The organization of state Administration in Missouri

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Preface.

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Chapter One.

Introduction.

In its broad outlines the government of Missouri resembles that of most of the other American commonwealths. There is little in the administrative organization of Missouri to distinguish it markedly from the other forty-seven commonwealths. Missouri's constitution-makers accepted a constitutional inheritance from their fathers. Time has made a few changes. In the constitutional history of the executive and administrative departments a few changes were made (and undone). Tenure of office shortened, then lengthened, the vote necessary to override the governor's veto enlarged, a long ballot replaced the short (a step distinctly backward), these are the only changes of note. The broad outlines of the state government under the constitution of 1875 is substantially that under the constitution of 1820. One hundred years of an independent constitutional history with little progress.

What progress has been made has been accomplished by statute. A slow but gradual accumulation has characterized the development of state administration in Missouri. Missouri has made no novel experiments in government as have been made in other states of the Union. Missouri has
been content to follow, to watch the development of events following an innovation of government in another state, and then if successful there to venture to try it herself. But too often Missourian legislators have been untrained in matters of government; men lacking vision, content to follow the past; ultra-conservative, moving only when caught in the stream of progress. Then too, practical politics with its patronage and spoils for the victors makes politicians loth to abolish the old system with its spoils, graft, and fraud. Efficient government means less offices to fill with political henchmen.

Responsibility and efficiency in administration should be the double end sought in government. These are the ends of the ideal representative democracy. The attainment of these ends with a certain degree of administrative freedom is the goal of all modern reorganization of state government.

To attain that end centralization of certain social activities is absolutely necessary: a centralization that is entirely exclusive of local administration in some cases, especially health and education. At present state supervision of health and education is confined almost solely to the receiving of reports from local officials at
the central state department, the scattering of research bulletins, the accrediting of schools, and the licensing of teachers and practitioners.

There has been too much legislative centralization at the expense of the administration. The legislature is almost omnipotent in the realm of supervision of administration. And it has given a poor report of its trusteeship. It has created boards without number, illly or not at all coordinated, barely responsible to anyone, and so constructed that they were conducive to waste. State administration in Missouri has been inefficient, irresponsible, uncorrelated, and handicapped by too limited grants of authority.
Chapter Two.
The Missouri Executive.

The westward trend of population in our country has moved in three great courses. One, that Mr. Thorpe calls the Virginia current from its source, moved westward and southwestward in an ever widening van covering all Missouri. Within this sweep of westward migration the states first settled contributed to the population of those directly west of them. This movement gave to Missouri a political character in uniformity to those states east of it and south of the Ohio river. This wave of migration gave Missouri originally a population natal of the older southern states, especially of Tennessee and Kentucky. A perusal of any biography of the prominent early pioneers of the state evidences the preponderance of early settlers born in the two southern states directly east of her.

Thus in studying the history of Missouri's executive we must travel obversely to the stream of movement of her earliest settlers traversing Kentucky and Tennessee to Virginia to reach his prototype.

The governor was the original form of the executive found in English America.

The London council empowered by its charter so
to do issued on February 28, 1610 a commission to "Sir Thomas West, Knight Lord La Warr, to be principal Governor, Commander and Captain General, both by land and sea, over the said colony (Virginia)." Thus Lord Delaware was made the first governor in America, to hold office until his death. This document is important in several respects. No other American governor was ever to be granted such absolute powers, nor was the earliest American governor to exercise them long. However, because of their historical importance it is well to note them here.

His commission made Sir Thomas West supreme in the colony: to him was delegated all the powers of sovereignty granted by the king to the London council. His Autocracy could declare martial law in time of mutiny and rebellion. In less strenuous times he was to govern according to his instructions, which did not limit nor minutely define how he was to govern, and, accordingly to his own discretion. He was to govern by such laws as he and his council might pass. This council was but an official echo of the executive, being appointed by the governor to advise him. All other officers necessary for government in the colony were likewise appointed by the governor with the exception of the lieutentant-governor, admiral, the vice-admiral, the marshall, and sub-governors of the provinces. These were to be appoint-
ed by the London Council. The governor could suspend any officer in the colony and fill the vacancy with an appointee of his own choice to hold office until a decision was announced by the Council in London. During the governor's absence from the colony he could appoint a deputy to perform his gubernatorial functions for one year.

Kaye succinctly defines the early Virginia governor's powers. "The governor," he says, "was vested with all powers not denied to him expressly by the charter or the ordinances of the London Council, or implied by the statutes of Parliament. The government * * * was centered in one chief with several subordinates, the chief being responsible only to the source of his power in England." In 1619 the first legislature was called in America by governor Yearley. This assembly was to prove a great curtailment to the legislative power of the governor. His legislative power, however, was not entirely suspended. The governor with his council could yet exercise an immense influence over the deliberations of the burgesses for he and his council still retained the privilege of sitting with the assembly. But the governor had no voice in the choice of the assembly's speaker.

The colonial governor was the least American contribution of the American colonies to our constitutional
history. He was a replica of the king. He was the king's agent. He possessed many of the King's prerogatives and possessed nearly all of his executive powers. What his authority as an agent meant becomes more real to us when we consider that the end in view of the government of the early southern Atlantic colonies was not so much the "government of a province as the regulation of a business venture." What little government was considered necessary had to be concentrated into the hands of one directly responsible to the charterers in England. The charter merely set up an executive officer and granted to him sufficient powers to control the colony. This lack of attention to minute construction of government was a fortunate thing because it left much for original contribution to constitutional government by Americans.

Altho the least American contribution to American constitutional history, yet the story of the colonial governors is practically the whole of pre-revolutionary American political and constitutional history. At that time there was barely any idea of the separation of governmental powers.

Nor was the development of executive authority in most of the other colonies essentially different from that in Virginia. In all cases the governor and all or most
all his subordinates were appointed either directly or indirectly thru companies chartered by him or thru proprietors who had received grants of territories in America and governmental powers from him. The royal governor received his mandate from the king, the proprietary governor received his from the colonial proprietor or proprietors. In Rhode Island and Connecticut he was chosen by the electorate.

"'Every proprietary governor,' it was said, 'has two masters; the one who gives him his pay', adding, 'the subjects' money is never so well disposed of as in the maintenance of order and tranquility and the purchase of good Laws.'

The powers conferred upon the corporations by their charters were primarily executive in nature and these to an almost full extent were conferred by the corporations upon the governors.

The colonial governor's powers and functions were defined in the corporation charters, in his instruction§ and in his commission. At first these conferred powers were very broadly stated but soon more precisely and specifically. It was among his duties to recommend to the colonial assembly such legislature as was desired by the crown, and he must make definite reports to the crown concerning wants, conditions, and happenings of any importance in the colony: its commerce, military resources, revenues, as well as its ad-
The colonial governor held a duplex post for he was both agent for the Crown or proprietor, and for parliament. He was the medium of communication between the colony and the home government, and the executor of Parliamentary acts that applied to the colonies.

With variations in the various colonies the governor's "commission authorized him to arm, muster and command all persons residing within his province, to transport them from place to place, to resist all enemies, pirate and rebel, if necessary to transport troops to other provinces, to pursue enemies out of the province, to do independently these and other things properly belonging to the office of commander-in-chief. By advice of his council he might establish fortifications and execute martial law. His vice-admiral's commission conferred extensive powers. He conducted affairs with other colonies and with Indian tribes, and with the advice and consent of his council, concluded treaties. Indian wars and boundaries were fruitful subjects of discussion. The governor's power of military appointment was independent; of civil appointment limited. He kept the public seal, made grants of lands and charters of incorporation. When his instructions were silent he was authorized, with the consent and advice of council, to take provisional
action, giving immediate notice to the home government. His
pardoning power was limited; he controlled prosecutions.
The important judicial function of the governor and council
was the hearing of appeals under various limitations of a-
mounts involved. As keeper of the seal he had a theoretical
equity jurisdiction which was not favorably regarded. 'As a
part of the ecclesiastical jurisdiction he had the probate
of wills and the issue of marriage licenses; either alone
or with the council he usually acted as a court of probate;
in Massachusetts and New Hampshire, at least, the governor
and council constituted a court for the decision of ques-
tions of marriages and divorces.'

Rarely was the colonial governor chosen by the
colonists nor from their number. Occasionally colonists
were appointed to this important position.

Even with the advent of popular colonial leg-
islature and all thru their strenuous struggle for supre-
macy the governor exercised a vast control over their de-
liberations. This was partly due to his large patronage:
only obsequious legislators could aspire to hold an office
within the gift of the governor. Then to, he had the right
of absolute veto. Lastly, he possessed the right of dissolv-
ing the legislative body. This power was more to be feared
because of the possibility that the governors would not use
it upon the sessions of a subservient legislature than that he would use it upon the sessions of an obstreperous one.

The earliest American governments were essentially executive in form, the governor and his immediate subordinates administered all governmental powers in the colonies. This was its earliest form and altho the home government attempted, previous to the Restoration, to still further centralize all governmental powers in the colonies, antagonistic to such a policy, succeeded in over-ruling the prerogatives of the governor by checking him in the exercise of his functions.

For over a thousand years every reform in England had for its immediate object the limitation of the powers of the Crown. In the United States since 1776 the opposite effect was desired; public opinion distrusted the legislature and desired to increase the powers of the executive. The English parliament possesses unlimited powers, and altho the American legislatures' powers are residuary, yet portions are constantly being transferred to the executive.

The tendency to concentrate large powers in the hands of the chief executive of the state is but a recent movement in American constitutional history. Altho the early state governor took the place of the colonial governor
and to that extent was modeled upon his prototype, the people were careful to subtract from that office all devices for independent action on the part of the governor. This was in part due to the erstwhile colonists' remembrances of how their colonial governors had been the pliable and odious instruments of English oppression. All administrative powers were shorn from the governor and what powers and importance the office was to gain was only on the political side.

Unlike the legislative power the executive power has always been a constitutional power. "The American governor is an institution of native origin." To an extreme degree the governor was made very dependent because of past experience. The revolutionary constitutions made the legislatures truly omnipotent, and the governors practically subservient to the legislature.

The period from a short time before the outbreak of the revolution to shortly after the promulgation of the Federal constitution was one of constitution-making in the states. Practically all the states at the beginning of this period adopted constitutions with the exception of Rhode Island and Connecticut. Rhode Island and Connecticut retained their colonial charters, transferring them into their fundamental laws, by substituting the authority of the
people for that of the king. Connecticut in 1318 and Rhode Island in 1842 adopted new constitutions.

The statesmen of this period were obsessed with the idea of the separation of powers. Section 30 of the Massachusetts declaration of rights stated: "The legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative or executive powers, or either of them."

Many of the other state constitutions with the exception of those of New York, New Jersey, Delaware, South Carolina (1776 and 1778), New Hampshire (1776), Pennsylvania, and Vermont contain similar provisions and many contained a prohibition against individuals holding more than one office.

The early New Hampshire Bill of Rights made much the same statement as that made in the Massachusetts Declaration of Rights: "The three essential powers, to wit, the legislative, executive and judicial, ought to be kept as separate from and independent of each other, as the nature of a free government will admit, as is consistent with the claim of connection that binds the whole fabric of the constitution in one bond of unity and amity."
Because of the colonists' distrust of the governor who had been with five exceptions the direct colonial representative of the king, the governor was deprived of most of his former powers. The governor was elected in eight states, and was appointed by the legislatures in six. In New Jersey, Delaware, Maryland, North Carolina, South Carolina, and Georgia he was elected by joint ballot of the two houses, in Pennsylvania by joint ballot of the assembly and the executive council. In seven states he was elected for a one-year term only, in three for three years, in three others for two years, and in Kentucky for four years. The governor was ineligible three out of every six years in North Carolina, and four out of every six in South Carolina (1776), and four out of every seven in Maryland and Virginia. The colonial executive council had separated into two bodies, the governor's council and an upper house of the legislature. In the first eleven constitutions the executive council functioned in all the states but New York and New Jersey, its members being either elected by the people directly or by the legislature. Towards the end of the eighteenth century every state with the exception of Delaware, Pennsylvania, South Carolina, and Georgia had abandoned it. Later Vermont adopted it. At the opening of the nineteenth century six states had a governor's council.
In some of the states the governor's powers were so limited independently of the executive council as to really vest the executive power in the two jointly. The New Hampshire (1776) constitution did not provide for even a nominal chief executive for there the council, nominally the upper house of the legislature, with its president was virtually an executive board. In Pennsylvania and Vermont the executive board was in reality the chief executive. In Pennsylvania, New Hampshire (1784), South Carolina (1776) and Delaware the chief executive was called President, in all others Governor.

Virginia and Delaware prescribed no special qualifications for the governorship. The New Jersey and Maryland constitutions used trite phrases in describing his qualifications, which consequently meant nothing in particular ("Some fit person," New Jersey; "Person of wisdom, experience and virtue," Maryland.) New York required him to be a freeholder. In Pennsylvania, Vermont, Georgia, and South Carolina (1776) anyone qualified for the office of legislator might be elected governor; in North Carolina and New Hampshire (1784) he had to be at least thirty years old, and in Maryland at least twenty-five years. New Hampshire (1784) required him to have been a resident of the state seven years preceding his election. South Dakota (1778) required
a residence of ten years; North Carolina, Maryland and Massachusetts required five years. Property qualifications were required in New Hampshire (1734), North Carolina, Massachusetts, Maryland, and South Carolina (1778). Many required religious tests.

In the powers granted to the state executive in the early constitutions we find enumerated many of his present-day powers, which are in reality but further developed phases of these early grants. We find many of these elements of the executive power formulated in two or three or more of all the early state constitutions. We find either the rudiments of or the fully developed suspensive veto, the power to adjourn the legislature in case both houses cannot mutually agree as to the time of their adjournment, the power to convene the legislature at some other place than at the seat of government in case the capital is for the time being in danger. The governor was commander-in-chief of the militia; he possessed qualified powers of pardon and a restricted power of appointment coupled with that to fill temporary vacancies and to sign commissions. Frequently he might require information from the executive officers and communicate information and make recommendations to the legislature. Oftimes he was the keeper of the state seal.
Altho in the reorganization of the executive department the constitution-makers deprived the office of much of its previous autocratic character when under the sole control of England, yet they did not entirely abolish all of executive dignity and efficiency. The colonial executive was the least American feature of the colonies in that its founders copied closely the royal prototype; made it a model,---so to speak,---a small imitation of the real thing.

And to further accentuate the governor's dependence upon the legislature it was in all states, except South Carolina, given the right to fix his salary.

All the constitutions gave the governor a nominal right of supervision over the enforcement of state laws.

The later development of the governor's office we will consider under two heads: the period from 1801 to 1850, and that from 1851 to the present time.

Altho the colonists drew freely upon their contemporary English models in the formation of their early constitutions Morey contends that it is no more tenable to theorize that the first governments were copies of the eighteenth century English government than to say the same of our Federal constitution (or government).

The election of the governor which had been, un-
der the revolutionary constitutions, vested in the legislatures in eight states was gradually placed in the hands of the voters. His term of office was gradually increased ahd New York shortened the term of its government from three to two years. In Virginia he was given a three-year instead of a one-year term.

In the constitutions of the new states of this period the three departments were separated in form. The American state constitutions for all time contained a provision to this effect. The governor was elected for varying terms of two, three, and four years by popular vote. No state was to withhold the veto from its chief executive except Ohio. Ohio finally conceded it to him.

Vermont and Maryland dropped from their constitutions the governor's council.

The legislatures no longer were honored bodies for many constitutional measures were passed to restrict their authority. Their early omnipotence in legislation and administration gradually passed into senescence. In turn the governor's power increased at the expense of the legislature: he was a new Phoenix. His remuneration was constitutionally provided for without dependence upon the legislature. His veto power was expanded and the legislative vote required to override his veto was numerically increased.
In respect to administration his powers declined with those of the legislature. This was due in part to the Jacksonian preachments that more powers of the government should be lodged directly with the people, and the general dread of "one-man" power.

Since 1850 many causes, primarily constitutional, statutory, and extra-legal, have accentuated the power, prestige, and influence of the governor's position. Chief among his increased powers are those of appointment and removal. Thru extra-legal influence he has attained a positive initiative in legislation.

Political writers in the past have lamented the fact that the executive powers have not received the proper attention, that the theory of the separation of powers has been at times utterly disregarded, and that because the privileged legislature shared executive powers with the executive disastrous results have occurred in state administration. But at present the strong centralizing tendency in economic and political life is having its effect by forcing popular attention to the proper relation of the legislature to the governor. Large powers of oversight, including the veto power and the power of appointment and supervision over the administrative departments, is being centralized in the governor.
"There is plenty of evidence that there had developed a lack of confidence in the Legislature in Missouri. This was manifested by provisions in the constitution of 1865 and constitutional amendments adopted from time to time as well as in massacres of Governors McClurg, Brown, Woodson and Hardin. Among the most important causes for this popular distrust was the abuse of the power of special legislation and the policy of authorizing State and local aid for railroads. As a result of the latter the State as well as counties, townships, cities and other local subdivisions had incurred large debts with resulting increase of taxes. The Civil War and later the panic of 1873 had increased the difficulties of the situation and had caused serious embarrassment in State and local finances. The members of the Constitutional Convention had personal experiences with these conditions and their constituents were demanding relief and safeguards for the future. As a result the constitution of 1875 was distinguished for possessing greater restrictions upon legislative power than any of its contemporaries in other states and today there are few state constitutions which can compare with the strictness of its provisions."

Missouri has taken her place in the lead with her sister states.
Missouri has had four constitutional conventions: the product of three of these were adopted. The first of these called the Barton constitution from David Barton, president of the convention, took effect July 10, 1820 without submission to the voters. The second, drafted at Jefferson City in 1845, was repudiated by the people. The third constitution, framed at St. Louis in 1865, was afterwards adopted by the people and was effective until the constitution drafted by the convention of 1875 was adopted by the people. The fourth constitution is now the organic law of the land.

No debates were recorded of the earliest Missouri constitutional convention.

Article 4 of the 1820 constitution deals with the executive department. In speaking of this article Shoemaker says: "It seems that the states whose constitutions apparently influenced its framing the most fall in four classes: first, Kentucky and Illinois, of which the former state exerted the greater influence; second, Mississippi, Indiana, Alabama, and Louisiana, whose influence though not nearly so great as that exerted by Kentucky and Illinois is still very clearly seen; third, Connecticut, Ohio, Tennessee, Delaware, South Carolina and Georgia, which seem to have furnished the pattern for several individual sections;
fourth, Maryland, Vermont, Maine, Massachusetts, New Hampshire, whose constitutions contained the provisions that were quite similar to scattered clauses in the Missouri constitution. Quite a large number, in fact the majority of the twenty-one sections in this article, are very like provisions to be found in a large number of other state instruments but there are some points set forth that were followed by very few states, and in some cases were distinct departures from any constitutional provisions."

The majority of the early inhabitants of Missouri being migrants from Kentucky and Tennessee naturally were predisposed to follow the southern types of constitutions, and especially those of Kentucky and Tennessee rather than those of northern states. Next to Kentucky's constitutions those of Alabama and Illinois, the latest framed constitutions were most influential.

Eight of the members of this early convention were born in Virginia, seven in Kentucky and possibly two others whose nativity is doubtful, two in Tennessee and probably one other whose nativity is doubtful, two in Maryland, two in Missouri, one each in the District of Columbia, South Carolina, New York, North Carolina. The nativity of six is unknown. Of the two foreign-born members both were from the British Isles, one was born in Wales, the other in Ireland.
Only two other state constitutions at the time required their chief executive to be thirty-five years old as did this early Missouri constitution, and but three others specified as high citizenship qualifications. In but three other states was the governor elected for as long a term as four years as in Missouri. Only Missouri at this time allowed her governor by constitutional provision ten days in which to pass on bills; the others, with the exception of Kentucky, either specified a shorter time limit or made no mention of it.

Southern influence was again dominant at the St. Louis convention, with a strong German influence, if we may judge by the nativity of the membership of the convention. Nine of its members were born in Kentucky, nine in Missouri, eight in Virginia, seven in Tennessee, seven in Ohio, six in New York, four in Pennsylvania, two in Connecticut, two in Indiana, one each in Illinois, South Carolina, North Carolina, and New Hampshire. Arnol Krekel, president, was born in Germany, as were eight others. The only other foreign-born member was an Englishman.

Today the governor is elected in all states by popular election. Those qualified to vote for members of the lower house of the legislature may vote for the governor. The constitution of 1820 (Article 3, Section 10) en-
franchised all free white male citizens of the United States twenty-one years old or over having resided in the state one year (except soldiers, seamen, and marines in the Regular Army or Navy of the United States). The constitution of 1865 (Article 2) required citizens to subscribe to a test oath pledging their past and present loyalty to the Union before being allowed to vote, providing he was a white male, except United States soldiers and marines, at least twenty-one years old and for at least one year a resident of the state. An amendment ratified November 8, 1870 enfranchised negroes. The same year the Test Oath was abolished.

Article 2, Section 8 reads: "Every white male person of foreign birth who may have declared his intention to become a citizen of the United States according to law, not less than one year nor more than five years before he offers to vote, may vote providing he is not otherwise disqualified!"

Article 8, Section 2 prescribes the same qualifications for voters as the amended constitution of 1865.

Article 4, Section 2 of the constitution of 1820 provided that the governor be at least thirty-five years old and a resident of the territory which was then Missouri for four years before his election. And in addition "be a natural-born citizen [Missouri never had a foreign-born governor] or of the United States, or a citizen at the a-
doption of the constitution of the United States, or an in-
habitant of that part of Louisiana now included in the
State of Missouri at the time of the cession thereof from
France to the United States." The constitution of 1865, Art-
icle V, Section 2, made no changes as to the age qualifica-
tions but otherwise completely changed the earlier require-
ments. He must be a "white male citizen of the United
States ten years, and a resident of the State seven years,
next before his election." The similar constitutional pro-
vision of 1875 struck out the word "white" in the same sec-
tion and article of the previous constitution.

The Constitutional Convention of 1875 provided
for the executive department in sections whose provisions
differ in few respects from those to be found in other
state constitutions in existence in 1875.

These changes, it is well to note, are all in ac-
cordance with the tendency then developing if increasing
the power and importance of the executive.

The qualification that the governor must be a
male is not found in any other state constitution in 1875.

The requirement of thirty-five years is high as
compared with the other state constitutions.

The governor is elected at the presidential
44
_elections. Mathews says that governors have sometimes been
elected, not so much on their own merits or on the policies which they advocated, but because they happened to be members of the political party which for the time being was dominant in national affairs. This is hardly true of Missouri for prior to the Civil War she was consistently Democratic, always returning democratic electors and governors. During the abnormal Civil War period and immediately following during the abnormal reconstruction days in the elections of 1864 and 1868 republican electors and governors were elected. Since that date democratic electors were always returned except at the elections of 1904, 1908, and 1920. Only in 1908 and 1920 were republican governors elected.

"In 1906 the state went Democratic by a plurality varying from 8660 for Howard A. Gass, Superintendent of Schools, to 14,665 for Rube Oglesby, Railroad and Warehouse Commissioner. In 1908 the Republicans carried the state for Taft for president by a plurality of 629 and for Hadley for governor by 15,879. The other state officers were divided between the two parties. In the election of 1910 the Republican State ticket was elected by pluralities ranging from 2,240 to 5,429.

"Owing to the division of the Republican party in 1912, the Democratic party easily elected all the State officers, with pluralities ranging around 120,000. Wilson's
plurality over Taft was 124,371, but the combined vote for Taft and Roosevelt exceeded that for Wilson by 1,446. The Progressives again put out a State ticket in 1914, and the entire Democratic ticket was elected by pluralities ranging around 50,000, but the total vote cast was about 65,000 below that of 1912. In 1916 the Republican party was united, yet Wilson carried the state by a plurality of 28,693. However, Gardner's plurality over Lamm, his republican opponent was only 2,263 and Hackmann, the Republican candidate for state auditor, was elected by a plurality of 9,080.  

The difference between the vote cast for the successful presidential candidate and that cast for the successful gubernatorial candidate is large enough to refute any argument that the choice of a governor in Missouri is unduly influenced by national politics; altho, that such an influence exists must be admitted as the 1920 election evidences. At that time a republican governor was swept into office upon the crest of a republican national landslide, the electors being more dissatisfied with the Democratic national administration than with the Democratic state administration. The republican votes for president and for governor at that election were very even. (See Chart 1, p. 207.)

Double elections, presidential and gubernatorial, tend to strengthen party control, and certainly facilitate
straight party voting. One decided advantage of a double election is that it diminishes expense.

A bare plurality is sufficient to elect Missouri's governor. Seven times in her history Missouri has had a minority governor. The first time in 1844 when the Democratic candidate, Edwards, was elected by a vote of 4,379 less than the total vote of his opposition, again in 1856 when Polk received 21,100 less than his opponents, in 1860 Jackson received 7,687 less than his opponents, in 1888 Francis received 6,594 less than his opponents, in 1892 Stone received 10,993 less than his opponents, in 1908 Hadley received 3,853 less than his opponents, in 1916 Gardner received 21,288 less than his opponents. In recent years a minority candidate is more apt to be elected than formerly because election issues are not clear-cut, but to the contrary are vague and ill-defined, and the situation is further complicated by the number of candidates in the field which is usually not less than four. In 1856 there were three candidates in the field, four in 1860, three in 1888, four in 1892, five in 1908, and six in 1920.

In New York up to 1854 all the elective officers with one or two exceptions required a majority of all votes cast to be elected. Since 1854 a plurality will elect.
ing of this change Gamaliel Bradford says:—

"No longer single step downward was ever taken in the politics of the State; and it is a crucial illustration how dangerous is legislature which is not subjected to the stringent and public criticism of the executive branch which is responsible for administration. The very basis of popular government or of Democracy is that the majority shall govern, to say that the largest of any given number of fractions shall govern is a very different thing. * * * Instead of a combining, election by plurality is distinctly a disintegrating force. It lends every theorist who has a pet idea, female suffrage, prohibition, eight-hour laws and so on to work in creating a new fraction in the hope that it may in time outnumber any other. It leads every rascal to work in multiplying fractions that the proportions of any one of his own may be diminished. It permits any citizen who does not fancy either of the great parties to throw away his vote upon some particular idea which strikes him as praiseworthy, without incurring the reproach of abstention. There is a great deal of talk about minority representation. Under the plurality system there is a good chance that minorities only may be represented. It is as necessary in a democracy as in any army, that the members should be taught that they must pull together, and the way to do this is to
require a clear majority of votes at every election."

Article 5, Section 3 of the Missouri constitution provides that if two or more candidates for any general election shall have an equal and the highest number of votes, the General Assembly shall, by joint vote, choose one of such persons for said office.

The reasons for requiring certain age, residence, and citizenship qualifications for the governor's office was undoubtedly to guard against the election of a young, inexperienced and before unheard of man. Only by casting a vote for a man well-known could the electors decide as to his fitness for the office. But these qualifications placed in the constitution are not limitations upon the candidate so much as upon the voters themselves. They have practically confined their choice to a certain class of electors. Such limitations as the constitution imposes are of little actual importance. The electors would not elect any man who did not possess these nominal qualifications. A man less than thirty-five years old and not having lived in the state seven years preceding his election would hardly be chosen. Voters must be somewhat familiar with the name of a man before they will cast their votes for him when he is a candidate for an office of such importance.

Almost everyone of Missouri's governors held a
long list of minor public offices or have otherwise gotten their names before the voting public long before being elected. Frederic Bates, Missouri's second governor, held minor state offices almost uninterruptedly since the age of twenty years: John Miller was a colonel in the War of 1812, and later a register of deeds; D. Dunklin served as a member of the first constitutional convention; Boggs was a soldier in the War of 1812; Reynolds was a member of the General Assembly, later speaker of the House, and before his election as governor a circuit judge; Price served for a term in Congress; King served as a state legislator and judge; Steward served in the constitutional convention of 1845; Jackson was a captain in the Black Hawk war, later a member of the House, and then its speaker; Gamble, the famous war governor, served in the legislature and as chief justice of the Supreme Court; Hall served in the Mexican war and three terms in Congress; Fletcher, union soldier, served as clerk of a circuit court, and was the chairman of the first Republican convention in the state; McClurg served in Congress as had Brown (as Senator); Woodson was a member of the legislature and circuit attorney in Kentucky, and later a circuit judge in Missouri; Hardin was state senator, and prosecuting attorney; Phelps was an officer in the Federal army; Marmaduke was a colonel and major-general in the Confederate army, served in Congress,
and was a railroad commissioner; Morehouse served in the legislature; Francis was mayor of St. Louis; Stone was a congressman; Stephens was a state treasurer; Dockery resigned from Congress after serving sixteen years to become governor; Folk was district attorney of St. Louis; Hadley was attorney general just previous to his election as was Major; Gardner never held any public office before his election, and Hyde never held any state or national office.

In many states the governorship is considered a stepping stone to the United States senate. In 1857 Trusten Polk resigned to become United States senator; and later ex-governor Stone was elected Senator and held that office until his death. Early in the past century the United States senatorship was regarded as a stepping stone to the office of governor. B. Gratz Brown was elected governor the year his term in the United States senate expired.

Section 4, Article 5 of the constitution of 1865 stated that "the governor shall not be eligible to office more than four years in six." No governor was ever elected under this provision to serve four out of six years. Section 2, Article 5 of the constitution of 1875 is a reiteration of Section 4, Article 4 of the constitution of 1820 making the governor ineligible to succeed himself.

The governor serves for four years, a term as long
as that granted any other state executive. The term is barely long enough for him to thoroughly learn the duties of the governorship. The state is constantly breaking in novices, only to cast them aside when their experience might prove advantageous to the state. The tenure lacks incentive to the governor to so serve as to give his best to the people. If he proves to be an efficient executive and administrator the people are deprived of his further services thru a self-imposed constitutional limitation. The electors should be free to reward a good governor with an added term; they will readily enough reject a poor one.

To Edward McCabe, of Marion, chairman of the committee on the executive in the fourth constitutional convention the discredit can be given for rendering the governor ineligible for re-election as his own successor. Likewise it was upon his recommendation that the gubernatorial term was enlarged from two years to four as it had been before the Draco constitution.

More capable men would seek the office if the governor were given a longer term coupled with a larger and more adequate salary. A longer term would give him an opportunity to show his ability as an administrator. By centralizing responsibility upon the governor the office would become more influential in state administration and
Prohibitions upon re-eligibility were originally placed in the constitution because it was feared that the governor would scheme and electioneer to be re-elected; that he would form log-rolling combinations of interests and attempt to secure his re-nomination thru favorable appointments. Such scheming it was thought would seriously divert his attention from the proper consideration of his official duties.

The governor is disabled from serving in any other public office except as a member ex-officio of boards. He is a member ex-officio of the State Board of Agriculture, the State Board of Education, the State Board of Charities and Corrections, the State Board of the Permanent Seat of Government, the State Fair, the State Board of Horticulture, the Bureau of Geology and Mines, the State Board of Equalization, the State Board of Poultry.

Under the early state constitutions only one state fixed its governor's salary in its constitution. In the South Carolina (1776) constitution it was guaranteed that the president (governor) receive an annual salary of nine thousand pounds (no governor fares so sumptuously today). Altho four other constitutions made loose provisions concerning the executive's salary none had a mandatory effect. The Missouri constitution of 1820 contained a
more liberal provision for the governor's salary than that of any other state. No other set forth the minimum amount its governor should receive, and one state fixed the maximum of the governor's salary at less than two-fifths of Missouri's minimum. It was never to be less than $2,000.00 a year. It could be increased at the pleasure of the legislature but never, nor decreased, during his continuance in office.

Governor's salaries range from $2,500.00 a year in Vermont and Nebraska to $12,000.00 a year in Illinois. The governor of Missouri receives $5,000.00 annually and the rent of the executive mansion.

The governor's salary is established by law but can neither be increased nor diminished during his term of office. The provision concerning the governor's salary in the 1835 constitution was similar. In all the early state constitutions, except South Carolina, the governor's salary was left to legislative discretion. Such dispensation is apt to give the legislature a whip to intimidate the governor, and cause the governor to resort to bribery to insure his economic status unless the abuse of this power is guarded against by constitutional provision that the governor's salary is not to be changed during the incumbent's term in office.
There is likewise serious objections to having the governor's salary definitely fixed in the constitution for once so fixed it cannot be readily changed. It may become manifestly inadequate if it cannot rise along with the rise in the cost of living. It may then be that the governor can only serve his state at a serious financial sacrifice to himself. Illinois once got around such a situation by boldly disregarding the constitutional restriction. The Illinois judiciary acquiesed as they benefited by the state schedule of increased salaries.

In case of death, impeachment, conviction by a court, failure to qualify, resignation, absence from the state, or other disability of the governor, the powers, duties, and emoluments of the office for the residue of the term, or until the disability is removed, devolve upon the lieutenant governor. The president pro tempore of the senate and the speaker of the house of representatives succeed respectively in case their superiors are disqualified for any of the reasons given.

The governor is presumed to represent the personality of the state, to be its spokesman, and consequently he has many social duties to perform and social functions to attend as representative of the state.
Chapter Three.
The Governor's Legislative Powers.

The Lord Governor and Captain General in the colonies was always the supremely important man governmental. He was the king in the colony and in him was vested many of the prerogatives of his king. All executive powers were in his hands.

The early state constitution makers because of their past experience with their colonial governors extended the powers of the legislature at the expense of the erstwhile almost politically omnipotent powers of the executive. As Madison said in the 1787 constitutional convention the executives were little more than ciphers: the legislatures were omnipotent. But due to the immense extravagances of the early legislatures the people soon lost faith in them and delegated to the governor, independently or jointly with the legislature, many powers formerly exercised by the legislature alone. The governor grew stronger at the expense of the legislature. There has been a great change in the relative positions of the legislative and executive departments since the time of the first American state constitutions. The confidence in the legislative body has been destroyed and the belief in the superior wisdom of the re-
presentatives is gone.

There is a vast difference in the origin of the legislative and executive powers. The powers of the legislative body are largely of a residuary character, those of the governor are strictly confined to such as are expressly or by clear implication granted to him in the constitution.

This has been repeatedly decided by the Missouri Supreme Court as the following quotations from its decisions show:

"Powers or duties not specifically conferred upon the governor by the constitution, the executive cannot exercise or assume except by legislative authority, * * * . The constitution of a state is a limitation upon the powers of the legislative department of the government, but it is to be regarded as a grant of powers to the departments, * the executive * * * cannot exercise any authority or power except such as is clearly granted by the constitution."

"The governor has no prerogative powers but only such powers as are vested in him by the constitution."

"It is a general rule that when a constitution gives a general power, or enjoins a duty, it also gives, by implication, every particular power necessary for the exercise of the one, or the performance of the other."

But even the doctrine of necessary implication
is generally applied hesitantly by the courts.

Altho the primary office of the governor is to enforce the laws he exercises a vast influence in the formation of the public policy of the state. As the leader of his party the governor may and often does wield an immense influence in practical politics in the formulation of the policy of his state. But rarely are political leaders chosen to head the state governments, too frequently they are satisfied to remain in the background and command the nominal governor lime-lighted by public opinion. This does not mean that governors are not men of ability for ordinarily they are men of greater and worthier ability than the party bosses are, but are not of the sort to inspire men to group themselves about them as their leaders.

The governor ordinarily influences and controls public policy thru constitutional prerogatives. This legislative relation to the legislature, a cardinal principle found in all state constitutions, is intimacy of communication. This relation to the legislature is adjectived by that conception,---as old as Aristotle,---of a separation of the powers of government into three distinct departments. It was firmly embedded in the early Missouri constitution of 1820 and renovated in each new Missouri constitution since that date. In that constitution the legislative de-
partment took primacy over the executive department. It not only was the stronger of the two branches of government both in its residuary and expressed powers but also in its indefinite sphere of control over its two "co-ordinates."

The definition of the executive relation to the legislature in the formulation of public policy has not been materially changed since that date in subsequent constitutions.

The governor may influence public policy thru his influence over the organization and sessions of the legislative body proper. The governor is elected at the general election at which legislators are returned. Ordinarily this means that the legislature will be of the same political faith as the chief executive unless he is pre-eminently a popular and strong man with the people. This is generally the case in Missouri for rarely is the legislature of a different complexion from that of the governor.

Ordinarily when a member of the legislature resigns he sends his resignation to the governor, but evidently the constitution makers of Missouri thought that a resignation would occur so seldom that it was not worth while mentioning in the constitution. All the Missouri constitutions provide that in case of a vacancy occurring in either house of the assembly the governor shall issue writs of election.
to fill such vacancies.

The governor has no control over the convening of the legislature in regular session as that is provided for in the fundamental law of the state, neither has he any power to adjourn either a regular or special session. The constitution makes no provision concerning such a situation. In other states whose constitutions make provisions for such emergencies "the governor has no power over the time of adjournment of the two houses, except in case of disagreement between them." In a number of other states the governor in case of special danger, or on other extraordinary occasions such as an epidemic of disease or uprising, may convene the legislature at some other place than at the capitol. The only limitation being that it must not be outside the state or at some almost wholly inaccessible place. The Missouri constitution contains no such provision.

Of the twenty-three states existing in 1820 fourteen allowed their governors to convene the legislative body in extraordinary session.

The governor's most important power in connection with the sessions of the legislative body is his power to convene it in special session. This grant of power is given in each of the three constitutions. That of 1820 states that "on extraordinary occasions he [the governor]
may convene the general assembly by proclamation, and shall state to them the purpose for which they are convened." The sections in the other two constitutions are identical. Section 9, Article 5, of the constitution of 1875 reads: "On extraordinary occasions he [the governor] may convene the General Assembly by proclamation: wherein he shall state specifically each matter concerning which the action of that body is deemed necessary." The constitution of 1835 added: "and the General Assembly shall have no power when so convened, to act upon any matter not so stated in the proclamation."

The governor alone has the power to decide when a situation arises necessitating the calling of a special session.

The action of a legislature called in special session, by majority rule, seems not to confined to the purposes set forth by the governor, unless so defined by an express constitutional limitation. The legislature at such a session may exercise the same power as at its regular session.

The constitution of 1835 conferred the power of calling the legislature in special session on the governor, but the powers of the special session were strictly confined to the proposals made in the convening proclamation.
This provision was retained in the next constitution which added that the governor might later introduce other measures.

The Missouri Supreme Court has decided that the general assembly's power to act in special session is strictly limited to the subjects designated by the governor in his proclamation calling the special session. In this case the legislature had passed a law upon a subject not named in the governor's proclamation calling the special session.

The court said in part: "The power of construing the constitution must necessarily be lodged in some department to insure that practical sanction of its mandates which is essential to preserve their vitality and force. This delicate and sacred trust is devolving upon the judiciary as a manifestation of the political principle that ours is a government of laws rather than of men. In exercising that power the courts should take a large and comprehensive view of constitutional language, mindful that 'every scripture is to be interpreted by the same spirit which gave it faith,' and with a deep desire to enforce its full and exact meaning. Thus viewing the very definite provision before us we cannot regard it otherwise as mandatory.

"When the people have declared a certain form indispensable to the proper expression of their will, it is no
part of our function to adjudge that form unnecessary or immaterial, on the contrary, our bounden duty is to enforce that deduction.

"It follows that the 'act' in question cannot be sustained as a constitutional exertion of the law-making power.

"That position being reached, it is unimportant that the governor, by his formal signature, in due course, approved the bill after its passage by the General Assembly.

"By the terms of the constitution the legislative power to act in the premises depended on the governor taking the initiative by a proclamation or a message. His subsequent approval cannot be accepted as a substitute for these earlier steps which the fundamental law prescribes."

The governor may recommend further subjects for the legislature's consideration other than those mentioned in his special message after the general assembly has convened in special session.

This restriction is confined to purely legislative acts and does not apply to executive or judicial acts that may be legally exercised by the legislature, such as confirmation of the governor's appointments, and impeach-ments.

By joint and concurrent resolution both houses
when called in special session may request the governor that he submit to their consideration any particular measure in which they are interested. By joint and concurrent resolution on July 3, 1919 the Missouri general assembly requested that the governor submit to them for their consideration the repeal of the law prohibiting capital punishment in the state and the restoration of capital punishment.

"The confirmation by the State senate of an appointment made by the governor is not a legislative act, and may be performed as well at a special session as at a regular session. Hence it is not material for what purposes the legislative body may have been called in session, for whenever the Senate is lawfully convened for legislative purposes it has the right to act for administrative purposes, even without mention of such purpose in the call for a special session."

Governor Sulzer in 1913 called a special session of the New York legislature and presumably much to his dismay it proceeded to impeach him. The question of the legislature's power to do so at a special session was finally passed upon by the supreme court of that state. "The power of impeachment," the court decided, "is a judicial power vested in the assembly, in which the Governor and Senate
cannot participate, and is not a legislative subject. The constitution empowers the assembly to impeach the Governor, but it does not specify when the power shall be exercised; and the assembly is the sole judge of the time as well as the grounds for impeachment, free from control by the executive or the courts. The assembly, having been given the judicial power by the Constitution of impeaching the Governor without limitations as to the time the functions shall be exercised, may convene itself for that purpose, tho without power to do so ordinarily as the conferring of a general power carries with it every particular power necessary for its exercise. The impeachment of the Governor, by the assembly while in extraordinary session is valid, tho the constitution provides that no subject shall be acted on at such a session except as the Governor recommends, and it had not been recommended, as the powers of impeachment is a judicial and not a legislative power and one that should always be independent of outside control."

The Missouri constitution makes no provision for calling the Senate alone in extraordinary session. Several state constitutions, other than Missouri's, make provision for the calling of extra sessions of the senate. The inference is that when such express authority is not given that the one house may not be called without the other.
In a special session opportunities are lacking to evade responsibility for the enactment of needed legislation for both its and the public's attention is fixed upon the subjects denominated by the governor in his proclamation. This has enlarged the governor's control of and leadership in the legislature. Especially is this true since the tendency in recent years has been to decrease the frequency of regular legislature sessions, especially in those states that have newly adopted or recently amended constitutions. This has compelled the calling of more frequent legislative meetings in order to meet newly arisen imperative needs or other emergencies.

Other than thru the approval and veto of bills the governor's constitutional powers of participation in law-making are exercised principally thru the sending of messages and recommendations to the legislature.

The constitution of 1820 stated that the governor "shall from time to time, give to the General Assembly information relative to the state ***, and shall recommend to their consideration such measures as he shall deem necessary and expedient. The 1865 constitution contains the identical provision, as does also the latest one.

Altho the governor is compelled by the constitution to recommend measures to each new session of the legis-
lature, the legislature may legally ignore his advice; which it, of course, frequently does. In addition, it is mandatory upon the governor at the commencement of each session of the general assembly and at the close of his term to give written information of the condition of the state, and to recommend such measures as he deems expedient.

His message at the opening of the regular sessions usually gives great prominence to a statement of the financial conditions of the state. In fact, and in Texas, Illinois, and Nebraska, it is specially required of him that such a statement be submitted for the same section further states that "he shall account to the General Assembly, in such manner as may be prescribed by law, for all moneys secured and paid out by him from any funds subject to his order, with vouchers, and at the commencement of each regular session, present estimates of the amount of money required to be raised by taxation for all purposes."

The governor's recommendation of needed legislation in his messages to the general assembly are not considered to be formal introductions of proposed measures. Much depends upon the personal relations between the governor and the legislators whether his recommendations will be favorably acted upon. His recommendations of needed legislation will at least be considered. If the governor is well
that of by the electorate his recommendations will greatly influence the legislation. His influence has markedly increased in recent years.

Bradford write that "governor after governor has been making of himself the chief fountain of legislation in his state. There is no more suggestive sign of the times. East as well as West, the phenomenon presents itself. Governor La Follette in Wisconsin has been imitated by Governor Johnson of Minnesota and Governor Hoch of Kansas. To the initiative of Governor Hughes of New York comes an immediate response from Governor Woodruff of Connecticut and Governor Fort of New Jersey. All of them press critical matter upon their legislatures. All of them tacitly assume that the governor must intervene with prompting and public advocacy of important legislation, or else it will fail. Nor is this attitude much resented by the legislatures. As for the people, they accept it enthusiastically."

Jellinek's explanation of this increasing power to shape legislative enactments gained by the governors is that "owing to need of committees to expedite governmental business in the legislature the houses often do 'scarcely anything more than to ratify the resolutions of [their] committees.' An energetic governor can keep in close touch with the committees considering measures he wishes to
see enacted and thus almost dictate the measures that are to be reported to the houses. He may intimate to a committee that he will veto a proposed measure and even introduce bills thru the committees. The governor by working thru committees is steadily gaining an immense influence upon legislature. Of course, in this unofficial relation between committees and governor much depends upon his personality and besides he must be ever on the alert to forestall the introduction of measures that are personally obnoxious to him.

In explaining the growth of the executive power at the expense of the legislature Professor Shepherd says that "the noticeable decline in the powers of legislative bodies everywhere and the growing strength of the executive organs of government is explained by the fact that the latter are much more capable than the former of 'keeping their ears to the ground.'"

The personal relation between executive and legislature will be most auspicious of harmony if both houses and governor are of the same political party. It is rarely otherwise in Missouri. The exceptions are: Folk, a Democrat, was handicapped with a Republican house and an antagonistic Democratic senate; Hadley, a Republican had to labor with an obstreperous and Democratic senate. In recent years Gardner,
a Democrat, during the last two years of his term had to work with a Republican house.

The governor may send special messages of recommendation or information at any time during a session.

Section 8 of the 1820 constitution stated: "The governor shall take care that the laws be distributed and faithfully executed; and he shall be a conservator of the peace throughout the state." The 1835 constitution contains no similar section, but the identical section denominated Section 6 is in Article V of the 1875 constitution.

By not too faithfully heeding this provision the governor may practically null the laws by a lax execution of them. In this manner he may considerably modify various statutes. The West Virginia supreme court held that "before the governor executes a law he must of necessity decide, whether the act of the Legislature, which he is thus called upon to execute, is constitutional and valid or unconstitutional and void."

The power vested in the governor by state constitutions to grant pardons and reprieves carries with it, unless expressly restricted the power of regulating the applications for pardon and the methods of passing upon them. But even this power has been hedged about by the Missouri constitution for it expressly provides that it shall be
"subject to such regulations as may be provided by law relative to the manner of applying for pardons.

The governor in conjunction with other bodies is given power to formulate certain rules and to enforce the same. In regard to the militia "the governor may from time to time, upon the recommendations of the military council, adopt and publish regulations for the government and discipline for the National Guard and military forces of the State not in conflict with the provisions of this act, and such regulations when so adopted and published shall have full force and effect." The governor may approve and enforce regulations passed upon by the State Board of Agriculture and the state veterinary surgeon, and such quarantine regulations as they may deem necessary.

In no case can the governor dissolve the legislature. No governor possesses nor did possess that power. Only in New York under its 1777 constitution could he prorogue the legislature without its consent, and then only for a period of sixty days during any one year.
Chapter Four.

The Veto Power of the Governor.

In public law the veto is the right invested in one department of the government to negative the determinations and resolutions of another department. Abbott says that the term is one of popular use. It is not found in the United States constitution, and it is not found in the Missouri constitution. Its extraction is from the Latin word "veto" meaning "I forbid," or "I deny." The Roman Tribunes possessed the right to listen at the door of the Roman Senate and negative all proposed legislature by shouting "veto!"

The early colonies regarded the possession of any veto power in the governor, however small, with great distrust. Only one of the original state constitutions, that of Massachusetts, gave the governor even a qualified veto. The Articles of Confederation withheld it entirely, reaching the other extreme by requiring the consent of nine states to every proposed measure before it became law. Thus a minority of five states could absolutely negative any legislation. As late as the first decade of the twentieth century four states, Delaware, Rhode Island, Ohio, and North Carolina with held that power from the governor. Ohio granted its governor the suspensive veto in 1913. As yet the power is
not reposed in the North Carolina chief executive for the North Carolina constitution makes no provision for a veto. In the other forty-seven states the governor has but a suspensive veto.

The royal and proprietary governors possesses an absolute veto. The king could prevent the enactment of any bill in any colony, except Maryland, Connecticut, and Rhode Island, even after it had received the approval of the governor.

Among the first state constitutions the governor's qualified veto was permitted in but one state, Massachusetts. But later and before the end of the century four other states, New Hampshire, Pennsylvania, Georgia, and Kentucky granted the veto to the governor. Vermont gave the veto to the governor and his council.

In New York during the revolutionary period we find the qualified negative exercised by a peculiar board called the Council of Revision. This board consisted of the governor, chancellor, and any two or more judges of the Supreme Court. This board might revise all bills proposed by the legislature. It required a two-thirds vote in each house to override the veto of the council. Unless prevented by the adjournment of the legislature the council had to return all bills presented to it within ten days to prevent
passage. If the council was prevented from returning bills within ten days it was required to return the bills upon the first day of the next session of the legislature.

All states at this time had similarly composed executive boards but with varying powers. These boards were composed of from three to twelve members elected from either or both houses, or from the state at large. In Pennsylvania, Vermont, and Georgia the members were chosen by the people.

In South Carolina the president possessed a nominal absolute veto. It, however, was of little consequence as the president was elected by the legislature, and the same bill could not be brought back to the legislature after a three days adjournment. In Vermont and Pennsylvania all bills had to be published before their third reading, and then could be passed upon only at the next session.

In the period of constitution making from 1801 to 1830 the New York, Connecticut, and Maine governors were given the veto, as were the governors of all the new states, except Ohio.

Under the 1820 constitution the Missouri governor was required to return a vetoed measure with his objections to the house in which it originated. If a bill was not returned by the governor within ten days after its presentation to him, Sundays excluded, the bill became a law. A
majority vote of the members elected to both houses would override his veto.

The veto provision in the 1805 constitution is identical with that of the earlier constitution with the exception of the added clause that a bill would become a law whose return was prevented by the adjournment of the legislature, if the Governor did not sign and deposit it in the office of the Secretary of State.

The gubernatorial vest still contained a veto pocket.

The constitution of 1875 is very detailed in all its provisions. It provides that whenever the governor is prevented from returning a bill or resolution by the adjournment of the legislature he must within thirty days thereafter return such bill or resolution to the office of the Secretary of State with his approval or reasons for disapproval. It also gives him the item veto.

The governor's veto power is equivalent to a legislature's vote of one less than two-thirds of its membership; but with this material difference, that it can be cast only in the negative.

The governor often disapproves a bill for constitutional reasons, and in this way he materially reduces the number of unconstitutional statutes. His veto may also be
for other reasons. He may forbid a law on general policies, for political or personal reasons, and in this manner may negative many good as well as bad bills. He may veto items in an appropriation bill on grounds that the proposed expenditures is unnecessary and therefore wasteful, or because the total appropriation must be kept within certain limits. When the governor vetoes bills on account of defective drafting or unnecessary duplication, as a special act concerning a subject already covered by general laws, he does an unmeasurable service to the state.

No act passed by the legislature is valid until it is signed by the governor, who, for such purposes, is a part of the legislature. An act of the legislature is passed only when it has gone thru all the forms made necessary by the constitution, to give it force and validity as a binding rule of conduct upon the citizen. The governor is an integral part of the law-making power: his disapproval, commonly known as a veto, is essentially a legislative act.

The veto power is essentially an act of legislation. State courts have decided that "while the veto power is ordinarily exercised by the person possessing the executive power, it is not an executive, but a legislative act."

In Missouri a bill must be presented to the governor on the same day of its passage. Bills signed by the presiding officers of each house are to be presented to the governor, on the same day on which they are signed by the clerk of the house in which they originated; fact of present-
ment must be entered upon the journal. This provision as
to the presentment of bills to the governor has been held
to be merely directory by the state Supreme Court.

In an overwhelmingly majority of states the only
necessary act on the part of the governor to show his approv­
al is to sign the bill. In Missouri, however, in order that an
approved bill become law it must be returned within ten days
to the house in which it originated.

The majority cases hold that the veto is primar­
ily a legislative act. We find that emphatically stated in
a Pennsylvania case: "The governor's disapproval of a bill
is commonly so known [as the veto] and is essentially a leg­
islative act." Another case, however, holds a contrary o­
ipinion. President Lucas says: "Under the constitution of the
state [West Virginia] the three departments, legislative, exe­
cutive, and judicial, are required to be 'separate and dis­
tinct so that neither shall exercise the powers properly
belonging to either of the others,' * * * * * . The gov­
ernor has no legislative function to perform; his approval
of the law passed by the legislature does, it is true, give
it vitality, as a law, but should he decline to approve a
bare majority in each of the two houses may pass the law
over his veto, thus showing that it was not intended that he
should have any legislative power, not even the casting vote.
His veto amounts to an appeal for 'reconsideration' by the legislative branch, and not to a defeasance of the passage of the bill."

In general every joint resolution passed by the legislature must be presented to the governor with the exceptions of joint resolutions on the question of adjournment, and any resolution on the question of amending the constitution. In the majority of states any order, resolution, or vote on the question of adjournment is not subject to the governor's approval.

The Missouri constitution has a provision concerning the veto power of the governor peculiar to itself. Any bill if not returned within ten days after presentation, the legislature may by joint resolution, reciting fact of failure and the bill at length, direct the Secretary of State to enroll the bill as an authentic act; such enrollment to have the same effect as approval by the governor.

Altho the constitution clearly states the time limit in which a bill must be returned to the legislature lest it become a law the courts were called upon to decide as to just what was the time limit, whether to include or exclude the day on which the bill was presented. The court decided that in computing when the governor must return a bill the first day, the day on which the bill was present-
ed, must be excluded.

What is meant by the 'pocket veto' is too well known to need definition. Nearly all state constitutions guard against giving the governor a pocket veto. In Missouri the governor, within thirty days after adjournment of the legislature, must return all bills to the office of the Secretary of State with his approval or reasons for disapproval.

In constitutional governments there are two fundamental theories on which the grant of the power of veto rests: "first, to preserve the integrity of that branch of government in which the vetoing power is lodged, thus maintaining an equilibrium of governmental powers; and second, to act as a check against the enactment of improper legislation."

Judge Hatch defines the purpose of the veto power in almost the exact words. He states that the first purpose is "to preserve the integrity of that branch of government in which the vetoing power is vested, and thus maintain an equilibrium of governmental powers; second, to act as a check upon corrupt or hasty and ill-considered legislation."

It is apparent from the language of the constitutional provisions that the executive is not invested
with any absolute power to negative an enactment of the legislature, but his veto has only the effect of referring the bill back to the legislature, and requiring a larger vote in its favor before it can take effect as a law. In other words, this power is not executive in its nature, but is essentially legislative, being a survival of the law-making power vested in the king as a constituent third body of the parliament.

The effect of the executive's refusal to approve a bill is merely to send the bill back to the legislature for further consideration, and to require its repassage by an increased vote in order that it may take effect as a law notwithstanding such veto. The governor must send disapproved bills back to the house in which they originated.

The executive must treat the bill referred to him as a whole. This is arranged for by constitutional enactment in that no bill may deal with more than one subject except appropriation bills. The governor ordinarily may not approve part of a bill and object to a part; and this, for the obvious reason that otherwise the executive action alone might make that law which had never received legislative sanction. An exception is made in regard to appropriation bills.
An adjournment which can prevent an executive from returning a bill with his objection within the time prescribed must be an adjournment amounting to a termination of the session and not an adjournment from day to day.

In no state constitution is any restriction placed on the grounds upon which the chief executive may veto a measure. He may declare it inexpedient for various reasons that the bill become a law or that there was an informalilty in its passage when in fact there was none, or that the measure is unconstitutional although the courts have held similar measures not to conflict with the constitution. The more ingenious the executive is the more and better reasons he can give for his disapproval.

A vetoed bill must be considered first by the house in which the bill originated; if repassed, it is sent with the governor's objections to the other house. A two-thirds vote of all members elected thereto in each house is required in order to repass a rejected bill. A bill, when its passage over the governor's veto is certified to by the presiding officer of each house, must be deposited in the office of the Secretary of State, and becomes law as if signed by the governor.

Thirty-five states, including Missouri, permit the governor to object to one or more items in the appropriation
bill approving the balance of the bill. The status of the items not disapproved is law; disapproved items are void unless repassed. Three states, Washington, Virginia, and South Carolina, allow him to veto part or parts of any bill.

No provision giving the governor power to veto special items in appropriation bills is found in the Missouri constitutions of 1820 and 1855.

At the time of signing appropriation bills the governor must append to it a statement of the objected items. If the legislature is not in session the governor must transmit a copy of the statement of the items objected to within thirty days to the Secretary of State "with his approval or reasons for disapproval."

Emergency measures are such as are passed by a vote of two-thirds of all members elected to each house, taken by yeas and nays, and denominated as being necessary for the immediate preservation of the public peace, health, and safety. Emergency measures may be vetoed, but may be passed over the veto by a vote of three-fourths of each house. The veto power does not extend to any measure referred to the people.
Chapter Five.

Special Functions of the Governor.

Some exceptional powers were at first conferred upon the governor. By constitutional authority the governors of Vermont, Pennsylvania, North Carolina, and Delaware during the Confederacy were empowered to lay embargoes for a period not over eighty days when the assembly was not in session. In New Jersey the governor was chancellor, ordinary and surrogate-general. In all cases of law the New Jersey governor with his council was a court of appeals of last resort.

The legislature may confer such powers as they choose upon the governor providing such action does not entrench upon the legislative and judicial departments. Any duty prescribed by law to be performed by the governor is an executive duty. Statutory provisions have made him ex-officio member of many boards and commissions. Such ex-officio positions place the governor in an "advantageous position to supervise and co-ordinate the activities of these bodies."

In case of vacancies occurring in the offices of lieutenant-governor, representative, senator, sheriff, or coroner the governor must issue writs of election to fill such vacancies. The constitutional provision authorizing the governor to issue a writ of election upon being satis-
ed that a vacancy occurs confers no judicial power upon him. The governor may determine the question whether a vacancy occurs or not in order that the public service may not suffer thru a period of vacancy waiting for a judicial investigation to determine the question.

The governor is commander-in-chief of the militia except when they are called into the service of the federal government. The state does not keep troops in time of peace as that would be contrary to the federal constitution.

The governor's military power under the present constitution is in marked contrast with that granted him by the former instrument under which it was necessary to pass a special act before he might even call out as few as twenty-five men to quell disturbances in the state.

The governor may call out the state militia to execute the laws, suppress insurrection and repel invasions. His good judgment and sound discretion as to when such an occasion arises is conclusive. The law has left to him the final decision as to when an emergency arises when the state militia shall be ordered into active service. The courts have no power to control or restrain his acts, even tho he act hastily, unwisely, or imprudently. Of course, the presumption is that he will only call out the organized militia when it becomes absolutely necessary to do so in
order to maintain peace and quiet, and to protect the lives and property of citizens, and only after the local officials have conclusively demonstrated that they are utterly unable to cope with or control a lawless situation. Were he to send the militia into a district of the state when uncalled upon by the local authorities for aid he would be apt to antagonize the inhabitants of that district. Consequently a governor is slow in sending troops anywhere until the local authorities have invited him to do so or until they have shown beyond doubt their inability to do anything to remedy the situation under their jurisdiction. Also the governor would appear in a very ridiculous situation were he to call out the militia to close the saloons on Sunday.

The governor need not command the troops in person unless directed to do so by a resolution of the General Assembly. The constitutions of Kentucky and Maryland contain the same provision. The governor controls the organized militia and commands them thru the adjutant-general, an officer appointed by him with the advice and consent of the senate and who holds office during the governor's pleasure.

Thru the adjutant-general the governor transmits all directions, rules, and regulations concerning the organized militia. The governor not being a legislative official, and the United States congress having concurrent jurisdic-
tion over the organized militia of each state with the state legislature, all rules and regulations concerning the militia are subject to the superior authority of the state and national legislature.

The governor in exercising his right to call out the militia acts in his capacity as a civil officer. He is a civil magistrate and his power as commander-in-chief of the militia subordinates the military to the civil power. The military officers must conduct their operations under the direction of the civil power. Of course the right to call out the troops for any particular purposes necessarily implies the power to issue proper orders and to use all means to effect the object of the call.

The federal constitution provides for extradition. Under its terms the demand for the extradition of a fugitive from justice shall be made by "the executive authority of the state from which he fled."

Under this provision congress has passed an act in regard to interstate extradition which provides that when a proper demand has been made on the governor of a state into which a fugitive from justice has fled and upon other compliances with certain requirements therein specified "it shall be the duty of the executive authority to cause the fugitive to be arrested and secured, and deliver-
A complaint must be filed before a warrant will be issued in Missouri for the arrest of a person found in Missouri who has committed a crime in another state. The complaint must show that the person has been guilty of some crime against the laws of that state. This complaint may be either by direct averment, or by stating facts which constitute a crime at common law. "If there be no direct averment of a crime and the facts stated do not constitute one at common law, the officer acquires no jurisdiction, and his warrant will be void."

Interstate extradition is not a matter of comity or discretion on the part of the state upon whom demand is made for the surrender of a fugitive from justice. It is an absolute duty imposed by the federal constitution and laws and thus the governor has no right of discretion to refuse to issue his warrant, providing a "proper requisition for the surrender of the fugitive is made upon him and the requisite evidence produced."

Even tho this be a legally imposed duty upon the governor, yet in case of his refusal to surrender any fugitive of justice the federal government cannot compel him to perform this duty, neither can the state courts. At best it is a mere moral obligation.
A fugitive in interstate extradiction, unlike the rule which obtains in international law, may be tried for a different offense or offenses from that or those for which he was extradicted. And so it was held that a person extradicted for grand larceny may be tried for petit larceny.

"It is significant," says Smithers, "that it [the executive pardon power] has never been overlooked in any scheme of government from the dawn of history."

"This important function of government," says former-governor David B. Hill of New York, "seems to be securely established, because public sentiment rebels at the idea that the determination of a criminal court should be absolutely and forever irrevocable."

The theory of pardon was inherited with the common law of England. At the time the colonies separated from Great Britain the power to grant reprieves and pardons had been employed by the king as chief executive and so the colonists had always been accustomed to the use of the pardoning power in various forms by the king. Whenever provisions were made for the pardon power in the early constitutions such provisions referred to the pardoning power exercised by the English king or by his lieutenants in America.

In New York, North Carolina, Maryland, and Delaware
the governor exercised the pardoning power alone. In all these four, except New York, he could not pardon in cases of impeachment and when otherwise decided by law. In New York he could not pardon persons convicted of impeachment, treason, or murder. With his council the governor in Massachusetts and New Hampshire (1834) could pardon all crimes except impeachment. In New Jersey the governor and the Council (as a court of appeals) could pardon any conviction except in case of impeachment and "where the law should otherwise direct." All pardons were reserved to the legislature in Georgia. The constitution of South Carolina was silent on the question of pardons.

Much doubt has been shown whether or not the power to pardon is an exclusively executive function. Authority may be found on either side. In thirty-two states the governor exercises it on his own authority or partly in connection with the legislature, or the senate alone; in three by the aid of a board; in three others by the aid of a council. In Missouri it is held that the pardoning power belongs exclusively to the executive department and cannot be exercised by the legislative department. The Missouri court held that "altho questions have sometimes arisen whether a power properly belonged to one department of government or another, yet there is no contrariety of opinion
as to the department of the government to which the power of pardoning offenses properly appertains, all unite in pronouncing it an executive function. So the framers of our constitutions thought, and accordingly vested the power of pardoning in the chief executive officer of the State."

All courts, however, assume that in order to be rightfully exercised it must be conferred upon the executive authority." No court has ever attempted to review the reasons for a pardon granted. No court has ever attempted to declare upon what grounds or motives a pardon might properly be granted.

The constitution subjects the governor's pardoning power to such regulations as may be provided by law relative to the manner of applying for pardons. The observance of these legislative regulations are essential to the validity of pardons. However, where the law provides that the pardon be registered with the Secretary of State, such registration is not necessary to its validity. In the absence of such constitutional mandates the legislative regulations as to the application for pardons would be merely directory and the pardon granted would be valid even tho the regulations were not observed.

The governor's pardoning power does not extend to treason or cases of impeachment, nor may he pardon a
person convicted of the violation of a city ordinance. The constitution gives the governor power to pardon only in case the person is convicted of a violation of a state law. It reaches only to matters in which the state is interested.

The constitution further restricts the governor's pardoning power in that he may only pardon after conviction. The right to pardon "after conviction" means after the return of the verdict of "guilty."

"In order to avoid all secret or exparte proceedings on the part of the governor it is provided that the governor shall at each session of the General Assembly communicate to that body each case of reprieve, commutation or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, the date of commutation, pardon or reprieve, and the reasons for granting the same."

The governor need not exercise his pardoning power in conjunction with any other officer or official power. Before Dockery's administration the onus of investigating all applications for pardons devolved upon the governor himself. Complying with Governor Dockery's recommendation the legislature in 1901 provided for a pardon-attorney to be appointed by the governor with the consent and
advice of the senate, and whose duties were to "examine, index and report to the governor on all applications for pardons that may be submitted to him by the governor."

Later Governor Dockery recommended the repeal of this law for in his message to the forty-third General Assembly he says: "At the beginning of this administration I approved a bill creating the office of pardon attorney. I believed then that such an officer was essential to the proper conduct of public business in regard to applications for clemency, upon examination I discovered there was no necessity for this officer, the clerical force of the governor's office being ample to perform the duty. The office has remained unfilled. I recommend the repeal of the act authorizing his appointment."

The office was abolished.

Of late years there has been a nation-wide tendency to repose in some other person than the governor, or in a council or board, some advisory functions pertaining to pardons in order to partially relieve the executive of the laborious and grave responsibilities which he assumes in considering pardons. These responsibilities often involve the momentous questions of life or death. States now provide the governor with some advisory person or body to hear and make recommendations to him before he acts upon any ap-
application for clemency.

Governor Stephens included in his message to the general assembly in 1890 the following recommendations concerning the pardoning power: "In order that the Governor may be relieved, to some extent, of this burden, I would suggest that you create what is commonly called a 'Board of Pardons; or 'Board of Recommendations.' The constitution authorizes the Governor of the State to exercise the pardoning power and the creation of this Board could not divest him of this prerogative. The Board could only be empowered to examine into the merits and demerits of all applications for pardon and report findings and recommendations to the Executive for his further consideration and action."

Governor Stephens again recommended the creation of such a board in 1901.

In speaking of the state pardon system in his message to the forty-sixth General Assembly Governor Hadley says: "Under the present system, it is impossible for the Governor, even with the assistance of a pardon attorney, to examine all of the applications for executive clemency that come to him from those confined in the state penitentiary. The result is that many who deserve executive clemency fail to receive it thru the lack of time and opportunity to carefully examine into the merits of their application."
In his report to the forty-seventh General Assembly of pardons granted Governor Hadley says: "The chief executive should, * be relieved from the burden and responsibility of dealing with these pardon cases. By virtue of his position he is generally regarded as the leader of the political party that nominates and elects him. For this reason he is peculiarly subject to and liable to unwarrantable and malicious attacks by sensational and unscrupulous newspapers for granting executive clemency to those convicted of crimes. And it is easy, by a failure to publish the facts upon which clemency in each case was based to mislead and to prejudice the public mind against a proper policy of executive clemency. If this work was done by a Board of Pardons and Paroles, the decision would assume something of a judgment of a court, and, in addition to providing a better and a more complete investigation of the merits of the different applications, such a board would to a large extent exempt from unwarranted attacks and misrepresentations to which the governor is liable to be subjected."

Again in 1913 the creation of such an advisory board was recommended, this time by Governor Major. In that year a board of Pardons and Paroles of three members was created, to be appointed by the governor for four-year terms, and subject to removal by him whenever in his opinion the
public interests required it. The duties of the board were "to investigate fully the merits of all applications for executive clemency properly coming before the Governor, and all applications for such clemency shall be heard and investigated without unnecessary delay. In each and every such case said board shall, for the information of the governor make a written report of its finding of the facts in such case together with their recommendations thereon."

Today the State Prison Board is also the board of pardons and paroles, and as such hears applications for clemency from persons convicted of crime, and makes recommendations to the governor. It is authorized to hear evidence and arguments concerning such applications.

The existence of such a board may bring about a greater regularity of procedure in the granting of pardons and more settled rules for the determination of the questions as to whether a pardon should be granted. Then to, it will relieve the governor of much worry and will relieve him from the political pressure and personal influences that he formerly found almost impossible to resist. It is impracticable, to say the least, to carefully consider each application with such care as they deserve. The imposition of a pardons and paroles board between the governor and clamorous applicants and their friends and relatives
will undoubtedly tend toward definiteness and regularity and may in time accumulate a mass of precedents to guide subsequent executives in the use of official clemency. Such procedure will also provide the needed publicity of the merits of every application.

As seen before the grant of pardoning power vested in the governor excludes others from exercising it. Yet sound authorities hold that when the constitution vests the power to pardon after conviction in the governor, the legislature may pardon before conviction. This is certainly not the ruling of the Missouri court. In 1857 the general assembly passed an act to the purport that all persons in the state of Missouri who were then indicted for the violation of the act regulating dramshops, committed before December 15, 1856, were to be released from prosecution provided each individual paid all the costs in his case, and a fee of two dollars to the circuit court. The Supreme Court held such pardons, even before conviction, granted by the legislature was contrary to the constitution vesting the pardoning power in the executive.

There is no legal distinction between a pardon and an amnesty, yet an act of amnesty is valid even tho it includes many transgressors who were never convicted. The Missouri court held that amnesty is a general pardon grant-
ed to a class of persons by law or proclamation, and is as properly a pardon as if simply granted to an individual by deed.

It seems that the legislature has a general power to discharge the state's debtors from their obligations and give the persons convicted and fined the benefit of the insolvent laws of the state. The existence of such a power is incident to the relation of creditor and debtor and to the authority to pass laws for the management of the public revenues.

It has been held that a law giving to justices of the peace power to commute punishment from fine to imprisonment, when the defendant is unable to pay the fine, is not repugnant to that provision of the constitution which vests in the governor the sole power to grant commutations.

"Deductions from time of prison service for good behavior, to be adjudged by the prison board or other such authority, as affecting sentence imposed before the passage of the act, have been held to be encroachments upon both the executive power of pardon and the judicial power to sentence, but as to subsequent sentences they have been sustained."

The governor's pardon may be absolute, limited, or conditional. If a convict out on parole breaks his condi-
tional release the governor cannot remand him back to prison. His return is only possible thru a judicial trial. However, if a conditionally released convict breaks his parole and is re-arrested the only question that must be ascertained by the jury in his case is his identity.

A commutation does not annul the court's sentence, but is, pro tanto, an affirmation of it with a modification.

Altho an application for clemency is a legal right a pardon itself "is purely an act of grace." As a matter of strict legal right no one is entitled to it. No one can claim any legal right to a pardon or benefits from it until the pardon is completely performed. Even when signed by the governor, attested, and sealed, it may be revoked before delivery. Once it is delivered to the subject of it or his agent it is beyond the governor's power to recall or revoke. All the benefits and immunities it grants are then the legal right of the recipient.

Ex-governor Hill of New York says that it is easier to ask upon what precise grounds clemency should proceed than to answer the question. "It may be assumed," he says, "that clemency should be based upon public consideration." There are no rules binding upon the Missouri governor what reasons he will give in his report to
the legislature. The reasons for the grant of a pardon is for he himself to determine.

These are some of the reasons Governor Stone gave to the thirty-eighth General Assembly: "On merits of application, 17; that they might be tried for more serious offenses, or to be used as witnesses in important prosecution, 6; on the recommendations of the prison warden and inspector because of dangerous sickness, 38; solely to restore citizenship where the beneficiary had been previously discharged from prison, 37; holiday pardons granted in conformity to a custom long established, 9; commutations made to shorten terms of sentence imposed by the courts, 14; from death to life terms, 5; on children from penitentiary to reform school, 15. In all 107 pardons and 34 commutations."

Here sympathy alone ought not to impel a governor to pardon criminals, altho cases may arise in which considerations of sweet mercy alone are sufficient. A hypothetical case would be that of a youth sentenced to a fifteen year term for his first offense of larceny. Cases that undoubtedly present the greatest difficulty and are a constant source of embarrassment to the governor are those of the fatal illness of prisoners. These are very often made the ground for applications for pardon. Often prisoners so released recover in a surprisingly short time after their
release from prison.

The most amusing reason for an executive pardon granted in Missouri is told by Stevens:-

"Governor Steward had the run of the 'pen' as governor, and ex-officio member of the prison inspectors. Slightly drunk on one visit curiosity prompted him to go from convict to convict and ask, 'What are you in here for? Are your guilty or innocent?' Of the large number accosted all protested their innocence. As he retired from the prison he encountered a squad of 'trusties' engaged in digging a cistern in the front yard of the warden. To those who were plying the wind-lass he propounded the same question: and all of them with one accord said they were innocent. Observing a man in the cistern filling the tub with a spade, he called to him, 'You fellow down there, what are you doing with stripes on your clothes? Are you guilty or innocent?' The man answered: 'Well, Governor, to tell the truth, and I will not tell you a lie, I am guilty; I did break into a store in St. Louis and steal two suits of clothes and a watch, and they proved it on me.' Whereupon the Governor said: 'Get into that tub, you rascal; pull him up; now come with me to the mansion, for I will pardon you and send you home, for no such rascal as you are shall stay here and corrupt the morals of the innocent convicts in this penitenti-
The number of the recipients of executive clemency depends, of course, to a large extent upon the governor. Of three governors taken at random, one pardoned 107 and commuted the sentences of 34 others; his successor pardoned 87 and 34 others in order to restore their citizenship; one of his successors granted 476 pardons. Another pardoned 75, and commuted the sentences of 48.

The governor who pardoned the 476, Hadley, in his report to the general assembly says: "There are undoubtedly many prisoners in the penitentiary who should be paroled, either on account of a substantial doubt as to their guilt, the undue severity of their sentences, or because it would be of greater benefit to society to have them at liberty supporting themselves and their families in some useful occupation than to have them confined in prison."

Governor Stone in his report to the assembly took a somewhat opposite view: "I believe that fully ninety-five per centum of applications for clemency are without merit, or at least not entitled to serious consideration. I believe there are comparatively few instances in which executive authority is justified in disturbing the judgments of the courts."
Chapter Six.

The Administrative Powers of the Governor.

Both the constitutions of 1820 and of 1865 state that "The supreme executive power shall be vested in a chief magistrate, who shall be styled 'The governor of the State of Missouri'."

The constitution of 1875 makes it clear that the executive power is not vested in a single person but that "the Executive department shall consist of a Governor, Lieutenant-Governor, Secretary of State, State Auditor, State Treasurer, Attorney-General, and Superintendent of Public Schools."

The constitution again recognizes that the executive power is in reality vested in numerous officers and boards. The governor is not the head of the administration for the constitution recognizes seven such heads, least of whom is the lieutenant-governor. Section 4 states that "the supreme executive power shall be vested in a chief magistrate, who shall be styled 'The Governor of the State of Missouri'." The word "supreme" limits the governor's powers: there are other executive heads in whom subordinate executive powers are vested. Over these subordinate executives the governor exercises barely any control.
Section G reads: "The governor shall take care that the laws are distributed and faithfully executed; and he shall be a conservator of the peace throughout the state." Nominal the duty of executing the laws is placed upon him, yet he has no greater power to do so than a private citizen, except through tedious court processes. In the absence of any further constitutional provisions the governor's powers are not such that he can take any specific action to enforce the laws. He has no inherent powers. The Missouri constitution by its provisions may be said to be a limitation upon the powers of the legislative department, but a grant of powers to the executive branch.

But when given specific power by the legislature the governor may take steps to enforce the laws. This was clearly brought out in a Supreme Court decision.

The court said:

"Under the division of powers in our form of government between the executive, legislative, and judicial departments it necessarily follows that in time of such exigencies which demand immediate action, the power necessarily rests with the executive of the State to enforce the police power of the State and to restore order in the locality * * * nothing is said in this provision [Article 5, Sections 4-6-51] of the constitution about the exercise of the
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police power of the State,or of the power of the governor
with reference thereto. And it is argued that the governor
has only power to see that the laws of the State as declared
"by the judgment of the court shall "be exercised,and that he
has no power even to call out the militia to execute the
law,except in furtherance of a judgment of a court,and fur­
ther that whilst he is a conservator of the peace,he has no
more power than any other conservator of the peace in the
state.
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chief executive the power to discharge his duty as a con­
servator of the peace. There can also he no reasonable doubt
that under our system of laws,the governor is the chief con­
servator of the peace in the State,and especially in time of
local disturbances which do not amount to insurrection but
where the local machinery of the lav/ is inadequate or insuf­
ficient to restore order and preserve good government.
# *

In fact,the rule of law is universal that, ’The exe­

cutive,in the proper discharge of his duties under the con­
stitution is as independent of the courts as he is of the
legislature

(Jbooley,Const. Lim.(7th Ed.)l62j •"*

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The metropolitan police of the city of St.Louis are state
officers *"* * and

they are subject to the orders of the


Governor, and were created for the express purpose of affording the Governor an efficient arm for the enforcement of the police powers of the State and * * no other officer in the State, and * * no other tribunal in the State, has any control over them, or power to call them into action, except the governor, acting thru the board of police control appointed by him.

* * * * If, * * * * the governor had * * * * to declare a state of affairs to exist in St. Louis county that demanded the calling out of the militia to suppress, there can be no question that no court would have had power to interfere with him in so doing.

* * * * The distinguishing feature between a metropolitan and local police is that the latter has no power beyond the territorial limits of the city that creates it, while the former is created by the State, and is the civil means credited by the State for the enforcement of the police laws of the State. * * * * When conditions require it; when rural communities need immediate police protection; or when local officers cannot or will not enforce the law, it is not only proper and right but absolutely necessary for the governor to use the metropolitan police.

Over the local executive officers the governor exercises only a mere supervisory control. At various times
the governor has ordered the metropolitan police to various parts of the state to execute the law. In 1873 Governor Woodson called them to Saint Charles and Moberly to quell railroad strikes. In 1876 Governor Phelps ordered them to Johnson, Jackson, Clay, Henry, and Callaway counties to apprehend and arrest train robbers and other outlaws. And in 1877 Governor Hiram Duke used them in St. Louis city and county.

A rather unique method of direct law enforcement may be employed by the governor. He may organize a force of able bodied men not to exceed twenty-five in number to capture and arrest highway robbers, marauders, or other outlaws, when the ordinary officers of the law fail to do so. But even here the governor's power of direct law enforcement is hedged about as to the circumstances and time when he may employ such a force: only to deal with highway robbers, marauders, or other outlaws and then only when the local officers prove unable to do their duty.

Another means of direct execution that the governor may employ is the state militia. Section 7 gives him the right to call out the militia to execute the laws. Its power is in no way limited. Yet because of its unwieldy nature the power to call out the militia would be too cumbersome and expensive except in cases of grave emergency. For a governor to rely solely upon the militia in ordinary
cases would provoke the ridicule of the community where the militia was used.

The greatest authority of the governor in times of peace to see that "the laws are faithfully executed" is that he may direct the attorney-general to assist any prosecuting attorney in the discharge of his duties. 189

The power of the executive in the early constitutions was deplorably weak for in those days the legislature controlled the administration. In most states the legislature was endowed with important administrative duties. In Virginia, North Carolina, South Carolina, New Jersey, and New York the legislature appointed nearly all of the most important state officers; in the others a large number. In a few states it shared this power with the governor and council. In not a single state could the chief executive appoint any officer without the approval of his council. 190

During the colonial period all the functions for the government of the colony for which the charters provided were in the hands of the Lord Governor and Captain General and subject to his administration. There was no thought of the separation of powers. Even where he was assisted by a council he had more or less influence in the selection of its members. The power of appointment was one of the governor's principal powers. 191
During the revolutionary days the legislatures were in a position to gobble up more and more the administration functions of the executives. The executives were dependent upon the legislatures for their salaries and in many cases in respect to appointments, and so the legislatures could without constrain suck up all the administrative powers except such as were constitutionally conferred upon the executive, and even in the exercise of those expressly granted seriously constrain the activities of the governor.

In New York the governor in his administrative functions was handicapped by a council of appointment consisting of one senator from each district appointed by the assembly, who had a casting vote but no other vote. This council of appointment made appointments to almost all the important state offices.

During the period from 1801 to 1830 the governors were given more extensive powers of appointment in some of the states. In New York he was authorized to appoint, with the senate, judges. In Maine the governor was given the appointment of the most important judicial officers. During this period the judges of the supreme court were chosen by the governor and senate in three states.

Since that period until just before the Civil war the former system of executive appointment or legisla-
tive selection of local officials, judges and sheriffs, were largely superseded by the popular election of local administrative and judicial officers in the older constitutions.

In modern times the representatives of the people in the state legislatures have lost the respect of the people which was once theirs. The legislatures have ceased to be the trusted champions of the people and consequently have been slowly but surely deprived of all power of selection of the executive officers by the constitutions. This power has been transferred to the people. Today the people choose, by election, all or most all the chief executive officers. Those not so chosen are appointed by the governor with the concurrence of the senate.

The methods of appointment of executive officials in Missouri has followed the trend all over the rest of the country. The constitution of 1820 stated the general rule that the appointment of all officers, not otherwise provided for by the constitution, should be made in such manner as might be prescribed by law. The state treasurer was appointed by joint vote of both houses of the general assembly. This was the rule in nearly all the states at that time. The state auditor, attorney-general, and the secretary of state, were appointed by the governor acting "by and with the advice and consent of the Senate." In Alabama, Kentucky,
and Mississippi which served as models for Missouri in this respect, the attorney-general was appointed, and of the eighteen states that provided for a secretary of state, seven, Delaware, Illinois, Kentucky, Mississippi, Louisiana, Tennessee, and Pennsylvania, that officer was appointed by the governor. Of the other eleven states the secretary of state was either elected by the general assembly or by the people.

A constitutional amendment ratified by the people in 1850-51 made all these executive officers elective by the people. Since that date they have remained elective.

Thus it is seen that there have been three methods employed in the construction of the executive department: (1) selection or nomination by the chief executive, his choice to be confirmed by another body; (2) legislative choice upon joint ballot; (3) popular election. The last method is the one now employed in nearly all states. Missouri is no exception. Such popular choice of all executive officers, the governor included, results in the division of the executive power of the state.

Article III distributing the powers of government solemnly enjoins that "the powers of government shall be divided into three distinct departments—the legislative, executive, and judicial—each of which shall be con-
fided to a separate magistracy, and no person, or collection of persons, charged with the exercise of powers properly belonging to one of those department, shall exercise any power properly belonging to either of the others, except in the instances in this constitution expressly directed or permitted.

Here, then, is stated the principle of the separation of powers, which in theory is as old as American government. But nowhere does the constitution lay down any working definition of how the powers which it so solemnly states in Article III shall be separated. That is the trouble with all the state constitutions: a workable definition is left to the legislature, which, Missouri as well as elsewhere, has not hesitated to appropriate as much power to itself as possible.

As government business multiplied thru the growth of population and wealth the legislature's opportunities to amass powers were enhanced. The constitution makers lacked the foresight, a prophetic vision, that the government might some day outgrow stale division of three dimensions of government. A fourth function of government arose. There was one big function of government which the early Americans failed to see, --- the function of administration. But since 1825 on this function has been discovered to be a permanent element in government, distinct and somewhat separate from the other three departments. An evidence of the pre-
sent tendency to recognize the fourth department of government is the creation of a body of administrative officers with defined,—altho often illy defined,—duties. The people have learned that it is easier and cheaper to change the membership of the three other departments "than to change the body of administrative public servants who practically do the work of government."

With the recognition of this fourth function of government paradoxally the power of the governor has grown. The people realizing that a check must be kept upon the administrative officers prefer to exercise that check thru the governor in whom they are placing greater confidence, rather than thru the legislature in which they have lost much confidence thru sorry experience.

In order to find out what exactly is the position of the governor in Missouri we must look to the constitution for the powers which are specifically and expressly granted to him. "A consideration of these enumerated powers, as they are called, is even more necessary in the case of the governor than in the case of the President of the United States. For the State courts have not derived, as has the Supreme court of the United States, any very large powers from such a general power or duty as the duty to see that the laws be faithfully executed. In other words the
principles of narrow construction is more commonly adopted in regard to the powers of the Governor than with regard to those of the President."

The state executive since the colonial governors has always retained a large power of appointment, and this power of the patronage has been increased thru the creation of statutory affairs, filled by the governor independently or with the advice and consent of the senate.

The appointing power of the Missouri governor was increased by the constitution of 1875. In the former constitution he had received no power of appointment other than that depending on some future contingency such as a vacancy or the creation of a new office. The new constitution put into his hands the power to appoint, for indefinite terms, the curators of the state university, the major-general, the brigadiers-general, the adjutant-general, the quartermaster-general and his other staff officers. The appointment of the board of curators and the majors and brigadiers-general was required to receive the ratification of the senate. The other appointments did not require this ratification. Besides these new powers given the governor, he retained the power of filling all vacancies not otherwise provided for, to appoint all regimental and company officers who should not have been elected within a prescrib-
ed time, and to appoint the sheriffs and coroners in all new counties. He was also to appoint judges of the newly created St. Louis court of appeals to serve until the next election. By an amendment to the constitution ratified in 1834 he was to appoint the judges in the newly created Kansas City court of appeals to serve until the next election and the additional judges of the supreme court created by the amendment of 1890 were to be appointed by him in the same way.

Judges of the St. Louis court of appeals, judges of the Kansas City court of appeals, and additional judges of the supreme court are appointed by the governor without the ratification of the senate.

The governor appoints all notaries public.

The constitution makes no provision for the appointment of officers by the governor. Naturally all his powers of appointment were derived from statutory grants. However, the constitution did provide that "when any office shall become vacant, the Governor, unless otherwise provided by law, shall appoint a person to fill such vacancy, who shall continue in office until a successor shall have been duly elected or appointed and qualified according to law." This power of temporary appointment to fill vacancies occurring in elective offices was of considerable importance.
Aside from the constitution and the laws based thereon, the governor has no power to appoint any officer in the state. The legislature may say to some other executive body, officer or official, "You appoint," and it is so, and nobody may bring the right into question.

The state courts have defined an office as a public trust or charge created by competent authority.

As seen, the Missouri constitution confers no power of appointment upon the governor other than that before mentioned. Such power as has been conferred upon the governor or by the fundamental law cannot be abridged by legislative authority, but it is otherwise when such authority has been conferred by the legislature. It is then subject to legislative control.

Each of the judicial, executive, and legislative departments may exercise all such powers as are necessary to maintain the separation of powers. The power of appointment, by its very nature, must of necessity be employed by each. The power to appoint its subordinates is essential to the independence of each. Yet where the courts have held that the act of filling a public office by appointment is essentially an administrative or executive act, and, under the constitution can be exercised only by an officer charged with the duty of executing the laws yet this rule does
not conflict with the meaning of Article III. Courts and the general assembly may appoint such officers or agencies, as are necessary to the exercise of their own functions. This power is essential as a right of self preservation, and is necessary to preserve that very independence in the several departments of the government which Article III is designed to guard.

So, altho the courts and the legislature may exercise the power of appointment, it is essentially of an executive character, and when exercised by either of the other two departments does not become either a judicial or legislative act and may not be so considered.

The Missouri court further held that it is regarded as improper, especially when a constitutional provision applies, for the legislature or the courts to appoint executive or administrative officers not their immediate subordinates:

"That section [referring to Section 9 of Article 14, 'The appointment of all officers, not otherwise directed by the constitution, shall be made in such manner as may be prescribed by law.'] expressly authorizes the General Assembly acting within its legislative capacity to pass a law prescribing the manner in which an appointment shall be made, but it does not authorize the General Assembly to make the
appointment itself, nor authorize anyone unconnected with the government to do so. To provide by law the manner in which an appointment shall be made is one thing, to make the appointment is another; the one is in its nature legislative, the other is essentially executive. The legislature has no power to both create an office and appoint the officer itself, or designate what persons shall be chosen."

The governor's appointing power as it is essentially an executive act cannot be curtailed by the legislature other than to vacate or abolish any office created by it. The power of appointing departmental subordinates may be, however, lodged in the departmental head rather than in the chief executive. While the legislature may create a board of commissions for any constitutional purpose, and may prescribe the manner of their appointment, it cannot prescribe that the appointee shall be named by other individuals or by another board: for that would be conferring upon such individuals the executive power of appointment.

The recent growth of new boards and commissions has enormously increased the governor's appointing power. This is especially true in Missouri. Few of the boards consist of more than seven or nine members nor are the terms of the members so long as to prevent the governor from appointing a majority of the board during his administration.
This naturally increases what little control he may previously have had over such boards and at the same time gives him a rather large patronage.

As all these boards and commissions are legislative creations the legislature may fix their terms and qualifications and in so doing no constitutional prerogative of is infringed or impaired. None of the qualifications named are so definite as seriously limit the governor's appointing power.

The supreme court held that "in conferring this power of appointment on the governor, the legislature had the power to attach such conditions to it as to require such qualifications in those appointed by the governor as it saw fit, so long as these conditions were not shared by others with the governor, or thrown upon others, wholly or in part, for their determination, and so long as the qualifications were not so drastically restrictive on the executive volition as to become for one of these three reasons in conflict with the constitutional provision requiring the separation and the retaining separate the three co-ordinate branches of government."

The qualifications which vary somewhat for the different offices may be grouped according to:

1. Residence.
2. Sex.
3. Occupation.
4. Educational attainments.
5. Professional experience.
6. Political affiliation.
7. Nomination by an association.

1. Residence:-

These restrictive qualifications hamper somewhat the governor but on the whole not seriously. Under the first heading it is obvious that it is not unjust that all appointees should be residents of Missouri. "Residence within the territorial district over which a public officer has jurisdiction is a nominal requirement of those who may hold office. Not only may an office holder be required to be a resident, but a period of several years residence may be established as a prerequisite to office."

Many of the governor's appointments are subject to the provision that the members should be distributed by residence among the different sections of the state. On the Board of Agriculture he must appoint one member from each congressional district. On the Boards of Control of the state eleemosynary institutions he can appoint no more than one member who is a resident of the county in which any institution under the supervision of a board is situated. In
the Game and Fish Department as originally organized, two members had to reside south of the Missouri river and two north.

2, Sex.

The law provides that two of the members of the State Board of Charities and Correction be women. Two of the members of the Board of Managers of the federal soldiers' home may be women of the Women's Relief Corp of the State of Missouri.

3, Occupation.

The statutes stipulate that appointees to boards, especially examining and licensing boards, be of the particular occupation for which they examine applicants: barbers must be appointed to examine barbers, accountants to examine accountants, "practical embalmers" to examine embalmers, physicians to examine physicians, veterinarians to examine veterinarians, dentists to examine dentists, and nurses to examine nurses.

4, Educational attainments.

Five of the members of the Board of Health must be graduates of "reputable" medical schools.

5, Professional experience and otherwise.

The bank commissioner and his deputy must have three years of experience in actual banking business, or have served for a like period of time in the banking department in this or some other state. Accountants appointed on the Board of
Accountancy must have had three years of experience "in the reputable practice as a public accountant." The insurance commissioner must be experienced in matters of insurance. Members of the pharmacy board must be engaged in the practice of pharmacy. The dental examiners must be reputable dentists of five years of experience. The examiners of nurses must have had a varied nursing experience.

6. Political affiliation.

Most of the statutes creating boards or commissions provide for a bi-partisan body stipulating that not more than a majority of the members may belong to one political party.

7. Nomination by an association.

The Missouri Pharmaceutical Association nominates the candidates from which the governor chooses the members of the pharmacy board. Each of three barbers' associations names candidates. From each group of nominations made by the three associations the governor appoints a member of the state examining board of barbers.

For some appointments no specific qualifications are given: wide latitude as to choice:—

"A competent person to serve," Industrial Inspection Department; "Some suitable person", Department of Labor Statistics; "Shall be a discreet suitable person", State Inspector of Tobacco at St. Louis; "Suitable person, head of Food..."
and Drug Department.

In nearly all appointments the appointees must be twenty-one years old. The commissioner of the Public Service Department must be twenty-five years old.

Of the three members appointed on the Board of Meditation and Arbitration "one * * shall be an employer of labor, or selected from some association representing employers of labor, and * * shall be an employee holding membership in some bona fide trade and labor union; the third shall be some person who is neither an employer or employee of labor."

Of the five members appointed on the Board of Managers of the Confederate Soldiers' Home all must have served in the Confederate army or navy.

Of the five members appointed on the Board of Managers of the Federal Soldiers' Home three must have served as volunteers in the Federal army or navy.

Negative qualifications: -

No person is eligible for an office as commissioner, deputy, or examiner in the state banking department "who is an officer or employee of any bank or trust company or holder of stock thereof." The tobacco inspector must not be interested in any tobacco warehouse selling leaf tobacco in St. Louis.
No qualifications are given for the hotel inspector.

There are three steps in appointment: (1) nomination, (2) affirmation, (3) commission. All three powers are discretionary to a greater or less degree.

A few officers and boards are appointed by the governor with fixed statutory terms ranging from three to six years. A few hold office at the governor's pleasure. Few of these boards are of any great importance with the possible exceptions of the Board of Health, and the Board of Charities and Corrections.

By far the more important boards are filled by the governor with the confirmation of the senate. All are appointed for fixed statutory terms with the exception of the adjutant-general who holds office at the governor's pleasure. The heads of many departments are alone appointed, they being privileged to select their subordinates.

Before any officer, appointed or elected, can legally act in his official capacity he must receive his commission from the governor. This is a purely discretionary act on the part of the governor and mandamus will lie to compel him to issue a commission. The commission is regarded as only prima facie evidence of the officer's election or appointment. It is the duty of the governor to is-
issue a commission in accordance to the results of an election as legally ascertained.

In an opinion given by the court in response to inquiries of the governor it was held that "it is well settled that in issuing a commission the governor acts in a political or executive capacity, and he alone can judge whether the power shall be exercised or not, and the courts can neither control nor interfere with him in the exercise of this right." But a commission once issued and the officer installed, he cannot be ousted by the issuance of a commission to another.

In issuing commissions to elective officers the governor does not act in a judicial capacity; he is an executive officer and as such is simply authorized to issue commissions to the person who appears on the records at the City of Jefferson to be entitled to it. His duties in this matter are purely ministerial and he is relieved of all responsibility should the one who appears entitled to it on the records fail to be legally and duly elected.

An officer derives his right to an office by his election [appointment] and may be ousted at the instance of the state notwithstanding his commission if he exercises the function of an office without having been legally elected thereto. But not if the executive is exclusively vested
with the power to determine upon the results of election.

The governor's greatest power of appointment is granted by the constitutional clause that says that "when any office shall become vacant, the governor, unless otherwise provided by law shall appoint a person to fill such vacancy." Under this section is vested in the governor the whole power of appointment and it is not vested in any other person, or tribunal. The legislature has failed to take any action on the subject and hence there is no statutory provision giving anyone other than the governor control over the subject.

Before the governor may appoint an actual vacancy must exist. A new office is vacant upon its creation. An existing office without an incumbent is vacant within the meaning of the constitution, and can be filled by the governor by appointment, unless an election or some other method is plainly indicated. An existing office, whether it be new or old, without an incumbent is vacant. Such appointees hold office only for the rest of the term in which the vacancy occurs.

"There is no technical nor peculiar meaning in the word 'vacant', as used in the constitution. It means empty, unoccupied, as applied to an office without an incumbent."
In case of the inability of any judge of a court of record to discharge the duties of his office with efficiency, by reason of continued sickness or physical informity, the legislature, by a two-thirds vote of each house and with the approval of the governor may remove such judge from office. But no judge can be removed in this manner for any cause for which he may be impeached. The legislature is apparently required to take the initiative in the process.

The governor's power of direction of officials when dealing with financial affairs is especially noticeable. First, he is to receive from all officials in the executive department a semi-annual statement of the disbursements of all moneys made by them. This report is to be made under oath. Second, he is to designate the manner in which the treasurer shall issue quarterly statements of the state's finances. Third, acting with the attorney-general, he is required to approve the action of the state treasurer in selecting banks for the deposit of state money.

He is authorized to require at any time from the officials of the executive departments and all officers and managers of state institutions information in writing and under oath upon any subject relating to the condition, management and expenses of their respective offices and institutions. It is further provided that anyone making a false
report shall be guilty of perjury and punished accordingly.

The governor may summarily remove the head of the oil inspection department, the mines and mining inspectors, and the hotel inspector, and any person who he has appointed as a member of the board of managers of any state eleemosynary institution.

He may practically remove any of his appointees for cause. He may, at any time, remove any Tax Commissioner or Public Service Commissioner for inefficiency, neglect of duty, or misconduct or other malfeasance in office, first giving to him a copy of the charges against him or an opportunity of being heard in person, or by counsel, in his own defense, upon not less than ten days notice. If such commissioner shall be removed the governor shall file in the office of the secretary of state a complete statement of all charges made against such commissioner, and his findings thereon, together with a complete record of the proceedings. He may suspend the bank commissioner, the insurance commissioner, and the Building and Loan supervisor, and may remove either if he succeeds in obtaining the consent of the senate. If the senate consents after the governor has reported his action to that body the commissioner or supervisor is removed; if the senate fails to concur the commissioner or
supervisor is re-instated. In cities of 300,000 or over any member of the board of excise commissioners may be removed by the governor at pleasure. Any commissioned officer of the Missouri militia may be removed on recommendation of his immediate commanding officer, or of the inspector general, or any officer or the governor, by a board of five commissioned officers, one of whom is a surgeon.

The state attorney, the attorney-general, the grand jury, or the governor, or even a private citizen may institute an action against any officer preferring charges for alleged delinquency. Such charged officer is then given a hearing before a court of competent jurisdiction. The judge or jury determines whether the offense with which the officer is charged is serious enough to justify his removal. The question of removal is submitted to the jury.

The governor may remove members of the Board of Embalming for neglect of duty, incompetency, or improper conduct. He may remove members of the Board of Examination and Registration of Nurses for cause, or for the continued neglect of duties. He may at any time remove any member of the Board of Charities and Corrections upon causes to be specifically stated in the order of removal, which order shall be filed with the Secretary of State.
Chapter Seven.

The Governor and the State Judiciary.

Under the revolutionary governments the judicial system in general remained the same as under the colonial governments, except that judges formerly named by the Crown were either chosen by the legislature, or by the governor and his council. In six states, New York, Virginia, North Carolina, South Carolina, Tennessee, and Vermont, the judges of the supreme courts were elected by the legislatures, in six others they were appointed by the governor, either with or without the aid of his council or the senate. In Delaware judges were appointed by the legislature and president; in Pennsylvania, Vermont, Maryland, and Massachusetts by the governor and council. In New York they were appointed by a committee of four senators. In Georgia we find the most democratic of all provisions: there the higher court judges were elected by the voters for a three-year term.

The constitutions of this period had very little to say about the judicial department, the details of the organization of that department were left for the most part for statutory arrangement.

Georgia, New Jersey, Pennsylvania, and Vermont gave limited terms and in many states the legislature could also
remove judicial officers. The early constitutions failed in providing a good behavior tenure and properly guarding the same from unjust removals.

In the period from 1801 to 1830 New York gave her justices a good behavior tenure, with retirement at sixty years. Connecticut likewise gave her judges a good behavior tenure after election by the legislature. The Virginia assembly continued to elect the judges. Supreme court judges were appointed by the assembly in four states, and by the governor and the senate in three others. They held offices for terms varying from seven years to a life tenure during good behavior.

The development of the judiciary in Missouri followed closely the progress of the courts in other states. By the constitution of 1820 the supreme court and the circuit court judges, and the chancellor were all appointed by the governor and the senate. At this time all the states except Georgia, and in part Indiana, provided for an appointed tenure for the judges: about half confided this power in the legislature and half in the governor and senate or council. All the states except Georgia, Indiana, Ohio, and Connecticut made the same provisions. The Missouri judges could be removed either by impeachment, or by address of the general assembly to the governor. Two-thirds of each house had to
concur in the address. Each house had to state in its journal the cause of removal, and give notice of the same to the accused. The jurist whose removal was requested was given the right to be heard in his own defense, according to law.

By constitutional amendment of 1851 the power of appointing the supreme court judges and the circuit judges were withdrawn from the governor. If a vacancy occurred the governor was to issue writs of election to fill the office for the residue of the term only. By section 8 of the constitution of 1865 the governor was empowered to fill vacancies on either the circuit or supreme benches providing the next general election would not occur until three months after the happening of such vacancy. The constitution of 1875 provides that "in case the office of judge of any court of record become vacant by death, resignation, removal, failure to qualify, or otherwise, such vacancy should be filled in the manner provided by law." The statutes empower the governor to fill all such vacancies to the next election, also vacancies occurring in probate and county courts. He has the same duty when a vacancy occurs in the office of any clerk of a court of record until the next general election.

The appointment by the executive who by all traditions is entitled to appoint those who assist him in the administration of the state government is gradually waning.
before the desire of the electors to select for themselves every representative of their political institutions. The struggle between the adherents of an elective and those of an appointed judiciary has been long in the United States. Among the many and complex causes for this change is the popular distrust of "one man" power.

There is a conflict of authority among state courts as to whether or not a mandamus or some other compulsory or prohibitory judicial power will issue to the governor to control him in the performance of a duty which is purely ministerial. Such processes have been used in Alabama, California, Montana, Ohio, and Minnesota. But it is beyond doubt that the Missouri governor can be reached by no judicial process. Mandamus will not lie to compel him to perform any duty pertaining to his office, ministerial or political, and whether commanded by the constitution or by some law passed on the subject.

Leaving no discretion as to the manner in which the governor shall perform his duties does not render them ministerial.

In one Missouri case a mandamus prayed for against the governor to compel him to issue a commission to the relator as one of the justices of the court of Callaway county. The court held that "the issuing of a commission is an act
by the executive in his political capacity, and is one of the means employed to enable him to execute the laws and carry on the appropriate functions of the state; and for the manner in which he executes this duty he is in no wise amenable to the Judiciary. The court can no more interfere with the executive discretion then the legislature or executive with the judicial discretion. The granting of a commission by the executive is not a mere ministerial duty, but an official act imposed by the constitution, and is an investiture of authority in the person receiving it. We are of the opinion therefore that mandamus will not lie against the governor in a case like this."

But once a commission has been granted the governor's act is reviewable by the courts. The court said:--

"The governor is entrusted by the constitution with authority to issue commissions to all officers elected or appointed—Article 5, Section 25. That neither this court nor any other branch of the judiciary can interfere with the exercise of a purely political power, confided by the constitution to the executive is clear. Whether the issuing of commissions to elective officers, is one of those political functions which the judiciary cannot compel the governor to perform, it is not important in this case to inquire, but that the governor, in the performance of this function, must be controlled by the laws regulating elections, and by the evidence furnished him under those laws, and cannot institute inquiries into facts outside of the records in the public
office is, in our opinion, the necessary result of the purely ministerial character of the act. The act is purely ministerial, altho confided to the governor in his political capacity."

In another case covering this question the facts were that one, Ed. J. Robb was hired by Governor Francis as counsel for the state. He was promised a fee of $500.00, which was never paid. He sought to mandamus Governor Stone, the successor to Francis, to pay this debt. The governor voluntarily submitted himself to the jurisdiction of the court. The court in this case said:-

"We, constituting a portion of the judicial department of the government, are called upon to exercise, or what amounts to the same thing, to control the exercise of power belonging exclusively to the executive department of that government. To such action on our part the organic law interposes an insuperable barrier. In addition to the provisions of the organic law quoted, that instrument also declares that, 'The supreme executive power shall be vested in a chief magistrate, who shall be styled 'the governor of Missouri' Const., Art. 5, Sec. 4. Section 3 of the same act requires that 'the governor shall take care that the laws are * * * faithfully executed.' Of the same Art., Sec. 1 provides that the governor 'shall perform such duties as
may be prescribed by law.'And Sec. 6 of Art. 14 as a prerequisite to his entering on the duties of his office, prescribe that he 'take and subscribe an oath to support the constitution of the United States and of this state, and to demean himself faithfully in office.'

"Under these plain and comprehensive provisions, it must be apparent that any duty 'prescribed by law' for the governor to perform, is as much part and parcel of his executive duties as the made so by the most solemn language of the constitution itself.

Concerning the validity of any given law, the fact that the duties which it prescribes are merely ministerial can not take them out of the domain of executive duties nor make them any the less that which 'properly belong' to the executive department of the government and should we by our process be able to compel the performance by the governor of such duties, we would in effect and to all intents and purposes be performing those duties ourselves; for there can be no substantial distinction drawn between our assumption of duties pertaining to another department of government, and our intervention resulting in the compulsory performance of such duties. * * * *

"Abundant authority establishes the position here taken that mandamus will not issue to the governor to com-
pel the performance of any duty pertaining to his office, whether political or merely ministerial: whether commended by the constitution or by some law passed on the subject.

"The fact that the governor has voluntarily submitted himself to the jurisdiction of this Court has been pressed upon our attention as a reason why we should pass on or adjudicate the question submitted, then this court may adjudicate the matter at issue and leave the governor to claim his exemption afterwards. But we regard such cases as wrong in theory and unsafe and unsound in practice. If we have authority to render a judgment, then we have jurisdiction to enforce that judgment by all appropriate process, and need not inquire whether any exemption from that process will be pleaded. If, however, we have no jurisdiction over the chief magistrate his consent will not confer it on us. We will not 'assume a jurisdiction, if we have it not'; we will not sit as a moot court and pass upon questions and enter a judgment thereon which we are powerless to enforce. For jurisdiction implies superiority of power, authority to try would be vain and idle, without an authority to redress; and the sentence of a court would be contemptible, unless that court had power to command the execu-
tion of it". Cooley's Blackstone, 242."

Neither of the other two branches of government may direct, supervise, or review the governor's official action. In respect to his executive conduct he is not subject to mandamus, injunction, certiorari, writ of prohibition, or subpoena.

An information in the nature of a quo warranto is the proper remedy for the trial of title to office. As such probably a quo warranto would issue against the governor when several dispute the governorship. The writ would probably oust a usurper. The Wisconsin court was called upon to settle such a dispute. It said in part in a very lengthy opinion that although the court had no power to control or in any manner interfere with the functions of the executive department of the state government it had jurisdiction over the citizens of Wisconsin to prevent them from usurping the offices and franchises of the state, and to punish such usurpation when consummated, and that the office of governor is a civil office, and an unlawful intrusion into, or usurpation of the same, may be tried in the supreme court by information in the nature of a quo warranto, and the intruder or usurper be ousted and punished.
Chapter Eight.

State Officers.

As popularly understood a state officer is one whose jurisdiction is co-extensive with that of the state. Or as defined by the Missouri constitution a state officer is one who performs some governmental function, deriving his authority so as to act under the laws of the state.

By popular definition a local officer is one whose jurisdiction is much more limited, usually extending only over some political division of the state. The legal rule is that any officer whose duties and powers are defined by the statute are just as much state officers as those whose jurisdiction covers the state, even tho their functions are confined to the administration of local affairs. In Missouri it has been held that an election commissioner is not an officer of the county in which he performs his duties but a state officer for the exercise of his functions affect the entire state.

The more important state officers, lieutenant-governor, secretary of state, attorney-general, auditor, and treasurer, who we will consider in this chapter are all elected at the same time as the governor and hold office for four years. Their duties are defined in part in the con-
stitution but are greatly augmented by statute. At their option the legislature may impose the performance of any duty they so desire upon the governor or any other executive head subject, of course, to the constitutional provisions. The fetish of the separation of powers must be adhered to. The legislature may even confer upon them the duty of promulgating rules and regulations in carrying out in detail the legislative will, or to ascertain facts upon which the operation of any statute will depend.

The legislature has made these officers ex-officio members of various state boards, some of which are composed entirely of executive officers; for instance, the State Printing Commission, State Board of Equalization, the State Board of Education, the Board of Permanent Seat of Government, the Fund Commissioners, the Board of Prison Inspectors.

The constitution provides that they receive for their services a salary to be established by law, which can never be either increased nor diminished during their official terms. The same section states that they cannot receive for their own use any fees. Any fee payable by law for any service performed by any of these officers must be paid into the state treasury. However, any member of the Board of Equalization, which is composed of the governor, auditor, treasurer, secretary of state, attorney-general, may receive
the compensation of five dollars per diem provided by law for services of the board.

At the beginning of the history of Missouri state government the governor was empowered to appoint the heads of the executive departments, except the treasurer. Patronage evils resulting from this practice led the people to change the method of forming the official relationship in the state government. This was equally true generally speaking in the majority of the states. This method of selection gave way in 1851 by constitutional amendment to popular elections. Today a reaction in favor of the earlier method of appointment by the governor, especially among students of governmental affairs, is being felt. The reason undoubtedly is because the method of popular election has not had the beneficial results which it was supposed to usher in.

In order to secure an "efficient, harmonious, and responsible administration, subject to popular control" for the central state administration the principal state administrative officers should be appointed. Appointments of the principal administrative offices in the federal government has worked successfully.

The important executive officers are now elected by the people at the same time the governor is elected. The governor has no control in selecting them nor has he much
power over them after they have once been elected by the people. But a greater control over the department heads is gradually vested in the governor. By statute he is given the power to request information in writing from the state auditor and treasurer regarding their offices. And in addition they must report once a month to him and whenever he should so demand. These reports must be given under oath. He is given the power to suspend the auditor and treasurer whenever either wilfully fail to report to him as required by law, and whenever it appears that any such report is false, or that the treasurer has failed to deposit the state's money as required by law, or drawn state money out of any depository of the state funds, except as required by law. Upon proof of such offence the officer forfeits his office and the attorney-general must take immediate steps under the direction of the governor to have the officer removed by a quo warranto proceeding in the supreme court. However, his supervisory powers over the departments is abominably weak, for he possesses absolutely no power over the organization of any department. He does not determine the number of departments nor assign the various services to be performed to the respective departments. All these matters are regulated by the constitution or by statutes.

Each state officer supervises his department a-
lone and acts in a large measure independently of the others. They in no way need regard the activities of the other departments. Never do they meet as a body, and at such rare times when they do meet it is in some other than their executive capacity, usually as ex-officio members of some board or commission.

Altho the governor may issue commands and directions to the executive officials they are ordinarily under no obligation to obey his behests, unless the courts of law compel them to act in confirmance with the governor's decrees. He can exercise no effective control over them without recourse thru an appeal to the state courts.

The courts have repeatedly held that mandamus will lie against a public officer to compel the performance of a mere ministerial act, but will not lie to control the exercise of a discretionary power. Mandamus, however, will not lie to enforce a ministerial duty unless it is clearly and unmistakably enjoined by law, but where the duty of a ministerial officer is plain, mandamus will issue at the instance of one who has a right to compel him to do it. The general principle must be upheld that whenever the laws lay a command upon an officer he must enforce the law. But even in such cases where otherwise there would be failure of justice, mandamus will only lie to enforce the
performance of a "strictly ministerial duty" by which is meant one that is absolute and imperative, requiring neither the exercise of official discretion nor judgment. Even in matters in which public officers exercise a discretion, the writ of mandamus will lie to compel them to act it will not dictate the terms of discretion. It is not sufficient that an administrative body or officer against whom the writ is directed that it or he exercised discretion as to the matter in controversy. Discretion must always be reasonably exercised, and whether or not it has been reasonably exercised is a judicial question which may be reviewed by the courts.

But the remedy of mandamus is allowable against a public officer only in case the person seeking its benefits is directly interested in the performance of the matter demanded, and has no other adequate specific and effective remedy at law. It is exercised only to correct the fraudulent abuse of power by public officials whether their acts be ministerial or judicial where other adequate remedy does not exist. A particular case illustrating this is where the court issued a writ to compel the state auditor to audit demands against the state that had been provided for by law, since the state cannot be sued, and the claimant had no other remedy. In another case the state auditor
was compelled by mandamus to audit the account of the relator and draw a warrant for the salary of the relator as governor of the state for one month.

Mandamus issues to coerce action but not to control official discretion given by law. But it will not lie to compel performance of an official act, which involves exercise of large measure of discretion.

The 1776 constitution of South Carolina and the revolutionary constitution of Pennsylvania provided for a vice-president to be selected in the same manner as the president. In New Jersey the vice-president was selected by the upper house. Under the 1773 constitution of South Carolina, and the constitution of New York, Massachusetts, and Vermont, a lieutenant-governor was chosen in the same way as the governor. In brief, nearly all the early state constitutions made some provision for a deputy governor or vice-president to succeed the chief executive in case of that worthy’s death, or other disability to act. The deputy-governor’s office was derived directly from the colonial governments. It was also a feature of the organization of the early trading companies.

Today thirty-five states elect lieutenant-governors. In Missouri he is elected at the same time as the governor, and must possess the same qualifications
as the governor. In case of death, conviction, or imprisonment, failure to qualify, resignation, absence from the state or other disability of the governor the lieutenant-governor succeeds him. A temporary absence of the governor from the state, in discharge of duties imposed upon him by law, does not of itself authorize the lieutenant-governor to assume the functions and receive the salary of the governor during his absence. In case the office of lieutenant-governor becomes vacant no one succeeds him to that office. Officers favored to succeed him in other states are either the secretary of state, or the president of the senate. In case both the governor and lieutenant-governor are disabled for any cause from holding office then the president of the senate succeeds, and if the president becomes incapable of performing the duties of the office then the governor's duties devolve upon the speaker of the house. In 1825 the governor having died, and the lieutenant-governor having previously resigned the president pro tempore of the senate, Abraham J. Williams, succeeded, holding office from August to December, or long enough to allow him to call a special election to fill the vacancy in the governorship.

In all three of Missouri's constitutions the office of lieutenant-governor was created to provide a successor to the governor's office.
Under the colonial governments "the disability of the governor was provided for by succession of a lieutenant-governor, senior councilor, or appointee of council." Under the first state constitutions in Delaware and North Carolina the presiding officer of the upper house succeeded in default of the chief executive; in Virginia and Georgia the president of the executive council, and in Maryland the first named of that body, succeeded the governor. The early Missouri constitution contained provisions concerning the lieutenant-governor that were original and distinct improvements over the other state constitutions of that period. The 1820 constitution provided for the succession in case of a temporary vacancy in the office of governor, and contained a detailed provision on the election of a governor to fill the vacancy occurring during this unexpired term of the regular incumbent. The present constitution contains but the first of these two provisions.

The lieutenant-governor is president of the senate. Thirty-three of the other states likewise make him president of the senate. In the rest, Massachusetts among them, the senate elects its own presiding officer. In Missouri in committee of the whole of the legislature he may debate on all questions, and when there is an equal division he may cast the deciding vote in the senate, and also
in joint vote of both houses.

It is suitable that the lieutenant-governor succeed in case of the disability of the governor to perform the functions of his office, for like the governor he is elected at large throughout the state and is thus most truly representative of all the people, whereas were the president of the senate or some other locally chosen officer eligible to succeed, the new incumbent would but fulfill the desires of one portion of the state.

As the office is constituted today it is a sinecure. As moderator of the senate he receives seven dollars per diem, in addition to an annual salary of $1,900.00. Dealey suggests that "he be made head of the administration, as a sort of business manager for the state, subject to the governor's supervisory powers, and having in administration an authority like that exercised by the president in his cabinet of administrative heads. Such responsibilities would certainly dignify this somewhat useless office, and would afford him excellent training for a later promotion to the governor's chair. * * * There is urgent need that the loose-jointed system of the present be suspended by a strongly centralized group of from five to ten departments, among which should be divided the functions now performed by the existing numerous boards and commissions. The heads
these departments should serve as an advisory cabinet so as to unify policy and to induce economy and efficiency."

The office of secretary of state is a conglomeration of heterogenous duties not clearly related to each other. Even in states where some method is discernable in apportioning new activities among the various departments the office of secretary of state serves as a sort of wastebasket. Any service not easily assignable to the other departments is dumped upon the secretary of state. This, however, must always be so even under the new administration methods advocated if the administrative departments are to kept within numerical limits.

In Missouri the secretary of state calls the legislature together, is custodian of the great seal of the state, keeps all original laws passed, superintends the publication and distribution of laws, records all lands belonging to the state, issues automobile licenses, keeps record of all county and district offices, counts votes. Election returns are made to him. These, as are most of his other duties, are of a ministerial character. Yet many of his duties require discretionary power; as, for instance, he passes upon corporation applicants and issues certificates of incorporation. The court held that under the law mandating the filing of petitions under the initiative and referendum laws
with the secretary of state, he is vested with power to examine the petition presented to him to determine their sufficiency, and with a discretion, subject to review by the courts, to refuse to accept such as are legally insufficient.

At an earlier date the court held that although the duties of the secretary of state are ministerial as distinguished from judicial, yet some portion of the qualities and attributes of discretion necessarily inhere in the discharge of his official duties and require him to consider before acting or announcing a conclusion.

Wyman says: "The distinction between discretionary power and ministerial duties is in the last analysis the question what the law is in any particular case."

A law stating that the secretary of state verify the correctness of certain accounts is a mere ministerial duty and a mandamus will lie to compel him to perform the duty.

The secretary of state may be compelled to perform a duty merely ministerial thru issue of mandamus.

It is well to quote at great length the court's decision concerning the prayer for a writ to prevent the secretary from revoking a license. "The secretary of state is an executive officer and if he refuse to do what the statute requires him to do, a mandamus may reach him; or if he should
attempt to do what he ought not to do, he may be restrained by injunction. But he is amenable to a writ of prohibition only, if at all when he assumes to exercise a judicial function; but he cannot be said to assume a judicial function so long as he obeys the statute.

"A writ of prohibition will not lie to prohibit the secretary of state from obeying a statute whether or not it be constitutional."

The financial officers of the state are a state treasurer and a state auditor: both of whom are placed under heavy bonds, the treasurer at $500,000.00, the auditor at $50,000.00.

The state treasurer is the custodian of the state's money, which he receives and pays out only on the creditor's warrant. The state treasurer deposits the state's money, subject to be withdrawn at any time, in banks, which pay the state a small rate of interest for its use. The state auditor apportions to each county its share of the state taxes, keeps an account of all money due the state from all officers and sources, issues warrants to those entitled to the state's money. "He cannot issue a warrant for any purpose or to any person except as the appropriation bills authorize him so to do, nor can he issue a warrant until there is sufficient money in the state treasury with which
to pay it, duly appropriated for that specific purpose."

In the exercise of his duties the treasurer can disburse money only as the general assembly directs for he has no discretionary powers.

The treasurer appoints examiners to audit all state institutions and most county offices.

Both the financial officers must make monthly reports under oath to the governor and oftener if the governor requests them to; they must also report to the general assembly at the beginning of each regular session, and give information in writing to either house whenever so asked.

For every failure to make his report each is fined $500.00 to be recovered by civil action, and it is the duty of the attorney-general to bring such action whenever he is informed that either one has failed to comply.

Whenever either wilfully fails to report or falsifies his report he may be suspended by the governor contemplating an investigation of the charges. If the charges are proved he is removed from office, if the charges are found to be baseless he is reinstated in office.

The law makes the attorney-general counsel for the state in any action brought against the state, and prosecuting attorney in any action brought by the state. He is the legal advisor of all state officers and must give in -
formation upon any legal question to the general assembly when requested to do so by that body. "When directed by the governor, the attorney-general or one of his assistants, shall aid any prosecuting or circuit attorneys in the discharge of their respective duties in the trial courts, and in examination before the trial court, he may sign indictments in lieu of the prosecuting attorney."

Altho the attorney-general must heed the command of the governor to aid in any case in which the state is interested as prosecutor, it is practically beyond the governor's power to direct that officer with regard to the technical details of a suit. What is more natural than when the governor coerces an attorney-general against his will to institute a prosecution that he will not sullenly and carelessly push it hoping that thru his carelessness and lack of energy the case will be lost?"

The attorney-general, as a public official, has the right to appear and assist any circuit attorney, when requested by him so to do, and by leave of the court, whether or not he was ordered to do so by the governor.

He possesses some quasi-judicial powers as member of several boards of appeal. In addition to these duties he is an ex-officio member of many boards, the membership of some is very incongruous with the character of his official ca-
pacity.

On the whole the present organization of the state legal department and the arrangement of the law officers of the state do not result in a coherent and efficient enforcement of the law. Until the right to hire outside legal counsel and attorneys is taken away from certain boards and officials possessing such right at the present time, incoherence will continue in the present arrangement of the state law offices, and which will continue the present state of lax law enforcement.

Few of the early states inserted in their first constitutions provisions regarding education. Missouri's earliest constitution did not provide for a superintendent of public schools. The office was originally established in 1839 but did not have a continuous existence since that date. The duties of the office were placed upon the secretary of state from 1841 to 1854. Since 1865, when the office was re-established by constitutional enactment, it had a continuous existence.

In the constitutional convention of 1875 an amendment was offered and rejected to abolish this office.

Both constitutions gave the superintendent of public schools a four year term. He is elected at the same time as the governor. There has been much agitation throughout the
country to abolish the elective character of this office and substitute appointment instead. One authority commends upon the present system as follows:-

"It is problematic whether a superintendent of public instruction elected by the qualified voters in a state will be as competent a man for that office as one appointed by the governor of the state. Under the present tyrannical political condition there is danger that the superintendent of public instruction may be more astute as a politician than as an educator. Experience in some of the other states has repeatedly revealed that under an elective system a superintendent of schools often knows more about politics than pedagogy. Not only are the administrative officers elected, but they are elected for short terms, and it may be confidentially expected that the system of rotation in office, the almost inseparable concomitant of a short term, will cripple the civil service of the new state."

The electorate has relied almost entirely on impeachment to remove an obnoxious elected state official since they presumed they could protect their interests and enforce their wishes in the case of elected officials by frequent elections. But impeachment has proved to be a costly as well as an uncertain and unsatisfactory process of removal. Few impeachment proceedings have ever been instituted
and fewer still have resulted in conviction. One state has definitely abandoned this process.

The impeachment process in Missouri is similar to that in the majority of the states, the house impeaching and the senate acting as a court of trial. The chief justice of the supreme court presides if the governor is tried. The impeached official is suspended, subject to reinstatement if acquitted, or removal if convicted.

Any official subject to impeachment may be removed also for a crime punishable thru the courts by imprisonment.
Chapter Nine.
Boards and Commissions.

In this chapter we will treat only of the larger features which concern in general the Missouri boards and commissions.

As the legislature became too large for prolonged debate it was therefore impossible for it to work out in session the details of legislation. Much of the detailed and administrative work of state government had to be left to numerous standing committees. Because of short and infrequent sessions of the legislature affairs of the state, which continued even tho no legislature was in session, had to be left to permanent committees, which would remain in session continuously or could be called into session whenever the need arose. These permanent committees, later called boards or commissions are the direct outgrowth of earlier legislature committees and may be defined in general "as administrative agencies created for the special purpose of enforcing or supervising the enforcement of a particular portion of the substantive law of the state."

The creation of boards and commissions was the only practical solution of the problem how to escape the continuous session of the legislature, for the affairs of government are constant and will not wait to be attended to later. Not alone considering the inexpediency of legislative
administration it tends to violate the principle of the separation of the powers of government and hence "approaches the unconstitutional."

Administrative boards and commissions are a direct result of the enlarged functions of the state. As long as the laissez-faire doctrine of state function held sway in the councils of the state numerous boards and commissions were unnecessary; in fact, were held to be things to be avoided. State boards and commissions mean centralization of authority and consequently a more extended interference with "individual rights."

But as newer collective wants arose because men lived in ever-growing groups, these wants could only be satisfied thru state organization. As Missouri became more highly developed industrially and her manufacturing centers became more numerous and larger, the need for state action became stronger. As this growth continues the state's rôle will become more extensive. The increasing complexity of modern life makes this extension of state activities more imperative. The causes of this increasing complexity of modern life are the growth of manufactures, and other large industrial and financial corporations; the conditions of the modern industrial system; congestion of population in such centres as St. Louis, Kansas City, St. Joseph, Joplin, with
their complex political, social, and economic problems; and the increase of corporate wealth. In brief, changed economic and social conditions in general.

As society grows men become more dependent upon one another and on the social group in which they live as a whole, consequently the state must take over newer functions and enlarge its old in order to satisfy the citizens' common wants.

"* * * wisely organized and directed state action not only enlarges the moral, physical, and intellectual capacities of individuals, but increases their liberty of action by removing obstacles placed in their way by the strong and self-seeking, and thus frees them from the necessity of a perpetual struggle with those who would take advantage of their weakness."

Not alone has the state taken over the new functions of common concern due to the growth of society but it has taken over many local functions. This centralization in state administration is justifiable because of economic reasons. Community interests have been extended beyond municipal, township, or even county boundaries, and the state has logically become the administrative unit thru the growth of population, the increase in wealth, and the binding of all parts of the state together by means of easier communication, the develop-
ment of new agencies of transportation and commerce, especially the railroad and the telegraph.

Boards and commissions are constantly increasing in number. The legislature Manual of 1889-90 mentions but fifteen (excluding boards governing state institutions), the succeeding one mentions sixteen. These early agencies were mainly created for the preservation of the peace. The manual of 1919-20, not counting the governing boards of state institutions mentions forty-four. Not a legislature adjourns but some change or additions have been made in or to the state's administrative organisms. It is true that the late legislatures have created few new and independent agencies. But such as have been created are of great importance. Each legislature spends much time in extending or restricting the activities of an established department, or changing its internal organization, creating subordinate bureaus, sometimes merely changing its name. The fiftieth General Assembly changed the name of the Factory Inspector to State Industrial Inspector, barely changing the duties of the department.

Numerous reasons have been given for the creation of separate and independent boards. As to supposed advantages; first, boards allow specialization which is very necessary as many of the duties to be performed require the application of technical knowledge and hence the services of
experts are required; second, many functions of a legislative nature require the deliberation of a board rather than the opinion of one individual.

The range of subjects which have been brought under the administrative control or supervision of state boards or commissions is of a bewildering variety, almost every conceivable state activity of whatsoever nature is included. Following Beard's classification we have:

I. The Industrial.

1. Board of Agriculture.
2. Bureau of Building and Loan Supervision.
4. Industrial Inspection Department.
5. Department of Land Reclamation.
7. Department of Oil Inspection.
8. State Grain Warehouse Department.

II. The Scientific.

1. Board of Health.

III. The Supervisory.

1. Banking Department.
2. Insurance Department.
IV. Examining Boards.

1, Board of Embalming.
2, Board of Law Examiners.
3, Board of Accounting.
4, Veterinary Examining Board.
5, Board of Barbers.
6, Dental Examiners.
7, Board of Pharmacy.
8, Board of Examination and Registration of Nurses.
9, Osteopathic Board.

V. The Sanitary.

1, Department of Beverage Inspection.
2, Food and Drug Department.

VI. Educational and Public Libraries.

1, Board of Education.
2, Historical Society of Missouri.
3, Missouri Library Commission.
4, Missouri State Library.

VII. Corrective.

1, Board of Charities and Corrections.

VII. The Scientific (Agricultural).

1, Fruit Experiment Farm.
2, Board of Horticulture.
3, Poultry Board
IX. Internal Improvement.

1, State Highway Board.

X. Executive.

1, State Prison Board.
2, Game and Fish Department.
3, Hotel Inspection Department.
4, Military Department.
5, State Tax Commission.
6, Soldier Settlement Board.
7, Board of Equalization.
8, Board of Permanent Seat of Government.
9, Excise Commissioners of St. Louis County (2).

XI. Miscellaneous.

1, Public Printing Commission.
2, Public Service Commission.

The larger number of these boards deal with executive, industrial, and examining functions. As the state grows more industrial there will be a marked preponderance of new boards to satisfy economic needs and for the protection of labor and health. This tendency has already been shown and reflects the newer conceptions of the state. At present many are economic in their functions, some developmental, and the majority regulative.
Because of the heterogeneous and confusing list of boards and commissions there is an apparent overlapping in this classification. There are numerous other methods of classification but no matter what method is used overlapping cannot be avoided and this classification as to functions is as useful as any other.

To determine how boards are similar for purposes of classification is very perplexing. There are found boards with all gradations of power and authority.

In the construction of commissions there is no uniformity. They range in number from one to nineteen. There is but one board, the Board of Agriculture, with nineteen members, three of whom are members ex-officio. The next largest are the Board of Health and the Bureau of Mines and Mine Inspection with seven members each. The other departments' memberships range from one to six, no department, however, with two members.

As to their organization they may be classified under six different forms:-

I. Boards with Expenses Paid.

1. Board of Curators.
2. Board of Agriculture.
3. Board of Charities and Corrections.
4. Horticulture Board.
5, Poultry Board.
6, Bureau of Geology and Mines.
7, Boards of Regents of the various educational institutions.
8, Boards of Managers of the various state eleemosynary institutions.

II. Paid Boards

1, State Tax Commissioner.
2, State Prison Board.
3, Fruit Experiment Station.
4, State Highway Commission.
5, Public Service Commission.
6, Excise Commissioners of St. Louis County.
7, Department of Mines and Mine Inspection.

III. Boards Paid Per Diem and Expenses.

1, Board of Barbers.
2, Dental Board.
3, Board of Embalming.
4, Board of Accountancy.
5, Board of Pharmacy.
6, Board of Health.
7, Veterinary Examining Board.
8, Board of Examination and Registration of Nurses.
IV. Single Head (Paid).

1. Banking Department.
2. Department of Land Reclamation.
3. Department of Beverage Inspection.
4. Department of Oil Inspection.
5. Grain Warehouse Inspection.
7. Food and Drug Department.
8. Game and Fish Department.
9. Hotel Inspection Department.
10. Industrial Inspection Department.
11. Insurance Department.

V. Unpaid Boards.

1. Missouri Library Commission.

VI. Ex-Officio Boards.

1. Board of Education.
2. Board of Equalization.
5. Soldier Settlement Board.

Goodnow classifies boards as follows; first, those whose members retire from office at such times as to make the boards reasonably permanent. The Board of Agricul-
ture is an example. Such boards are usually large, sixteen members in the case of the Agriculture board, besides three ex-officio members. The members are unpaid and the detailed work is done by a staff of hired workers. This is the largest board in the state government and each governor has an opportunity to name all the members on the board for his term is four years and four members' term expire each year. Each member is appointed for four years. Second, Goodnow names those boards that are small, usually consisting of three or five members. In Missouri these are usually the examining boards the members of which are paid a small per diem and are reimbursed for expenses contracted in attending to their official duties. Other than these examining boards and with the exception of a few others these small boards are paid substantial salaries and themselves attend to the detailed work; such as, the State Tax Commission, State Highway Board, Public Utilities Commission, etc. Third, Goodnow names those departments that are intrusted to one officer. This single officer is always salaried; i.e., the head of the Banking department, the Department of Beverage Inspection, the Bureau of Building and Loan Supervision, the Game and Fish Department, the Hotel Inspection Department, the Industrial Inspection Department, the Insurance Department, the Bureau of Labor Statistics, etc.
Again boards may be divided as to the extent of the powers they may exercise. Ordinarily those whose functions are to investigate can only advise and recommend. Others again may exercise a coercive power. The Public Service Commission may issue mandatory orders which it has the power to enforce. However, as the power to regulate the rates and services of the railroads and other public utilities of the state belongs to the legislature, the commission can only act as its agent under power delegated to it by the legislature.

The bulk of the duties of the Board of Health are executive or administrative, simply advisory relative to matters of hygiene and sanitation. In addition it may make such rules and regulations as will prevent the entrance of infectious, contagious, communicable, or dangerous diseases into the state. And it may make and enforce adequate rules, regulations, and procedures to prevent the spread within the state of such diseases as it designates as infectious, contagious, communicable or dangerous. It may also make and enforce adequate rules and regulations for the maintenance of a safe quality of water dispersed to the public. The Agriculture Board has similar power concerning stock diseases, sanitation, and quarantine.

The promulgation of these rules and regulations
is in reality the exercise of legislative powers. The supreme court has never been called upon to settle a case precisely in point. But where the legislature required insurance companies to agree to a uniform form of policy to be approved by the insurance commissioner of the state the court held that it was an unconstitutional delegation of legislative power as it was indistinguishable from delegating the power to prescribe the form of policy to the insurance commissioner alone.

Various boards conduct hearings and inquiries, especially the examining boards when they are considering the revocation of a practitioner's license. When they sit as a quasi-judicial tribunal they are empowered to administer oaths, subpoena, and examine witnesses. This action is always subject to judicial review for the supreme court has held that "* * * these boards are clothed with discretionary powers, yet an unwarranted exercise of that discretion is a subject-matter for review. They are not judicial bodies."

The licensing boards have the right to regulate the practice of their professions. It has been decided that such regulation is not an interference with vested rights. The licensing boards have the right to regulate the practice of their professions. It has been decided that
such regulation is not an interference with vested rights. Standards are usually broadly specified by law but boards may prescribe further and more detailed standards of efficiency. The boards may revoke the license of any individual for bad moral character, or of persons guilty of unprofessional or dishonorable conduct, gross violation of the law, fraud, or malpractice. Notice must be given the accused and sufficient time allowed to permit the accused to prepare defense after being served with the accusation. The trial is similar to a regular court proceeding, the board having judicial powers. A majority vote of the members may revoke a license. The trial is reviewable by the regular courts on a writ of certiorari. The boards in general have supervision over the registration of all practitioners.

Briefly, we find great variety in the powers of commissions.

Being creatures of the legislature the internal organization of boards is completely controlled by the legislature for it may prescribe the personnel of their administrative, and expert staffs. With the exception of certain wide qualifications prescribed the boards may select their staff without much interference for their appointees are not subject to civil service regulations. Ordinarily the
number of persons on the staff, their rank or grade, and amount of salary is determined by the legislature. But in the later acts creating commissioners the number of assistants within wide latitude is left to the boards, although salaries are always predetermined by the legislature with few exceptions. The Soldier Settlement Board may employ as many as may be necessary, and at such compensation and for such terms as the Board may determine. Salaries in many departments are regulated according to the fees that may be received by each department and the amount biennially appropriated by the general assembly for the support and maintenance of the department.

The legislature wields an immense power over the boards by its grants of appropriations. Each item of expense is often minutely provided for and no wide variations in expenditures on the part of the boards are permitted. It killed the Horticulture Board by simply refusing it any further appropriations.

Efforts to provide representation to different sections of the state are now obsolete. Formerly on the old fish and game commission at least two members had to appointed from north of the river and at least two from south of the Missouri river. The Agriculture Board created in 1865 has a member from each congressional district.
Boards composed of ex-officio members are not expected to devote full time. Those given adequate salaries are required to devote their entire attention to their duties. The members of all boards are appointed by the governor, the members of some boards with the consent of the Senate, of others without its consent. All, with the exceptions of two departments, are appointed for fixed terms of from two to six years. Members of the Military Department and the Bureau of Mines and Mine Inspection hold office during the governor's pleasure. There are three methods of removal; summarily by the governor, for cause by the governor alone, or by the governor with the consent of the Senate. All departments are required to send reports either to the governor or to the general assembly.

All former laws creating administrative agencies provided for minority representation on state boards, commissions, and bureaus. "This practice, however, tends, to divide responsibility and has been condemned by the efficiency and economy committee [of Illinois] on the ground that it facilitates bi-partisan combinations for the control of the offices at the disposal of the board. It has also been observed that the device of bi-partisan representation enables those boards to be particularly successful in securing large appropriations, * * * and also enables them without
great difficulty to thwart any threatened investigation' for the 'washing of dirty linen' in public would be equally injurious to the interests of both parties."

There is a lack of conscious development and the systematic planning in Missouri in all matters dealing with health and kindred activities. Lack of co-ordination is the natural result. There are endless boards each charged with a certain special function more or less closely related to public health. These boards are charged with the function of examining candidates for entrance into particular professions that vitally concern the public health; i.e., the boards that examine embalmers, nurses, veterinarians, barbers, dentists, druggists, and osteopathic physicians. It would be logical to abolish all these examining boards and transfer their duties to the Board of Health, or at least make them divisions of the Board of Health. As they are at present constituted they are entirely separate and independent of the Board of Health for they are subject to no measure of control of the Board of Health with the exception of the Board of Barbers. Some co-ordination is possible. The functions of these examining powers, as well as those of the various food and drug departments, could be more efficiently and economically exercised by one department dealing with all matters that affect the health interests of the state.
It would mean increased efficiency and less expense.

What is more absurd than to have a separate and entirely autonomic Poultry Board with the chief executive of the state as an advisory member ex-officio? The work this board is supposed to attend to and also that of the Fruit Experiment Farm and the Board of Horticulture could be undertaken more efficiently by either the well-established Agriculture Board or the State University. The former Immigration Bureau is now a department under the supervision of the Agriculture Board.

The subordination of departments of minor importance to well-established and well-functioning boards and commissions ought to continue along with the consolidation of related bureaus. A systematic re-organization and consolidation of the heterogeneous and confusing variety of state boards, bureaus, and commissions is imperative in order to center responsibility, produce efficiency by reordering service and reduce expenses. It seems that there is no broad appreciation of the present chaotic condition of the state administration on the part of the legislature nor any desire for any general reform in this direction.
Chapter Ten.

The Selection and Removal of State Officers.

There are two principal methods in the selection of state officials, either by election by the people, or by appointment by some elected official. In the case of elective offices, the qualifications required in Missouri are such as are capable of being met by a wider range of persons than in the case of appointive offices. In the latter class ordinarily some technical knowledge or professional experience is required in addition to the citizenship and age requirements which are ordinarily the only qualifications required of elected officials. However, there is one large fault under the present system of administrative irresponsibility and lack of co-ordination in placing the choice of so many administrative officials in the hands of an elective officer. This leads to a rotation of incumbents in office, the old set going out and the new set in with every change in the executive department even tho they be of the same political faith. This has ever been the case in Missouri. The exceptions are negligible, not worthy of account.

Concerning the aims of these two methods in the selection of public officials we find that the appointive method aims at administrative harmony and efficiency. The other aims to insure a fundamental principle of representa-
tive government: popular control over the administration.
In the case of filling offices the duties of which require
the possession by the officer of special professional or
technical knowledge, the elective method is extremely inade-
quate and unfitted for its purpose.

At the beginning of the constitutional history
of Missouri choice of officers by appointment was the method
used in filling offices in the state executive department.
The governor and lieutenant-governor were the only state
executive officers placed on the elective list. The power
of appointment was vested in the governor but he was under
the necessity of securing the confirmation of the senate to
his appointment. This method undoubtedly led to log-rolling
in the legislature, and assuredly did divide the responsibil-
ity of choosing proper officials for the administration of
the state affairs between the governor and the senate.

Missouri was not caught in the great "democratic"
wave which swept over the country during the hey-day of
Jackson's reign for her people rejected the constitution
of 1845 at the polls, although not decisively. The vote was by
a majority of over 9,000 out of a total of 60,000. "The
opposition to the new constitution was mainly against the
clause making the judiciary of the State elective, instead
of appointive, as it was at the time." But by the adoption
of an amendment in 1851 the elective principle was applied
to the relation of all the constitutional state officers of
the executive department, and later incorporated in the body
of the 1875 constitution. Even the selection of judicial
officers underwent the same process.

Before considering in further detail the appointment
and removal of state officers the term "public official"
had better be defined. Mr. Wyman defines a public officer as
"the right, authority and duty conferred by law by which for
a given period, either fixed by law or thru the pleasure of
the creating power of government, and individual is invested
with some portion of the sovereign function of the govern-
ment to be exercised by him for the benefit of the public.
The warrant to exercise power is conferred, not by a contract,
but by the law. It finds its source and limitation in some
act of expression of governmental power. Oath, salary, operation, scope of duties, are signs of the official status; but no
one is essential."

Early in the history of the state the supreme
court defined a civil office as "a grant of possession of
the sovereign power, and the exercise of such powers within
the limits prescribed by the law which creates the office,
constitutes the discharge of the duties of the office; and
is distinguished in this respect from a mere employment as
a contractor or agent under some public officer."

The essential thing is that in some way or other the office is identified with the government. Blackstone defines an office as the right to exercise a public or private employment, and to take the fees or emoluments belonging to it. As Wyman defined office copying the definitions reportedly expostulated by the federal and state courts, a position in order to be an office must be one to which a portion of the sovereignty of the state, either legislative, executive, or judicial attaches for the time being. As the Missouri court decided an incumbent will in almost all cases be considered a public officer if he discharges some of the functions of government under authority given him by law. The recognized test of a public office is the performance of an executive, legislative, or judicial act.

Appointment is an executive function. Wyman defines appointment "as the act of designation by the executive of an office in the administration." Following the traditional system of government in America all governmental functions are considered as divided between the legislative, executive, and judicial departments. The constitution makers made no effort to clearly define what functions fall within each class, and what functions are
prohibited to the others. Instead the constitution has left every act to be classified according to its nature. Consequently there has been much overlapping. But it has always been considered one of the principles of law that, in the absence of a constitutional provision to the contrary, any one of the three departments under the authority of a statute may appoint its own subordinates. No matter which department makes an appointment to office such acts of appointment are executive acts.

This decision helps insure the complete independence and separation of the departments of government. Where constitutional provisions apply it is regarded as improper for the legislature or the courts to appoint executive or administrative officers not their immediate subordinates.

Although the legislature is prohibited from appointing officers not their immediate subordinates, such prohibition does not prevent it from creating a board composed of state officers who become members thereof ex-officio. Nor does it interfere with its rights to create new offices.

If one department were dependent upon another to fill its vacancies, whether these vacancies be heads or subordinates, that department would speedily become an
appendage of the other. The legislature may not vary the method provided by the constitution for the filling of offices where the constitution has directed some specific method.

Wyman states that appointment is an inherent executive power while Meechem holds that "it by no means follows that the appointive power is inherent in the executive." The Missouri court has held that no governor has the right to appoint an officer in the absence of authority conferred upon him by the state constitution, or some legislative act.

The right to office is not a natural right, neither is it a contract relation and so within the provisions of the national constitution prohibiting the impairment of contracts. The incumbent of an office created by statute has no vested interest or right of property in that office. The office is held neither by grant or contract. No one has any private right of property in a public office.

The appointive power may be either absolute or conditional. If the appointment is complete upon the designation of a choice and his commission the appointment may be called absolute. If previously to the issuance of a commission by the governor some other body
must confirm, or consent, to the choice the appointment is termed conditional.

The Missouri governor enjoys both a conditional and an absolute appointing power.

Altho a law creating an office may provide that an appointment to it may be made by the governor only with the advice and consent of the senate, the governor may appoint to such office without the consent of the senate if the office is one newly created. However, the appointee holds office only so long a time as his nomination is not rejected at a later time by the senate.

In State v. Washburn it was decided that the weight of authority sustained the view that making appointments to public offices is a function of government and therefore could not properly be delegated to anyone not a public official. Thus the legislature could not confer the power of appointment to anyone not a governmental official. Altho the power to provide by law the manner or mode of making appointments to office is vested in the legislature, this power cannot be interpreted as including the power to make the appointment for that power is considered an executive function.

Since the power of appointment is an executive function certain results follow. As an executive func-
tion certain results follow. As an executive function it is independent and so brooks no dictation from any of the other two departments. To allow this would be to violate the rule of the separation of powers. It is constitutional to make qualifications upon the eligibility of officers, but not to make directions as to the choice of appointees.

The Missouri constitution restricts the privilege of holding any public office to those who are citizens of the state. Other qualifications may also be required so that the right to office is usually limited in various ways. Boardly defining, the right it is one that is coextensive with the right of suffrage. The Missouri court has adjudged a woman as being eligible to election as a county clerk by the constitutional provision that no person shall be chosen to an office "who is not a citizen of the United States, and who shall not have resided in this State one year." The use of a masculine pronoun in the constitution in referring to the qualifications of a public office does not necessarily restrict the right to hold that office to men, when other provisions of the constitution expressly provides that males shall hold certain offices. The provision referring to the qualifications of the governor, lieutenant-governor,
secretary of state, and the other elective state executive officials expressly excludes females.

The constitution contains few positive qualifications for office, but limits the right by some negative qualifications such as citizenship, age, and sex.

Provisions imposing restrictions as to age are of frequent occurrence in state constitutions and legislative enactments. They may either establish a minimum or maximum limit. The Missouri constitution establishes a minimum age limit.

In addition to a requirement of state citizenship as provided for in the constitution there may be required by legislative enactment residence within the territorial district over which a public officer has jurisdiction. Sometimes the law obligates that the officer maintain his office in a particular part of the state, county, ward, or other district. This requirement is somewhat in the nature of a residence requirement.

Constitutions never, but the statutes may require political qualifications. This requirement is never specifically stated by naming certain political parties but is supposed to act as a check upon the appointing power from filling all vacancies with adherents of his own party. Usually the political qualification imposed is that no more
than a majority of a board or commission belong to the dominant party at the last state election. A Missouri statute conferring on the central committee of the Democratic party the power to name certain persons from whom the governor was to appoint an election commission was held to be invalid as violating the constitutional provision prohibiting the passage of any local or special law granting to anyone "special or exclusive right, privilege or immunity." The court held that this statute was unconstitutional as conferring a special privilege on the commission of the Democratic party and with holding the same privilege from the committee of all other parties.

As stated the tendency of the law is to reduce to a minimum the qualifications for election. The laws are equally brief concerning disqualifications for office. The disqualifications are criminal practices and the holding of another office. He who has been convicted of corrupt practices or crimes is ineligible for office. A common method of the loss of qualification is the acceptance of an incompatible office. "This is regarded as ipso facto a vacation of the first office, even if the second office is inferior to the first."

The Missouri constitution establishes a severe
standard of incompatibility concerning office holding. No person may hold any office of trust or profit under the state if he holds any office of trust or profit under the United States, or any other state. A public officer vacates his office by accepting another which is incompatible with the first.

The Missouri constitution, however, has followed the common law rule that the holding of two public offices is not in itself illegal providing there is no inconsistency in the functions of the office in question.

The appointment of an ineligible person is an absolute nullity, for whatever constitutional limitations exist must be scrupulously observed.

Unless the power is restricted by the constitution the legislature nominally possesses the power to create public offices. Along with this right the Missouri legislature has the right to change the term of an office even during the term of an incumbent, except where the constitution fixes the duration of the term. Where the tenure of any office is not fixed by law it is arranged at the pleasure of the appointing power. And where no time is fixed by law for the commencement of an official term, it begins to run from the date of the appointment and in the case of an elective office from the
date of election. In cases where the law prescribes a term within which a public officer is to perform official acts affecting the rights of others, the general rule is that it is only directory as to the time unless from the nature of the act the designation of the time must be considered a limitation on the powers of the office.

The right of any public officer to resign in Missouri is secured by a constitutional provision. Whatever doubt may exist in some states as to the right of a public officer to resign his office without the concurrence of the officer or body which has the power to act upon it, all doubt is removed in Missouri, by the constitutional recognition of the right for Article 14, Section 5 declares that all officers subject to the right of resignation shall hold office during their official term. The resignation need not be in any particular form; it may be either by parole or in writing. In the absence of a statutory direction the officer should direct it to the authority having power to bind his successor, ordinarily the power which appointed him.

In order that the resignation be effective it must be accepted by some competent authority in words implying acceptance or by something else equally implying an acceptance, such as the appointment of a successor.
Mathews gives the more important ways of removal from office as, expiration of term; death; resignation; forfeiture; loss of qualifications; legislative removal thru direct action, thru impeachment, thru the abolition of the office, or, practically, thru failure to make the necessary appropriations for the salary; judicial removal; and removal by administrative action.

The State Board of Horticulture was established in 1907. For the past three legislature the board received no appropriation for maintaining the work. As a consequence their office has been closed.

The modes of removal are often prescribed by the constitution. The modes of removal usually prescribed by state constitutions are by impeachment and legislative address. Where the office is created and the official tenure of the incumbent is prescribed by the constitution as well as the method of removal is prescribed by the constitution the methods named are exclusive of all others and consequently the legislature cannot vary the method of removal.

Altho the power to remove from office is regarded as a power possessed by the courts in the absence of its express or implied grant to some other authority in the government, the courts hold that this power may be
exercised by declaring the office vacant, or may be dele-
gated by the legislature to some other authority. What
is sufficient cause for removal of an officer is a ques-
tion for the courts.

Whenever the legislature has taken the power of
removal from out the hands of the courts and delegated it
to another power in the government it has usually placed
it in the hands of the governor. This is following the
general tendency of modern administrative science by cen-
tering responsibility in the hands of one person who in
turn may be held responsible to the people.

The executive power of removal may be classified
either as an arbitrary one or a conditional one. The power
is defined as arbitrary when it is incident to the power
of appointment. If the power is an arbitrary one it may
be lawfully exercised without presenting to the person
to be removed the formal charges, or granting him a hear-
ing.

This arbitrary power is also called by some
authorities a summary power.

The power to remove is considered incident to the
power to appoint when the term or tenure of a public offic-
er is not fixed by law. It is the fixity of tenure which
destroys the power of removal at pleasure otherwise incidental to the appointing power. Where the power of removal is exercisable at the discretion of the appointing power it is well settled that the officer may be removed without a notice or a hearing.

The constitutional or limited power of removal, as for cause, may be exercised only after charges have been made against, and a hearing accorded the person to be removed. The conditional power only can be used to remove an incumbent whose power of office is fixed. "For cause" necessarily implies some dereliction or general neglect of duty, or incapacity to perform the duties, or some delinquency affecting the general character of the officer or his fitness for the office. Having authority to remove for cause only the appointing power cannot remove at pleasure. In the absence of any statute to the contrary the removal of an appointed official at the will or caprice of the appointing power is not unconstitutional. But where a statute enumerates certain specific causes for which an officer may be removed, the removal must be based upon at least one of these causes and cannot be made for other causes.

"Where the appointment is during good behavior, or where the removal must be for cause, the power of remov-
al can only be exercised when charges are made against the accused, and after notice, with a reasonable opportunity to be heard before the officer or a body having the power to remove." The duty to give the accused who was appointed to hold office for a definite term personal notice and a hearing is mandatory and "it does not matter that the law conferring authority to make such removal does not expressly provide for such notice."

The charges set forth in the notice of discharge need not be set out in detail, but the notice should contain the substantial fact that a proceeding to remove is intended. Analogies of ordinary court proceedings may be followed in the absence of statute. Official misconduct specified in a statute as a cause of removal means misconduct in the conduct of the office and not mere personal misconduct. The term "official misconduct" is broad enough to cover any "wilful malfeasance, misfeasance, or non-feasance in office."

Regarding his fellow elective executives the governor has in many instances the power of suspending an officer pending his trial for misconduct. This ties the officer's hands for the time being and prevents him during that time from performing the functions of his office, but does not remove him. The power to suspend is included in
the power to remove for cause since it is merely a less severe disciplinary measure and so seems to be unanimously accepted as fair.

An officer's title to office may be attacked and the officer removed by the state on an information of quo warranto. Originally an information of quo warranto was a proceeding of a criminal nature prosecuted by the attorney-general, ex-officio, in behalf of the state, to inquire into and punish the party usurping an office to which he had no legal title. It decides the doubt as between two persons who claim the same office as to who has the better right to the office and can be filed in the supreme court only after leave granted. A proceeding by information in the nature of a quo warranto is now essentially a civil proceeding. In such cases the defendant has no constitutional right to trial by jury.

The supreme court has jurisdiction. It is a writ of right and issues as a matter of course upon demand of the proper officer. But the filing of the information at the relation of a private person is only granted at the sound discretion of the supreme court under the circumstances of the case.
Chapter Eleven.

Charities, Correction and Education.

The recent development of administration in the United States affords abundant evidence of a tendency toward centralization. This centralization may be considered as a phase of the general tendency toward combination and organization in industry that has characterized the closing decades of the last century. This tendency toward centralization, however, is sadly handicapped by the movement to enlarge the sphere of the state's activities. To provide for the administration of these newer activities the legislatures have tended to follow the line of least resistance, to do as their predecessors have done, provide for a rapidly increasing number of state officers and boards. Missouri is no exception. Often new positions are created for the express purpose of filling them with party henchmen.

Yet, a tendency towards centralization is apparent although the New York Reconstruction Commission reports "the recommendations with reference to the re-organization of boards, offices and commissions have not been accepted by the state legislatures as readily as proposals for budget reform. The reasons are obvious. A consolidation of a hundred or more offices, boards and other agencies affects
political patronage more vitally than does a budget system, and it requires considerable courage and intelligence on the part of a legislature to reorganize an entire system of state government. Nevertheless, recommendations of commissions are passing steadily into law." Many of our legislatures have gone about the reorganization and centralization of state administration piecemeal: Missouri among them, altho as yet she has made but a single improvement. The first department of state administration to be reorganized was that concerning the charitable and correctional institutions, due largely to the fact that they had been so unsatisfactorily organized and managed heretofore.

Boards of charity and reform, as they are now organized in the various states may be grouped into two classes. The first class has powers of supervision, inspection, and recommendation, but leave the business management of each institution to a local board of trustees. The second class exercises positive control over the state institutions and assumes full responsibility for their management. Boards of the first mentioned class are usually composed of honorary officers who give but a portion of their time to the work and without pay; the members of the second class of executive boards devote their whole time to the work and receive salaries commensurate with the
responsibilities they assume. In New York and a few other states the system of administration combines both the professional state board, and the honorary local board of trustees. The dominance of the first idea in the early years of charity organization led to the prevalence of "sentimental boards," engaged in both state and local charitable work. The growth of the second idea is in response to a more enlightened humanitarian spirit, which recognizes that public and private charity and correction demands the most careful business methods and the scientific treatment of the question of reform which come under the jurisdiction of the authorities.

Previous to 1917 Missouri followed the first path in the administration of her charitable and correctional institutions. Each penal institution was under the control of a board of five members appointed by the governor with the consent of the senate. (See Chart 2, P. 208.)

The Board of Charities and Corrections has powers of supervision, inspection, and recommendation over the system of public charities and corrections in the state. The board consists of seven members, six of whom are appointed for six years by the governor with the consent of the senate: two must be women, and not more than two of the remaining four may belong to the same political party.
The seventh member is the governor ex-officio.

The Board of Charities and Corrections with its general function of supervising the entire system of public charities and corrections in the state still exists, but the Forty-ninth General Assembly abolished all the Boards of Control of penal institutions. By an act approved April 12, 1917, known as the "State Prison Board Act," it placed the management and control of the penal institutions of the state under a board of three members, the "State Prison Board."

The members of this board, no more than two of whom may belong to the same political party, are appointed by the governor with the consent of the senate for terms of six years. Each member receives an annual salary of $4,000.00.

This board has complete control of all state penal institutions: the State Penitentiary at Jefferson City, the State Reformatory at Booneville, the State Industrial Home for Girls at Chillicothe, and the State Industrial Home for Negro Girls at Tipton.

The consolidation of related administrative agencies and services into a unified department tends to decrease internal friction, and to promote co-operative and efficient action. Even after consolidation, however,
there may still be a lack of co-operation between the different departments remaining separate. The defect may be remedied either by placing a greater degree of control over the scattered departments in the hands of a common superior officer, such as the governor, or by providing specifically in the law for direct co-operative action between the different departments.

The governor may upon presenting written charges and proof of the same on public trial remove any member of Missouri State Prison Board for malfeasance, non-feasance, or other official misconduct in office. The accused member must be given a reasonable time in which to file a written answer. If the accused is removed the governor must file a complete statement of his charges, findings, and judgment with the secretary of state.

The consolidation of the penal boards of control into one board, or rather their substitution by one board was the only advance made in the centralization of administrative activity in Missouri. The various eleemosynary institutions of the state are still managed by separate Boards of Managers. Each institution is governed by a board of five members, no one of whom may hold a position on more than one Board of Managers at the same time, by the governor with the consent of the senate for four years.
The governor may remove any member for cause. If a member refuses to act or fails to attend two successive meetings without a good excuse for his absence it is the governor's duty to remove the member.

The ten eleemosynary institutions are the State Hospitals at Fulton, St. Joseph, Nevada, and Farmington, the Colony for Feeble Minded and Epileptic at Marshall, the School for the Deaf at Fulton, the School for the Blind at St. Louis, the Sanitorium at Mt. Vernon, the Confederate Home at Higginsville, and the Federal Soldiers' Home at St. James.

Governor Gardner in his inaugural address recommended the abolition of all Boards of Control of the ten state eleemosynary institutions, and the creation of one board of three members to take over the powers and duties of the abolished boards.

The governor said in part:

"A large saving would come from a concentration of the buying for these institutions under one authority.

"But aside from the feature of economy and more important than that would be the increased efficiency in these institutions. This board should be given authority to employ all superintendents, and other employees on the basis of efficiency. These institutions should be removed entirely from politics."
The legislature took no action on this proposal.

The situation as regards the administration of the state educational institutions is almost identical to that of the state eleemosynary institutions. With the exception of the state university each educational institution is governed by a Board of Regents of seven members, six of whom are appointed by the governor with the consent of the senate for terms of six years. The seventh is the state Superintendent of Public Schools ex-officio. Six must reside in the district, and one in the county where the school is located. Those appointed for Lincoln Institute may reside anywhere in the state. Not more than four of the members may belong to the same political party.

A Board of Curators administers the affairs of the state university. Nine members are appointed by the governor with the advice of the senate for terms of two years, the terms of three members expiring every two years. Each member must be a citizen having resided in the state previous to his appointment for ten years. Not more than five members may belong to the same party nor more than one live in the same congressional district.

Altho Missouri is very backward in consolidating her boards of similar functions she is not alone. Unbusiness-like organization for administrating state gov-
ernments continues and is augmented by the formation of new boards and commissions. The range of subjects brought under the supervisory control of state boards is extremely wide, practically every field of state activity is covered. Side by side with the movement toward the creation of new boards, has developed a promising tendency toward the abolition of some boards and the consolidation of others as illustrated by the substitution of the Missouri State Prison Board for four boards of managers. The abolition of boards has not had the effect of narrowing the field of state activity, but rather of creating a more centralized control over state activities, for the work of the abolished boards has usually been transferred to existing agencies. A similar development has been the consolidation of existing boards into a single central body, which takes over the functions previously exercised by the separate boards. This tendency has been recently most marked in connection with educational and with charity and correction administration as in Kansas where the newly created State Board of Education took over the work of four educational boards that were abolished.

In their messages to the legislatures of 1919 eight governors recommended the consolidation of related state offices for the sake of economy and efficiency, and
several others recommended the establishment of a central purchasing agency for the state departments.

The outstanding transformation of that year was the creation of a state Board of Control in Texas. The board is composed of three citizens appointed by the governor with the advice of the senate. The work of the board is organized into the divisions of public printing, purchasing, auditing, design, construction and maintenance, estimates and appropriations, and eleemosynary institutions. Five state agencies were abolished, together with the boards of managers of about fifteen state asylums, and their power and duties were transferred to the Board of Control. To this board is also assigned the function of preparing the biennial budget for all state offices and departments.

A review of the reports of the Illinois state Board of Control reveals many complaints which suggest the need of a larger authority for the state board. The board complains of political influences in appointments, and doubtless could complain with equal reason of the support of thrifty lobbyists by each institution at the legislative sessions in order to procure appropriations for their respective institutions. This practice has been quite general in those states employing the system of local trusteeships. One of the most urgent reasons for the creation
of the state board of control in Wisconsin was the wasteful competition for appropriations between the trustees of the various state institutions in their efforts to secure favorable appropriations. The institutions were constantly lobbying against each other, and the most liberal appropriations were secured by those who clamored with tact and influence, even in opposition to the advice of the supervisory board. It is not at all improbable that similar practices prevail in other states where the state board possesses only supervisory and visitorial powers.

One of the most pressing problems in Oregon for some time has been that of the proper organization of state control over its institutions of higher learning. The state university, the state agricultural college, and the state normal school, each located at a different place, brought about the question whether to continue the separate boards or to consolidate the institutions under the control of a single board. A commission recommended to the legislature that it create a State Board of Education of nine members to be composed of three institutional committees of three members each, one committee for each of the three institutions. These three committees were to appoint the presidents and faculties of their respective institutions and to attend to local and special matters.
The three committees together, sitting as the state Board of Education, would attend to such matters affecting more than one institution. Such matters include the formulation of requests for any appropriations needed above the proceeds of the mileage tax, and also in eliminating, as far as possible, duplication of work among the several higher institutions of learning.

In 1917 Governor Capper stated in his message that "Kansas had admittedly outgrown the present system of state government. A multiplicity of boards, commissions, bureaus, and departments duplicate the work of one another, divide responsibility which should be concentrated, and by interfering with one another often retard the public business."

During 1918 some experience with the working of various consolidated agencies in Kansas were obtained. It revealed two unfortunate features. In the first place, the state Board of Administration created was to constitute a board of trustees for the control of three different kinds of institutions; namely, all educational, charitable, and penal institutions of the state. The methods and needs of these three kinds of institutions are probably too diversified to be brought satisfactorily under the immediate control of a single agency. In the second place, the legis-
lature parsimoniously limited the salaries of the members of the board and of the business manager appointed by them to $3,000.00 a year, which is too small to attract the right sort of men for work of this kind. Despite these handicaps a capable business manager was secured who brought the institutions thru the fiscal year without a deficit. No institution was obliged to curtail its work despite the greatly increased prices for material and labor.

Wisconsin ranks in a foremost position among the states of the union in regard to the administration of its charitable and correctional institutions. The institutions coming directly or indirectly under the state Board of Charitable, Reformatory, and Penal Institutions are divided into two classes: the state institutions and the semi-state institutions. The institutions in the first class include the state hospitals for the insane, the schools for the deaf and blind, Industrial School for Boys, State Prison, State School for dependent Children, Home for the Feeble-Minded, and the State Reformatory. The institutions which compose the second class are the twenty-seven county insane asylums, the Milwaukee County Hospital for the Insane, the Industrial School for Girls, and the Wisconsin Veterans' Home. As to the general powers of the board, it is charged with the maintenance, government, and direct management and super-
vision of the various state institutions. It must preserve and care for and make annually a full and complete inventory and appraisal of the property of each institution. The members must make monthly visits to each institution, and provide all needful regulations for the officers and employees, course of study, tuition and maintenance of pupils. In short, all administrative matters pertaining to the state institutions fall within the jurisdiction of the board.

Another phase of the policy of the Wisconsin Board of Control has given it a unique place in the history of charity administration in this country, and even in Europe. It is the practice of other states to care for the insane in state institutions alone. In Wisconsin the Board of Control not only directs the administration of the state institutions, but has also been given a large control over the affairs of the locality in certain phases of its activity. The first step lies in the power of the board to condemn jails, poor-houses, prisons, and locums for sanitary reasons. All financial matters concerning the county keep of insane persons are adjusted between the counties thru the Board of Control. Another important advantage of the Wisconsin system is the strong control exercised by the board over the county asylums and poor-houses without destroying the responsibility of the county authorities in
An additional feature to the Wisconsin system is found in the Minnesota board of control. In 1907 when the appointment of a board of visitors to the state institutions was considered a St. Paul newspaper in an open letter of that year said:—

"There is no other country in civilization where the administration of public charitable institutions has no regular and official inspection, but in the state of Minnesota, there is no official inspection of the spending of millions of dollars and the care of thousands of helpless wards of the state. The remedy for this situation is the establishment of a state board of visitors, non-partisan in character, composed of six representative citizens serving without salary, of which the governor shall ex-officio be a member. The superintendents of the state institutions should be glad to have such a board for they have nothing to conceal and the fact of possible and unannounced visits at any time would keep up the discipline and make their task easier. The Board of Control should favor this plan for they have the right of the approval of the competent authority and should be by this time a little tired of examining themselves and finding everything all right."
An editorial in the same issue said:—

"Such a board would do much to allay the irritations that have arisen against the Board of Control on account of its political activity. Its recommendations would be a guaranty to the public that progress is being made which will keep our public institutions in the front rank among the best states of the Union."

The Minnesota system, after this board was appointed, differs from that of Missouri which has a Board of Managers for each eleemosynary institution and a state board of charities and correction (a system similar to that of the majority of states) in having abolished the individual boards and replaced them by a central board of control of three members who give their entire time to the work at a fixed salary, and whose expenses are paid. It differs from such boards of control states as Iowa and Wisconsin in having supplemented its board of control by a board of visitors. The experience in Minnesota is especially illuminating in showing the exact place of the board of control. It is only a substitute for the separate boards of managers. Its functions are chiefly financial. The men who are appointed on the boards of control have nearly always been men of business rather than of philanthropic experience. As the separate boards of managers need the
assistance of a state board of charities and corrections
so does the board of control need the assistance of a
state board of visitors.
Chapter Twelve.

Reorganization.

The development of the state administrative organization has been for a long time hap-hazard. Incongruities and absurd systems were a natural result of such organization. But the Missouri administrative organization is not all faults. The legislature has consistently followed a policy of placing all new functions concerning agriculture under the supervision of the Board of Agriculture with the exceptions of the fruit and poultry experiment farms. The Fiftieth General Assembly created the State Bureau of Marketing under the direction of the state Board of Agriculture. And recently the legislature [1917] abolished all the separate boards of managers of the various state penal and correctional institutions, also the Board of Pardons, and placed the functions previously intrusted to these boards in the State Prison Board.

But aside from these commendable improvements in state administration the greater portion of development has been in the accretion of numerous boards and commissions, all agencies of the state dealing with particular administrative functions. Like the development of state
administration in Illinois "the large extent and varied conditions found in the state, together with its prominence in agriculture, industry and manufacturing, operated as one of the principal causes in producing this extraordinary number of such [state administrative] agencies. * * *
The expansion of the state administration thru the creation of boards and commissions is in large measure due to the practical necessity that the state shall undertake new functions for the regulation of new conditions. Mere legislative action for this purpose was rightly deemed insufficient and administrative agencies were therefore created."

The old boards and commissions operate with little reference to one another, and consequently are not very well correlated to one another, neither are they under any effective supervision. It is true that the members of the boards may be removed either summarily in many cases or for cause in all by the governor, but it is almost humanly impossible for any one man to exercise any effective control over such a vast array of heterogeneous administrative agencies.

The lack of co-ordination, and duplication has proved wasteful to an extreme degree. Moreover, there is no reliable accounting system to audit the various boards' expenditure. Appropriations and expenditure have constantly increased with great rapidity. It all spells inefficiency.
Many other states are equally suffering from a defective and expensive administration system. The faults of state administrations are patent to almost all, and for a long time. However, it has been only comparatively recently, within the last decade, that the problems of reorganization have been tackled in dead earnest in many states. Several states appointed investigating committees to make careful investigations of the existing conditions and a thorough analysis of the existing evils in state governments and to make recommendations with reference to the reorganization of state governments. All the plans of reorganization submitted involve the centralization of the state administration. All these reports are in substantial agreement on the following points:

I. "State administration is a collection of offices, boards and other agencies which have been created from time to time by legislative act without consideration being given to the desirability of grouping all related work in one department.

II. "The board or commission type of organization for purely administrative work is generally inefficient owing to the division of powers and absence of initiative and responsibility. This applies with less force to the departments in which there are important quasi-judicial or
quasi-legislative functions combined with administrative functions. Boards have been successful in many cases in carrying out advisory and inspectional functions and in the general supervision of education. Ex-officio boards are almost never effective.

III. "Widely scattered and independent agencies of state government cannot be effectively supervised and controlled either by the legislature or by the governor.

IV. "When such a large number of agencies is independent of the governor, he cannot be held responsible to the voters for an efficient and economical management of public affairs."

In their recommendations for improvement of administration, the commissions are substantially agreed that economy and responsible government can only result from:

I. "A consolidation of all administrative departments, commissions, offices, boards and other agencies into a few great departments, each headed by a single officer, except departments where quasi-legislative and quasi-judicial or inspectional and advisory functions require a board." Each department to be "responsible for the conduct of a particular major function such as finance, health, welfare, or public works."

II. "The adoption of the principle that the
governor is to be held responsible for good administration and is to have the power to choose the heads of departments who are to constitute his cabinet and who are to be held strictly accountable to him thru his power to appoint and remove." This involves the reduction in the number of administrative officers. "There is a difference of opinion as to the desirability of confirmation of the governor's nominations by the senate.

III. "The careful adjustment of the terms of department heads with reference to the term of the governor. Excepting members of boards with overlapping terms department heads should have the same term as the governor.

IV. "The grouping of related offices and work in each of the several departments into appropriate divisions and bureaus, responsibility for each branch of work to be centralized in an accountable chief."

Summarizing certain general principles with reference to administrative reorganization drawn from the administration plans now in operation in Illinois, Idaho, and Nebraska that may be applied to Missouri we have:-

I. Group administrative agencies mainly according to function.

II. Reduce the number of administrative depart-
ments to the smallest number consistent with the general lines of functional grouping.

III. Hold one person appointed by the governor fully responsible for the administrative work of each department.

IV. Give no department head or their administrative officers a longer tenure than that of the governor.

V. Allow department heads to make their own appointments. "In this way the line of responsibility are definitely drawn and there are no conflicts of authority."

VI. Allow no boards to perform administrative duties.

VII. Create certain boards to be attached to the departments performing certain quasi-judicial and quasi-legislative functions to take care of such duties.
Chapter Thirteen.

Governor Hyde's Reorganization Plan.

Illinois was the first state to consolidate its administrative agencies (1917). In 1919 Idaho and Nebraska enacted similar consolidation plans.

Governor Hyde in certain of his campaign speeches during the fall of 1920 often pointed out the great need for administration consolidation and the establishment of a budget system. Most of his inaugural, and his special message to the general assembly dealt with consolidation.

Mr. Hyde's administration program was proposed with the view of combining and centralizing the work of many of the various state agencies and abolishing those found to be useless. There was no public discussion of the proposed plan of reorganization. No committee was appointed with any power to investigate departments and agencies of the state government. No trained investigators studied closely the conditions, no tentative plans for consolidation were drawn up. The governor made certain recommendations; later these were embodied in administration bills introduced by party members.
Even tho no investigating committee reported making recommendations the defects in the state administration were patent to all. These were: lack of correlation, scattered offices, no standards of compensation, overlapping of functions, irregularity of reports, ineffective supervision, no budget system, imperfect accounting, inadequate advice on legislation; in brief, irresponsible government.

What constituted the basis for the preparation of the administration bills is unknown. However, we may assume that the reports of numerous Efficiency and Economy Committees of various states were on the governor's desk, probably at his elbow, from which were abstracted the Hyde plan of state reorganization. This we know that only until after the convening of the general assembly did he commence work in earnest upon bills to carry out his ideas. The legislature was told what to expect but the bills were not forthcoming until the session had almost run its course. Then all were dumped upon the legislators. These were poor parliamentary tactics. Some republicans were obstreperous; some democrats were obstinate because a governor of the opposite political faith proposed these measures. The result was that several of the bills were not enacted, those that were were so altered that in substance they were entirely new measures. Of the eight consolidation
measures proposed five were passed.

The governor's plan contemplates no changes in the constitution. The plan does not affect the number of elective constitutional officers: namely the governor, the lieutenant-governor, the secretary of state, the treasurer, the auditor, the attorney-general, and the superintendent of public schools.

No single act was to abolish the old organization but each separate bill proposed destroying a portion of the state's machinery and at the same time building up a new organization for the departments or agencies destroyed. Some departments were to be administrated by single heads, others by boards.

The plan proposed by Governor Hyde and partly enacted by the general assembly involves a number of principles. It organized the state administration into a few departments. As originally planned the administration was to be divided into eight departments but the legislature enacted but five of the proposed eight bills and these five with numerous amendments. The heads were to be appointed by the governor alone and held strictly responsible to him. The method of appointment in some of the departments was changed by the legislature. It amended the bills so that the governor's choice be confirmed by the
senate. The aim is to fix administrative responsibility by making the state government most responsive to the people. It focuses the lime-light of public opinion upon the governor.

Co-ordination in the administration is possible under the Hyde plan for departments of similar purposes are to be united and must from the very nature of the organization co-operate. The plan promises better governmental service and an effective retrenchment in expenditures. Uniform accounting and central purchasing is provided for which makes possible a budget system.

The governor apparently intended no economies in the form of salary reductions. Each department head and subordinate were to be paid substantial salaries in order to attract efficient men.

Neither expenditures were attempted to be reduced by abandoning certain governmental functions. Waste was not due to a multiplication of state activities, all of which were necessary, but because of the unco-ordinated and unbusiness-like organization of the state administration. Government is mostly a question of financial justice by giving the taxpayer dollar value for every dollar contributed. Taxpayers must pay for governmental services and so may expect full value. It is as immoral for the
government to profit at the expense of the consumer as it is for the coal-baron to do so.

The movement for administration consolidation while gradual in other states has been of almost mushroom growth in Missouri. Previous to Hyde's administration but one consolidation reform was made, and another was suggested by Governor Gardner. The majority of Missourians were unprepared for such reforms.

Just what the governor intended to accomplish by his administration bills is best understood from a detailed perusal of his special message to the fifty-first General Assembly on February fifteen, 1921.

He says that "the object of these bills is to make each appointive state official responsive and responsible; to co-ordinate the departments of the government and to eliminate duplication and lost motion."

The Department of Public Instruction as proposed by Hyde would consolidate under one management the five teachers' colleges, Lincoln Institute, the school for the deaf, and the school for the blind. "There is an attempt to make them all integral parts of a state school system."

"In the management of these various institutions, there is too much local pride, too little state plan, too much local interest; too little attempt to make them units
in a state system. Local pride is admirable and it will serve us under consolidation, but we must get the statewide view. We must see the educational system, as a whole, and as a statewide institution, not a disservered lot of local institutions.

"A central board of control will serve two very valuable purposes. First, they will be able to construct a plan for the advancement of the schools invoked and adhere to the plan over a period of years, thus advancing the schools as a system instead of as an isolated institution. Second, they will be able to standardize the curricula of these institutions and to co-ordinate such curricula with the state university. There is every reason to believe that such central board of control will be able to achieve economy as well as to increase the efficiency of the institution.

"A bill is already pending for the consolidation into the department of agriculture of the activities heretofore carried on by the board of agriculture, and adding to that department the duties of the warehouse commissioner, the land reclamation commissioner and the bureau of immigration. The bill contemplates retaining the board of agriculture as it is at present organized, but in an advisory capacity to a director of agriculture, who will be the re-
sponsible executive head of the department. The board of agriculture is to retain as heretofore the management of the state fair. (See Chart 6, p. 212.)

"We propose also a department of labor to which shall be delegated the powers of the factory inspector, the bureau of labor statistics, the mine inspector, the supervisor of private employment agencies, and the conduct of public employment agencies. There is no reason why the same inspector could not inspect mine and factories and employment agencies on the same trip."

The governor proposed the establishment of a department of eleemosynary institutions. This department was to abolish eight of the ten Boards of Managers governing the state eleemosynary institutions except. The two excepted are those for the school for the blind, and the school for the deaf. For eight boards with a total of forty members was to be appointed one board with eight members.

In no other state plan of reorganization do we find a Department of State Eleemosynary Institutions. In Illinois similar work is entrusted to the department of Public Welfare. In addition to the administration of all charitable institutions the administration of all penal institutions is consolidated under this department in Ill-
inois. In Idaho the department of Public Welfare is charged with similar duties. According to Hyde's plan there are to be two departments to do the work done by one department in the states whose administrative agencies have been reorganized. No Efficiency Committee ever proposed the consolidation of the eleemosynary institutions of a state into a separate department. They usually proposed combining the work of administrating the eleemosynary institutions with the administration of the state penal institutions in a department of Charities and Corrections.

According to Hyde's plan in this department, one man, the supervisor, is to be held entirely responsible for the discharge of the functions concerning eleemosynary institutions which are purely executive. Functions which are primarily of a legislative or judicial nature are vested in a board of managers. This board is a separate entity. It is entirely independent of any superior direction or control by any officer. (See Chart 4, p. 210.)

Further in his special message the governor says:

"We plan also the consolidation of a number of inspection services under one head. The inspection of beverages, eggs, ice cream, milk, hotels, barbers, etc., are not unrelated subjects. The same inspector and the same force
"The penal institutions of this state have already been consolidated. I have no fault to find with that law, except that the control of the penal institutions by a board is a division of responsibilities."

Hyde proposes that one single responsible executive be placed in control of the institutions and "that the amount of his salary be left indeterminate and that there be no restrictions as to his residence in order that we may if possible secure the highest grade of executive ability for these institutions regardless of politics or residence." (See Chart 3, p. 209.)

In regard to the creation of a department of Finance he says:-

"A bill has also been introduced for the creation of a department of finance which shall take over and administer the duties heretofore performed by the bank commissioner, building and loan commissioner and the soldiers' settlement board. These are related activities and can well be administered by one responsible head."

Another "bill provides that the department [of budget] shall take over the duties heretofore exercised by the state tax commission and the state printing commission. The department of budget will be charged with
the duties of estimating the revenues and the needs of the state; with studying the possibilities of still further coordinating the departments of the state and of making them more efficient. (See Chart 5, p. 211.) (See Chart 7, p. 213.)

"The board thru its bureau of purchase will have general supervision of the purchase of supplies, stationery, printing and other merchandise needed by all the various departments. * * * The bill gives the department power to edit and to determine what shall be printed and will thus be able to reduce the volume of public printing which has run to an alarming proportion.

"A bill has been prepared consolidating in a department of public works the duties of the board of permanent seat of government; the control of public buildings located at the capital and it is recommended that to this department in the future be referred the control of the state parks as established and that to this department be delegated the responsibility of repairing present buildings and constructing new buildings for the various institutions of the state. Appropriations for this purpose should be made to this department."
**Chart 1.**

<table>
<thead>
<tr>
<th>Vote Received by Successful Candidate for Governor.</th>
<th>Vote Received by Successful Candidate for Governor's Party candidate for United States President.</th>
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<tr>
<td>1340 Reynolds, D., 29,625</td>
<td>Van Buren, 29,730</td>
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<td>1314 Edwards, J., 36,978</td>
<td>Polk, 41,339</td>
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<td>1343 King, D., 48,921</td>
<td>Case, 40,077</td>
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<td>1352 S. Price, D., 46,245</td>
<td>Pierce, 35,353</td>
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<td>1353 T. Polk, D., 46,933</td>
<td>Buchanan, 58,144</td>
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<tr>
<td>1330 Jackson, Douglas democrat, 74,443</td>
<td>Douglas, 58,801</td>
</tr>
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<td>Total votes cast 153,579</td>
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<td>1864 Fletcher, R., 71,531</td>
<td>Lincoln, 71,373</td>
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<td>1838 McCullough, R., 82,107</td>
<td>Grant, 85,671</td>
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<td>1872 Woodson, D., 156,714</td>
<td>Greeley, 151,434</td>
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<td>1876 Phelps, D., 199,580</td>
<td>Tilden, 202,337</td>
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<td>1880 Crittenden, D., 207,670</td>
<td>Hancock, 203,909</td>
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<td>1884 Marmaduke, D., 218,335</td>
<td>Cleveland, 235,933</td>
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<td>1888 Francis, D., 255,734</td>
<td>Cleveland, 261,901</td>
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<tr>
<td>1892 Stone, D., 265,044</td>
<td>Cleveland, 285,400</td>
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<tr>
<td>1896 Stephens, D., majority of 38,153</td>
<td>Bryan, majority of 58,423</td>
</tr>
<tr>
<td>1900 Dockery, D., majority of 15,193</td>
<td>Bryan, majority of 20,133</td>
</tr>
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<td>1904 Folk, D., 326,352</td>
<td>Parker, 290,212</td>
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<td></td>
<td>(Roosevelt, R., 321,449)</td>
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<tr>
<td>1903 Hadley, R., 355,932</td>
<td>Taft, 347,203</td>
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<td>1912 Major, D., 337,019</td>
<td>Wilson, 330,743</td>
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<tr>
<td>1916 Gardner, D., 332,355</td>
<td>Wilson, 397,013</td>
</tr>
<tr>
<td>1920 Hyde, R., 722,024</td>
<td>Harding, 727,132</td>
</tr>
</tbody>
</table>
Chart 2.

THE ELECTORATE

SENATE

STATE PRISON BOARD, THREE MEMBERS, SIX YEARS

HAD CHARGE OF PENITENCIARY, REFORMATORY, SCHOOL FOR NEGRO GIRLS.

GOVERNOR

CHAIRITIES AND CORRECTIONS

School for Old Girls

Board of

Reformatory

School for Negro Girls

Penitentiary
State Department of Penal Institutions, Hyde's Plan.

Chart 3.

THE ELECTORATE

GOVERNOR

SENATE

DIRECTOR OF PENAL INSTITUTIONS
Holds office at pleasure of Governor
Salary $7500.

PENITENCIARY:

Warden $4000
Deputy Warden $2500
Physician $1500
2 Chaplains $125 per month
Matrons $1500
Laundresses $125 per month
Others of salaries agreed upon between them and Governor

Supt. Girls Home
Supt. Negro Girls Home
Supt. Reformatory
Supervisors of Female Employees
Chart 4.

State Department of Eleemosynary Institutions, Hydè's Plan.

THE ELECTORATE

GOVERNOR

AGERS PRESIDENT $4000.

BOARD OF MAN-

HEALTH SUPERVISOR $7000.

HOSPITAL NUMBER 1 $2500.

HOSPITAL NUMBER 4 $3600.

SANITARIUM

HOSPITAL NUMBER 2 $3000.

FEDERAL SOLDIER'S HOME $5000.

COLONY

CONFEDERATE SOLDIER'S HOME $1500.

HOSPITAL NUMBER 3 $3600.

SUPERINTENDENTS

STEWARDS
Assistant and examiners receive such compensations as are fixed by the Commissioner not to exceed $2400 a year. Stenographers receive such compensations as are fixed by the Commissioner not to exceed $1500 a year.
Governor Hyde's Plan, Department of Agriculture.

Chart 6.

The Electorate.

State Board of Agriculture, 16 members. 4 appointed each year for 4 years. No salary.

Assistant Commissioner of Agriculture. $3600 salary.

Governor.

Commissioner of Agriculture. Holds office at pleasure of Governor. $5000.

Chief Grain Inspector. $3600 salary.

Supervisor of Bureau of Markets. $3600 salary.

General Manager of the State Fair. $3600 salary.

Chief Veterinarian. $3600 salary.

Supplies are secured thru the Department of Budget.

Technical inspectors are not to receive over $2500 a year; inspectors not over $2000; clerks not over $1800; and stenographers not over $1500. All are allowed traveling expenses.

Board of Agriculture composed of one member from each congressional district: no more than a majority may belong to the same political party. Governor must select members engaged in agricultural industries, not excluding members of the agricultural press. Members are allowed expenses, and must convene in annual meetings.

Commissioner and Heads must devote full time to their duties. General offices must be maintained in the Capitol.

Annually the department must publish a Yearbook.

Governor Hyde's Plan, Department of Agriculture.

Chart 6.
The State Department of Budget.

Governor Hyde's Plan.

Chart 7.

This department takes over the duties and powers formerly vested in the state tax commission, and the commissioners of printing.

The Bureau of Taxation and Estimate gather data concerning state taxation and state expenditures.

The Bureau of Purchase has jurisdiction and control of the purchase of all necessary supplies and of public printing for the state, except as otherwise provided.

The department examines the accounts of the government and prepares to report to the governor upon request estimates of the incomes and revenues of the state, and once in every two years a state budget.
Notes and References.

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5. Ibid.
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7. Ibid., p. 18.
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of the American Academy, ii, p. 131.


17. Finley, J. H. and Sanderson, J. F., American Executive and Executive Methods, p. 3.


21. Quoted by Webster, p. 359.


23. Ibid., 384.

24. Ibid., 393.

25. Ibid.


28. Ibid., 397.
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31. Ibid., 229.

32. Mathews, J. H., Principles of State Administration.


34. Ibid., p. 43.

35. Ibid., p. 53.


39. Ibid., p. 110.


41. Ibid., p. 59.

42. Abstracted from table appended to Shoemaker's article.


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ouri and Missouri Blue Books.


51. Mathews, J. M., Principles of State Administration,


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63. Richardson v Young, 122 Tenn., 471.

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66. Shoemaker, Missouri's Struggle for Statehood, p. 211.


69. Shoemaker, Missouri's Struggle for Statehood, p. 221.

70. Mo. Const., 1820, Art. 4, Sec. 7.

71. Mo. Const., 1875, Art. 5, Sec. 7.

72. Mo. Const., 1875, Art. 5, Sec. 9.

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77. Governor Gardner's Message to the 50th General Assembly in Special Session.

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79. People v Hayes, 143 N. Y. Sur., 325.
80. Finley, J.H. and Sanderson, J.F., American Executive and Executive Methods, p. 53.


82. Ibid.

83. Mo. Const., 1323, Art. 4, Sec. 7.

84. Mo. Const., 1835, Art. 5, Sec. 7.

85. Mo. Const., 1875, Art. 5, Sec. 9.

83. Ibid., Art. 5, Sec. 10.


91. Loeb and Williams, Civil Government of Missouri,

92. State v Buchanan, 24 Va., 332.


94. Mo. Const., 1875, Art. 5, Sec. 8.


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98. Finley, J. H. and Sanderson, J. F., American Executive and Executive Methods, p. 72.
99. Dealey, J. Q., Growth of American State Constitutions,
101. Ibid., p. 399.
103. Mo. Const., 1820, Art. 4, Sec. 10.
104. Mo. Const., 1865, Art. 5, Sec. 9.
105. Mo. Const., 1875, Art. 5, Sec. 12.
110. Goldstein v Lester, 88 Wash., 462.
111. Mo. Const., 1875, Art. 4, Sec. 38.
112. State v Meade, 71 Mo., 236.
112. State v Mason, 155 Mo., 486.
113. Mo. Const., 1875, Art. 4, Sec. 38.
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117. Ibid.
118. Mo.Const.,1875,Art.4,Sec.40;Art.5,Sec.12.
120. Mo.Const.,1875,Art.5,Sec.12.
122. People v Buffalo,20 N.Y.Sup.,51.
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131. Mo.Const.,1875,Art.5,Sec.7.
132. Mo.Const.,1865,Art.5,Sec.7.
133. Finley,J.H. and Sanderson J.F.,American Executive and Executive Methods,p.123.
135. Ibid.

136. Mo.Const.,1875,Art.5,Sec.7.


138. U.S.Const.,Art.1,Sec.16; Houston v Moore, 5 Wheat.,1.


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141. Ibid.,124.


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144. Am. and Eng. Ency. of Law,xii,p.605.

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158. Mo. Const., 1875, Art. 5, Sec. 8.

159. Ex parte Reno, 66 Mo., 266.

160. Same as 158.


162. Same as 158.

163. Ex parte Collins, 94 Mo., 22.

164. Same as 158.


166. Jan. 4, 1905, p. 11.


170. Same as 153, p. 88.

171. State v Eby, 170 Mo., 497.

172. Same as 156, p. 87.


175. Same as 156, p. 86.
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The constitution of 1865 omits the word "power" and does not capitalize the word "the".

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198. Ibid., p. 43.

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199 A. Same as 193, p. 45.

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203. Same as 193, p. 31.

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232. Ibid., S. 2.
233. Ibid., S. 6878.
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237. Ibid., S. 597.
238. Ibid., S. 7823.
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249. S. v Vail, 63 Mo., 97.
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252 B. S. v Draper, 48 Mo., 213.
254. Mo. Const., 1875, Art. 5, Sec. 8.
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257. S. v Boone Co. Court, 50 Mo., 317.
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288. Ibid., S. 4073.

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296. Ex parte Bellows, 1 Mo., 115; St. Louis Court v Sparks, 10 Mo., 117; S. v Thompson, 36 Mo., 70.

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227. S. v Walker, 78 Mo., 139.


229. Mo. Const., 1875, Art. 5, Sec. 17.


231. Finley, J. H. and Sanderson, J. F., American Executive and Executive Methods, p. 10.

332. Same as 325, p. 397.


334. Same as 228, p. 134.

335. Mo. Const., 1875, Art. 5, Sec. 18.


337. Same as 228, p. 288.


341. S. v Leseuer, 103 Mo., 253.

342. Same as 312, p. 150.

343. Register of Lands v Secretary of State, 33 Mo., 293.

344. S. v Secretary of State, 33 Mo., 293.


347. Ibid., S. 11799.

348. Rader, Government of Missouri, p. 278.
The state superintendent of public schools is an ex-officio member of the following state boards and commissions: State Fair, Library Commission, Board of Horticulture, Board of Education, Board of Agriculture.

Since 1875 no motion was made in the House to have an officer impeached. Prior to that time four or five circuit judges were tried by impeachment and one was
convicted and removed from office. Rader, Government in Missouri, p. 264.

The constitution of 1820 provided for a Register of Lands to be appointed by the governor. In 1851 the office was made elective. In the Constitution of 1865 the office of Registrar of Lands is no longer mentioned nor was it mentioned in the constitution of 1875.

Chapter Nine.

369. Same as 366, p. 220.
373. Board of Health Report, 1918.
Mo. Compiled Statute, 1909, S. 6653.

Ibid., S. 6653a.


Nally v Home Ins. Co., 153 S.W., 769.

S. v Adcock, 206 Mo., 550.


Chapter Ten.


Ibid., p. 234.


Ibid.

Wyman, B., Principles of the Administrative Law Governing the Relations of Public Officers, p. 163.

, 3 Mo., 481.

S. v Corcoran, 206; Mo., 1.

Garnier v City of St. Louis, 37 Mo., 554; S. v Bus,

135 Mo., 325.

Same as 385, p. 173.

S. v Washburn, 167 Mo., 680.
392. Same as 390.
394. S. v Towns, 153 Mo., 91.
395. Same as 389.
397. Finley, J.H. and Sanderson, J.F., American Executive and Executive Methods, p. 94.
398. 251 Mo., 325.
399. S. v Davis, 44 Mo., 129; S. v Davis, 166 Mo., 347.
400. Gant v Brown, 244 Mo., 271; S. v Valle, 41 Mo., 31.
401. Same as 385.
402. S. v Hostetter, 137 Mo., 636.
404. Same as 382, p. 310.
405. S. v Bus, 135 Mo., 325; S. v Merry, 3 Mo., 278, mayor of St. Louis and U.S. official; S. v Valle, 41 Mo., 31, municipal officer and member of the legislature.
406. S. v Bus, 135 Mo., 325.
408. S. v Newmann, 91 Mo., 445.
409. Gant v Brown, 244 Mo., 271.
410. S. v Davis, 44 Mo., 129.
411. S.v McKay, 249 Mo., 249.
412. S.v Williams, 222 Mo., 268.
413. St. Louis Co. Court v Sparks, 10 Mo., 117.
416. Mathews, American State Administration, p. 416.
417. Same as 398, p. 93.
419. S.v Walbridge, 119 Mo., 383.
420. S.v City of St. Louis, 90 Mo., 19; S.v Howes, 177 Mo.,
418. S.v Davis, 44 Mo., 120.
421. S.v McKay, 249 Mo., 249.
422. S.v Brown, 57 Mo. Ap., 199; S.v Police Commissioners,
423. S.v St. Louis, 90 Mo., 19.
424. Ibid.
431. S.v Lingo, 26 Mo., 496.
432. S.v Boal, 46 Mo., 428; S.v Laurence, 38 Mo., 535; S.v
Lingo, 26 Mo., 406; S.v Lupton, 65 Mo., 415; S.v McAdoo, 36 Mo.,
The governor may at any time remove any member of said board upon causes to be specifically stated in the order of removal, which order shall be filed with the Secretary of State. Mo. Compiled Statutes, 1909, p. 507.

Report once in two years to the governor. Ibid., p. 508.

Governor may demand reports when his request is
in writing. Ibid.,p.1317.

444. Ibid., p. 158.
446. Ibid., pp. 3344-5.
447. Ibid., p. 3452.
449. Same as 440, pp. 76-7.
452. Same as 450, p. 234.
453. Same as 440, p. 81.
454. Ibid., pp. 36-9.

Chapter Twelve.

458. Ibid.
459. Ibid., Part III, Chap. V.
Chapter Thirteen.


461. Ibid., p. 15.

462. Ibid., p. 16.

463. Ibid., p. 17.

464. Ibid., p. 18.

465. Ibid., p. 19.
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Journal Printing Co. v Dreyer, 183---462.
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