PARTY GOVERNMENT IN THE CITIES OF NEW YORK STATE.

THE principle of minority representation is usually discussed as being applicable to the choice of legislative bodies by popular election. The non-partisan or bipartisan principle, on the other hand, is usually considered in connection with the appointment of administrative boards and subordinate departmental officers by the executive authority of city or state. But a little study into the development of bipartisan legislation for cities in the commonwealth of New York will show that, in this state at least, bipartisanship as a legal system of making municipal appointments has grown out of experiments in minority representation. This movement has been roughly contemporaneous with the decrease in the number of officers chosen by common councils or elected by the people, and the increase in the appointing power of mayors.

So far as the present writer has been able to ascertain, the first recognition of the minority in the laws of the state had reference, as might have been expected, to election officers in New York City. In 1840 an act was passed by the legislature "to prevent illegal voting and to promote the convenience of legal voters."[1] Under this act every voter was permitted to vote for two of the three election officers to be chosen in his ward and precinct, the three candidates receiving the highest number of votes being declared elected. This method of choosing election officers was extended, a year later, to all the cities of the state.[2] A general law of 1842, entitled "an act respecting elections for other than militia and town officers,"[3] is famous in the history of the election laws of New-York. In this act, the principle of minority representation was embodied

[1] Laws of N. Y., 1840, c. 78.

[2] Laws of N. Y., 1841, c. 301. This law specifically provided, in regard to election officers, that "one inspector in each board shall belong to a different political party from the other two."

[3] Laws of N. Y., 1842, c. 130.

by the requirement that the presiding officers of the election should appoint as third member of the board of election inspectors the minority candidate who had received the highest vote. Thus early we see the appointive principle superseding the principle of elective minority representation. This change was probably due to the feeling that minority representation pure and simple was of doubtful constitutionality; for by this system the right of suffrage would be in a sense abridged, from the fact that a citizen would not be permitted to vote for *all* elective officers. At any rate, we shall see that in succeeding years the lawmakers of New York resorted to rather intricate expedients in order to attain the ends of minority representation and popular election, and at the same time avoid the technical objection to limited voting and formal choice of officers by the minority.

The year 1857 marks an era in legislation touching New York City, for it was at that time that the state legislature entered upon its now familiar practice of interfering arbitrarily with the organization of the city government. A new charter was passed without being submitted to the people, and the police force of the whole metropolitan district was taken forcibly out of the hands of the local authorities and put under the control of a board appointed at Albany. During that same year the state legislature established a board of twelve supervisors for New York County.[1] Six were to be elected by the people, and the mayor was required to appoint the six who received the next highest number of votes at the election. Three years later, in 1860, the appointment of election officers in New York City was intrusted to this bipartisan board of supervisors.[2] Appointments were to be made, however, by concurrent vote of a majority of all the members of the board, or, after three ineffectual ballots, by lot from the lists of candidates. A number of years later it was enacted that election officers in Brooklyn should be chosen by an absolute two-thirds majority of the city supervisors.[3] In these two cases we find an effort to secure minority representation, not by making a minority vote suffi-

[1] Laws of N. Y., 1857, c. 590. [2] *Ibid.*, 1860, c. 246. [3] *Ibid.*, 1865, c. 740.

cient to appoint a portion of the election officers, but by requiring so large a vote for the appointment of any election officers at all that the majority party would be practically compelled to divide the offices with the minority, in order to get its own candidates elected. If there were no political parties, or if political leaders were so inveterately hostile that all agreements between opposing parties would be avoided as a league with the devil, this method might be supposed to lend itself to *non*-partisanship and the selection of officers on the grounds of honesty and efficiency alone. But in New York, as in every other place where two opposing parties are organized primarily for spoils, it is not impossible for the "bosses" to make peace and sit down to the banquet of patronage together.

About 1870 the two principal political parties began to get definite recognition in the laws of New York State. The Tweed Charter of New York City, enacted in that year,[1] established a police board of four members, which, though not required to be bipartisan by the terms of the law, was probably intended to include in its membership representatives of more than the one dominant party. To this board, in 1872, was transferred the appointment of election officers.[2] There were to be four inspectors for each election district,

> two of whom, on state issues, shall be of different political faith and opinion from their associates, and those appointed to represent the political minority on state issues in said city and county to be named solely by such commissioner, or such of the commissioners of police in said board as are the representatives of such political minority.

Here we have the bipartisan system clearly established.

[1] Laws of N. Y., 1870, c. 137.

[2] Laws of N. Y., 1872, c. 675. During this same year we find a remarkable example of what may be called laws "made to order" — that is, laws made to fit a particular case, without any reference to universal principles. The mayor, the auditor and the comptroller of Brooklyn were required to appoint a board of elections of three members, of whom not more than two should be adherents of the same political party. The mayor was to appoint one, and the auditor and the comptroller together, two. The "registers and inspectors" and the "canvassers" of elections for each district were to be appointed by this board: that is, the mayor's man was to appoint one inspector and one canvasser, and the auditor's and comptroller's men together were to appoint two of each.

In the recent election for mayor and other officers of Greater New York, the Citizens' Union, under the leadership of Mr. Low, insisted that the state constitutional convention of 1894 had intended to establish non-partisanship in municipal affairs, by the separation of municipal from state and national elections.[1] On the other hand, General Tracy, the Republican candidate for mayor, vigorously asserted that the constitution made partisanship necessary, by the clause requiring that election officers in all elections should be equally divided between the adherents of the two principal political parties in the state. In the light of this controversy, the provisions of an act of 1892 to govern elections in Albany are of curious interest.[2] This law established a board of election commissioners representing different political parties on state issues. But the board itself was required to appoint precinct election officers from the different political parties on local issues. The law was self-contradictory and absurd, except on the assumption that state parties and local parties were practically identical. A similar law applied to the metropolis at the present time would also cause confusion, as the people of New York City are divided very differently on state and on local issues.

The controversy just referred to, over non-partisanship in the constitution, illustrates the fact that, while parties are getting a firmer footing in the laws of the states, the opposition to partisan government and the spoils system is also getting a statutory footing. There is certainly no easy way, under the conditions of political thought that prevail in this country, of definitively separating municipal from state and national politics. The partisans have the advantage of the non-partisans, not only by reason of the political habits of the people and the inherent strength of established organization, but also by having got an earlier grip on the law itself. As a matter of fact, the election law of the state of New York, from the mild hint of partisanship in the law of 1842, has developed a definite and thorough recognition of the bipartisan system. For now the

[1] See Citizens' Union Publications: "Campaign Book," pp. 1–3, and "Home Rule for Cities," Pamphlet F 1. [2] Laws of N. Y., 1892, c. 171.

constitution itself requires that election officers shall not only be equally divided between the adherents of the two principal political parties, but shall even be appointed on the nomination of the party committees.[1]

It was, of course, inevitable that in the great state of New York, where even national elections sometimes turn on the canvass of votes in a single city, two political parties of nearly equal strength should have secured general recognition as parties in the administration of the election law before they secured it in any other department of government. But "minority representation" and "non-partisanship" have extended themselves to many branches of municipal administration. Prominent among these is that concerned with poor relief and the management of institutions for the relief of the defective and dependent classes. Under our system of equal manhood suffrage, the manipulation of the pauper and the criminal vote of a large city may have a very important bearing on the results of elections. The political significance of "charities and correction" had become so great in New York City, as early as the middle of this century, that the almshouse and the penitentiary were put under the management of what was in practice a bipartisan board of "governors" by an act of 1849.[2] In 1860, when the Republicans were in control at Albany, they abolished this board of governors and established a partisan department of charities and correction, under a board of four commissioners to be appointed for long terms by the Republican comptroller.[3] Although the dual party control of the charities department of New York City has never been revived in the law, that system has been established at various times in several other cities of the state.[4]

The third branch of administration in which party government began to be recognized by law was the police. (Fire protection will here be treated as a branch of the police function.)

[1] Constitution of 1894, art. ii, sec. 6.

[2] Laws of N. Y., 1849, c. 246.

[3] *Ibid.*, 1860, c. 510. See also Durand, The Finances of New York City, p. 80.

[4] Utica, Laws of, 1873, c. 30; Troy, Laws of, 1880, c. 328; Little Falls, Laws of, 1895, c. 565; Oswego, Laws of, 1895, c. 394.

The protection of life and property and the enforcement of the laws in cities have come to depend in all too many cases, as Americans think, on what is called political "pull." The enforcement of the liquor law and the laws against vice and crime is of momentous importance to the practical politician and vote-getter; for the gambling vote and the liquor vote are influenced by the methods of enforcing law even more than by the provisions of the law itself. Furthermore, the election officers, no matter how loyal they may be to the interests of the people or of their party, are comparatively helpless without the support of the police. It is not strange, therefore, that in New York state at some time during the last forty years representation of the two parties should have been guaranteed in the police administration of no less than twenty-two different cities[1] and in the separate fire departments of eight cities.[2] The motives for putting fire departments under bipartisan control are, however, not so apparent as those in the case of police proper, unless we frankly accept the somewhat ungracious theory that the division of the spoils is at the bottom of all this lawmaking in the name of "non-partisanship."

The experience of the city of Buffalo in police organization is instructive. The police department of that city was organized in 1853, with an absurd system of appointments to the police force by the common council, under provisions for minority representation that would secure three out of every five officers to the majority party and two to the minority in the council.[3] This system lasted only three years, and it was not

[1] These cities, with the dates of their police organization or reorganization on the basis of party representation, are as follows: Albany, 1872, 1896; Binghamton, 1881, 1888; Buffalo, 1853, 1883, 1891, 1892, 1894; Corning, 1890; Dunkirk, 1894; Elmira, 1875, 1889, 1894; Hornellsville, 1890; Kingston, 1891, 1895, 1896; Little Falls, 1895; Lockport, 1882, 1886; Mt. Vernon, 1895; New York, 1895, 1897; Niagara Falls, 1892, 1893; Oswego, 1870, 1895; Poughkeepsie, 1883, 1896; Rochester, 1865, 1880; Syracuse, 1869, 1881, 1885; Troy, 1876, 1880, 1881, 1885, 1892; Utica, 1874; Watertown, 1875; Watervliet, 1896; Yonkers, 1873.

[2] These cities, with dates as above, are as follows: Albany, 1867; Binghamton, 1888; Buffalo, 1891; Lockport, 1895; Rome, 1881, 1890; Syracuse, 1877, 1885; Troy, 1893; Watervliet, 1896.

[3] Laws of N. Y., 1853, c. 230.

until 1883 that party representation in the police department of Buffalo was again guaranteed.[1] Since that date the city has had a noteworthy police system. The police board is composed of the mayor and two commissioners appointed by him, provided that "at no time shall there be two commissioners of police of the same political party." It is further provided that one of the members of the board shall be the "acting commissioner," thus in a measure satisfying the demand for a single head of the police force, capable of acting without too much deliberation and delay. Moreover, the mayor is not required to attend the meetings of the police board, except on the written request of one or both commissioners. Under this arrangement, we see that provision is made for the ultimate responsibility, in the police administration, of the party which is at the time in political majority in the city; while the minority is sure to have one member of the board, and is thus likely to be prepared to defend its rights and expose any attempted maladministration.

The city of Troy has always been a stronghold of Democracy, having resisted even the Republican tidal waves of 1894, 1895 and 1896; and so the state legislature, when Republican, has been particularly solicitous for the welfare of the Republican minority in Troy. A police commission of three members, on which both parties were represented, was established in 1876.[2] Poll clerks were to be appointed by this board for every ward in the city, and the majority of the poll clerks in any particular ward were to be of the political party which had a *minority* of the voters in the ward. Some years later the Troy police commission was increased in membership to four and was made strictly bipartisan.[3] As if this were not enough, a statute was enacted in 1881 directing the police commissioners to meet at a specified time, in a specified place, and appoint a specified number of police officers of specified ranks and in a specified order.[4] Each commissioner was permitted to vote for one candidate at a time, and the votes of two out of the four commissioners were declared sufficient to elect. Furthermore, the police commis-

[1] Laws of N. Y., 1883, c. 359.
[2] *Ibid.*, 1876, c. 30.
[3] *Ibid.*, 1880, c. 328.
[4] *Ibid.*, 1881, c. 362.

sioners were made removable by the supreme court for neglect of duty, and any taxpayer was authorized to bring mandamus proceedings to compel the performance of any of the acts named in the law. To such lengths of interference with municipal authorities does a state legislature of opposite politics sometimes go!

But the bipartisan law that won more notoriety, perhaps, than any other ever enacted, was the New York City police law of 1895.[1] In practice, both of the leading parties had been represented on the police board before that time, this result having been brought about by political "deals" between the parties. By the law of 1895 it was enacted that not more than two of the four commissioners should "belong to the same political party" or "be of the same political opinion on state and national issues." To practical politicians this, of course, meant that two commissioners should be chosen from each of the two political parties. Mayor Strong appointed commissioners representing the two parties, but not at the dictation of the two machines. Under the presidency of Mr. Theodore Roosevelt, now governor of the state, complications arose which divided the board and caused a deadlock of long standing.[2] The efficiency of the police department was greatly impaired and the bipartisan system of control was discredited, wherever New York's municipal experience was carefully observed. Nevertheless, the framers of the charter of Greater New York adopted the bipartisan provision of the old New York police law, with some modification in details.[3] The apologists for a bipartisan police board maintained that, so long as the board retained control of the election bureau, the bipartisan arrangement was required by the provisions of the state constitution, and that, in any case, to intrust the control of the police force

[1] Laws of N. Y., 1895, c. 569.

[2] The law authorized the board to appoint policemen, subject to civil-service rules, by majority vote and also to dismiss members of the force, for cause, by majority vote. But promotions required a unanimous vote, unless recommended by the chief of police. One of the commissioners "held up" certain promotions and the chief declined to take the responsibility of recommending them.

[3] Greater New York Charter, secs. 270–371.

of New York City to a single commissioner, would be to grant powers that would be dangerous in the hands of any one person, no matter what safeguards should be provided to secure an honest and capable officer. The Republican politicians were greatly irritated when, in the summer of 1898, the Democratic Mayor Van Wyck summarily removed the two commissioners who had been appointed as the accredited representatives of the Republican organization, and filled the vacancies with Republicans of his own choosing. The mayor exercised a clear prerogative, under the charter; but it might reasonably be contended that, if it was of such importance that the police board should be bipartisan, so long as it has charge of the bureau of elections, the legislature was in duty bound to designate in the charter of the city the authorities of the two political parties, on whose nomination the mayor should be authorized to appoint the police commissioners. The constitutional argument for a bipartisan police board was evidently abandoned, however, by the Republican organization, when the "metropolitan elections district" was established at the extra session of the legislature in 1898. For, by this act, while the election bureau was not taken out of the police department, the functions of the police force in keeping order at the polls and in enforcing the election law were transferred to a bipartisan force of state officers, called deputy superintendents of elections.

The principle of minority representation has been adopted in a number of cities of New York state in the organization of the department of education,[1] and in most cases the represen-

[1] An act of 1869 (Laws of N. Y., 1869, c. 437) provided that there should be twelve commissioners of common schools in New York City. Every voter was permitted to vote for seven only, and the five minority candidates who received the highest number of votes were to be appointed by the mayor. A law of 1871 (c. 574) made all of these commissioners appointive by the mayor, but required that minority representation should be maintained. Elective school boards with equal minority and majority representation were established in Troy in 1873, in Auburn in 1876 and in Oswego in 1879. In 1892, however, when there was a Democratic governor and a Democratic legislature at Albany, the Troy board of education was reorganized, so that it would be composed of seven members appointed by the mayor, not more than *five* to be of the same political party. Appointive bipartisan boards of education were established in Little Falls in 1895 and in Watervliet in 1896.

tation of the minority has been equal to that of the majority. A peculiar expedient for taking or keeping the school administration of Ogdensburg out of politics was embodied in an act of 1893.[1] It was provided that three school commissioners should be elected every year by plurality vote. For the nomination of candidates the board of education was authorized to call a primary of voters, irrespective of party, not more than one month, or less than twelve days, before any election, and the list of candidates nominated by this non-partisan primary was to be printed on the official ballot on an equal footing with regular party nominations.

The department of municipal administration that is next in importance to the police and fire departments, from the standpoint of patronage, is the department of public works. It is, therefore, quite in accordance with the precedents of partisan municipal government that attempts have been made to secure a share of this patronage to the minority in a large number of cities. The water commission of Buffalo, established in 1868, was the first example of this kind.[2] This board was merged in 1891 in the board of public works, which is organized on nearly the same principles as the police commission of Buffalo.[3] In twenty-two cities, in addition to Buffalo, minority representation has been established in the constitution of boards charged with the construction or management of public works, and in only six of these has the law failed to give the minority equal representation with the majority.[4]

[1] Laws of N. Y., 1893, c. 87.

[2] *Ibid.*, 1868, c. 716; 1870, c. 519.

[3] *Supra*, p. 687. See Laws of 1891, c. 105.

[4] These six cases are as follows: Poughkeepsie, water commission, 1883; Syracuse, city hall commission, 1888; Ithaca, pavement commission, 1892; Rome, water and sewer commission, 1893; Ithaca, sewer commission, 1895; Niagara Falls, harbor commission, 1896.

The sixteen cases in which strictly bipartisan boards were established are the following: Rochester, executive board, 1876; Oswego, board of public works, 1877; Binghamton, street commission, 1888; Syracuse, water supply commission, 1888, and water board, 1889; Hornellsville, sewer commission, 1890; Hudson, street commission, 1891; Utica, Mohawk River commission, 1891; Watertown, board of public works, 1891; Niagara Falls, board of public works, 1892; Ogdensburg, board of public works, 1893; Cohoes, city hall commission, 1894; Elmira,

There have been a few scattered cases in which party representation has been required by the law in other departments of municipal administration.[1] The case of the Utica board of assessors, established in 1894, is unique, in that it provides for minority representation without the "limited vote."

> The two persons nominated by any political party or by a certificate filed in the clerk's office, as now provided by the election law of the state, receiving the highest number of votes, shall be declared duly elected assessors: no more than two persons nominated by any party or by said certificate shall be declared elected and entitled to serve as such assessors. The two persons nominated by any other party or by said certificate, who shall receive the next highest number of votes, shall be declared elected as such assessors and entitled to serve as such.[2]

In the reform charter of New York City, passed in 1873, there was a provision for genuine minority representation in the common council.[3] The number of aldermen was fixed at twenty-one (twenty-two after 1874).[4] Six of the twenty-one were elected by general ticket, but no elector was entitled to vote for more than four; and in each of five districts three aldermen were chosen, no elector being permitted to vote for more than two. This system was abolished in 1882[5] and has not since been revived. But the commission which framed the Greater New York charter recommended an amendment to the state constitution which should clearly authorize the legislature to establish "minority or proportional representation." In reference to this proposed amendment, the commission said, in its report to the legislature:

> It is a source of sincere regret to the majority of the commission that under the constitution of the state, as it now stands, it has

board of public works, 1894; Oswego, works commission, 1895; Little Falls, board of public works, 1895; Cohoes, public improvement commission, 1896.

[1] Elmira, park commission, 1889; Newburgh, park commission, 1894; Utica, board of town auditors, 1881; Troy, board of assessors, 1880; Rome, board of assessors, 1881; Utica, board of assessors, 1894; Watervliet, board of assessors, 1896.

[2] Laws of N. Y., 1894, c. 300.

[3] *Ibid.*, 1873, c. 335, art. ii.

[4] *Ibid.*, 1874, c. 515.

[5] *Ibid.*, 1882, c. 403.

appeared to be impossible to provide for minority or proportional representation in the charter of Greater New York, without making a vital part of the charter depend upon a provision of uncertain constitutionality. Such representation is equally desirable, whether the basis of division in municipal elections be political or non-political.

Finally, attention should be called to a case in which party representation was applied to the judiciary. By an act of 1892 a municipal civil court was established by a Democratic legislature for the Republican city of Syracuse.[1] The Democratic governor was authorized to appoint the two judges, one for a term of five years and the other for a term of six. The Democrats, imitating Republican generosity, provided that not more than one of these judges should belong to the same political party, and, furthermore, that their successors should be elected by the people.

It should be noted that all the acts to which we have referred, except the last two and the act of 1857, by which the New York county board of supervisors was established, have been confined in their scope to the administrative departments of municipal government. We may divide all the acts here under discussion into two groups and four classes. The first group will include those acts which have provided for "minority representation" wholly or partly by election, while the second group will include those acts which aimed to secure "non-partisanship," in all but a few cases by appointment alone. The word "non-partisanship" is here used, because it is the word most frequently adopted by the advocates of what has come to be dubbed the "bipartisan" system. Indeed, the clear purpose of these acts has so commonly been a division of spoils between political parties, that even the lawmakers themselves have in a number of cases been constrained to adopt frankly the word "bipartisan," with whatever stigma of selfishness that word may be burdened.

"Minority representation" has been secured in two different ways: first, by the limited vote, with the whole number of officers elected by the people or by the common council; second,

[1] Laws of N. Y., 1892, c. 342.

by the limited vote, with a part of the officers elected and the other part appointed from the minority candidates by some appointing authority acting under instructions. "Non-partisanship" has likewise been secured in two ways: first, on the principle that the two leading political parties shall have equal and exclusive representation; second, on the principle that not more than a certain proportion of the members shall belong to the same party. The difference between these two methods of securing "non-partisanship," like that between the two methods of securing "minority representation," involves a question of constitutional law. For in Michigan, strictly bipartisan legislation has been declared void, under a constitutional provision similar to one in the constitution of New York;[1] while in New York legislation providing that not all of the members of a certain commission shall belong to the same political party has been sustained by the courts.[2]

Counting as separate acts those provisions of charters, charter amendments and special laws which establish boards or commissions, or provide for the appointment of subordinate officers, in accordance with one or another of the principles here explained, there have come under my notice one hundred and nine laws in all, falling under our classification as follows:

I. Minority Representation.
   a. Limited vote — all elected — 24.
   b. Limited vote — part appointed — 13.
II. Non-Partisanship.
   a. Strictly bipartisan — generally appointed — 44.
   b. Non-partisan — always appointed — 28.

In the following table, where these acts are classified by decades since 1840, the immense increase in the amount of this kind of legislation is apparent. This increase is undoubtedly due to two causes — namely, the rapid growth of the cities of New York state in both size and number and the increasing recognition that parties are securing in the law, to correspond with their long-maintained dominance in practical politics. The

[1] See Attorney-General *vs.* Detroit Common Council, 58 Mich. 213, and Constitution of N. Y., art. ii, sec. 1. [2] Rogers *vs.* Buffalo, 123 N. Y. 173.

table also shows a very marked shifting of methods in the acts here under consideration. "Non-partisanship" has almost supplanted "minority representation." This change has undoubtedly been due, for the most part, to the decrease in the direct power of the people and of the common councils, corresponding to the increasing powers of appointment intrusted to the mayors. And, besides, bipartisan boards are much more efficient instruments for the distribution of spoils between two rival parties than are boards with unequal party representation. It will be noticed that nearly half of the total number of acts have been enacted since 1890, and that considerably more than half of the acts classed under "non-partisanship" in both divisions have been passed since that time.

TABLE.[1]

YEARS.	NO. OF YEARS.	NO. OF ACTS IN CLASS I *a*.	NO. OF ACTS IN CLASS I *b*.	NO. OF ACTS IN CLASS II *a*.	NO. OF ACTS IN CLASS II *b*.	TOTAL NO. OF ACTS.
1840–1849 . . .	10	2	2	0	0	4
1850–1859 . . .	10	0	2	0	0	2
1860–1869 . . .	10	2	2	0	1	5
1870–1879 . . .	10	10	3	4	3	20
1880–1889 . . .	10	6	0	14	8	28
1890–1897 . . .	8	4	4	26	16	50
1840–1897 . . .	58	24	13	44	28	109
1840–1879 . . .	40	14	9	4	4	31
1880–1897 . . .	18	10	4	40	24	78

[1] It is interesting to compare this increase in legislation with the increase in general charter-making. I have gone through the session laws of New York as carefully as I might, with a view to listing all the city charters and general charter revisions passed from the beginning of English rule down to the close of 1897. I find that the number of such laws passed during the different periods is as follows:

1665–1839	16	1860–1869	13
1840–1849	7	1870–1879	16
1850–1859	12	1880–1889	17
		1890–1897	22

This makes a total from 1665 to 1897 of 103 acts, applying to 42 cities, of which Williamsburg, Brooklyn and Long Island City have been merged into what is now the city of New York.

We have seen that minority representation, in the usual sense of the term, is of doubtful constitutionality in the state of New York. The doubt is based on the guaranteed right of every duly qualified citizen to vote "for all officers that now are or hereafter may be elective by the people, and upon all questions that may be submitted to the vote of the people."[1] The constitutional amendment, recommended by the Greater New York charter commission and already passed by one legislature, consists in the insertion after the above of the following clause:

> The legislature may, however, enact laws which, in elections by the people for offices in municipal or public corporations or any class of such corporations, shall provide for minority or proportional representation in such elections.

The most distinctive feature of American constitutions is the establishment of civil liberty, under the protection of the fundamental law. At one time it was considered necessary to protect the minority party against the tyranny of the majority party; for it became apparent that abstract provisions for the protection of the individual in the possession of equal rights might come in conflict with the welfare of the individual as a member of the organized minority. The result was that, with doubtful constitutional right, the legislature of New York, almost sixty years ago, began to limit the right of the individual in the abstract, in favor of the individual as a member of the minority party. Thus the rudiments of minority representation, in the choice of election officers and some other administrative officials, were gradually introduced. And although the minority has already secured in many cases equal representation with the majority, yet the stakes of governmental power are so great that the minority is still clamoring for protection, and bids fair to get its potential rights guaranteed in the constitution of the state. Indeed, with an equally divided control of elections, with bipartisan boards of police and public works, and with proportionate representation in municipal councils, the condition of the minority will soon be so ameliorated that the difference

[1] Constitution of New York, art. ii, sec. 1.

between being "out of power" and being "in power" will not be important. When this stage of political progress begins to be reached, a new minority or perhaps an unorganized majority will wake up to the fact that government has fallen into the hands of professional spoilsmen, and that the independent citizen must begin a new fight for recognition against a combination of the two chief party organizations which have secured a grip on the constitution and the statute books.

Even now the citizen is not entirely unprotected against party despotism. An old provision of the constitution of New York, after describing the oath of office to be required of every public officer, goes on to say: "No other oath, declaration or test shall be required as a qualification for any office of public trust."[1] Under a similar provision, the Supreme Court of Michigan has invalidated legislation providing for the exclusive representation of the two leading political parties.[2] The notorious "Albany police bill" of 1896 was declared void partly on the same ground.[3] And it is probably true that very little, if any, of the legislation which we have called "bipartisan" would be sustained, if taken into the courts. It is doubtless this question of constitutionality that has led to the enactment of so many laws of the form classed above as "II *b*." Under these laws the independent citizen remains eligible to office; and whether or not he succeeds in being accepted as a public servant depends entirely upon his ability to persuade some benevolent mayor or council to appoint him. Under ordinary conditions, to be sure, the benevolence of appointing authorities is so "directed" that independent citizens are not at all likely to enjoy the emoluments of appointive offices. Still, mere eligibility under the law is no small crumb to snatch from the overloaded table of party government. It may enable the "non-union" politician to keep alive until the political machines have an unlucky day and are laid by for repairs.

Professional politicians are, it seems, sometimes caught napping. This was apparently the case in the New York

[1] Art. xiii, sec. 1. [2] See *supra*, p. 693, note.
[3] See Rathbone *vs.* Wirth, 150 N. Y. 459.

constitutional convention of 1894, which was controlled by the Republican party and doubtless had a membership of a higher average order than that of a state legislature, but from which the politicians were not all absent. In the new constitution, civil-service reform was introduced without any apparent partisan motive, other than the fact that the state administration and the governments of New York City and Brooklyn had been for a good many years in the hands of the Democratic party. The separation of municipal from general elections, although supported in the address of the majority of the convention to the people on grounds of "non-partisanship," was a measure which seemed to be favorable to the Republican party within the state. The encouragement of independence in municipal politics would, it was thought, open the way to a weakening of the hold of the Democratic party on the municipal affairs of the metropolitan district; and from the development of independent voting in the cities of the state, or at least in the most populous cities, the Republicans had apparently nothing to fear. But the separation of municipal from other elections proved to be the principal *raison d'être* for the Citizens' Union in New York City. The advent and rapid growth of this local political party dumfounded the politicians—for the moment, at least. With strictly bipartisan legislation, except in the one field of elections, probably forbidden by the constitution, and with local political independence encouraged by the separation of municipal from state and national elections, independent movements in cities become dangerous to the old party organizations; for endless confusion, from the party leader's standpoint, may thus be introduced into the distribution of municipal patronage. Take, for example, the New York City police department. The law requires only that not more than two of the four commissioners shall be of the same political faith on state and national issues. The Democratic Mayor Van Wyck might, if he had been so disposed, have appointed all four commissioners from the Citizens' Union, or he might have appointed two Jeffersonian Democrats and two Socialists, or two Prohibitionists. Possibly, if the candidate of the Citizens' Union for mayor had

been elected, neither of the regular party organizations would have been represented at all on the police board. And if the ordinary rule, that the members of bipartisan boards be taken from the two principal parties, had been followed out in Mayor Van Wyck's appointments, the Republican organization certainly would not have had any representatives on the police board. Whether or not the bipartisan system, as now applied to municipal affairs, is to be broken up, depends chiefly upon the permanent strength of such movements as that represented by the Citizens' Union.

We have seen the "compromise" of the constitution of New York, which in one breath says that every citizen may vote for all officers who are elected by the people and in the next breath says that election officers must be chosen exclusively from the two principal political parties, and on the nomination of the party committees. The independent citizen consoles himself with the fact that appointments to subordinate offices must be made, so far as possible, in accordance with open competitive examinations to determine the "merit and fitness" of the applicants. And the municipal reformer gets his morsel of comfort from the fact that his mayor and aldermen are to be elected at a different time from the governor and the Congressmen. In all these provisions there is shadowed forth a single compromise, expressing the confusion of thought among the people on the question of party government. The relation of parties to the system of elections and the extent of party influence in matters of administration constitute, for the immediate future, the leading problems of commonwealth constitutional law. In their solution are involved the more special problems of municipal home rule and central control, of the true scope of municipal functions and of state regulation of private and local enterprises.

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ELK RAPIDS, MICH.

REVIEWS.

The Workers: An Experiment in Reality. *The East* and *The West.* By WALTER A. WYCKOFF. New York, Charles Scribner's Sons, 1898. — x, 270; x, 378 pp.

Inspired by close contact with a friend of "intimate familiarity with practical affairs" and "catholic sympathy with human nature," Mr. Wyckoff spent some eighteen months among the laboring classes, trying thus to bridge the gulf between his own "slender, book-learned lore and [that friend's] vital knowledge of men and the principles by which they live and work" (preface). In that time he travelled, mostly on foot, from Connecticut to California, living by "odd jobs," —as farm hand, hostler, lumberman, day laborer, *etc.*, —and of necessity mingling with all manner of men. The story of his adventures is certainly interesting; but the nature of the undertaking, as a so-called "application of the laboratory method to sociological research," is to the student of affairs economic and sociological a matter of much greater importance.

From the outset it is clear that the writer is a novice in dealing with the hard facts of life. When serving his apprenticeship with the pick and shovel, he made the epoch-making discovery that, when "down sweeps your pick with a mighty stroke" upon a concealed stone, the contact "sends a violent jar through all your frame, causing vibrations which end in the sensation of an electric shock at your finger-tips" (I, 114)! Very early, too, Mr. Wyckoff received a "revelation in the discovery of the degree to which profanity is ingrained in the vernacular" of "the laboring poor" (I, 58); and the naïveté of his exclamations of horror over the cursing of some urchins (I, 60) is comparable only with his attempts at softening the oaths of lumbermen (I, 217, 239). More convincing evidence as to the equipment and point of view of this investigator is found in his astonishment at the "unlooked-for quality in the intelligence of the people"—a wonder at first arising from the not infrequent discovery of books, even copies of Milton and Emerson, on sitting-room tables (I, 17)! Later, however, he found better ground for his wonder (see I, 119; II, 241); and it was after discussing with a Pennsylvania farmer the alleged grievances of the farming class that he wrote: "I went