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THE STATE LEGISLATURE.

S. S. COMBS—Junior Law.

An examination of the various state legislatures will show much dissimilarity in the grade of election and in the representative character of the members. Some of the states are divided into small districts with one representative, as in Kentucky. Others are divided into large districts with several representatives. While there are others, as in Illinois, where they have adopted the large district with cumulative voting. There is really no such thing as a standard size for a legislature. States of the same area and population differ widely. New Hampshire has a lower house of over 400 members, or about one member for every 250 votes. A New York Senatorial district has 200,000 population. A few years ago Delaware had a Senate of nine and a house of twenty-one. This number has since been changed and each house is now nearly twice as large as it was then. This state was at one time divided into three districts, each district electing three senators and seven representatives. Now each senator and each representative is elected from an individual district.

An examination of our state legislatures will show that they are also losing in power. A century ago the legislature had extensive appointive power. Now this is almost entirely lost. In the West the people do not even associate the appointing power with the legislature except as connected with the confirming power of the senate. With this loss of power of the legislature, the veto power of the Governor has grown. Years ago in many states the Governor had no such power, or sometimes only a suspensive veto which could be overcome by the mere message of the bill again. To illustrate this, when William McKinley was Governor of Ohio he had no part of lot in legislation. The recent progressive constitutional convention of that State gave the Governor this power and Judson Harmon was the first Governor of Ohio with the veto. In Rhode Island and North Carolina the Governor is still without this right, but in every other state the legislature is subject to this curb, and the undoubted tendency is to give the Governor power to veto separate items in appropriation measures.

California has recently adopted the split session of legislature. By this method the legislative session is really divided into two sessions. The first session is for the purpose of introducing measures. When all the measures are introduced and the time for adjournment

has come, the legislature adjourns and the members go to their various homes, and discuss proposed legislation among their constituents. After a few days they return to the capitol for the second session. In this session no bills are introduced, unless they be very urgent. The time is entirely taken up with discussing and passing upon the measures already before the legislature. This is in fact a lessening of the powers of the state legislature; because it has the effect of referring legislation to the people for their consent, by simply sending the legislators home to talk proposed legislation over with the people.

But the most striking illustration of this loss of power is the growth of the Initiative and Referendum. There is now twenty-two states that have adopted this plan of government. During the last four years, thirteen states have had this plan of government submitted to a vote of the people, and it has not failed a single time to pass by a majority vote.

Why all this dissimilarity and loss of power in the state legislatures? It is due to the fact that the people are not satisfied with the legislature in its present organization, and workings, and are continually trying to ameliorate the defects.

Since this is a question that vitally concerns every state of the Union, we may well turn our attention to the question and try, if possible, to discover the cause of this general inefficiency.

Governor Hodges, of Kansas, Governor Hunt of Arizona, President Wilson, and many present day statesmen have been devoting much of their time to the study of this question. And what have they discovered? They have all declared that the state legislature, with its two houses, is an affectation of the Federal Congress with its two houses, which is in turn copied from the English Parliament. Now since our state legislature is a copy of the Federal Congress, let us see if the conditions which led to the adoption of two houses in the Federal government exist in the state; and if not, then to seek the best way to better conditions in the State Legislature,

As to the first proposition which led to the establishment of two houses for the National Government—A single house composed of members chosen from the several states according to population always gives the large states an advantage over the small, and thus leaves unguarded an avenue to tyranny and monarchy. The founders of our Federal Government were opposed to Monarchy. They had fought the Revolutionary War to rid themselves of Monarchy and the tyranny of King George; now in establishing the Federal Government this very condition threatened them again through the single house; and in order to prevent this the Fathers compromised by

adopting a second house, the Senate, to be composed of two members from each state, thus giving every state equal representation in one house. As Alexander Hamilton said, "This compromise recognized that portion of sovereignty remaining in the individual states, and was an instrument for preserving that residuary sovereignty." This is the first proposition that led to the establishment of a bicameral Congress for the national government. But does this condition exist in the state? We are removed from Monarchy by the space of 150 years. The success of Democracy is no longer an experiment, but a demonstrated fact. Besides, this condition could not exist in the state. There is no avenue by which one portion of the state can swallow up the other and thus create a Monarchy. Our second house is not intended to be a guard against this condition. Neither is our state senate intended to preserve political divisions. The method of choosing State Senators, unlike the United States Senators, is based upon population. There is one senatorial district in the state of Kentucky comprising ten counties, while Jefferson county, alone, is divided into three senatorial districts. The very method of choosing state senators is sufficient proof that this proposition does not apply to the state.

The second proposition which led the Fathers of our national government to adopt a second house, was the necessity for representation of invested interests. It was argued by the fathers of our government that the Upper House, chosen by the state legislature, and being composed of a comparatively small number of men, would naturally represent the wealth of the nation, while the Lower House to be chosen by the people would naturally represent the people. This reasoning led to the conclusion that the Lower House representing the populace, would naturally be envious of wealth and would seek to divest the rich of their wealth by means of taxation. And on the other hand the Upper House representing the wealth of the nation would naturally form a check upon, and stay the taxing power of the Lower House, as was done in England by the House of Lords. But does this principle apply to the state? It does not. It was not even discussed in the state constitutional conventions. How could this principle apply to the state, when both senators and representatives are chosen by the same people and represent the same interests? We believe Turgot was correct when he said "Our bicameral system of state legislature was an affectation for us to copy the House of Lords when we had no Lords to use for the purpose."

There yet remains a third proposition—that of forming a check upon hasty and rash legislation, by means of a second house. We

have become so accustomed to associate the term "check and balance" with "bicameral legislature" that it is almost impossible for us to think of one without the other. The fact that we have a two house legislature does not necessarily mean that we have a check upon hasty legislation. It was never thus argued by the Fathers of our government. So far as I know they only argued from the premise, since the two houses of the National Government were to be chosen in a different manner, by different people, and were to represent different interests, the Upper House would naturally form a check upon the Lower. Practically all authorities agree that unless the two houses differ, there can be no check upon legislation. James W. Garner, in his Introduction to Political Science says: "If the two chambers are the same in constitution, then the second is a mere duplicate of the first, and the advantages of the additional chamber are questionable." Lieber says: "They amount to little more than two committees of the same house." Judge Story declared, "The division of the state legislature into two houses can have little or no intrinsic value, unless the organization is such that the second house can operate as a real check upon rash legislation." Bluntschli argues: "We believe the upper chamber ought to rest on a different basis from the lower chamber, that it ought to represent political classes or interests, or political units as such without full regard to population, while the Lower Chamber ought to represent the opinion of the masses." And this is the opinion of practically all authorities on this subject. But as we see the two houses of the state legislature are absolutely lacking in the principle of territorial difference as our Federal Government has it. We have also seen that they are lacking in the principle that one house represents the invested interests while the other represents the masses of the people, therefore the argument made by Hamilton, Jefferson, Madison, and the other Fathers of our National Government do not apply to the state, and were not intended by them to apply to any state.

Not only is this system of checks and balances a failure when applied to the state, because of lack of different interests represented; but political conditions are often of such a nature as to make this argument seem ridiculous. There are many states in our Union where both houses of the legislature are largely composed of men of the same political party. Experience has taught us that when necessary the two houses unite in order to carry a political measure which they would otherwise lose by checking each other. This is a day of platforms. Today the political party adopts a platform of principles which it desires to see enacted into laws. Then it chooses

men to run on this platform. These men virtually promise before election to stand for the principles of the party—indirectly to stand for the same principles. How can they, then form a check upon each other, and at the same time remain true to the party platform? Regardless of the fact that the two houses of the state legislature represent the same interests, if they were more nearly evenly balanced as between the political parties, they might yet be a check upon each other. But history of state legislation bears us out in the statement that political conditions often tend towards uniformity in legislation.

Aside from the fact that uniformity in representation and political conditions destroys the principle of checks and balances in the state legislature, there is another condition which tends to weaken the efficiency of the present system. That condition is the complexity of the system. The theory of our Federal Congress, of which the State Legislature is a copy, was that no man engaged in making laws should be trusted with authority. This was to prevent any man from usurping the powers of government for his own personal gain. The result was a bicameral Congress, in which the actions of each house would be checked by the other. This was the first step which led to the complexity of the present system. Again the present system is founded upon the theory of local representation, that is each community must be represented in the state legislature by the actual presence of one of its members in that body. Consequently most states get a large number of incompetent men to make the laws. This number is usually too large to legislate upon the floor of the house, and the result is committee legislation. There are 108 committees in the legislature of Kentucky, and we may safely say that the destiny of legislation is largely controlled by these committees.

Let us now look at the state legislature as seen in the various states. There it is with its powers divided between two bodies of men, both existing for the same purpose and trying to do the same thing, and neither of them authorized fully to do any thing. Furthermore each house is again divided into numerous committees which are in themselves enough to destroy the power of authority, which is really granted. This leaves the members absolutely helpless. Men go to the state legislature endowed with the highest of aims, and pledged to the people to faithfully represent them; and immediately become swamped in this Serbonian Bog of legislative effort and give up in despair.

With these conditions I ask, Where is the real check upon hasty and rash legislation? I submit the following: 1. In the written constitution. 2. The Supreme Court of the State, and 3. The force of public opinion at the polls.

Every line in the state constitution is a limitation of the powers of the state legislature. It is either a direct denial of power to the legislature or an indirect denial through the assumption by the convention of the power of legislation. "It is a well known fact," said Mr. Carroll during the debates of the Kentucky Convention of 1890, "that one of the prime causes for calling the convention was the abuses practiced by the legislative body of the State; and I venture the assertion that except for the vicious legislation and the local special laws of all kinds and character passed by the legislatures that have passed in Kentucky for the past twenty years, no proposition to call a constitutional convention could have ever received a majority of the votes of the people of Kentucky." As a result of the feeling here expressed in the convention, and attempts to check the legislature our state constitutions look like statute books rather than constitutions.

The second check which the states have upon rash and ill considered legislation is the Supreme Court of the State. Alexander Hamilton said of the courts: "They are the bulwark of a limited constitution against legislative encroachment. They serve not only to moderate the mischiefs of the laws passed, but serve as a check upon the legislative body in passing them." In proof of this statement we might look at the acts of the last legislature of Kentucky which the Supreme Court has declared unconstitutional. What is known as the "Rail Road Rate Law" was declared unconstitutional for want of an Enacting Clause. The Employer's Liability Act, the Workmen's Compensation Act, and many others have been declared unconstitutional by the Supreme Court.

The last and most powerful check upon hasty and rash legislation is the force of public opinion at the polls. The check which stands as a giant oak on the mountain side when all others have fallen. More than 100 years ago Jeremy Betham declared in his Constitutional Code, "If we are obsessed with fear of oppression the true corrective is found, not in a second house, which is certain to be a slave to party or class, but in the veto of people at recurring elections." The world is fast swinging round to the belief that the people can be trusted, that all they need is a system of government open and above board whereby they are able to detect crime and bribery and they will check the impostor by their vote at recurring elections. The Initiative and Referendum have no other principle for their foundation. But the great trouble with the present system, is that authority and responsibility are not fixed; the people know some one is to blame for the present character of legislation, but they are unable to place the blame. What we need today is a system of legislation, which is simple,

straight forward, and positive, which gives authority, and fixed responsibility. Many states are now proposing the Unicameral or single house legislature as a remedy for these evils.

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TAX-FREE INVESTMENTS IN KENTUCKY.

Real estate located in another state has no situs in Kentucky, and legislation by this state could not give it a situs here even though the owner is domiciled in Kentucky. (1) The same thing is true of tangible personalty. (2) As to tangible personal property, the ordinary rule is that the situs is at the domicile of the owner. Within certain limits this rule may be changed by legislation, and a statute fixing the situs of intangible personalty at the domicile of a non-resident has the effect of exempting such property from taxation so far as Kentucky is concerned. An example is the statute fixing the situs of intangible trust property at the domicile of the cestui instead of the domicile of the trustee even though the trustee is domiciled in Kentucky and cestui is not. (3)

But all property having a situs in this state, except United States bonds (4) and property expressly exempted in Section 170 of our constitution, must be subjected to the general property tax. An act of the Legislature expressly exempting any other property from taxation would be unconstitutional.

How, then, can one write of tax-free investments in Kentucky? The answer is to be found in the following principle: There may be many different property rights, legally speaking, where there is but one property, economically speaking. The courts when permitted or authorized to do so by the Legislature, can look behind the legal technicalities, see the substantial oneness of the property, and require the holder of only one of the legal rights to pay the tax on the property, exempting the holders of the other legal rights in the same property. But the courts may, when not permitted or authorized to do otherwise by the Legislature, require the holders of two or more legal rights to pay taxes upon the full value of the property, although there is, economically speaking, but one property.

For an illustration, suppose that X owns \$100,000 in gold coin, and that Y owns a factory worth \$100,000. The State would collect taxes upon \$200,000 worth of property. Suppose then that X and his friends A, B, C, and D organize the Alphabet Bank with a capital stock of \$100,000. X puts up his \$100,000 of gold coin for the capital stock. He has certificates for five shares each issued to A, B, C, and D, be-