SOME NEW ROOMS.

Changes in Our State Constitutions. It is a book of a type essentially new which FRANCIS NEWTON THORPE has given us in the two volumes collectively entitled A Conulional History of the American People from 2776 to 1820. (Harper's.) The record of the evolution of government in this country since the Revolution which is here presented rests upon authorities hitherto almost entirely disregarded. These are principally the laws and of the various States, and the journals, proceedings and debates of constitunal conventions. We are reminded that the constitutional convention originated in America, and has become a recognized political institution in modern government. Our author is inclined to regard it as the chief contribution of this hemto the political agencies of the world. It may be defined as a grand committhe of the constituency authorized to submit a plan of government. The discussions which have taken place in State conventions have been hitherto neglected; not sufficient head has been paid to the value of the evidence they furnish concerning the nature of American civil institutions and of their working and drift. The traditional distinction between administration and Federal government has done much to establish a popular notion that the two polities rest on different princi-

ples. The reverse, of course, is true. The purpose of these volumes is to show wherein the States composing the Federal Union in 1850 differed from the Thirteen Colonies which proclaimed their independence in 1776. It is certain that the conception of the State and of its functions had, in the interval, greatly changed. Civil relations had come to be seen in a new light. Citizenship was defined anew. The coordinate branches of government were conceived not only under revised relations, but as under a stricter ac countability to the people. Representative government in 1850 sat more firmly in its entinental seat; the anxieties and strivings of the early years of the republic gone; the people seemed not only poised, but aggressive and almost proselyting in their po litical confidence. The democratic spirit had permeated the land; local government in towns cities and counties felt its power. Demoeracy, in a word, had so reconstructed its ideals that it seemed to have passed through a peaceful revolution. The details of this revolution will be found recorded in the later chapters of the second of these volumes. some of these chapters that we would here in vite attention, after a preliminary glance at the work which had been done with respect of constitution building during the last quarter of the last century.

1.

It is a fact the significance of which is often overlooked that the sixteen States which com prised the Union in 1800 had adopted no fewer than twenty-six Constitutions in the preceding twenty-four years. Their activity in this direction was engendered by the incomplete ness of the Constitutions made amid the stress of war. Some of the original declarations, in deed, remained unchanged. The doctrines of natural rights, of the social compact and of popular sovereignty could not be abandoned. One phrase found in several of the later colopial charters was elaborated in the first State Constitution into a new principle. who by royal charter were said to have all the liberties and immunities of free and natural enblects of Great Britain, could, without great intellectual effort, at least in the eighteenth century, when accusing the King of violating the social compact and leaving "in a state of nature," claim that their rights were natural. This, which was asserted for the first time in the New Jersey Constitution (1776), may be said to be the fundamental doctrine of democracy in America Mr. Thorpe points out that all the provisions in the American bills of rights were once admin-istrative measures. He would describe them as past politics gone to seed, the outcome of the mature experience of men in social relations. If government were not a matter of administration, there would be no bills of rights. These need not necessarily be written. They may be secured in the customs or traditions of people. Perhaps the best illustration of the manner of their coming into being is afforded by the amendments to our Federal Constitution which constitute the National bill of rights. The first ten were common to the first State constitutions: the remaining five were added to safeguard administrative measures accepted as final at the time of their adoption. The normal organization of the Legislature

in the original State Constitutions was in two branches. In Pennsylvania, Georgia and Vermont, however, the State Legislature was, for time, unicameral. The division was not an inheritance from England except as to form. Functionally the two houses in Amerfea differ widely from the English, as was thoroughly understood in the eighteenth century. The life tenure, the membership by inheritance, the landed interest of the Ho Lords, had no place in the Senate of an American State. The functions for which the English system provides we secured by a conven tional arrangement of elections, tenure of office and prescribed powers. In a similar way we sstablished the lower chamber, with functions analogous to those of the British House of Commons. Mr. Thorpe attaches but little importance to the variations in legislative title The terms Senate and House were sufficiently common to give names to the branches of the Federal Legislature. Annual elections of the lower House prevailed and continued till their cost and the superfluous legislation they engendered compelled their abandonment. Rep resentation in the lower chamber was variously apportloned. The basis was property civil corporations, taxable inhabitants, electors. population or some combination of these ele ments. The "Federal number," as the provision for representation of three-fifths of the slaves was called, was adopted in only one State (Georgia, 1708), though proposed in sev eral in later years. In States having cities con taining a large proportion of the population Massachusetts, New York, Pennsylvania and Maryland) a struggle began early between ru ral and urban interests, which has continued to the present time and has affected their suc eessive constitutions. In every instance the gural interest has triumphed, and to the city has been denied the proportion of representation to which its population has entitled it The custom of fixing the minimum and maximum number of both House and Senate began at an early day. Changes in population were usually provided for by a sliding scale of representation based on a census. As in later times, the practical definition of a district proved a difficult problem. Its solution could be, at best, only approximate and temporary There was sure to remain a fractional population in many districts, which in the aggregate constituted more than the ratio of representation. As early as 1700, in Kentucky, an attempt was made to recognize this remainder. But neither then nor since has the mode of recognition been accounted satisfactory, though successive State conventions have wrestled with the problem The demand for equitable representation was one of the chief causes of the number of State Constitutions that came into being before 1800.

Though the fundamental notion of eigh teenth-century democracy was equal rights. the early State Constitutions carefully dis insted between those among the population who were qualified to vote and to hold office and mose who were not qualified. The votare constituted only a small fraction of the people; and those who were qualified for office were but a small fraction of the voters. The representative in a State Legislature was required to be of a certain age, to have resided e State or district a certain time, to possess a certain amount of property, principally in land; to profess a certain religious creed and to be native born or a citizen at the time when the Constitution was adopted. Only white men were eligible to office. As the qualificawere carefully detailed in the Constitutions, they must be interpreted as expressing

public opinion. In but few instances were they left to the discretion of the Legislature. They show what were considered the guarantees of public safety. Men possessing them were accounted as having "a permanent common interest with the community," or, in other words, "a stake in the commonwealth." Edu-cation at public expense, which is now deemed an element so essential to the general welfare was comparatively overlooked in the eighteenth century. The need of schools was felt, however and was met in part. Five States, to wit, Massa chusetts, New Hampshire, Vermont, Pennsylvania and Georgia, made the support of schools obligatory upon the Legislature. The silence of other State Constitutions on the subject should not be construed as evidence of wilful neglec of learning. The States were poor and deeply in debt. Individualism ruled the hour, and it was not thought to be a function of a State to do for the citizen what he ought to do for himself. John Adams may be looked upon as the father of the public school, the State university, the State college and the normal school. He realized when he inserted the educational clauses in the Constitution of Massachusetts that he was departing from precedent, and feared lest all would be struck out. Save in New England, the idea of State fostered education lay dormant, until the Federal Government began to make donations o public lands exclusively for school purposes The State Constitutions then introduced ar administrative article on education. In our day, of course, the right to education ranks in popular estimation as a fundamental civil right Departure from English precedent was inevitable in the case of the State Senate, for this, being an elective body like the House, was responsible to the same constituency, a condition that has never prevailed in England. Originally in all States only the lower house could bring in a money bill. It was Tennessee which n 1796 inaugurated the change that after

1800 was gradually to overspread the country.

the change permitting money bills to originate

in either house. This alteration was the forerun-

er of many another, until the state of things

was reached which is embodied in the later State Constitutions, and in pursuance of which the Senate differs from the House in but a few maerial particulars. The origin of the State Senate is suggested by the name it bore in several States Delaware, New Jersey, South Carolina, and New Hampshire), the Legislative Council, This riginal must not be confused with the Execu tive Council, which for a time existed in most of he States, and survives in three, namely, Maine, New Hampshire and Massachusetts The State Senate sprang from an idea imbedded In many colonial charters, that, in addition to the colonial Assembly, which was elective, a cond council should be appointed. As the theory of checks and balances took possession of the public mind, the State Senate, as we now know it, was devised as a set-off to the House. It was the most artificial part of the new civil system, and its functions have never been so distinctly marked in the popular mind as those of the House. Nor is it strange that a proposal dispense with it has been made from time to time. As its functions have come to be nearly identical with those of the House, its existence has become precarious. It seems to body politic strengthens, but it should be noted that the House has weakened at the same time. It might be expected, previously to experience, that the Senate would be invigorated by being empowered to originate money bills. On the contrary, the conviction has gained currency that the dualism is superfluous and that the smaller body should be permanently dissolved. The original advisory functions of the Senate are now performed largely commissions, administrative boards and in dividuals who, in theory, are experts. All this body of administrative agents was wanting in the first State Constitutions, excepting a few military, fiscal and land officers.

Senatorial apportionment differed from that

for the House. It was by groups or masses of

population, rather than by single towns or unties. The basis was property; that of the House, though varying, was persons, or persons and property. The "district" came into existence in the attempt to establish a basis for enatorial apportionment. To secure all the benefits of the Senatorial device, the retiring clause was worked out by which Democracy secured a changing body (the House) and permanent one (the Senate) at the same time The State thus established a precedent for the nation. The Senate was a smaller body than the House and chosen for a longer term : the qualifications for its members were a little more exacting. The Senator was an older and, in some States, a richer man. A body so conventional in origin might be expected to Illustrate temporary expedients, or schemes of election. Of these, the most noticeable was the Electoral College, the prototype if not the precedent for the Presielectors. The States speedily abandoned the college; Maryland, in which it originated, and Kentucky, which borrowed it partly from Maryland and partly from the Constitu tion of the United States. The idea early took root that each county should have one Senator but the theory of equal representation compelled a proportionate recognition of the populous counties and increased the difficulties of apportionment. Various devices were tried to keep the membership of the State Senate in a ratio with population, but none gave full satisfaction. The functions of the Senate were partly copied from those of the House of Lords, as, for instance, the right to act as a court of impeachment or a court of law. but they were, in part, conventional, like the right to elect the Governor (Georgia, 1789). The first privilege led to confusion of legislative and judicial functions; the second was soon recognized as undemocratic. Before the last century closed the Senate came to be regarded as representing the property, the House, the in the State. The distinction was, for half a century, a political issue. After 1820 the State Senate gradually became a demo-

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Distrust of executive power and fear of ex-

ecutive usurpation characterized American

cratic body.

lemocracy, as this found expression in the early State Constitutions. Executive, like legislative, titles varied among the States. The unwritten law of official life, however, has at ast given all Governors the title prescribed in the Constitution of Massachusetts, whence it has come to pass that the Executive of a State is addressed as "his Excellency," whereas the ederal Executive is addressed simply as " the President." Where democracy was strongest and most experienced, as in New England, a Governor might be redlected at the will of the people; elsewhere constitutional limitations more or less affected the choice. Executive qualifications were more discriminating in degree than those laid down for Senators; a can lidate for Governor must be longer a resident of a State and be possessed of a greater amount of property. The office, in some States, was accessible only to the few who possessed strong family influence. The Governor was chosen by the Legislature, except in New England and New York, where he was chosen by the electors. Not until Jackonian Democracy revised the State governments generally, was the Governor chosen by popular vote throughout the Union. It is further to be noted that, when the early State Constitutions were made, the Governor was conceived as a military rather than a c.vil officer. His military duties were quite carefully outlined; his civil functions were obscure. shone in the splendor which now clothes his staff. In popular fancy, he was the man on orseback. To-day he is the man with the quill. His civil functions now almost wholly clipse his military. The last quarter of the last century was a military period, and the soldier, rather than the civilian, was the hero. It was the age of captains, as the period eighty years later was the age of colonels. The State was conceived as a military rather than an industrial machine. Safeguards were, consequently, established against an abuse of authority by the Executive. The pardoning and the veto power were not freely given to him. Few were the appointments

at his disposal, and those chiefly in the militia. He could not, unaided by his council, nominate

judges or the few civil officers which the State required, such as the Attorney-General, or the Sheriff. His function in legislation was obscure. Popularly, he was supposed to execute, not to make, laws. He was expected, indeed, to send an annual message to the Legis lature, in which he pointed out the needs of the State. For a time, Legislatures seem to have taken these messages literally. In our day, they are consigned to a committee, and for gotten. The measages of the early Govern ors remain fair indices of early legisle tion. As long as this state of things ontinued, it was needless to limit the power of the Assembly, and increase that of the Governor. Relatively powerless as he was, how ever, he was conceived to be the head of the State. That his office was considered one of great dignity is illustrated by the early history of the National Government. When Presiden Washington came to Boston, Gov. Rancock held that it was the duty of the Federal Execu tive to make the first call. Men preferred the office of Governor to that of United States Sen ator, Cabinet Minister or Federal Judge, John Jay resigned the office of Chief Justice of the United States to become Governor of New York. It was a sign of the times. The State offered more than the United States to him who sought a political career. To become Governor was to reach the summit of political grandeur. We should not omit to point out that, of the Executive Council, deemed, in the last century, to be essential to the protec tion of the people, little now survives. Its original function in colonial times had been to control the administration. It was never a cabinet. In the first State Constitutions it represented popular distrust of the Governor of the State, as, in earlier times, I had represented royal distrust of the Governo of the colony. The growth of administrative offices later involved the decay of this Council For a time it stood for the civil side of execu tive power, as the Governor stood for the military side. Chosen usually by the Legislature began to change in political character whe the members were elected by districts. Befor it had disappeared, it had come to exercise executive, legislative and judicial functions eaving to the Governor little except military power. It is a curious fact that, although th Governor has increased in authority, he is a less conspicuous figure in public affairs, and is less looked up to than he was a hundred years ago

IV. The State courts, like the colonial, followed the English type: but a distinct State government required appropriate tribunals. county courts were continued, and a new court was created; the two sets were distinguished as the inferior and the superior of supreme. The nisi prius system was about to be changed. Superior courts exercised both a law and an equity jurisdiction. There were courts of chancery. Judges were appointed by the Governor, or chosen by the Legislature usually for the term of good behavior. The unreasonableness of the age limit on judges was proved by the appearance of Kent's "Com mentaries," after their author had retired from the bench on account of constitutions As is the case to-day, the jurisdiction of th appellate jurisdiction was regulated in each commonwealth by law. Not infrequently the was. ex officio, a justice of the

disqualifications. Judges were removable superior courts was final in all cases. Thus peace. The courts were too numerous, and their jurisdiction was too various for them to be easily classified. They were largely the creatures of the Legislature. Their titles help to indicate their character: Probate, Admiralty Orphans', Chancery, Common Pleas, Oyer and Terminer. Georgia began the innovation of defining jurisdiction by specifying the money value involved in a case; the precedent has been freely followed. The courts met much as at present, the number of sessions being regulated by law. Clerks were appointed by the Judges. All writs ran in the name of the Common wealth, as they had previously run in the name of the King. Justices of the Peace were ap pointed by the Governor or elected by the As sembly. Democracy had not yet secured con trol of any part of the judicial system. The Justice was a local dignitary, who wrote esquire after his name, and was commonly called the Squire. Usually he continued in the office for life, and prospered on its fees. Neve were people more given to litigation than were the Americans in the last century. Best known in each county was the Sheriff, whose office was the first important one, after that o sentative, to be filled by popular election His duties, it was thought, could not be safely ntrusted to any man, save for a short time and not for successive terms. It was his func tion of custodian of public and private money that forbade re-eligibility until his successor had had time, as it was said, to "go over the books." The jury system was as yet unshaken.

pillars of State. Coming to the basis of the State Constitutions, we observe that the electors were free white men. Only a few electors North and South were free persons of color. Their inclusion in the electorate in New Jersey and North Carolina was, doubtless, an oversight, That colored men voted for a time in New Jer sey, as well as in New Hampshire and Massa chusetts, is unquestionable, but, in the first named State they were disqualified in 1807 The majority even of white men were not permitted to vote, although the qualifications for electors were less exacting than those for officeholders. A shorter residence and less property were required. The landless man, it was thought, could not be trusted. Universal suffrage as we know it was unthought of The voters and officeholders constituted i landed aristocracy. Property was the basis o government, and continued to be in the older States for more than fifty years. Mr. Thorpe thinks that in 1800 the number of electors did not exceed 150,000, although the population had reached 5,000,000. The struggle for the extension of the franchise began before the century was over, and won its first victories when new States were admitted early in the

e right of trial by jury ranked high among

the proclaimed rights of man. Consequently

the jury of twelve men, and the Grand Jury of

nearly twice the number, were conceived to be

nineteenth century. The men who made these early organic laws realized that they might serve only tempo rary purposes, and provided for their amendment and revision. To the Legislatures wa left the initiative in such emendation. Pennsylvania and Vermont created a Council o Censors to guard the State Constitution and suggest changes. To prevent hasty ones, some itates provided for periodical revision. In making many of the first State Constitution the electors had not been consulted, but amendments and revisions were usually made with their consent. In some States changes were difficult to bring about, the elements necessary to effect them not being likely to work har moniously at any given time. Gradually the process of amendment became simpler, and to the electors the Legislature submitted the question of calling a convention. Gradually also, the practice prevailed of submitting the work of the convention, when completed, to the electors, that it might receive their ratification This has become the normal procedure.

The eighteenth century Constitutions were general in character, and usually short. De ocracy greatly modified these instruments during the first half of the nineteenth century They became more like laws, and less like the Constitutions with which the Commonwealth began. The change was twofold, conforming to the dual development of the country North and South. The northern zone represented the expansion of New England, New York and Pennsylvania; the southern zone, that of Virginia, Carolina and Georgia. Two streams o migration were pouring over the country, and the northern stream was swelled by Eu-ropean tributaries. The southern stream was American in origin, and but slightly increased through any foreign contributions The obstacle in the path of immigration into the South and Southwest was slavery. After 1835 the inpour of Europeans rapidly in creased, and in less than twenty years gave the balance of political power to the people of the North. All this time the Southern States deliberately excluded foreigners, and did not

welcome migration from the North. The South ultimately realized that it was falling behind in wealth and population. It was the recogni-tion of this fact that made it desire a separate slave empire stretching into the tropics.

While the Union increased between 1800 and 1850 from sixteen to twenty-one States thirty-two new State Constitutions and 150 onstitutional amendments were adopted. these Constitutions, nineteen were framed by Northern States. During this first half of the nineteenth century, there were not many changes in the bills of rights. The period was too short; most of the alterations that dis-tinguish the bills of rights of to-day from those of the eighteenth century were made after 1860. Nevertheless, the few changes observ able between 1800 and 1850 were significant. The right of admission into the Union and the right to prohibit slavery (in pursuance of the ordinance of 1787) were now claimed as civil rights, and were asserted in the Northern Cor stitutions, especially those west of Pennsyl vania. The Ordinance of 1787 had proved be epochmaking, and was instrumental in hastening the issue between the slavery regim and free democracy. Sanguinary laws were vanishing from the statute books, and Penn's declaration was appearing that "the true design of all punishments is to reform not to exterminate, mankind." Reform in this direction included the abolition of imprison ment for debt, which had been gradually evolved from sentiment into law, and, in Ohi from laws into a provision of the fundamental bill of rights. The struggle for existence compelled people to cherish and support public schools, and for the first time the world heard of an innate right to education, or, as it was sometimes put, to equal educational privileges. Other laws than those abolishing imprisonment for debt were incorporated in constitutional provisions. Public servante were de clared to be subject to investigation: the truth could be given in evidence and the common truth, the greater the libel."

As new organic laws were framed in the first half of the present century, it was notice able that the old colonial ecclesiasticism fell away, and the new Constitutions, one by one ceased to provide for the union of Church and State or for the support of churches by taxa tion. Religion became a voluntary institution earlier State polities had been distin guished by religious and property qualifications. Because these restrictions were un democratic and discriminated oven against white men, they were speedily attacked by the reformers, and most of them had disappeared by 1850. Usually they were abolished by law but their ultimate fate was inscribed in the

bills of rights, and first in Mississippi in 1852 Though Michigan, in 1850, incorporated an exemption clause in its Constitution, it was done with some doubt of its equity. It was thought to endanger the rights of creditors and to interfere with the rights of contracts, i it did not violate them. Public sentiment, however, which is usually created by the debto class, demanded the innovation. The exemp tion from seizure of a certain fraction of debtor's property seems to have been largely the effect of the new recognition of the rights of married women. Mr. Thorpe regards it as a form of life insurance, wherein the State is the insurer, and the debtor the insured. It furnished additional proof that a democratic form of government tends to favor the debtor class This is to be expected, seeing that debtors are in the majority. The author of this book ex presses, however, a doubt whether the in clusion of the exemption clause in many ne State Constitutions had strengthened public

During the period from 1800 to 1850 it be

came the custom to divide the State Senators into classes, and thus the State Senate, like the national, was made a permanent body. Changes in population caused frequent reapportionment and these were on a varying basis. Usually for the House, the unit adopted would be that prescribed for local government in the State the township in the North, the county in the South. The struggles to secure equitable apportionment were always vigorous; of thes the most serious was the Dorr rebellion in Rhode Island Even when the township or th county was adopted as the unit the problem of apportionment was still unsolved. How man people or voters, how much property, should be the basis for one representative? The answers to this question would constitute political history of the State in the period under review. Representatives were apportioned sometimes according to pop ulation, sometimes according to the numbe of free white males; then again, according to the number of voters; elsewhere, according to the taxes and the number of white inhabit nts, and, sometimes, accorof whites and three-fifths of the persons color. Another difficulty was the size of the House. Most of the States either fixed the number or gave a maximum and minimum the Legislature apportioning at discretion within these limits after the periodical census The membership of the Senate was suppose to bear a constant ratio to that of the House usually 1 to 3 or 1 to 4; but, in States hav ing large cities, like New York, Pennsylvania Maryland and Louisiana, the restriction on municipal representation affected the Senate As the middle year of the century drew near. the two bouses approached a common type. In colonial and early commonwealth days, they had differed chiefly as regards the power to levy taxes. By 1850, it had come to pass in thirteen States that a revenue bill might origi nate in either house. This was a significant change in American democracy. It meant tha one old idea at least had been given up, and that this spoke in the wheel of checks and balances was recognized as superfluous.

If one were to judge of the General Assem bly by the compensation of its members during the first half of this century, he migh conclude that ability was cheap or the thirs for office great. Seldom was the pay of a member more than \$3 a day. The presiding officer: usually received \$5. Then, however, a mem ber had, as he has now, various opportunities "to look around," and sometimes he profited by what he saw. The multiplication of laws against bribery and corruption and the provisions against them in the State Constitu tions are evidence that it was supposed to be profitable to be a lawmaker. As a matter of act, nevertheless, the man who took up poll tics for a living usually died poor and forgot Michigan set the precedent in 1850 of providing by its Constitution that each member of the Legislature should be entitled to stationery and magazines amount not exceeding \$5." In all the States there began during this period the practice which has since become expensive, of publish ing and distributing gratultously public docu ments. Usually an ex-member would posses a set of these, specially bound in heavy mo-rocco, with his name displayed in large gilt letters. The commonwealths learned from th Federal Government this costly habit of publi cation, which has gone on until the aggregate collection is quite beyond computation.

VI.

Two radical changes affecting the Stat Legislatures were in progress during the first half of the century, one limiting their powers the other defining their duties. The limitation of powers embraces the mass of constitutional provisions forbidding special legislation; the definition of duties makes certain legislation obligatory. The special legislation prohibited related chiefly to slaves, lotteries, banks, fiscal corporations. local indebtedness, divorces, onopolies, the sale of public property, the rate of interest, sinking funds, change o county or town boundaries, internal improvements, private bills, and the loan of public credit. Such prohibitions began in Ohio in 1803, and were multiplied in every succeeding State Constitution throughout the Union. Legislative obligations were less numerous. The related chiefly to steps in legislative procedure. the establishment and maintenance of school and sinking funds, the exclusion of free negroes from the State, the codification of aws, the emancipation of slaves, the registration of

births and deaths, the founding of township libraries, the equalization of taxes, the regis-tration of bank notes, and the care of the deaf and dumb, the blind and the insane. After the panie of 1837 all Legislatures were instructed are the people against the abuse of credit by banks, by internal improvements or by State, county or town loans. The danger of granting unlimited powers to the General Assembly had now come to be recognized. One immediate effect of the recognition was the lengthening of the State Constitutions. They began to grow into commonwealth codes and have continued growing to this day. The relative increase during the first half of this century is exemplified in three States, which are examined at length in the book before us. The Constitution of Louisiana of 1814 was expanded thirty-one years later in the ratio of 7 to 3; that of Kentucky of 1700 bore to that of 1849 the ratio of 2 to 3; that of Michigan of 1835 was but half the size of that established in 1850. In every instance where a State adopted a new Constitution It was larger, more com-

play and carefully subdivided. To the chief executive officer of the common wealth, all the Constitutions formed between 1800 and 1850 gave the title Governor. His functions increased in importance after the country got on a peace footing. His term was engthened and his powers were multiplied; he was elected directly by the people. The old colonial distrust of the Executive gradually disappeared as people learned that legislation may be foolish, and that the Governor can be made a check upon it. Administrative funcions were not yet wholly separated from the Executive, chiefly for the reason that this reform was not yet felt to be needful. A beginning was made, however, through the treation of the office of Bugerintendent of Public Instruction. The Governor could not attend to the duties of that office. Next, as the State founded charitable institutions homes for the insane, schools for the deaf, the dumb and the blind, the supervision of them was placed in the hands of administrative officers, who reported annually to the Legis lature. Commissioners of public lands, of cenals and of banks were appointed, as these interests, received special recognition from the State. Their duties were administrative, and

were distinct from those of the Executive. In spite of the triumph of Jefferson's democ racy, there was no shortening of the executive erm, nor any general provision against reelection. Early in this century a long residence in the State was required, but after 1835 the length of residence was rapidly out lown. Property qualifications for the office of Governor became uppopular, and were ignored n practice before they were formally abolished The salary of the State Executive was small. In 1821 it varied from \$600 in Rhode Island to \$7,500 in Louisiana. At that time, fourteen States paid \$2,000 or more; nine States, less than \$2,000. It will be remembered that, at the same epoch, the President of the United States received \$25,000 a year, and members of Congress \$8 a day. The pay of unskilled labor was from 25 to 40 cents a day, that of skilled labor from \$1 to \$1.25. District schoolteachers received \$6 a month, and were "boarded round" among the families from which their pupils were drawn. Ten dollars a month was considered a large stipend for a clerk; \$500 a year a princely salary for a clergyman, A physician's visit cost a shilling Daniel Webster, who was then about 33 years old, is thought to have had a practice worth \$15,000 a year. This was abnormal. There were no millionaires, unless that title could even then be applied to John Jacob Astor and to Stephen Girard. Seldom did a child have a penny to spend; there was little money in circulation. Clergymen were paid mostly in kind. One parishioner would bring potatoes, one apples, another butter and eggs, another a sheep, another a mess of pork, another a bag of flour, another hay for the clergyman's horse With farm labor at 30 cents a day and eggs at 6 cents a dozen, the Governor's salary was not

below his dignity.

During a large part of the period under re view prosperity was the chief collateral security which the States could offer, and they mortgaged it to its full value. From early in the century until after 1837 the American people were spellbound with the delusions of flat money. No nation ever tried harder to make money by law. In 1836 a State for the first time put in fts Constitution a reserve clause on the side of the taxpayers. Arkansas then provided that all taxable property should be taxed according to its value "in an equitable and uniform manner throughout the State." It was further provided that poll taxes should be for county purposes, and that country produce should not be taxed more than enough to pay for the labor of inspectors. In 1844 New Jersey forbade its Legislature to grant a bank charter for more than twenty years; the grant must have the assent of three-fifths both houses. In the Constitution of Nev York framed in 1846 the first definition of the erm corporation was attempted in a State rganic law. It should "be construed to include all associations and joint stock companies having any of the powers and privileges of corporations not possessed by individuals or parmerships," a precedent for all the later constitutions of the various commonwealths. In New York at this time the effect of the panic of 1837 was traceable in the constitutional provision forbidding the Legislature to "pass any act granting any special charter for banking purposes," or "to pass any law sanctioning in any manner, directly or indirectly, the suspension of specie payments by any person, association or corporation issuing bank notes of any description." Iowa, in the same year, went further than New York in seeking to secure a safe system of banking. In the Constitutions of Illinois and Wisconsin framed in 1847-8 the articles on finance and corporations were even more elaborate. Thenceforth the space devoted to corporations in State Constitutions

It remains for the author of this book to trace the history of changes in State Constitutions during the last half of the nineteenth century, and we trust that the task will be performed with equal lucidity and thoroughness. M. W. H.

was rapidly increased.

Babylonia and Assyria.

We are indebted to Dr. Monnis Jastrow, Jr., Professor of Semitic Languages in the University of Pennsylvania, for a volume entitled The Religion of Babylonia and Assyria (Ginn & Co.). Even in 700 octavo pages it is, of course, impossible to offer an exhaustive treatise on the subject of this work. What the author has here essayed to do is to set forth in a concise and accurate way the conclusions based upon the latest excavations in the valleys of the Euphrates and the Tigris, and upon the most ap proved interpretations of the cuneiform texts. After two introductory chapters Prof. Jastrow traces the history of his subject through the old Babylonian period, the so-called Middle period (circa 2300 B. C.), the Assyrian period and the latest, or Neo-Babylonian period. Naturally, the exposition of the old Babylonian pantheon is incomparably the most diffi cult. Not only is the chronology relating to the period guesswork to a large extent, but the identification of many of the gods mentioned in the oldest inscriptions with their posterior equivalents, must be postponed till future discoveries shall have cleared away the obstacles which now obstruct the student's path. The recent discoveries at Telloh and Nippur have compelled a recasting of many views previously held. In dealing with this branch of his scheme the author is careful not to pass beyond the range of what is definitely known or at least regarded as probably certain We should note that, in the transliteration of proper names, Prof. Jastrow has followed conventional methods for names that are well known, like Nebuchadnezzar, and the general usage of scholars in the case of others.

Before marking some of the conclusions touching the morality of the Mesopotamian peoples, which will be found summed up in the last chapter of this volume, we should glance at the historical sketch which covers the long interval between about 4000 B. C. and the middle

of the night century, B. C. The recent excava tions at Nippur have pushed back our knowledge of Babylonian history to the date first named. At that time the Euphrates Valley was divided into a series of states or principalities which parcelled out North and South Babylonia between them. These States grouped themselves around certain cities. In fact, a principality would arise from the extension of a city's jurisdiction, just as the later Babylonian Em-pire represented the enlargement on a greater scale of the city of Babylon. Of these old Babylonian cities the most noteworthy were Eridu, Lagash, Ur, Larsa, Uruk, Isin, in the South, and Agade, Sippar, Nippur, Kutha and Babylon, in the North. The rulers of these cities called themselves either King" (literally, "great man,") or "Gover nor," according as the position was a purely independent one, or one of subordination to more powerful chieftain. Thus the earliest rulers of the district of Lagash of whom we have inscriptions (3200 B. C.) have the title of King," but a few centuries later Lagash lost its ndependent position, and its rulers became Patesis," i. e., Governors. These Governors were in a position of vassalage, it seems, to the contemporaneous Kings of Ur, who, in addition to their specific title, styled themselves Kings of Sumer and Akkad. It is uncertain whether, at this time, Sumer and Akkad included the whole of Babylonia or only the southern part, but, in either case, Lagast would fall under the jurisdiction of these Kings, An ethnological problem confronts us in connection with this first epoch. Are there any traces of other settlers the Semitic Babylonians in the earliest period of the history of the Euphrates Valley? Those who cling to the theory of a non-Semitle origin of the cuneiform syllabary of course answer in the affirmative. Sumerians and Akkadians are the names given to the non-Semitic settlers who are assumed to have preceded the Babylonians in the control of the Euphrates Valley. No positive proof, however, is forthcoming that Sumer and Akkad were ever employed or understood in any other sense than as geographical terms, and Prof. Jastrow holds that we are not warranted in going be yond the statement that the evidence points to the existence of a population of mixed races in the Euphrates Valley from the earliest period known to us. For this period, which extends from about 4000 B. C. to 2300 B. C. chronology is, as we have said, uncertain. Beyond the titles of the rulers over Babylonian States, there are but few safe indications for determining the succession of dynastles. So much, however, may be now averred that simultaneously with the Governors of Lagash and the older Kings of Ur. there was an independent State in northern Babylonia which had its seat of government at Agade. Indeed, the history of this State may now be traced back six centuries beyond that of Lagash. Two rulers of Agade, Naram-Sin (about 3800 B. C.) and Sargon I. are the earliest rulers as yet known. These Kings of Agade extended their jurisdiction as far north at least as Nippur on the one side and Sippar on the other. The city of Babylon itself, if it existed territory of these Kings. It was not until about the middle of the third millennium before the Christian era that Babylon comes into the foreground. The excavations undertaken by the University of Pennsylvania have east new light on this most ancient period of Babylonian history. It is now known that the Temple of Bel at Nippur antedates the reign of Naram-Sin, and in the further publications of the university we may look for material which will enable us to pass considerably beyond the period of Sargon I. In the south, as we have already mentioned, the rulers of Na gash and the dynasty of Ur are the earliest of which we have any record. Prof. Jastrow be lieves that further excavations at Nugbeir will bring to light the names of older Kings, and he holds that the presumption is in favor of regarding the southern states, or at least some of them, as earlier than any in the north. The seme of the power of the Kings of Ur may be fixed approximately at 3000 B.C. An independent State with its capital at Uruk follows upon the culminating period of the glory of Ur, and may be viewed as an indication that the rulers of the last-named kingdom had lost their control over the whole of southern Babylonia. Isin, whose site has not yet been determined, but which lay probably to the north of Uruk, was another political centre. At a subsequent period, the Kings of Urseem to have regained the supremacy which had been wrested from them by Isin, for the rulers of the latter acknowledged their dependence upon the first-named sovereigns. This so-called second dynasty of Ur controlled Nippur; its Kings were proud of calling themselves the Guardians of the Temple of Bel in that city. A subsequent change in the political situation.

A subsequent change in the political situation is reflected in the subjection of Ur to a district whose centre was Larsa, not far from Ur, and represented by the mound Senkersh. The power of Larsa received a fatal check through the invasion of Babylonia by the Elamites about 2350 B. C. II.

During the whole of this first period, the dis-

tinction between North and South Babylonia

was kept tolerably distinct, even though occa-

sionally a North Babylonian city like Agade and Nippur might extend its jurisdiction for a time over a section of the southern region. It remained for a great conqueror, Hammurabi the sixth King of a dynasty having its seat in the city of Babylon itself, to unite, about the year 2300 B. C., North and South Babylonia under one rule. With him, consequently, a new epoch in the history of the Euphrates Valley begins. Henceforth, the supremacy of the city of Babylon remained undisputed, and the other ancient centres, losing their political importance, retained significance only by virtue of the sanctuaries existing there, to which pilgrimages continued to be made, and the commercial activity that, through through the commercial activity that, upon the union of Babylonia, received fresh impetus. Attention was, some years ago, directed by Fognon and Sayes to the fact that the name of Hammurabi, as well as of four kings that preceded him, and of a number that followed, are not Babylonian. Sayes expressed the opinion that they were Arabic, and Prof. Hommel has recently corroborated this view by showing the close resemblance existing between these names and those found on the monuments of southern Arabia. While no evidence is as yet forthcoming to warrant us in pushing back the existence of the Minean empire in southern Arabia beyond 1500 B. C., still, since, at that period, this empire appears in a high state of civilization, with commercial intercourse established between it and Egypt as well as at Palestine, our author thinks that the inference drawn by Hommel that Babylonia was invaded about 2500 B. C. by an Arabic-speaking people ought to be seriously considered. Elain, which comprehended what was afterward called Persia and Medea, was constantly threatening Babylonia from the east, and, shortly before Hammurabi's appearance, succeeded in putting an end to the dynasty of Larsa. It now appears that the inhabitants of the Euphrates Valley were also threatened by an enemy lodged somewhere in the southwest. Though Hommel's hypothesis still needs confirmation, and may, perhans, be modified by future researches, this, at least, is regarded as certain by our author, that the great union of the Babylonian States and the supremacy of the city of Babylon were achieved not by Babylonians, but by foreigners who entered Babylonians, but by foreigners who entered Babylonian from its western or southwestern side. The dynasty of which Hammurabi was the chief upon the union of Babylonia, received the city of Baiylon were achieved not by Babylonians, but by foreigners who entored Babylonian from its western or southwestern side. The dynasty of which Hammurabl was the chief representative came to an end about 2100 B. C. and was followed by another known as Shish-Kha, the rulers of which likewise appear to have been foreigners. When this dynasty, in its turn, vanished after a rule of aimost four centuries. Babylonia was once more conquered by a people coming from the northern parts of Elam, who were known as the Casites. These Cassites, of whose origin, character and language but little has yet been learned, ruled over Babylonia for a period of no less than 57th years: but as they adapted themselves to the customs and religion of the country their presence did not interfore with the normal progress of civilization in the Euphrates Valley. It follows that the period of Hammurabl and his successors, down through the rule of the Cassite Rings, may be embraced under one head. It was a period marked by the steady growth of civilization, manifesting itself in the erection of temples, in the construction of canals and in the expansion of commerce. Active relations were maintained between Babylonia and distant Egypt. About 1500 B. C. appear the first traces of relationship between Babylonia and distant Egypt. About 1500 B. C. appear the first traces of relationship between Babylonia and the northern Mesopotamian power. Assyria. The relations were at first, of a friendly character, but it was not long before the growing strength of Assyria became a serious menace to Babylonia. In the mittide of the thirteenth century, an Assyrian force advanced upon the city of Babylon. For some decades Babylon remained in subjection to Assyria, and, although she regained temporarily her independence, and even a fair measure of her former glory, the power of the Cassites was weakened. Internal dissensions added to the difficulties of the sit-

uation and led to the overthrow of the Casaltes in 1151 B. C. Native Babylonian now occupied the throne for a short time but, though able to check the danger atill threatened from Elam, they could not resist Assyria. At the chee of the twelfth century. Tighthplieser I. secured a firm hold upon Babylonia, which, thereupon, sank to the position of a dependency of the Assyrian monarchy.

III.

In contrast to Babylonia, which bears, from the start, the stamp of a civilizing power, Assyria, from its rise until its fall, is essentially a military empire, seeking enlargement of power, and engaged in incessant warfare. Its history may be traced back to about 1800 B. C., when its rulers, whose sent was the ancient city of Ashur, first began to make their presence felt. The extension of their power was due to the growing importance of the central city, and it soon embraced the whole of Axayria proper. Its rulers next pressed on into the mountain regions to the east, and then advancing to the west, they encountered the forces of Egypt, whose Asiatic campaigns gin about the time of the rise of Assyria. The Egyptians, aided by the Hittites, who possessed strongholds on the Orontes, managed to check the growth of Assyria on the west for several centuries. In the meanwhile, the Assyrian monarchs gathered strength enough to make attacks upon their southern neighbors until, at the end of the twelfth century, as we have said, they added to their long list of titles have said, they added to their long list of titles that of "ruler of Babylonia," They either took the government of the southern provinces into their own hands or exercised the privilege of appointing a Governor to regulate the affairs of the Euphrates Valley. Thenceforth, for a allong time, the history of Babylonia and Assyria must be viewed collectively. This third period of Babylonian history—the second of Assyrian history—begins about 1100 B.C. and continues till the fall of Nineveh, in the year 695 B.C. These five contures represent the most glorious epoch of the united Mesopotamian Empire. During this time Assyrian acquired the dimensions of an all-embracing power. After severe struggles the Hitties were overcome and Assyrian sovereignty was established over the lands bordering upon the Mediterranean. The principalities of northern Syria were made tributary, and Phoenicia and the kingdom of Israel were conquered, while the southern kingdom of Judah purchased the shadow of independence by complete submission to the conditions imposed by the irresistible empire. Far to the northenst, also, Assyria extended her sway, while Babylonia retained a distinctive existence chiefly in name. The North, however, inherited the civilization of the South. Babylonian temples supplied the models for Assyrian architects. The literary treasures in the architects of the Southern cities were copied by the scribes of the Southern cities were copied by the scribes of the Assyrian kings. Meanwhile, the capital of Assyria newly and the year 850 B.C. and Calab in turn visible in the year 850 B.C. and Calab in turn visible in the year 850 B.C. and Calab in turn visible in the year 850 B.C. and Calab in turn visible in the year 850 B.C. and Calab in turn visible in the year 850 B.C. and Calab in turn visible in the year 850 B.C. and Calab in turn visible in the year state of the great diagram the province of th that of "ruler of Babylonia." They either took the government of the southern provinces inte their own hands or exarcised the privilege of appointing a Governor to regulate the affain of all the then known nations of the carth was averted. The province of Assyria proper fell into the hands of the Medes, but Babylonia, with her independence established on a firm footing, was the real heir of Assyria's spirit. Her most glorious monarch, Nebuchadnezzar II. (644-651] B. C.), seems to have dreamed of gaining for Babylon the position once held by Nineveh of mistress of the world. Taking Ashurbanabal as his model, he carried his arms to the west, subdued the kingdom of Judah, and, nassing on to Egypt, strove to secure for Babylon the supremncy exercised there for a short time by Assyrian monarchs. In addition to his military campaigns he appears in the light of a great huilder, enlarging and beautifying temples throughout the cities of his realm, and adorning his capital with the walls, embankment works and other improvements that gave it a permanent pince in the traditions of the ancient world as one of the seven wonders of the universe. The glory, however, of this second Babylonian Empire was of short duration. Its fall was as sudden as its rise had been unexpected. Nebuchadnezzar's son was murdered in 560 R. C., within two years after expected. Nebuchadnezzar's son was murdered in 560 B. C., within two years after reaching the throne, by his own brother-in-law. Neriglissar, and, the latter dying in-law. Neriglissar, and, the latter dying after a reign of only four years, his intent child was put out of the way, and Nabonnedos, a high officer of the State, mounted the throne. In the year 550 news reached Babylon that Cyrus, the King of Anzan, had dealt a fatal blow to the Medean kingdom, having captured its ruler and united it to his own territory. Eleven years inter Babylon fell an earpray to the Persian conqueror. Politically the history of Babylonia and Assyria terminates with the advent of Cyrus. The annals, also, of the Mesopotamian religions come to an end with the downfall of the second Babylonian Empire, but their rites continued to be practiced for a long time, and left traces in the popular superstitions and traditions that thavesu reived the conquests of Greeks, Romans and Arabs.

IV. For the religious doctrines of the Babyledans, and for an analysis of their relations to Judaism, Christianity, and Mohammedanism we must refer the reader to the book itself. We would say a word, however, about Babylonian ethics, concerning which some miscon-

ception is current, owing to the misinterpretation of a certain religious usage mentioned by Herodotus. It is now known that the standard of private morality was high, both in Babylonia and Assyria. The Babylonians had passed far beyond the stage of making the satisfaction of one's own desires the standard of right and wrong. Their kings prided themselves upon being the promoters of justice Even the Assyrian rulers, who seemed, while conducting their wars, to be bereft of all the soft emotions, declare that their highest aim is to spread plenty and happiness Sennacherib calls himself a king who loves righteousness," and he, as well as many a predecessor and successor, busied himself in making good the rights of those of his subjects who had been wrongfully deprived of their possessions. The legal and commercial tablets prove that due consideration was given to the treatment of woman, the most satisfactory index of high ethical conditions. She could hold property and dispose of it. Before the courts her status did not differ materially from that of men. A husband could not divorce his wife without sufficient cause, and children owed obedience to the mother as well as to the father. Folygamy, no doubt, the valled, but Prof. Jastrow deems it an error to suppose that polygamy is inconsistent with high ideals of family life. Such vices as adultery, hatred, lying, cheating, and insincerity, together with the use of false measures and the removal of landmarks, are denounced in the incantation texts, and, in accordance with this standard, are to be found in the records of lawsuits and agreements between partise clear indications of the stringent laws enacted for the nurpose of protecting different particular and the stringent laws enacted for the nurpose of protecting different particular in the stringent such the fact that he established ordinances to the end that the strong might do hoharm to the weak. It is true that the institution of slavery flourished in Babyionia and Assyria therefore the little from servants indentured for a longer or shorter period and expected to render certain specified services. The temple attendants seem to have belonged mostly to this class. A benign treatment of slaves were often the confidential agents of their misters, and attended to the business affairs of the latter blands. Injuries inflicted upon them were binding. Injuries inflicted upon them by their masters are found holding property in their own right. Contracts entered into by them were binding. Injuries inflicted upon them by their masters are found holding property in their own right. Contracts entered into by them were binding. Injuries inflicted upon th many a predecessor and successor, busled him elf in making good the rights of those of his those of Babylonia, still it may be assumed that, as the Assyrians were the pupils and that tators of the Babylonians in almost everything pertaining to eivilization and religion, the sentent tone of life in Assyria was scarcely as high rulers was probably but a symptom of the flercer character of the people. f Assyria were on a lower ethical hose of Babylonia, still it may