt., 1900, pp. 251-252.

[2] H. B. Henderson, *op. cit.*

[3] Governor Wm. A. Richards in 1899, and D. F. Richards in 1903.

Other states near Wyoming soon followed its example to some extent. Montana and North Dakota have each created the office of state examiner, with power to examine books and prescribe accounting methods in county offices, as well as state institutions. South Dakota, Nebraska and Kansas have provided a less effective supervision,—in the two first named through the state auditor; in the last named through a state accountant.[1] More recently (in 1903) Nevada has established a more intensive system of control. A state board of revenue must approve the loans of local governments, prescribe the forms for financial reports to the state comptroller, and employ an examiner to inspect the accounts and records.[2] And in the same year the extreme Southern state of Florida created the office of state auditor, whose chief duty is to prescribe the form of county accounts and see by inspection that they are properly kept.[3]

In the state of New York something has been accomplished in the same direction. Beginning in 1892 the state comptroller has been given power to audit certain accounts of county treasurers, including the court and trust funds and the accounts for the inheritance tax; while the state excise commissioner has similar authority over the accounts for the liquor tax. The introduction of the comptroller's audit disclosed inextricable confusion in the various accounts of county treasurers, and that within a few years before there had been defalcations or shortages in thirty-three of

[1] Nebraska, Laws of 1893, Ch. 15; Kansas Laws of 1895, Ch. 247.

[2] Laws of 1903, Chs. 78, 123.

[3] Laws of 1903, Chs. 14, 71.

the sixty counties in the state. A uniform system of bookkeeping has now been introduced for these special funds which with the regular audit discovers and often prevents deficits and defalcations.[1]

Until a few years ago this movement towards state supervision of local accounts was confined to the less important states and to such partial measures in the larger states as have been noted. But in 1902, the State of Ohio enacted the most important law on the subject yet adopted. This provided for a uniform system of accounting, auditing and reporting for every public office in that state, under the supervision of a newly established bureau of inspection in the office of the auditor of state. The act requires separate accounts for every appropriation or fund, and for every department, institution, public improvement, or public service industry; provides for full financial reports to the auditor of state; and authorizes annual examinations of the finances of all public offices, with power to the examiners to subpœna witnesses and examine them under oath.

Complete systems of accounting have been installed throughout the state in the offices of county auditors and treasurers, city auditors and treasurers, village clerks and treasurers, school-district clerks and treasurers, and township clerks and treasurers; comparative statistics of local finances covering the whole State of Ohio have been published; and audits by the state bureau have disclosed important illegal pay-

[1] Fairlie, "Centralization of Administration in New York State," pp. 185-186 (Columbia Univ. Studies in Political Science, vol. 9).

ments and defalcations, which have more than sustained the need for this work.

Since 1905, New York, Iowa and Indiana have provided for uniform financial reports from cities and other local districts, and for the audit of such accounts by state officers. In 1906, Massachusetts provided for uniform financial reports from cities and towns to the state bureau of statistics. In Wisconsin the state tax commission is authorized to install uniform accounting systems in counties, cities and towns, on request. Some state supervision over local accounts and financial reports has been established in West Virginia, Alabama, Mississippi, Louisiana, Kansas, Colorado, California; and a few other States have made feeble beginnings in this direction.

In 1912 county accounts were subject to more or less state supervision in more than half of the states; and town and city accounts in about one fourth of the states.[1]

The movement towards uniform accounting has been aided by the work of the Census Bureau in its annual reports on municipal financial statistics, and its decennial reports on Wealth, Debt and Taxation.

In some respects this movement may seem in conflict with general principles which are still declared to be fundamental in our American system of government. It must be admitted at least that it is not consistent with the most extreme demands for local autonomy; and that state control is not so clearly justified in this

[1] Proceedings Buffalo Conference for Good City Government (1910), p. 230.

"National Municipal Review," Vol. II, 522-525.

Annals Amer. Acad. of Social and Political Science, Vol. 47, p. 210.

field by a general state interest, as is the case in state supervision of health administration, schools, or the local management of state finances.

If, however, we apply the principles of such political thinkers as John Stuart Mill and Henry Sidgwick, it will be seen that this movement is in entire accord with a rational political philosophy. These writers recognize fully the advantages of locally elected authorities for matters of local interest, as well as for the sake of the political education of the people. But they also point out the advantages of central supervision, not only where the interests of the larger governmental units are directly concerned, but also because of the more complete information and the larger degree of technical efficiency which the higher government can command.[1]

Both of these latter factors support state supervision in the two branches of local finance that have been noted. The assessment of property with any approach to equality of treatment calls for a high degree of expert skill, and the comparison of conditions over a wide area. A uniform system of accounting is essential for accurate information on public expenditures, and for the comparison of outlay with returns in the many branches of local administration. And state control over the accounts of local public authorities is certainly as important as the control that has been established in most states over the accounts of private corporations, such as railroads, banks and insurance companies.

[1] Mill, "Representative Government," Ch. 15. Sidgwick, "Elements of Politics," Ch. 25.

Attention may also be called to another branch of local finance where a system of state administrative supervision is urgently needed,—over the loans and debts of local authorities. The need for some control here is already recognized in the constitutional and statutory debt limits established. But these arbitrary limits do not and cannot adjust themselves to the varying needs and conditions of different local communities. There is a great difference between a debt incurred for water works, which will be met by the revenue from the undertaking, and a debt for parks which must be paid from general taxation, and a debt for street paving that may be worn out in ten years. To decide whether additional debt may be safely incurred can be determined wisely only after a careful examination of a complex financial situation, involving a study, not merely of the aggregate amount of existing debt, but also of the provisions for meeting this debt and of the resources of the local government concerned. Such an examination requires expert technical knowledge, which is entirely absent from the present crude legislative limitations, and can only be supplied by a permanent administrative authority.[1]

[1] Massachusetts has established a system of administrative supervision over town loans by requiring the certification of notes by the state bureau of statistics.

CHAPTER XVI

MISCELLANEOUS

ANOTHER field of public activity, formerly left to local authorities, in which state supervision has very recently been developed, is the construction and maintenance of roads. In the early part of the nineteenth century the national government built the well-known Cumberland road; and there were also a few state and territorial roads built in the period of internal improvements during the second quarter of the century. But this tentative movement was soon abandoned, and the building and care of roads was left to counties, towns and road districts. For the most part, too, road work was done by a labor tax; little money was raised, and very little expert engineering construction was attempted. The rapid development of railroad building doubtless retarded the improvement of highways to some extent, by offering a more efficient means of transportation for long distances, and by absorbing the energies of the community devoted to the problem of communication. At any rate the country roads of America remained for the most part crude and in bad weather almost impassable.

New Jersey inaugurated the new movement for state aid and state supervision in 1891. Massachusetts followed in 1894, Connecticut and California in 1895,

and New York three years later. Since then other states have taken up the work; and some steps have now been taken in all of the New England states, in most of the Central group and in few of the Western states.

Under the present law in New Jersey the state pays one-third of the expense of building improved roads, ten per cent. is paid by the townships or abutting property owners, and the balance by the county in which the road is located. The work is done under the supervision of a commissioner of public roads appointed by the governor; and the practice has been to reappoint the same official. Up to July, 1904, 1,100 miles of state roads had been built, at a total cost of $4,930,000, of which $1,515,000 came from the state. At first the improved roads were detached strips scattered throughout the states, but intervening links are being improved, and already there are several continuous highways across the state.

In Massachusetts the state roads are built under the direction of a state highway commission, consisting of three members appointed by the governor and council. The state pays the entire cost of each road in the first instance, but assesses one-fourth on the counties. Up to 1903, nearly $5,000,000 had been appropriated by the state; and the annual appropriation is now $450,000 a year. Five hundred miles of state roads have been built; and in addition the cities and towns have constructed six hundred miles of improved roads, under specifications similar to those in use by the state commission.

Connecticut since 1895 has appropriated more than

$1,500,000 for state roads; and the counties have appropriated about $2,000,000 for their share of the work. The state pays two-thirds of the cost, and in the smaller towns three-fourths. The work is done under the direction of a state highway commissioner, and nearly five hundred miles of improved roads have been built.

Under the New York laws of 1898 the state pays one-half of the cost of building improved roads, the counties 35 per cent., and the towns or abutting property owners 15 per cent. The work is done under the supervision of the state engineer and surveyor, one of the elective state officers. Up to 1904, 700 miles of new roads had been built, and nearly $12,000,000 had been appropriated by the state, counties and cities. An amendment to the state constitution, adopted in 1905, authorizes the legislature to issue bonds to the amount of $5,000,000 a year for ten years, for the improvement of the public roads.

Pennsylvania in 1903 provided for an extensive scheme of state roads, to be built under the direction of a state highway commissioner. $6,500,000 was appropriated for a period of six years. Two-thirds of the cost is to be borne by the state, one-sixth by the counties and one-sixth by the townships. A significant feature of the Pennsylvania law is the use of state funds for road maintenance, up to one-half of the total expenditure for this purpose.

In the decade since 1903 the movement for state aid and supervision of highways has rapidly extended. By 1912 nine states had inaugurated extensive systems of state roads,— New York, Pennsylvania, Massachusetts,

Connecticut, New Hampshire, Rhode Island, California and Washington. Thirteen other states had established systems of state aid,— New Jersey, Ohio, Michigan, Wisconsin, Minnesota, Missouri, Maine, Vermont, Virginia, Alabama, Louisiana, Colorado and Utah; and Illinois began a similar policy in 1913.[1]

A state highway office is now provided in forty states, with at least power to investigate road conditions and to advise the local authorities.[2]

State supervision of drainage and irrigation works has also been established in Louisiana, Minnesota and a number of states in the far west.

A LONG line of judicial decisions has clearly established the rule of law in this country that locally appointed police officers are not, strictly speaking, local officers, but are agents of the state governments for the maintenance of the public peace and order.[3] In

[1] The extent of state aid is summarized below:

State	Total State App. to 1913	State	Total State App. to 1913
New York	$36,621,000	Washington	$ 2,812,000
Pennsylvania	13,576,000	Vermont	2,013,000
Massachusetts	9,500,000	New Hampshire	1,718,000
Maryland	7,000,000	Maine	1,420.000
Connecticut	6,589,000	Virginia	1,300,000
New Jersey	4,245,000	Michigan	1,150,000
Ohio	2,733,000	Illinois (1913)	1,100,000
Rhode Island	2,712,000	California	18,000,000

[2] The exceptions are Indiana (where good roads have been built by the counties) and some of the Southern States.

[3] *Cf.* People *v.* Draper, 15 N. Y., 532; People *v.* Mahaney, 13 Mich., 481; People *v.* Hurlbut, 24 Mich., 80; Burch *v.* Hard-

spite of this legal theory, there has been developed no effective state administrative control in this important branch of local government. Some occasional and haphazard steps have been taken in many states, but no systematic and permanent machinery has been established.

It has been already noted[1] that in a few states the governor has power to remove delinquent sheriffs and prosecuting attorneys, as well as other county officers. This provides a limited degree of central control, applicable in cases of serious misconduct on the part of the local officers. But it is very far from furnishing any effective supervision over the performance of their functions. Indeed there is seldom even any provision for the collection of information about the work of the local officers by means of reports.

Some supervision could easily be established by making the sheriffs more clearly responsible for police conditions in the local districts within their counties and requiring them to make regular reports to the governor or some other state officer. To this might be added a regular inspection of the sheriffs in each state. Such provisions would not involve any radical change of policy; but would simply revive the traditions of the sheriff's office, and energize the legal theory that local police officers are agents of the state. Like the state supervision established in other lines, they would improve the work of local authorities; and would do

wicke, 30 Grattan (Va.), 24; State *v.* Hunter, 38 Kans., 578; Buttrick *v.* Lowell, Allen (Mass.), 172; Goodnow, "Municipal Home Rule," 133.

[1] See p. 108.

away with the more drastic centralization that has been established by providing state appointed police boards in a considerable number of American cities.

In a few states there have been established small bodies of state police for service throughout the state.

Massachusetts in 1865 provided for a force of state constables mainly for the enforcement of the law prohibiting the liquor traffic. On the repeal of the prohibition law in 1875 the state police was continued as a detective force to aid in the suppression of disorder and the enforcement of criminal laws, and its functions have since been extended to include the inspection of factories; while more recently the office of fire-marshal, for the investigation of fires, has been incorporated with the state police.[1]

Rhode Island in 1886 established a chief of state police with powers of direction over the sheriffs and local police, in connection with the enforcement of the prohibition law then re-enacted in that state.[2] But this office lasted only a few years. Another brief experiment with state police was made by New Jersey, from 1891 to 1894.

Soon after the establishment of the system of state liquor dispensaries, South Carolina (in 1896) established a force of state constables to aid in the enforcement of liquor laws.[3] The governor appoints the chief state constable, who receives a salary of $1,500 a year,

[1] R. H. Whitten, "Public Administration in Massachusetts," Ch. 6. (Columbia Univ. Studies, vol. 8.)

[2] C. M. L. Sites, "Centralized Administration of Liquor Laws," p. 72. (Columbia Univ. Studies, vol. 10.)

[3] *Ibid.*, pp. 73, 118.

and this officer appoints seven assistant chief constables and other state constables to assist him in his work. Connecticut has also organized a body of state police (in 1903) similar to that in Massachusetts, specially for the enforcement of the laws relating to intoxicating liquors and gaming, and taking over the functions of the state fire-marshal. There is provided a superintendent of police at $3,000 a year, an assistant superintendent and from five to ten police officers, all selected by a board of five unpaid commissioners, who in turn are to be chosen biennially by the judges of the superior court.

Pennsylvania in 1905 established a state constabulary for maintaining order, especially in the rural districts and during strikes in the mining regions. This consists of about 200 men, organized in four platoons, under a superintendent appointed by the governor and senate.

Of a somewhat different nature are the bodies of mounted rangers established in less settled regions for the suppression of violent disorder and the protection of the Mexican frontier. The Texas rangers, organized in 1901 may consist of four companies, each composed of 22 men, the captains and the quartermaster in command of the whole force being appointed by the governor of the state. In Arizona the rangers as reorganized in 1903 consist of 26 men mustered into service by the governor of the territory. Both in Texas and Arizona the governors strongly commend the work of these rangers. A similar force was established by the legislature of New Mexico in 1905.

In the State of New York appointments to subordinate positions in the larger counties are now made on the basis of regulations and examinations of the State Civil Service Commission. This extension of the merit system was first applied to the four counties included in New York City and to Erie county. More recently it has been extended to 12 other counties.

A system of civil service examinations under a local commission has also been established in Cook county, Illinois and in Los Angeles county, California. In four New Jersey counties civil service appointments are made under the State commission.

Many other state officers and boards have been established under the general police powers of the states. These include authorities for the supervision of railroads and other public utility services, banking and insurance corporations, for the inspection and regulation of factories and mines, for the encouragement of agricultural interests, and for the protection of fish and game. All of these illustrate the tendency towards central state administration, as contrasted with the earlier decentralizing policy. And this development is steadily changing the balance between state and local government. The continuous expansion in the field of national administration marks a still further growth in the same direction.

But to examine these in detail would be to go too far afield from the subject of local government. They belong rather to a study of state and national administration, and raise large questions as to the probable and safest limits to the centralizing movement. For

the purposes of the present book, this brief reference must suffice.

In conclusion, however, a brief estimate may be made as to the merits of the centralizing tendencies so far as they directly affect the functions of local government. In the main, the measures for establishing administrative supervision over local authorities can be thoroughly endorsed; and further developments in that line may be viewed with approval. They not only improve the efficiency of local government; but also furnish a means of escape for the excessive legislative control, which seems inevitable where no administrative supervision is provided. For the most part, too, the development of direct state administration, in the establishment of state institutions, can be approved. But here there is, perhaps, more danger of going too far, particularly in view of the unorganized condition of state administration as a whole. And the most important administrative problem in our state governments to-day, is probably that of correlating and organizing the mass of minor offices into a definite system.

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