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Evolution of the Constitution of West Virginia

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I. Introduction.

West Virginia, the only distinctively mountainous state of the Appalachian region, and the only state whose formation represents a logical conclusion of the sectionalism which existed before the civil war in all the southern states from Pennsylvania southward to Florida, has a constitutional history somewhat unique. Its destiny to form a separate state was largely determined by the flow of its rivers in an opposite direction to the flow of the tide water rivers, and was foreshadowed in the different political ideas of the West—causing it to give a proportionately larger vote than the East for the ratification of the national constitution in 1788, to oppose the Virginia resolutions of 1798, to antagonize the election of Jefferson in 1801, to favor the American system as a national policy and to advocate the establishment of free schools and the further democratization of social and political institutions. Showing a growing influence in determining the constitutional development of the mother state before the war and its determination to fight the mother state in order to preserve the Union, the New Dominion still retains in its constitution many evidences of a surviving sentiment in favor of the institutions of the Old Dominion.

II. A Half Century Under the Constitution of the Revolution.

The first constitution of Virginia was adopted on June 29, 1776 when there were within the limits of the present state of West Virginia only Hampshire and Berkeley counties and the district of West Augusta. This constitution[1] established an annual general assembly of two houses the members of which were elected by the limited number of people who had the right of suffrage. The house of delegates, the members of which were elected each

1. Poore, Charters and Constitutions of the United States, vol. 2, pp. 1910-12.

year, replaced the old house of burgesses and with slight exception[2] retained the old system of representation: two representatives from each county, and two from the district of West Augusta, (and one from both Williamsburg and Norfolk). The general assembly was authorized to grant to each new county which it might create two delegates, and to use its discretion in allowing representation to new towns; but there was a provision for dropping the representation of any town whose population decreased until for seven consecutive years its voting population was less than one-half that of a county.

The senate was composed of twenty-four members chosen for a term of four years from twenty-four districts, and was made a rotating body by a provision for the election of six members each year. The apportionment was purely arbitrary and without provision for future reform.

The elective franchise remained as exercised since the law of 1736[3] and was confined to freeholders who had been in possession of their freehold at least one whole year before the issue of the writ for the election at which they wished to vote.

With the election of the members of the general assembly the voice of the voting population ceased. The governor, treasurer, the eight privy councilmen, the secretary, the attorney-general, and the judges of all the superior courts were chosen by joint ballot of the two houses of the general assembly; the governor and treasurer were chosen annually; the privy council was subject to the removal of two of their number every three years by the "scratch" of the assembly; the secretary, the attorney-general and the judges served during good behavior.

The people had little share in local government. The self perpetuating county courts[4] had general management of all local affairs. These courts constitutionally appointed the sheriff, the coroner and the clerk of the county; they had the statutory privilege of appointing all other civil officers of the county and all military officers under the grade of brigadier-general, and of laying all taxes for county purposes and of expending them as they saw fit; and, with all these powers, they were responsible to no one for their actions.

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2. Jamestown and the college of William and Mary were no longer granted representation.

3. Hening vol. 4, pp. 470, 476. A freehold was one hundred acres of uncultivated land without a house, twenty-five acres of improved land with a house, or a house and lot in town.

4. Jefferson's Works, vol. 7, p. 10.

The development of West Virginia for the half century after the revolution produced new problems for the Old Dominion. Before the close of the eighteenth century the population in the region now known as West Virginia had begun to grow rapidly. In the Virginia convention of June 2, 1788, which was called to ratify or reject the federal constitution, it was represented by six new counties which had been formed from the district of West Augusta: Monongalia and Ohio, in 1776, Greenbrier in 1777, and Harrison, Hardy and Randolph in 1784, 1785 and 1786 respectively. This number of counties had increased to thirteen in 1800 by the formation of Pendleton in 1787, Kanawha in 1789, Brooke in 1796, Wood in 1798 and Monroe in 1799. These thirteen became sixteen in 1810 by the addition of Jefferson in 1801, Mason in 1804 and Cabell in 1809. To these counties four new ones were added before 1820: Tyler in 1814, Lewis in 1816, Nicholas in 1818 and Preston in 1818. By the end of the next decade a total of twenty-three counties was completed by the formation of Morgan in 1820, Pocahontas in 1821 and Logan in 1824. The white population had increased from 50,593 in 1790 to 70,894 in 1800, to 93,355 in 1810, to 120,236 in 1820, and to 157,084 in 1830.[5]

During these years, and partly as a result of changing conditions, the defects in the constitution became very marked. These defects were early noticed by Jefferson who desired a state constitutional convention to remedy them. Commenting on the constitution, in 1782 he wrote: "The majority of the men in the state who pay and fight for its support are unrepresented in the legislature—the roll of freeholders entitled to vote not including generally the half of those on the roll of the militia or of the tax gatherers. Among those who share the representation the shares are unequal." To show some of the inequalities which existed even at that early date between the four sections of the state from the coast to the Ohio he prepared the following table:[6]

	Fighting men	Delegates	Senators
East of river falls	19,012	71	12
Falls to Blue Ridge	18,828	46	8
Blue Ridge to Alleghenies	7,673	16	2
Trans-Allegheny	4,458	16	2

The inequality of the county system of representation is well shown by a comparison of the counties. In 1800 Warwick with a

5. Census reports for 1790, 1800, 1810, 1820 and 1830.

6. Jefferson's Works, vol. 8, p. 360.

white population of 614 and had two members in the house of delegates while at the same time Berkeley with a white population of 17,832 had but two members in the lower house. The inequality was equally noticeable in the senate. In 1815 the entire West with a free white population of about 233,469, two-fifths that of the state, was represented by four senators; and at the same time the East, containing the other three-fifths of the white population, 342-781, was represented by twenty senators.

Several attempts to secure adjustment were unsuccessful. In the house of delegates, in the May session of the assembly of 1784, a petition from Augusta county asking for a constitutional convention was the subject of a two days debate; and although Madison strongly advocated it, a bill for a convention failed—largely through the violent opposition of Patrick Henry.[7]

After 1790 petitions praying for a reform in representation and suffrage were presented at almost every session of the assembly. From the counties of Patrick and Henry these petitions were expected regularly at the commencement of each session. In the session of 1806 a bill for submitting to the people the proposition to call a constitutional convention passed the house but was indefinitely postponed in the senate through the influence of prudent men who feared the political bitterness of the times.[8]

In 1814, a constitutional reform bill which provided for extension of suffrage, reapportionment of representation, and the reduction of the total number composing the house of delegates, was rejected in the house by a slight majority. The next year, a bill was introduced into the house providing for a rearrangement of the senatorial districts on a white basis. The fight was largely sectional. The western members unsuccessfully urged the passage of the bill. Eastern constitutional lawyers in the house held that the districts, created by the same power that made the constitution, could be altered only by a constitutional convention. This doctrine the westerners then determined to put into practice. On August 19, 1816, a convention composed of representatives from thirty-six counties (twenty-four of which were from the region west of the Blue Ridge) met at Staunton and sent a memorial to the general assembly requesting the passage of a bill for submitting to the people the question of calling a constitutional convention. Though the house was successful in securing the passage of a bill

7. Madison's Writings, vol. 1, p. 87.

8. Debates Virginia Constitutional Convention, 1829-30, pp. 81, and 421.

calling a convention to change the constitution by amendments which would extend the right of suffrage, equalize the land tax, and equalize representation on the basis of the white population, its program for securing a convention and larger western representation was frustrated in the senate. Then the legislature, reversing the doctrine held by the constitutional lawyers in 1815 passed a bill equalizing the senatorial districts according to the white population of the old census of 1810 which no longer represented the true population of the West.[9] By this reapportionment, the West got nine instead of four senators, while the number from the East was reduced from twenty to fifteen.

Though for a time public agitation ceased, by 1824 the equalization of representatives in the house of delegates on the white basis became the subject of newspaper controversy and general discussion which resulted in a second meeting at Staunton, on July 25, 1825, attended by upwards of one hundred friends of reform. This convention passed resolutions in favor of several reforms: representation in the house according to white population; the reduction of the total number of delegates in the house; the extension of the right of suffrage; the abolition of the executive council, and a more responsible executive. These resolutions, forwarded to the general assembly, in the three following sessions were the subjct of discussions which finally (in January 1828) resulted in the passage of a bill for submitting the question of a constitutional convention to a vote of the freeholders. The election returns showed that the convention was favored by the almost unaminous vote of the West and opposed by over one-half the vote of the East.

III. The Constitutional Convention of 1829-30.

The convention which met at Richmond on October 5, 1829, was an august assemblage composed of ninety-six of the most prominent men of the state (four members from each senatorial district)—eighteen of whom were from counties within the present limits of West Virginia. Its dominating spirit of sectionalism was largely due to the geographic and economic conditions which for years the defects of the old constitution had aggravated. The two sections agreed on the acceptance of the bill of rights; but, with their radically divergent ideas, they clashed on the practical application of the principles of government.

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9. Ibid pp. 82 and 83.

Practically all the time of the convention (October 5, 1829 to January 15, 1830), was consumed by debates on two questions: representation and suffrage. On the question of suffrage the thirty-six delegates from the district west of the mountains stood solidly for white population as the basis for both houses, in opposition to the East which favored a representation based on white population and taxation combined. Madison, Marshall and Monroe defended the property basis on the grounds that the state was the conservator of property. In the debates, when the eastern members demanded reasons, based on facts and conditions, for what they termed "the most crying injustice ever attempted in any land" against property rights, the westerners continued to cite the bill of rights and the abstractions of Jefferson.[10] In answer to the statement that nearly three-fourths of the tax had been paid by the counties east of the Blue Ridge, the West asked who were the men who had fought the battles. When Judge Upshur from the Eastern Shore, in a speech lasting the greater part of two days, endeavored to show that the law of the majority came from no source—not from the law of nature, nor from the exigencies of society, nor from the nature and necessity of government, nor from any constitutional source—Philip Doddridge of Brooke answered him by asking: if the majority are not possessed of the right or power to govern, "whence does the gentleman derive the power in question to the minority?" When Randolph, in a high key, exclaimed that if he were not too old to move he would never live under King Numbers, Campbell from the Ohio extolled King Numbers as the most dignified personage under the canopy of heaven. During the debate the white laboring farmers in the western part of the state were designated "peasants" holding the same place in political economy as the slaves of the tide-water East. There were reports that the western members would secede from the convention. To allay sectional feeling Monroe urged mutual concessions and suggested a white basis for the house and a mixed basis for the senate.[11]

Thus the debate continued until finally a plan of apportionment by districts, based on no principle and opposed by the West, was adopted.

The extension of suffrage was most strongly advocated by the

10. Debates of Convention, 1829-30, pp. 53, 54, and 57. F. N. Thorpe: The political value of state constitutional history, (Iowa School Journal, January 1903, p. 20).

11. Debates of Convention, pp. 66 et seq., 123, 151, 321, and 359.

western people who quoted Jefferson in favor of free manhood suffrage, but who were promptly notified by Randolph that the East was "not to be struck down with the authority of Mr. Jefferson." At this time, in Virginia (the only state of the twenty-four in the Union which still adhered strictly to freehold suffrage), in a total of 143,000 free white males there were 100,000 free white citizens paying taxes to the state—of which about 40,000 were freeholders and 60,000 were men who owned personal property.[12]

Having failed in the effort for manhood suffrage, the West fought vigorously , but unsuccessfully, to extend the suffrage at least to taxpayers. Several easterners, arguing that much of the land in the West, fit only for a lair of wild beasts, was not worth a mill per acre and would never be of any value, were determined to draw the line of suffrage restriction even closer by fixing a minimum value for a freehold. Throughout the East the feeling was pretty general that there should be some local attachment. Monroe said that the elective franchise should be confined to an interest in the land, and Randolph approvingly agreed that "terra firma" was the only safe ground in the commonwealth on which the right of suffrage could stand. "The moment you quit the land," said he, "you find yourself at sea without compass, without landmarks, or polar star."[13]

The convention finally agreed to lessen the requirements of a freehold, and to extend the suffrage to leaseholders and housekeepers who paid taxes.

Philip Doddridge, typifying the western democratic sentiment moved that the executive, unhampered by a council, should be elected by the people and responsible to them.[14] Although at that time eighteen states elected their governors by popular vote, his motion was lost. Mr. Naylor of Hampshire proposed that the office of sheriff should be filled by the people instead of by the county court whose members were accustomed to give this office to themselves in rotation, the one receiving it selling it at public auction to the highest bidder; but this recommendation met the formidable and successful opposition of men as influencial as Giles and Leigh who thought such an innovation would disturb the county court system which to them was "the most valuable part of the constitution." In the convention there seemed to be an abhorrance of

12. Ibid, pp. 355, and 356.

13. Ibid, pp. 347, 428-43.

14. Ibid, p. 464. W. T. Willey: Life of Philip Doddridge, pp. 55-57,

overlegislation and to remedy this Mr. George of Tazewell proposed that the assembly should meet but once in two years. The motion was lost, many perhaps feeling with Randolph that as the legislature of the United States met every year the Virginia assembly should meet annually also in order to watch it. Resolutions submitted by western members, looked toward the encouragement of public education, were opposed by eastern men, some of whom feared the adoption of a system by which the people of the East would be taxed for the education of the children of the West. Nor did the West, after failing to realize so many of its longed for reforms, have any prospect of realizing them in the early future. The proposition that there should be a constitutional provision for amendment received but twenty-five votes. In opposing this proposition, John Randolph declared that he would as soon think of introducing a provision of divorce in a marriage contract; and although he was strongly against the constitution, he exclaimed: "If we are to have it, let us not have it with the death warrant on its very face."[15]

The completed constitution, a precedent for all later constitutions of the South before 1860,[16] provided for several minor reforms. Under it the number of delegates was reduced from 214 to 134 (not to exceed 150), the county system of representation was abolished and representatives were apportioned according to districts—which were so arranged that the apportionment was more nearly in accord with the respective population of the counties. Thirty-one of the representatives were assigned to the twenty-six counties west of the Alleghenies. Of these thirty-one, the twenty-three counties now in West Virginia were given twenty-nine. However, as no reapportionment could be made before 1841, and then not unless two-thirds of the assembly agreed, and since the East had a large majority in the legislature, the chances for a reapportionment were small. An age qualification of twenty-five years was added to the qualifications of delegates. The number of senators was increased from twenty-four to thirty-two, not to exceed thirty-six. The state was divided into two great senatorial districts separated by the Blue ridge. The western district which contained the larger number of electors was given only thirteen members while the eastern was given nineteen. The age qualification for senators was changed from twenty-five to thirty years. The right of suffrage was extended to all white male citizens

15. Ibid. pp. 487, 817, 44, 359, 378, 787, 789. and 791.

16. F. N. Thorpe: Constitutional History of the American people, vol. 2, p. 463.

twenty-one years of age who were qualified to vote under the old constitution and laws,[17] to all who possessed a $25.00 freehold, a $25.00 joint tenantship, a $50.00 reversion, a five-year leasehold of an annual rental value of $20.00, and to all tax-paying housekeepers who were heads of families; but the right was granted in terms the interpretation of which proved very difficult.[18] There was a provision for the viva voce vote—characteristic of the South.

The term of the executive was increased to three years, and he was ineligible for the next three years. Contrary to the constitution of 1776, which left all qualifications for the executive to the general assembly, the new constitution contained several qualifications: thirty years of age, a native citizen of the United States, or a citizen at the time the federal government was established, and a citizen of Virginia for five years next preceding his election. The executive council was a rotary body consisting of three instead of eight members chosen by the assembly, and the senior councilman was authorized to act as lieutenant governor.[19]

This constitution, submitted to the people, in April, 1830, was ratified by a vote of 26,055 to 15,563. The vote within the bounds of West Virginia stood 1,383 for ratification and 8,365 against it.

Naturally, the constitution of 1830 worked unfavorably for the West. The vast natural resources of West Virginia—forests of excellent timber, oil and natural gas, and 16,000 square miles of bituminous coal in workable seams[20]—remained undeveloped because of the short sightedness of eastern leaders. The West, with no railroads and no canals, sorely needed improvements; but, despite much public agitation and vigorous struggles in the general assembly, it had to remain content with paltry appropriations for turnpikes, obtained by log rolling, while vast sums were spent on badly managed improvements which were undertaken in the East. Under this constitution the present territory of West Virginia received no public buildings, had no representatives in the United States senate and had no opportunity to furnish the governor for the state before the appointment of Joseph Johnson in 1850.

Under these conditions it is not surprising that equal representation on the white basis continued to be the western cry; but,

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17. Hening vol. 12. p. 120. The law of 1785 defined a freehold as twenty-five acres of improved or fifty acres of unimproved land.

18. J. A. C. Chandler: The history of suffrage in Virginia (in Johns Hopkins University Studies, nineteenth series).

19. Poore, vol. 2, pp. 1912-1919.

20. Hon. George C. Sturgiss in Congressional Record, April 5, 1909, p. 859.

after the indefinite postponement of the subject by the legislature, which had the power to reapportion the state after 1841, westerners, with sectional feeling more pronounced, finally settled into a firm determination to endure the evils of the constitution until after the census of 1850, satisfied that the excess of white population west of the mountains would be so great that the East could no longer with any show of justice refuse them their proper share in the general assembly.[21]

The basis of representation was the most prominent question between the two sections. The easterners, who affirmed not very reverently that to the white basis they could not and would not yield, gradually advocated many of the reforms which had so startled them when proposed by western members in the convention of 1829-30. They became willing to extend the suffrage to every free white man over twenty-one, allowing him to vote once where he resided and no where else; they favored a reform of the county court and the judicial system, the election of the governor by the people, and a more rigid accountability of all the governmental departments. Through their newspapers and through the governors' messages they urged a constitutional convention to bring about these reforms.[22] On the other hand the westerners, who had favored these reforms for years were unwilling to vote for a convention which was not organized on the white basis and which did not promise to equalize representation.

In the legislature, the West was again defeated by the passage of a convention bill that adopted for the convention a mixed basis which gave the East a majority of seventeen in the convention (The white basis would have given the West a majority of 13). In the western papers this defeat was attributed to the votes of western members who were anxious to secure a convention on any basis. The feeling in the trans-Allegheny region, however, was strongly against "that abominable convention bill" as it was called in the Parkersburg **Gazette**, and the people were urged to repudiate those traitors to the interests of the West and republican principles who had voted for the bill with no provision for a white basis. Anti-convention meetings were held in many of the counties and the people were advised to vote against the constitution. The Parkersburg **Gazette**, exhorting the West to present an unbroken front in opposition to the eastern scheme to avoid

21. Monongalia Mirror, March 16, 1850. Speech of Johnson, of Taylor Co., in House of Delegates, March 11, 1850.

22. Ibid, Dec. 15, 1849, Governor Floyd's message to general assembly, Dec. 4, 1849 and Richmond Enquirer, Dec. 3, 1849.

the reform most needed, said that it would then remain to be seen whether the East would have the temerity to stake the integrity of Virginia upon her dogma of "might makes right."[23] At the April elections, although the majority vote was in favor of the convention, most of the trans-Allegheny counties voted against it.

In the August elections for selecting delegates to the convention the basis question was the issue. Not a member elected from the West favored the mixed basis and not a member elected from the East except Henry A. Wise opposed it. Of the 135 members elected 34 were from the present state of West Virginia.

IV. The Constitution of 1850.

The convention which met October 14, 1850, and adjourned November 4, to await census data, reconvened on January 6, 1851. On February 6, the committee on basis and apportionment having found itself equally divided in opinion, submitted two reports. The one, favored not only by the western members of the committee but by every western delegate, advocated the white population as the basis for the apportionment of both houses; the other, having the almost equally unaminous support of the East, advocated white population and taxes combined as a basis for both houses (so that every seventy cents of taxes would have a representation equal to one white person). Every day[24] from February 17 to May 10, in committee of the whole, the convention discussed the reports of this committee and the various substitutes; but no conclusion was reached. The East had the power to adopt its basis, but feared that if it should do so the West would secede from the convention. Each side clung to its demands with bull-dog tenacity. Feeling was so high that on May 10 the convention was forced to adjourn until the following day. Then a compromise committee was appointed to prevent a split.[25] Finally, the West, unflinchingly refusing to consider any compromise which did not eventually provide for the white basis or for submitting the basis question to the people, partially gained its point. In the plan adopted the apportionment for the house of delegates was based on the white

23. Monongalia Mirror, April 20, 1850.

24. One session a day proved insufficient for the discussions. The reporter struck for higher wages, and the members enamored with their own verbocity agreed to his demands.

25. Journal, Acts and Proceedings of Virginia Convention, 1850-51, pp. 205, and 206. J. A. C. Chandler: Representation in Virginia (J. H. U. Studies, 14th. series), pp. 64-71.

population according to the census of 1850 (giving to the West eighty-three delegates and to the East sixty-nine). The apportionment in the senate was arbitrarily fixed giving thirty to the East and twenty to the West, but in the plan there was a provision that either the legislature should make a reapportionment on the white basis in 1865 or the governor should submit the basis question to the people. Any qualified voter of twenty-five years of age, except a minister of the gospel, or an officer of a banking corperation, or an attorney for the commonwealth, was eligible for election to the general assembly. The delegates were elected biennially; half of the senators were elected every two years and served four years.[26].

With the amicable settlement of the question which for so many years had been the great disturbing element, the convention was free to express that democratic spirit of the times which had been gradually breaking down old barriers, and which Virginia had not been able to resist as is shown by the work of the legislature of 1849 which abolished imprisonment for debt, and granted to women the right to make a will.

The provision extending suffrage to every white male over twenty-one, two years resident in the state and twelve months in the district where he votes, not only greatly enlarged the number enjoying the elective franchise but abolished the crying abuse of double and treble voting. A man, who before could vote in every district in which he held real or pretended property which he could reach by fast driving or riding on election day, could now vote only in the district in which he resided.[27] Although the method of voting was still viva voce, dumb persons were permitted the use of the ballot—a provision which was evidently suggested by the precedent in the Kentucky constitution of 1850.

The executive council was abolished, the judicial system reformed, and the county court reorganized. The governor, lieutenant governor (for a term of four years), the twenty-one circuit judges (for a term of eight years), the five judges of the court of appeals (for a term of twelve years) and all local officers—the justices of the peace and attorney for the commonwealth (for a term of four years), the clerk of the court and the surveyor (for a term of six years) and the sheriff and commissioners (for a term of two years)—were elected by the people. Provision was made for the payment of jurors who previously had been chosen from the

26. Poore, vol. 2, pp. 1919-1937.

27. Governor's message to the general assembly, December, 1849. J. A. C. Chandler: History of Suffrage in Virginia, pp. 41-45.

loungers within reach of the sheriff's voice the day the court opened and who had served without compensation.[38]

The spirit of the time was also reflected in restrictions on the legislature, both houses of which were now for the first time given equal power of legislation. The general demand throughout the United States for less frequent sessions of the legislature was reflected in the provision that the general assembly should meet once in two years for no longer than ninety days, which, however, might be extended for thirty days by the concurrence of three-fifths of the members. To the old restrictions of 1829—relating to habeas corpus, bill of attainder, ex post facto laws, impairing the obligation of contracts, freedom of speech and press, and religious freedom—were added several additional restrictions. The general assembly was forbidden to pledge the state for debts or obligations of any company or corporation, to grant charters of incorporation to any religious body, to authorize lotteries or to grant divorces,[29] to change names of persons or direct the sale of the estates of persons under legal disabilities. The attitude of the recently admitted states was reflected in the provision prohibiting the legislature to form a new county of less than 600 square miles or to reduce an old county to a lower limit. One restriction, reflecting a phase of the slavery question, forbade the assembly to emancipate any slave or descendant of a slave.

The constitution declared that taxation should be equal and uniform and that all property other than slave should be taxed according to its value. All the resolutions, substitutions and efforts of western members failed to keep this exception out of the constitution.[30] On every slave over twelve years of age was assessed a tax equal to that assessed on land of the value of $300. Slaves under twelve were not taxed. A majority vote of those elected to the assembly might exempt other taxable property from taxation. A capitation tax equal to the tax on land of the value of $200 was levied on every white male inhabitant of twenty-one. One equal moiety of this white capitation tax was applied to the purpose of education in primary and free schools. Many in the convention would have been delighted to have had a provision for a permanent system of schools incorporated in the constitution, but

28. Monongalia Mirror, December 8, 1849.

29. The general assembly granted two divorces from 1829 to 1831, and thirty-seven from 1849 to 1851. Acts 1830-31, p. 305; Acts 1848-49, pp. 246-248; Acts 1849-50, pp. 227-230; Acts 1850-51, pp. 196-200.

30. Journal etc., 1850-51, pp. 32 and 43. Resolutions of Neeson, Brown and Faulkner.

Virginia was not yet ready for that.[31] As in Michigan the same year, the constitution provided for a sinking fund by directing the legislature to set aside seven per cent of the state debt existing on January 1, 1851.

The constitution was ratified in October, 1851, by a vote of 75,748 to 11,063. The only counties giving majorities against the constitution were five eastern counties.

V. Formation of the New State.

In his speech at the close of the convention of 1851, after exhorting the members on their return to their constituents to exert all their influence to allay sectional strife and to promote a cordial fraternal feeling among the people of their beloved commonweath, President Mason said: "Virginia united has ever been one of the noblest states of the confederacy. I cannot contemplate what she would be if torn by intestine feuds or if frantically seeking her own dissolution. May you long live to see this ancient commonwealth united and happy at home, honored and respected abroad."[32]

In spite of Mason's parting injunction, the rift between the East and the West continued to widen in the decade of political agitation which followed. The fierce controversy over slavery was driving the North and South farther and farther apart and neither the President, nor Congress, nor the Supreme Court could suggest any middle ground which would satisfy both. Under the administration of Wise, the political hero of the West, efforts were made to conciliate the West and thereby to endeavor to bridge the chasm between sections. The West was exhorted to send her children to Virginia schools taught by Virginians, and various schemes for railroads and canals to connect the West and the East were proposed. The interests of West Virginia, however, with less than four per cent. of her population slave, were those of a northern state. Her sons continued to attend schools in free states rather than the schools across the Blue ridge. Her markets were in Pittsburg, Baltimore and the Mississippi river towns rather than in Norfolk. Her geographic conditions allied her interests with those of Pennsylvania and Ohio and her industries were those which called for white rather than slave labor. Her natural destiny and future loyalty to the Union and opposition to secession were

31. Journal, p. 26. (Also, the resolutions of Martin, Faulkner and Carlile in the appendix).

32. Ibid, p. 420.

clearly forecasted by Webster, in his speech at the laying of the corner stone of the addition to the capital at Washington (in 1851). "And ye men of Western Virginia who occupy the slope from the Alleghenies to the Ohio and the Kentucky," said he, "what benefit do you propose to yourself by disunion? If you secede what do you secede from and what do you secede to? Do you look for the current of the Ohio to change and bring you and your commerce to the waters of Eastern rivers? What man can suppose that you would remain a part and parcel of Virginia a month after Virginia had ceased to be part and parcel of the United States.[33]

Ten years later, Webster's significant utterance was brought to a test. The secession of South Carolina and the other cotton states precipitated a crisis in which Virginia hesitated to act. Governor Letcher called an extra session of the legislature which met January 7, 1861, to determine "calmly and wisely what ought to be done." This session authorized an election (on February 4) to choose delegates to a convention to determine the policy of Virginia in the impending crisis. In the West, in most of the counties, meetings were held vigorously protesting against any convention to consider federal relations and condemning the act of the legislature which had called such a convention without previously submitting the question to the people.[34]

In the convention which met February 14, special commissioners sent from Georgia, Mississippi and South Carolina, urged secession. The secessionists strained every nerve to get the passage of the ordinance and gradually induced several Union members to join them. Though the convention hesitated for a time, it was induced by excited leaders, after the news of the fall of Fort Sumter, to cast the lot of Virginia with the confederacy. The decisive step was finally taken on April 17, largely through the dramatic speech of Wise, who spoke with watch in hand, pistol in front of him, his hair bristling and disheveled, and his eyes standing out with the glare of excitement. The ordinance of secession was passed by vote of 88 to 55. The vote of members from western Virginia stood 32 to 11 against it (4 not voting).

Neither unionists nor secessionists waited for the popular vote on the ordinance which the convention provided should be taken May 23, the date for the regular election of members to the general assembly. The secessionists seized the arsenal at Harper's Ferry

33. Granville Davisson Hall: Rending of Virginia, p. 34.
34. Hall: Rending of Virginia, pp. 123-127.

and the custom houses at Richmond, Norfolk and Portsmouth, and put Virginia under the control of the confederacy as if she had already become one of its members.

The West, deserted by Wise its leader of the decade before, and seeking other wise leaders for the future, was soon under the general direction of John S. Carlile after his safe return from the Richmond convention. A meeting held at Clarksburg, on April 22, urgently recommended that each county of northwestern Virginia should send at least five men to Wheeling, on May 13, to determine what action should be taken in the emergency. In response to this recommendation, on the day appointed, over 400 men, pursued in some instances by confederate troops, flocked to Wheeling where amid great demonstrations, flags and banners flying, bands playing and people cheering, they assembled as a convention in Washington Hall. The members were divided on the question of what should be done first. Many, led by John S. Carlile, insisted on the immediate formation of a new state. The Wood county delegation carried a banner which bore the inscription: "New Virginia, now or never." Others feeling that the time called for thoughtful, guarded deliberation, were opposed to immediate action. After a debate which lasted for three days the convention delegated its power to a central committee and adjourned. Its recommendation, that if the ordinance of secession should be ratified on May 23, there should be an election, on June 4, to select delegates to a new convention to reorganize the government, was put into operation.[35]

On June 11, the representatives from thirty-nine counties assembled at Wheeling. At this time the people of western Virginia were without a judiciary, without sheriffs and without legal protection of life, liberty and property. The convention reorganized the state government and adjourned on June 25. It declared vacant the offices held by state officials who were acting in hostility to the federal government and provided for the appointment (by the convention) of the state officers for six months or until their successors were elected or qualified. It elected the governor, lieutenant governor, the executive council and attorney general, and provided that the remaining executive officers should be elected by the general assembly, consisting of all the members who were elected on May 23 and who should take the prescribed oath. This assembly also appointed Carlile and Willey to the seats in the

35. Congressional Globe, part 3, 2nd session, 37th Congress, 1861-62, pp. 2415-2419.

United States senate made vacant by the resignation of Hunter and Mason.

The convention reassembled on August 6; and, after much discussion concerning the legality of such an act, on August 20, it passed an ordinance providing for the formation of a new state; and adjourned on August 21. On October 24, the people living within the boundaries of the proposed state ratified the ordinance by a vote of 18,408 to 781 and at the same time elected delegates to a constitutional convention which met at Wheeling on November 26, 1861.[36]

The constitution framed by the Wheeling convention was far better than the prejudices of many of the members, as reflected in the debates, might have indicated.[37] Unfortunately, there was no official provision for the publication of the debates. Perhaps the reasons for this neglect are reflected in the remarks of three members. Chapman J. Stuart, representing Doddridge county, speaking without historical foresight said in the convention, that to publish the debates which no one would ever read would be an unnecessary expense. James H. Brown of Kanawha, untrained in historical perspective, said that after the vital point—the success and excellence of the constitution—had been attained, the debates by which it had been attained were "immaterial and unimportant." Hall, a stickler for impromptu and informal discussion, opposed publication because he feared it would lead to "set speeches."[38]

The name selected for the new state was not the only one proposed. The name Kanawha which had been used in the ordinance for the formation of the state was rejected—probably because there was already in the state a county and a river by that name. Mr. Willey said that some of his constituents along the Monongahela thought that Kanawha was too hard to spell. There was objection also to the name of West Virginia. Many felt that, as immigrants held the name Virginia in disrepute, thousands believing that Virginia policy still prevailed would be kept away if that name were retained. Others feared that the soubriquet "West" would disgrace the new state in comparison with Virginia. The question was finally settled by the sentiment of those who had long

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36. Journal of the Constitutional Convention of West Virginia, 1861-2: Appendix (No. 53).

37. The stenographic notes of the debates, made by an assistant clerk of the convention, Granville D. Hall, are in manuscript in the department of Archives and History of West Virginia. These have been read by the writer and frequent reference will be made to them under the title **"Hall MS."**

38. Journal p. 45; and Hall MS., Dec. 16, 1861 and Feb. 13, 1863.

lived in the old Dominion and who revered the memories of its most honored citizens.[39]

The question of boundaries was a source of considerable debate. On the day that the convention assembled, the Wheeling **Intelligencer** urged that the people wanted a homogeneous state. Such they could not have by including the eastern valley in which, contrary to conditions in northwestern Virginia, negroes were the staple, and whose people could not agree with the trans-Allegheny counties on the question of prohibiting slavery in the new state. Yet several attempts were made in the convention to include the valley counties together with additional counties in the southwest.[40] Through the influence of the Baltimore and Ohio railway, whose officials were desirous of getting the road out of Virginia,[41] the proposition was made to include (conditioned on a majority of the votes of each county), Pendleton, Hardy, Hampshire, Morgan, Berkeley, Jefferson and Frederick.[42] On the same day that this proposition was carried (February 11, 1862,) Brown of Kanawha, who at first had contended that the Blue ridge should be the eastern boundary, moved to include under like conditions seventeen additional counties: nine in the southwest (Lee, Scott, Wise, Russell, Buchanan, Tazewell, Bland, Giles and Craig), three between the Allegheny and Shenandoah mountains (Allegheny, Bath and Highland) to fill the niche between Monroe and Pendleton counties, three extending along the Potomac to a point below Washington (Loudoun, Alexandria and Fairfax) and the two counties of the eastern shore (Accomac and Northampton). The majority of the members of the convention, believing that if these counties were included the new state movement would fail, disapproved and defeated Mr. Brown's motion.[43]

Important changes in the electorate and in the elections were made. Desiring to accelerate the retarded development which had resulted from tide-water policies and the long delayed execution of projected intra-state improvements in western Virginia, the new state made a jealous bid for thrifty immigrants by extending the rather liberal suffrage provision of the Virginia constitution of

39. Journal pp. 24-25; Hall MS., Dec. 3, 1861. [Harmon Sinsel, the eccentric member from Pruntytown desired to include Virginia as part of the name because it reminded him of the Virgin Mary].

40. Journal pp. 32-39.

41. Parker: Formation of West Virginia, p. 62.

42. Hardy county included Grant which was formed from it in 1866; and Hampshire included Mineral which was formed from it in the same year.

43. Journal p. 162, and Hall MS., Feb. 11, 1862.

1851. The residence qualification for a voter, which had been fixed at two years in the state and twelve months in the voting district, were reduced to one year in the state and thirty days in the district. Viva voce voting, "that old aristocratic thumb-screw which had kept a large part of the voters of Virginia virtually slaves" and without which it was generally believed that Virginia could never have passed the ordinance of secession, was replaced by the ballot system. The date of elections was changed from May to October, which was considered a more convenient time for farmers to meet, and which also was more suitable to the convenience of candidates and politicians.[44]

The legislative body, the name of which was now changed from "general assembly" to "legislature," was to meet annually for not longer than forty-five days unless three-fourths of the members concurred to lengthen the session. Annual sessions were favored on the ground that they would prove less expensive than the biennial sessions which had been tried under the constitution of 1851. For the first time representation in both houses was to be based on the white population. The delegates were to be elected for a term of one instead of two years and the senators (half each year) for the term of two years in place of four years. To the age and district resident qualifications for legislators, which remained as in the Virginia constitution of 1851, was added the provision that a senator should be a citizen of the state five years next preceding his election or at the time of the adoption of the new constitution.

The clause of the constitution of 1851 which had debarred ministers and bank officers from seats in the legislature was dropped but a provision was borrowed from the constitution of Indiana debarring any person who had been entrusted with public money and had failed to account for and pay over such money according to law. A new anti-duelling clause disqualified from holding office any person who had been concerned in a duel.[45]

To the previous Virginia restrictions on the legislature prohibiting it to authorize a lottery, to grant a charter to a religious denomination, or to grant special relief in matters entrusted to the

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44. Hall MS., Dec. 18, 1861.

45. The reason for inserting this disqualifying clause in the constitution was explained in the report from the committee. The constitution of 1851 had given the legislature the power to pass laws disqualifying persons concerned in a duel. The legislature although it had passed such laws had been accustomed to repeal them temporarily whenever a favorite so disqualified became a candidate for office. [Hall MS., Jan. 7, 1862].

circuit court (to grant a divorce, to change the names of persons and to direct the sale of estates of persons under legal disability), or to form a new county of less than minimum size, were added other restrictions: prohibition of all special legislation, and any law which would make the state a stock holder in any bank, or grant the credit of the state in aid of any county, city, town or township, corporation or person, or make the state responsible for their debts or liabilities, or contract any state debt except to meet casual deficits in the revenues, to defend the state, and to redeem a previous liability of the state (including an equitable portion of the public debt of Virginia prior to January 1, 1861.

In one instance, the convention, after much debate, increased the power of the legislature by giving it the additional, but as yet unused power, to pass laws regulating or prohibiting the sale of intoxicants in the state.[46]

The term of the chief executive was changed from four years to two, his term to commence March 4, instead of January 1, and his salary reduced from $5000 to $2000 per year.[47] His powers and duties remained as under the previous Virginia constitution except that the clause which made him commander-in-chief of the naval forces of the state was omitted. He still had no power to veto an act of the legislature. The office of lieutenant governor which was considered a very unnecessary appendage was abolished without debate. In opposition to the wishes of Brown and others, who favored their election by the legislature as in Virginia, the convention decided that the secretary of state, the treasurer, and the auditor should be elected at the gubernatorial election for a term of two years. The attorney-general was to be chosen at the same time and for the same term.

The whole judicial power of the new state was vested by the constitution in a supreme court of appeals (with three judges, but otherwise the same as in the Virginia state constitution), circuit courts, and justices of the peace. The nine circuit judges were to be elected for six instead of eight years and the court was to be held at least four times instead of twice a year. Both the much disliked county court and the Virginia district court (created by the constitution of 1851) were abolished without mention.[48]

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46. Hall MS., January 16, 1862.

47. Stevenson, who doubtless changed his mind later when he became governor of the state, said in the convention that, as the governor might be at work but one month in the year and could occupy himself with something else the other eleven months, surely $1,600 would be enough for him.

48. Poore, vol. 2, pp. 1978-1992.

In the constitution one may see the evidence of the earlier opposition to the inequalities of the Virginia system of taxation. Paxton, in his report from the committee on taxation and finance, said that no feature of the constitution of 1851 was so odious as that which discriminated in taxation—taxing slave property much lower than the ad valorem tax on all other property. Therefore, the constitution clearly provided that all property both real and personal should be taxed in proportion to its value and that no one species of property should be taxed higher than any other species of property of equal value. There was a provision, however, that educational, literary, scientific, religious and church property might be exempted from taxation by law.[49]

In its provisions for the local government the constitution showed a distinct departure from the previous provisions of the Virginia constitutions. In place of the county court system which, although remedied much in 1851, was still very objectionable to many of the people of northwestern Virginia, the convention adopted the "Yankee institution" of townships as sub-divisions of the counties with provision for regular township meetings and for various township officers chosen by the people of each township: a supervisor, a clerk, surveyors of the roads and an overseer of the poor, elected annually; one or more constables elected biennially; and one or more justices elected quadrennially. The county officers retained in the new system were a sheriff (elected for four years and ineligible for the succeeding term) and a prosecuting attorney, a surveyor of land, a recorder and assessors (all elected for two years.)[50]

On the question of education the convention took advanced ground. In this it was much influenced by Mr. Battelle, who, favoring greater financial encouragement than was finally secured, said in the convention that to his certain knowledge people were leaving West Virginia in droves, in a great part influenced by the fact that elsewhere they could educate their children. The educational question was not new. The earlier discussions had finally resulted in the beginning of a system of common schools in 1846. Thereafter the West had continued to agitate for reform in the Virginia system of education, which Mr. Johnson of Taylor county, in the house of delegates, (on March 11, 1850), said was properly called a system for the poor and as properly called a poor system—one calculated to create and keep up distinctions in society, and one so abhorrent to the feelings of the poorer class of people that the children of the poor man dreaded to come within the pall of its

49. Hall MS., Jan. 31, 1862.

50. Hall MS., Jan. 17 and 22, 1862.

provisions. Consistent with the policy of the West, expressed in long-continued agitation, the convention provided for the establishment of a thorough and efficient system of free schools supported by interest from an invested school fund, the net proceeds of all forfeitures, confiscations and fines, and by general personal and property taxes.[51]

In the convention no one question caused more concern and division than that of slavery. On the one hand, some, strongly urging that the new state should be free from slavery, sustained their view with the argument that the convention was providing for the future of a region capable of becoming one of the most wealthy and important parts of the Union and which would long ago have been such had it not been for the curse of slavery which repelled from its borders the white population which had built up half a dozen states in the northwest. "Make West Virginia free," they said, "and she will invite immigrants. Her coal and her iron can be mined only by free labor. Negro slavery is wasteful everywhere but less profitable in West Virginia than in any other part of the southern states." Some also feared that Congress might refuse the admission of the new state if it should appear so wedded to slavery that it could not apply for admission with a free state constitution.[52] On the other hand, many in the convention, believing perhaps that slavery would gradually become extinct, thought it unnecessary to make any provision for it. The convention finally inserted in the constitution a clause forbidding the importation or immigration into the state of any slave or free negro with a view to permanent residence; but, feeling that there might be some objection to this clause in Congress, when it adjourned on February 18, 1862, it did so subject to recall in case any change should be necessary.

The remaining steps necessary to secure statehood were promptly taken. On the fourth Thursday of April, the constitution was ratified by the people by a vote of 18,062 to 514. On May 13, the re-organized legislature of Virginia gave the state's consent to the formation of the new state; and on May 29, Senator Willey, representing Virginia, in a speech ably setting forth the causes and conditions which led to the request, presented to the senate West Virginia's petition for admission to the Union. On June 23, the committee on territories reported the bill for admission, drawn up

51. Hall MS., Jan. 27, 1862; and Monongalia Mirror, March 16, 1850.

52. Extracts from New York Post, Cincinnati Gazette and Pittsburg Gazette in Wheeling Intelligencer Feb. 1, 3, 5 and 12, 1862.

largely by Carlile who had previously been an ardent new state man, and providing that before the state should be admitted its boundaries should be extended to include the fifteen valley counties, that a new convention should be held, and that a new constitution should be framed with a provision that all children of slaves born after July 4, 1863 should be free. It was evident to those who understood conditions that such a bill, even if desirable, was unpracticable and could not succeed; and some even asserted that its intent was to block admission. After several debates (on June 26 and July 1, 7, and 14), the bill, amended to conform with the boundaries established by the constitution, and to provide for general emancipation, passed the senate. On December 10, after a term of postponement, it passed the house; and on December 31, was signed by the President.[53] On February 12, 1863, the constitutional convention convened and made the necessary provision for gradual emancipation, and on March 26, the amended constitution was ratified by the people by a vote of 23,321 to 472. On April 20, the President issued his proclamation by which (on June 20, 1863) West Virginia became the thirty-fifth state of the Union. The new state government promptly replaced the re-organized government of Virginia, which moved from the new state and located at Alexandria.

West Virginia entered upon her career as a separate state of the American union at the most critical period in the war of secession—two weeks before the battle of Gettysburg and Vicksburg. After the President's proclamation of April 20, the new government was rapidly organized. Arthur L. Boreman for governor, and other state officers, nominated at a convention at Parkersburg early in May, were elected the latter part of the same month. Judges of the supreme court and county officials were elected at the same time. On June 20, the state officers began their duties. On the same day the first legislature (20 senators and 51 delegates) assembled, and on August 4, it elected two United States senators—Waitman T. Willey and Peter G. VanWinkle. Soon thereafter congressmen were elected from each of the three newly formed congressional districts.

VI. Problems of the First Decade.

The new state government, laying the foundation stones of state institutions and of future order and development, was con-

53. Cong. Globe, Part 3, 37th. Cong. 2nd. session, pp. 2959, 3307-15, 3397-98. Cong. Globe, Part 4, 37th. Cong. 2nd session, pp. 3308-3320. Cong. Globe, Part 1, 37th. Cong. 3rd. session, pp. 37, 41, 60.

fronted by many serious difficulties and obstacles—economic, social and political. The people, separated into many detached local groups by precipitous mountains and rugged streams, had not developed unity of action nor social and commercial identity except perhaps in the counties along the Ohio, and along the Baltimore and Ohio railroad. The most serious immediate political difficulty was the sympathy for the Confederacy in various parts of the state. Although the Confederates had soon lost control of the larger part of the state, over 7,000 West Virginians had entered the Confederate army early in the war—about one-fourth of the number who enlisted in the Union army—and the Confederate raids and skirmishes into the state, at first to prevent separation from Virginia, were continued until the close of the war.

Counties along the southern border of the new state were partially under the control of the Confederates until near the close of the war and "were forced to pay heavy taxes to the Richmond government, and to furnish soldiers for the Confederate army." Other counties along the border suffered from irregular "bands of guerillas and marauders" whom the state troops were unable to manage. In this sad state of disorder, the governor recommended that the citizens should organize to capture and kill the "outlaws" wherever and whenever found, and appealed to the Washington government which organized the state into a military district under command of General Kelley who scattered many irregular bands, and generally rendered life and property secure; but in some portions of the state the civil authorities were helpless against lawlessness long after the close of the war.[54]

Under these conditions the administration was seriously embarrassed by lack of funds to meet ordinary expenditures. In 1864, the governor reported that one-half of the counties had paid no taxes and others were in arrears. In fourteen counties there were no sheriffs or other collectors of taxes "because of the danger incident thereto." The burdens of the counties which paid were necessarily increased. One of the earliest measures of the government was an act (1863) providing for the forfeiture of property belonging to the enemies of the state, including those who had joined the Confederate army,[55] but such property was seized only in a few instances and the law remained practically a dead letter because the citizens of the state were usually unwilling to take advantage of the political disabilities of their neighbors.

54. House Journal, Jan. 19, 1862, pp. 1-8 and Jan. 17, 1865, pp. 6-18.
55. West Virginia Acts. 1861-1866; Acts of 1863, pp. 131-135.

Though in the election of 1864 there were only a few scattering votes in opposition to the officers of the state administration, there were no means of obtaining an expression of the people in some of the extreme southern counties where the governor reported that owing to the Confederate incursions and local conditions it was still impracticable to organize civil authority.

At the close of the war there were still many sources of disorder and friction. The most prominent related to the political status of those who had joined or aided the Confederate cause. Although the constitution had extended the right of suffrage to all white male citizens of the state, the first general election laws of West Virginia, passed in 1863, provided for election supervisors and inspectors who were authorized to require, from all whose eligibility to vote was in doubt, an oath to support the constitution of the United States and of West Virginia. Naturally the Unionists considered that those who had supported the Confederate cause could not safely be entrusted with political power immediately after their return from the Confederate armies, and before they had proven their willingness to co-operate in maintaining the established order. This opinion was enforced by conditions and events. In 1865, organized bands of returning Confederates committed several murders and robberies in Upshur, Barbour, Marion and Harrison counties. The legislature, with partisan spirit increased, on February 25 passed the voter's test act, requiring from all voters an oath that they had neither voluntarily borne arms against the United States, nor aided those who had engaged in armed hostility against the United States." On March 1, with some fear that the test-oath act was not constitutional, it also proposed an amendment disfranchising those who had given voluntary aid to the Confederacy—of course with the intention of removing the disabilities in course of time.[57] This proposed amendment, which required the concurrent approval of the subsequent legislature and ratification by popular vote before it was part of the constitution, further aroused the spirit of antagonism and insubordination in the minds of the ex-Confederates who were "impatient to repossess themselves of place and power." In the election of 1865, the test-oath

56. West Virginia Acts. 1861-1866: Acts of 1865, p. 47.

57. The amendment was as follows: "No person, who, since the first day of June, 1861, has given or shall give voluntary aid or assistance to the rebellion against the United States, shall be a citizen of this state or be allowed to vote at any election held therein, unless he has volunteered into the military or naval service of the United States and has been or shall be honorably discharged therefrom." Acts of West Virginia 1861-66: Acts of 1865, p. 94.

act was not strictly enforced, and in a few places it was entirely ignored. Many ex-Confederates, claiming that the law was unconstitutional, took a free hand in organizing the local government. In some places they ran for office, and in Greenbrier county two were elected—one to the state senate and the other to the house of delegates. In his message of 1866, Governor Boreman, commenting upon the alacrity with which the ex-Confederates insisted upon participation in politics, advised the legislature to enact a more efficient registration law, to require election officers to take a test oath, and to give the necessary concurrence in the proposed disfranchisement amendment, so that it could be submitted to the people. The legislature promptly passed a registration law, authorizing the governor to appoint in each county a registration board consisting of three citizens who were given power to designate the township registrars. It also concurred in the proposed amend. ment, which was promptly ratified by the people in May, 1866 by a majority of about 7,000 votes, thereby disfranchising between 10,000 and 20,000 persons.

Although there is yet considerable difference of opinion in regard to the wisdom of these measures, it is generally agreed that they were the natural result of conditions which seemed to threaten not only the policies of the administration but also the integrity and independence of the new state. Many of those who were disfranchised hoped to see West Virginia return to the control of Virginia. In Jefferson county a large number of persons stating that the transfer of the county from Virginia to West Virginia during their absence was irregular and void, refused to acknowledge that they were West Virginians and attempted to hold an election as a part of the state of Virginia; but they yielded when General Emory was sent to aid the civil authorities in maintaining the law. Virginia, too, tried in vain to secure the return of Jefferson and Berkeley counties, first by annulling the act of the Pierpont government which had consented to the transfer, and second (1866) by bringing suit in the supreme court which in 1871 was decided in favor of West Virginia. In 1866, while Pierpont was still governor of Virginia, the legislature of that state appointed three commissioners to make overtures to West Virginia for the reunion of the two states, but the legislature of West Virginia rejected the proposition in 1867—stating that the people of the new state were unalterably opposed to reunion. At the same time, the legislature, although in order to thwart the argument of unconstitutionality which was urged against the proscription laws it repealed the registration law of 1866, was forced by conditions in some of the

southern border counties to enact in its place a more exacting registration law, requiring the applicant for registration not only to take the test oath but also to prove that he was qualified to vote. A state of insubordination existed in three or four counties. In some places no elections were held in the fall of 1866, because of the fear of violence. The judge of the ninth district, including Greenbrier and Monroe counties, had received annoymous letters threatening his life. In his message, the governor stated that the ex-Confederates who caused the trouble were "learned men."[58]

The new registration law, which gave to registrars the power to identify those who had aided the secessionists in any form, increased the antagonism to the administration and the opposition to the laws. During the campaign of 1868 there was much partisan excitement. Many, unable to take the iron-clad oaths which would enable them to vote, and perhaps further irritated by the adoption of the fourteenth amendment, frequently attempted to intimidate public officials and threatened violence which in some places prevented elections and in others compelled the governor to appeal for federal troops to aid in the maintenance of law and order. Force was necessary to aid in the execution of the law in the counties of Monroe, Wayne, Cabell, Logan, Randolph, Tucker, Barbour and Marion. In some counties the restrictions of the registration law were almost entirely disregarded. As might have been expected, in some instances disorders arose from arbitrary refusal to register persons against whom there was no tangible evidence, or for unnecessary and unwise rigidity in administering the law—which of itself was not necessarily unjust nor unwise.[59]

Before the election of 1869 there was a vigorous discussion of the suffrage question in all its phases. With the admission of negroes to the suffrage by the fifteenth amendment which was proposed by Congress in February, 1869 and ratified by West Virginia on March 3, 1869, the question of removing the restrictive legislation which disqualified Confederates from voting became more and more prominent and was seriously considered by the more conservative wing of the party in power. A large number of the liberal Republicans considered that a continuance of the test oaths was inexpedient, and desired to adopt some policy that would terminate the bitter animosities of years. The legislature of 1870 repealed some of the test oaths. Governor William E. Stevenson, a man of

58. House Journal, 1867; Governor's Message Jan. 15, 1867, p. 3 et. seq.; Ambler: Disfranchisement in West Virginia, p. 50.

59. House Journal, 1868 and 1869, (Governor's messages of Jan. 21, 1868 and Jan. 19, 1869).

liberal as well as vigorous progressive views, earnestly favoring liberal legislation to encourage projects of internal improvement and industrial enterprise which would engage the people of the state in the development of its resources and terminate the quarrels over past issues, recommended an amendment to the constitution to restore the privileges of those who had been disfranchised by the amendment of 1866.[60] W. H. H. Flick in the house proposed the amendment which after acceptance by the legislatures of 1870 and 1871 was ratified by a vote of the people by a majority of 17,223, and proclaimed by the governor in April, 1871. Judging from the figures in the auditor's report, it appears that many disfranchised persons voted for the constitutional amendment which determined their legal right to vote.

In the meantime, in the election of 1870, the opposition pushed their claims to registration—often by intimidation of the registrars. In some counties the law was so far disregarded that every male of the required age was registered. This laxity in the enforcement of the more stringent features of the registration law, together with the opposition to negro suffrage, resulted in a victory for the Democrats, who elected John J. Jacobs governor by a majority of over 2000 votes, and secured a working majority in both houses which they retained for a quarter of a century.

VII. The Constitution of 1872 and Amendments.

After the passage of the Flick amendment which accomplished the enfranchisement of the ex-Confederates, an object for which the Democrats professedly had striven for five years, further amendment to the constitution seemed unnecessary. However, the strong reactionary elements of which the Democratic party was composed, interpreting the attitude of the liberal Republicans on the amendment as a sign of weakness, desired to put them completely to rout—or as the Wheeling **Intelligencer** said, they were not willing to wait until the corpse of the Republican party was decently buried, "but must administer on the estate at once," and for this purpose demanded a constitutional convention.[61] Their strength is shown in the legislature which, on February 23, 1871, passed a convention bill.

The most radical advocates of the convention were apparently resolved to restore pre-bellum conditions as far as possible. In

60. House Journal, 1871, (Governor's message, Jan. 17, 1871).

61. Wheeling Intelligencer, Jan. 31, 1871.

their zeal to make war on the state constitution, they constructed various ingenious complaints against it. The Wheeling Register first objected (July 26, 1872,) to it on the ground that a reapportionment could not be made under it without diminishing the existing representation of some of the counties, and later (August 11,) on the ground that a new constitution was necessary to extend the time in which the Virginia debt should be paid. The Democratic papers and various stump speakers emphasized the point that the constitution of 1862-63 was adopted without the consent of the whole people—at a time when many were in the Confederate army and when many others, refusing to recognize the reorganized state authority, had not participated in the election. Some, who were jestingly called "Democratic protectionists," wanted a convention to frame a constitution which would provide protection against the consequences of engaging in future rebellion. All the advocates of the convention were most emphatic in expressing their wish to abolish the township system, which they claimed was a new and expensive importation from the northern states. They desired to restore the antiquated county court system, and many proposed to abolish the ballot and to restore viva voce voting. Some frequently hinted that too many people were voting, and that some property qualification should be adopted to disfranchise the negro population and some of the poorer whites. Others who fiercely denounced the court of appeals, which had sustained the constitutionality of the proscription laws, at the same time criticised the constitution because it gave to the legislature the power to remove judges. But perhaps the most unique argument in favor of a new constitution appeared in the Martinsburg Statesman whose editor, apparently unconscious that the thirteenth and fourteenth amendments had preceded the fifteenth amendment to the constitution of the United States, declared in bold type, perhaps only for negro consumption, that under the existing state constitution slavery could still exist in West Virginia after the repeal of the fifteenth amendment by Congress (!) which he expected to be done soon (!); and he undertook to inform the colored voters that if they should oppose the call for a convention they would be voting to retain a constitution which still recognized them as slaves.[62]

On August 24, 1871, the people determined the question in favor of a new constitutional convention by a vote of 30,220 to

62. Wheeling Intelligencer, Aug. 10, 12, 14, 16, 18, 19 and 22, containing clippings from Wellsburg News, Parkersburg Journal, Point Pleasant Register, and Jefferson County Register.

27,638 (17,571 not voting). All the largest centers of population, except Martinsburg, voted in the negative. The big majorities for the convention were from localities in which there was a large ex-Confederate element—from the counties of Jefferson, Hampshire, Hardy, Greenbrier, Logan, Gilman and Braxton.[63]

The Democratic strength was again shown in the following October, at which time the Democrats elected sixty-six of the seventy-eight members of the convention. The twelve Republican members they humorously called the "twelve apostles."

Meeting on January 16, 1872, the convention remained in session for eighty-four days, at Charleston, then a village with unpaved and unlighted streets and shut off from the mails for three days at a time. It declined to accept the invitation to adjourn to Wheeling with free transportation. The radicals felt that nothing good in the shape of constitutional reform could be accomplished in that "iron hearted city" in which had been framed the first constitution to which they were so strongly opposed; and many, no doubt, were influenced by the fact that the "best livers of Charleston" had thrown open their homes to the members of the convention who would have been compelled to seek boarding houses in Wheeling.[64]

Strong efforts, made by the radical reactionaries, to keep West Virginia under the influence of the life and institutions of Virginia and the South, were resisted by the more moderate members. On January 20, Mr. George Davenport, a liberal young Democrat from Wheeling, wishing to show the ex-Confederates that the Union Democrats were unalterably opposed to the manner in which they were "running the convention," presented a sarcastic resolution requesting that the names of Grant and Lincoln counties should be changed to Davis and Lee. A few days later, some radical members made themselves rather ridiculous by opposing the first provision of the constitution which declared that the constitution of the United States is the supreme law of the land. Ward, of Cabell, on this question announced that he believed in the reserved rights of states and Col. Johnson of Tyler objected to the clause because it ignored the "heaven born right to revolutionize."[65]

63. Wheeling Intelligencer, Aug. 30, 1871.

64. Kanawha Daily, Jan. 19, 1872. A complete file of the Kanawha Daily (the only daily published in Charleston during the convention) containing the most complete account of the debates that can be found, is in the possession of the Department of Archives at Charleston.

65. Journal of Constitutional Convention of West Virginia, 1872, p. 34; Kanawha Daily, Feb. 8; and Wheeling Intelligencer, Jan. 25, Feb. 7 and 26, 1872.

After the early sessions of the convention, the efforts of the more radical reactionaries were somewhat neutralized by the more liberal and modern Democrats who feared that the ex-Confederate element of the party would force into the constitution provisions which might defeat it before the people. Some, observing how vigorously many members rode the hobby of economy, feared they would adopt a constitution intended not so much to benefit the people as to save money. The radical as well as the economic spirit of the members was shown in the great squabble which arose on January 22, after Mr. Farnsworth of Upshur made a customary and appropriate motion that the United States flag should be placed over the convention hall while the convention was in session.[66]

The new constitution exhibited the marks of the period of partisanship which preceded it. Due to this feeling was the insertion of provisions which made martial law unconstitutional, prohibited the denial of the right to vote to any citizen on the ground that his name had not been registered, and forbade the legislature to establish or authorize a board or court of registeration. The same feeling was reflected in the declaration, found in no other state constitution, that political tests which require persons, as a prerequisite to the enjoyment of their civil and political rights, to purge themselves by their own oaths of all past offences, are repugnant to the principles of a free government. Several new sections quoted from the Virginia constitution of 1851 and consisting of glittering generalities on the equality of man, the sovereignty of the people and the inalienable right of the majority, were also

66. After Farnsworth's motion, Ward, who it was jocularly said was perhaps best known for his magic ointment and scalp wash, moved to strike out "United States flag" and insert the "flag of West Virginia," arguing that his first allegiance was to his state. After a futile attempt to lay on the table, Farnsworth's motion was adopted, but the weighty question was reconsidered on January 24, and 25, when Col. Johnson wished to amend the resolution so that it would provide for inscribing on the flag the words "West Virginia rescued from tryanny." "In 1861," added Hagan, who rose from the opposite side. But while various members were debating the probable expense which would be incurred by the purchase of a flag. Mr. Henry Pike who, looking after coal land in that region, happened to be present solved the question by offering a flag as a gift to the convention. Whether or not Pike's offer was out of pure generosity or not, the convention accepted it, voted its thanks to Mr. Pike, and ordered the sergeant at arms to raise the flag over the convention. On February 19 the flag arrived, and after it was seized upon frantically by the twelve apostles and kissed by some of them it was hoisted over the convention hall. [Journal, pp. 43, 44, 57, 62-64, 73, and 115.]

introduced into the bill of rights as finger-boards to commemorate the proscriptive laws of the Republican party.[67]

The qualification for suffrage under the clause of the constitution of 1863 was changed in two ways: by the omission of the word "white"[68] to make it conform to the fifteenth amendment, and by increasing residence in the district from thirty to sixty days. The proposition to omit the word "white" from the clause on suffrage called forth lengthy debate before it was finally carried. Mr. Maslin of Hardy, expressing the wish that his arm might be palsied in any attempt to strike out the word "white," said that with the exception of those who had been re-enfranchised by the Flick amendment the legal voters were "carpet baggers, negroes, mulattoes, Chinese, Dutch, Irish, coolies, Norwegians, scalawags, with a few of the native population of the country." It was his purpose, he said, to give the latter more protection. Mr. Thompson of Putnam desired to cut off "that hideous tail" to the constitution (the fifteenth amendment), and to provide for such an emergency he urged the retention of the word "white." He did not consider that the negroes, who he said claimed every species of artificial rights in addition to natural rights, were quite as capable of self government as the buffaloes of the plains which had only their natural rights to protect.[69]

Different views in the convention, in regard to the best method for the expression of the popular vote, resulted in a peculiar provision which exists in no other state[70] and which leaves the voter free to select open, sealed or secret ballot. The opposition to the secret ballot was strong. Ward, asserting that the ballot system had given a great deal of trouble to the world, and Samuel Price, of Greenbrier (lieutenant governor of Virginia under the Confederacy, and president of the convention), said that the people of their counties favored the *viva voce* system of voting. Mr. Martin, with face toward the East, lamented that, although fifteen years before in old Virginia the right to vote had been regarded as the most sacred one known to man, "now-a-days the voter sneaks up drops a litle slip of paper through a hole in a door and then goes

67. Poore, vol. 2, pp. 1993 et seq.; Stimson: Federal and State Constitutions of the United States, p. 213; Wheeling Intelligencer, April 12, 1872.

68. Although the constitution makes no distinction between white and colored in the exercise of the elective franchise nor in the holding of office, it provides that white and colored children are not to be taught in the same school.

69. Kanawha Daily, Feb. 16, 1872.

70. Stimson, p. 217.

away lively as though he had done something he was ashamed of." All the more liberal democrats, however, fearing that a provision for *viva voce* voting would defeat the constitution, secured a vote of 36 to 29 against it. Twenty-four members insisted that at least the voter ought to be required to put his name on the back of his ballot, and were able to secure the compromise clause which was finally adopted.[71]

The legislature was required to meet in biennial sessions of not longer than 45 days unless two-thirds of the members concurred in extending the session. The members of the house of delegates were chosen for a term of two years; and the senators, half of whom were elected biennially, were chosen for a term of four years. Representation was based on population. Although in a few instances the convention in laying out the senatorial and judicial districts was accused of gerrymandering, the larger state papers do not reflect any serious discontent. The list of persons debarred from seats in the legislature was enlarged by the inclusion of persons holding lucrative offices under foreign governments, members of congress, sheriffs, constables or clerks of courts of record, persons convicted of bribery, perjury or other infamous crimes, and all salaried officers of railroad companies.

On the latter debarment, peculiar to West Virginia,[72] there was much debate. The attitude toward railroads at Charleston had greatly changed in the ten years since the convention in Wheeling in which Van Winkle of Wood, advocating the dropping of bank officers from the disqualified list, had clinched his argument and won the convention by saying that it might just as consistently proscribe railroad officers as bank officers. The growth of railroad influence produced anti-railroad sentiment in some sections of the state. It was sneeringly said that the young commonwealth should be called the state of the Baltimore and Ohio Railroad. Farnsworth, whose policy was to grant to big corporations no liberal franchises which worked to the detriment of land owners, declared his fear that the entire state would soon be under the control of the Baltimore and Ohio railway which by means of its through connections, he said, diverted to the west the immigrants who otherwise might stop in West Virginia. Among those who opposed the disqualification of men who had been active in improving means of locomotion was Mr. Hagan who—after recalling the times not so remote in which they had carried deer skins on their backs to Philadelphia and had drunk sassafras tea six months of

71. Journal, pp. 26 and 176; Kanawha Daily, Feb. 16, 1872.
72. Stimson, p. 203.

the year because they could not get store tea—said that without railroads residence in West Virginia would be about as desirable as residence at the North Pole.[73]

The legislature was forbidden to pass special acts in a long list of additional cases including the following: sale of church property or property held for charitable uses; locating or changing county seats; chartering, licensing, or establishing ferries; remitting fines, penalties or forefeitures; changing the law of descent; regulating the rate of interest and releasing taxes. By this constitution the state, in addition to the prohibition of 1863 which prevented it from holding stock in any bank, was prohibited from holding stock in any company or association in the state or elsewhere, formed for any purpose whatever.

The only new power given to the legislature (a power which remained inoperative for thirteen years) was that of taxing privileges and franchises of corporations and persons which in the consituation of 1863 had been witheld largely through the fear that a corporation tax would discourage corporate capital which was then so much needed to build up the new state.

The governor and all the executive officers were to serve for four years, and, with the exception of the secretary of state, were to be elected by the people. No lieutenant-governor was provided. In case the governor was unable to act, the duties fell upon the president of the senate or the speaker of the house; and, if neither should be qualified, the legislature was given the power to appoint unless the vacancy should occur in the first three years of the term, in which case an election by the people was required.[74]

The judicial system, entirely reorganized, consisted of a supreme court of appeals, a circuit court, county and corporation courts and justices of the peace. The supreme court of appeals, a rotary body consisting of four judges elected by the people for twelve years, could render no decision which should be considered as binding authority upon any inferior court except in the particular case decided unless the decision was concurred in by three judges. The number of circuits was fixed at nine and a provision forbade the legislature to increase that number until after 1880. After much debate, in which Osburn humorously suggested that there was no way out of the difficulty but to put the office up to the lowest bidder, the salary of judges of the supreme court of appeals was raised from $2000 to $2250 and of circuit judges from

73. Kanawha Daily, Feb. 13 and 26, 1872.

74. This provision is peculiar to West Virginia. Stimson, p. 243.

$1800 to $2000.[75] Abandoning the township system, the convention reestablished the antiquated county court system—composed of a president and two justices with its police, fiscal and judicial powers. This court was eulogized by Mr. Haymond of Marion, as the guiding star to younger members of the profession, the "theater upon which their youthful geniuses might disport with gay freedom before the assembled people." Hagan answered this speech by suggesting that it would be far better if these young lawyers were safely housed by the state in some law school where they would not afflict the public with such a "fraud as the farce known as the county court of the olden times." He continued by declaring that it was cruel and almost criminal to impose on men who had never read a law book in their lives the delicate and difficult tasks of adjusting the complex questions that arise in the suits that come before them. He had learned, he said, that the hapless suitor whose attorney could not boast of gray hairs could almost copy the inscription which appeared over the inferno, "He who enters here leaves hope behind," and rewrite it at the threshold of the august forum of the county court for it mattered not how ably a case might be put by the young lawyer, nor how much law he might bring forward to sustain it until it was as clear as a sunbeam, the venerable and foxy lawyer had but to refer to the "youth and inexperience of his young friend," and close with a few well chosen and hackneyed expressions about the "good sense" and profound judgment of the court, when lo! the heads went together for an incredibly short time and with a wave of the hand it was "judgment for the defendant, Mr. Clerk."[76]

Although the question of the Virginia debt arose in the convention, and Mr. Willey advocated the adoption of some addition to the clause of the constitution of 1863 relating to it so that there would remain no shadow of a question as to West Virginia's intention to assume her equitable proportion of the debt, the constitution omitted the entire clause. This was regarded by many as repudiation.

The antiquated clauses of the constitution which relate to the forfeiture of land may be regarded as a monument to a mis-

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75. Kanawha Daily, March 27, 1872. (In the convention of 1861-62, Harmon Sinsel, urging the strictest economy in the finances of the new state and stating that respectable families could live on $500 a year, advocated small salaries for judges partly on the ground that men liked the honor of the office.) [Hall, MS., Jan. 24, 1862.]

76. Kanawha Daily, March 8, 1872.

take of the dead but living past.[77] Originating with a purpose to quiet titles and reduce litigation they are still a prolific source of expensive litigation and lawyers familiar with the abuses and objectionable features of their operation have recently advocated their abolition in the interest of a less complex system of land laws if it can be done with injustice to none and without unsettling land titles. The adoption of a rational system for the registration and transfer of land titles is much needed.

The clause of the constitution of 1863 requiring an amendment proposed by one legislature to be approved by the next before it was submitted to the people was omitted from the constitution of 1872.

Although the new constitution which was ratified by a majority of only 4567, made some wise changes—lengthening the term of state executive officers to four years, doubling the terms of members of each house of the legislature and providing for biennial legislatures—it contained several restrictions, inhibitions

77. West Virginia at the beginning of her history inherited the confusion of land titles which had resulted from the mistakes made by the mother state in the early years of our national existence when she had urgent need of revenue to suport her government. The earlier failure to secure either revenue or much desired barrier settlements in the west, by the statute of 1779 which placed public lands on the market at a fixed charge of forty pounds for each one hundred acres (a price which proved too high for the hunter-farmer of the frontier), induced the legislature in December 1792, with the expectation of increasing revenues from land taxes, to offer western lands for sale at the merely nominal price of two cents per acre—an offer which in the next decade resulted in the acquisition of almost all the territory of western Virginia, principally in large grants often reaching a million acres in a single tract, by speculators who neither became residents on the land nor paid taxes thereon. Much confusion resulted from the methods by which the grants were located. Without adequate returns from the lands to enable her to supervise the location and survey of the lands sold, the state allowed every buyer to establish his own boundaries(!); and later, when she reluctantly and gradually entered upon the policy of forfeiting titles for non-payment of taxes, she first found many boundary disputes and subsequently discovered that many tracts had never been entered upon the commissioners' book for assessment. Finally, forced by the stern fact that the settlement of western Virginia by those who were willing to brave the dangers and bear the inconveniences of the frontier, was retarded by the fear of the insecurity of ownership of the soil upon which settlers might erect their humble homes, the Virginia legislature in 1831 and in 1835 passed two acts which provided for the forfeiture of titles returned delinquent (and not redeemed) and for the protection of pioneer settlers—acts which were lineal ancestors of sections three and six of article thirteen of the West Virginia constitution of 1872. The Virginia legislature, though it showed a growing tendency to forfeit titles for non-payment of

and imperfect provisions which have retarded or prevented governmental adjustments and have been criticised by leading men of both parties. Though some of these have been changed, others still remain.

Amendments have been submitted and ratified by the people at four different times. The first effort to appease the clamor for amendment was made in 1879 when the legislature proposed two amendments which were ratified: (1) an entire revision of the article on the judiciary increasing the number of circuit courts from nine to thirteen (and providing that the number of circuits might be increased or diminished after 1888) and increasing the number of terms in each county from two to three, and abolishing the county court system but still retaining the name for its successor—a police and fiscal board of three commissioners for the administration of county affairs; (2) a change in section thirteen

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taxes and to favor pioneer settlers who paid the taxes, hesitated to forfeit a title absolutely; and from time to time it passed numerous acts granting former owners of forfeited lands additional time to redeem them, and it never transferred a title to a claimant who had no claim of title derived from the commonwealth.

West Virginia in her first constitution adopted the growing policy of the mother state in regard to forfeitures, and again temporized with tho delinquent tax payer, but made a distinct advance by a provision which for the first time showed a disposition to favor the owner of a small tract whose delinquent taxes did not exceed $20. In a statute of 1869, her legislature provided for the proper entry of all land and imposed forfeiture as a penalty for failure to enter land on the books for a period of five years, but allowed the owner to redeem it within a year. The members of the convention of 1872 inserted in the constitution provisions which prevented any further temporizing with the question of forfeiture of tracts of unassessed land containing 1,000 acres or more and extending the transfer of a forfeited title to persons who had actual possession for a term of years and had paid taxes charged on the land for five years. In 1873 an act of the legislature (still in force) provided for the forfeiture after five years of all tracts of nonassessed land of less than 1,000 acres. [Hening, vol. 10, p. 82; Acts of Virginia 1831, pp. 87-97; Acts of Virginia 1835, p. 7; Code of Virginia 1849, p. 494; West Virginia Acts 1872-73, p. 450]. The tendency of this system to breed litigation is well illustrated by the fact that there are now on the docket of the circuit court of McDowell county thirty-seven suits by the state for the sale of forfeited lands, and in the larger part of these suits there are from ten to thirty tracts of land involved. These suits frequently result from the efforts of individuals who take an unfair advantage of the forfeiture clauses of the constitution in the litigation of their claims. They impose upon the state the burden of proof, and they assume no responsibility for the costs of the suits. The parties behind this litigation, in many cases, would have no standing in court if forced into a suit in ejection. [Proceedings of the West Virginia Bar Association, 1908, pp. 66-75. Paper by W. W. Hughes.]

of the bill of rights providing for a trial by a jury of six in suits at common law before a justice when the value in controversy should exceed $20.[78] In 1883 the legislature submitted an amendment, which was ratified, changing the time of state elections to coincide with the day on which the federal elections are held.[79]

With a hope of removing or reducing the many evils which still existed, the legislature of 1879 appointed a non-partisan (bi-partisan) joint committee to suggest needed revisions of the state constitution. In an elaborate report, this committee suggested many needed changes, five of which have since been adopted. In 1901, the legislature proposed amendments,[80] which were ratified by the people, limiting the invested school fund to $1,000,000, requiring the legislature to provide for the registration of all voters, making the office of secretary of state elective under the same provision as the other state executive officers, providing that the salaries of all these officers shall be established by statute and that all fees liable by law for any service performed by these officers shall revert to the treasury,[81] and increasing the number of

78. The working of justices' jury was not always satisfactory; and in 1897, after sundry decisions of the supreme court, the legislative committee on the revision of the constitution, in order to avoid the necessity of recording evidence in a jury trial before a justice or of taking bills of exceptions to the rulings and conduct of the justice, and with the idea that the judgment of a justice upon the verdict of a jury should not be final and binding as the judgment of a court of record upon a verdict in such court, proposed to add to section thirteen of the bill of rights a provision in such a case for an appeal to the circuit court for re-trial, both as to law and fact, under such regulations as the legislature might prescribe. (Rp. Sp'l. Joint Com., 1897, pp. 20 and 78).

79. West Virginia Acts 1879, pp. 72-76; Ibid. 1883, pp. 61-63.

80. West Virginia Acts, 1901, pp. 472, 459, 462, and 465.

81. This turned a considerable sum into the treasury. The fees derived from the office of secretary of state and auditor were variously estimated from $10,000 to $15,000 per year. The committee also suggested amendments providing for the election of a county treasurer to collect the taxes of the county, and for the payment of salaries to county officers in place of fees which should then revert to the treasury. Those in favor of the abolition of the fee system in payment of county officers argued that the fees collected by almost every county officer amounted to more than a just compensation for the officer's services and more than he would receive if he were paid a fixed salary, and that the cost of administering county government had become burdensome and oppressive to the people. The demand for reform became so strong that the legislature in 1908 passed a counties salaries bill. Notwithstanding the name of this bill, the fee system in payment for county officers is not entirely abolished, and there is much demand for complete abolition of the abuses that exist under the present system. [The Bar, March (pp. 4-6) and April 1908 (pp. 5-8).]

members of the supreme court of appeals from four to five—whose salaries, together with the salaries of the circuit judges, were to be fixed thereafter by statute instead of by the constitution. In addition to the adopted amendments which had been suggested by the legislative committee, the people have since ratified (1908) two other amendments—one of which increased the pay of commissioners of the county court in order to secure more competent men, and the other amended section four, of article four, of the constitution so that it no longer prohibited the appointment to office (state, county, or municipal) of persons who are not citizens entitled to vote in the state.

The committee of 1897 proposed other amendments which although many of them have seemed desirable, have never secured the approval of the legislature. Among these recommended, for which there seems to be a rather general demand, is that proposing that the legislators should receive "$4.00 a day for actual attendence for a period not to exceed 60 days at any regular, and 40 days at any special session." and another suggesting that, in order to secure more deliberate consideration of bills, no bill should be introduced into the legislature after the fortieth day of the regular session. The committee also suggested that the provision which limits the jurisdiction of inferior courts to a single county should be made more flexible in order to meet the growing necessity of development, and proposed that the constitution should leave the creation of such courts to legislative discretion and judgment. It also urged that, in order to prevent the great traffic in votes that exists under the constitutional method of voting, the mode of voting should be exclusively by secret Australian ballot.[82] To secure this change it would be necessary to omit the antiquated clause which provides that "the voter shall be left free to vote by either open, sealed or secret ballot as he may elect." Finally, it proposed to equalize taxation (1) by an exemption on real estate against which there was a lien for debt of purchase, (intended chiefly to benefit the farming classes who were paying more than their fair proportion of the taxes), and (2) by giving the legislature power to tax "business" (in addition to privileges and franchises) with the special purpose of reaching the intangible property of corporations and large enterprises which had escaped taxation, or paid only a small amount of their fair proportion estimated on the basis of wealth.

In 1903, Governor White, suggesting the need of a constitutional convention said: "Our constitution creaks at almost every

82. Report of Joint Committee, 88 pages.

joint."[83] Governor Dawson especially urged the need of reform in the size of senate—which can be most effectively accomplished by a constitutional clause providing for representation of each county in the senate by a senator chosen by the voters of that county. There has been a growing feeling that the size of the senate should be increased and that there should be some early change in the present system of choosing senators under which it is possible for eight counties to control the majority of the senate. Again, both the legislative and the executive branches of the state government have recognized the inadequacy of the present organic law as a means of solving modern economic problems relating to taxation and the proper regulation of public service corporations. Although the need of a new constitution has been suggested recently by Governor Glasscock, and although many recognize that a constitutional convention would be the best, cheapest and surest solution of the problems—especially social, economic and financial—which have resulted largely from the recent rapid industrial development of the state, many conservative leaders still prefer what they consider the less expensive method of "patchwork" amendments.[84]

83. Governor White's message to the legislature, January 14, 1903.
84. Morgantown Post-Chronicle, May 10, 1909.

BRIEF NOTICES OF SOME NEW BOOKS.

The Law of the Federal and State Constitutions of the United States.—By F. J. Stimson. (Boston Book Company, 386 pages). An historical study in constitutional law and principles and a comparative digest of the constitutions of the forty-six states. A timely and valuable book on "a live science" especially suitable for the use of the citizen and the student of politics. It especially aims to give the history, origin and present tendency of American constitutions.

Life and Letters of George Bancroft.—By M. A. DeWolfe Howe. (Charles Scribner's Sons, New York, 2 vols., $4.00 net.) These well-edited volumes based largely upon his private correspondence shed authentic light upon the character of a man whose literary ideal was to produce an historical epic of democracy and who in varied fields rendered distinguished service to his country and his time. In a series of nine interesting chapters the author has treated the chief periods in Bancroft's career: boyhood, preparation at home and abroad, beginnings of his interest in politics and history, secretary of the navy, minister to England, citizen of New York, minister at Berlin, and the final years at Washington. To these the author adds a chapter on his conclusions and a bibliography of Bancroft's books and pamphlets.

America the Land of Contrasts.—By J. F. Muirhead. (The John Lane Co., New York). A Briton's view of his American kin. An entertaining, practical and instructive, impartial and sympathetic survey of the social, economic, political, moral and religous condtions in the United States. Interspersed with flashes of humor, it presents the lights and shadows of American society, and acute and interesting reflections on various phases of American life. The author speaks with authority. He is the general editor of Baedeker's guides and his book is largely based on observation made throughout the United States in 1890-93 in the preparation of Baedeker's Handbook to the United States of which he is the author. His wife is a sister of Josiah Quincy and he dedicates his later book "To the land that has given me what makes life most worth living." His book is substantially a tribute of admiration—and of gratitude.

The Federal Civil Service as a Career.—By El Bie Kean Foltz. (G. P. Putnam's Sons, New York, $1.50). A reliable book of practical facts on the working of governmental machinery concisely and clearly arranged and suitable especially for the use of applicants for federal positions. The author is an office holder in the treasury department at Washington and writes from a knowledge of facts gathered at first hand.

Readings on American Federal Government.—By Paul S. Reinsch. (Ginn & Co., New York, $2.75). A collection of original materials suitable for use in the study of the institutions and the processes of the Federal government by the case method. These include selections on the executive and congress, the treaty making power, the senate, the conference committees, the organization of the house, financial legislation, the executive departments, legislative and administrative problems, the army and navy, the foreign service, the civil service, the courts centralization and constitutional changes and national nominating conventions.

The Good Neighbor in the Modern City.—By Mary E. Richmond. (J. B. Lippincott Co., Philadelphia, 60 cents). A practical book for charity workers, treating concretely the conditions of city life and the principles which should govern the giving of charitable relief to dependent families in the city. In detail the author in successive chapters considers: the bad conditions and remedial agenices that surround the child in the city; the men and women who make the goods we buy; the tenants who live in the houses we build and rent; the homeless men on the streets; the families in distress; and the sick who should have been strong and well. In the last two chapters she considers the good neighbor (1) as a contributor to charity and (2) as a church member.

The Statesmanship of Andrew Jackson (as shown in his writings and speeches.) Edited by F. N. Thorpe. (Tandy Thomas Co., New York, $2.50). A collection of letters and documents (many of which have never been published before) selected with care to illustrate in detail all the different aspects of Jackson's public policies—especially in relation to nullification, the national bank and the public domain. The editor has added a scholarly introduction and also explanatory notes to serve as an historical background.

America at College.—By R. K. Risk. (Archibald Constable & Co., London, 3-6). This book, the result of a recent examination of a dozen representative universities and colleges of the United States, contains a series of brightly written chapters describing the work and life of these institutions and comparing and appraising their methods in order to throw light upon problems in England and Scotland whose people the author believes should ponder and adapt to their uses the lessons drawn from the adventures of their kinsmen abroad. In observing the American system of higher education at work he apparently fails to be struck by the "deficiency of pedagogic intelligence" which has recently distressed two American writers on American college organization and methods. Though deeply impressed with the vast resources of the larger American universities, after a visit to both Chicago and John Hopkins he frankly expresses his preference for the Hopkins whose business he says is higher education in the most exacting sense of that elastic term.

American Supremacy.—By George W. Crichfield. (Brentano's, New York, 2 vols., $6.00). In these volumes, the author, who has studied conditions in South America for fifteen years, traces the rise and development of those republics gives some attention to the biographies of their leading statesmen and especially emphasizes social, economic and political tendencies and conditions resulting from the Monroe doctrine—a doctrine which he thinks should be abrogated. The second volume is largely devoted to a critical analysis of the relations of the republics to foreigners, and especially to the United States, under the Monroe doctrine, closing with a brief survey of national and international policies in relation to the government and civilization of Latin America.

A First Course in American History.—By Jeanette R. Hodgdon. (D. C. Heath & Co., Chicago, 2 vols., $1.30). An introductory survey of primary events of American history through biographies (from Lief Ericson to Thomas A. Edison and his contemporaries), suitable for use in the intermediate grades. The first volume covers the periods of discovery and colonization, and the second treats the national period.