THE GROWING POWER OF THE GOVERNOR

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Chapter One..

Introduction

Governmental institutions are continually changing. Forms which seem to serve the need of the state at one stage of the history of the people become very inadequate at a later stage and must give place to others which more effectively meet the demands of changed conditions. Many of these forms long ago served their time and are no longer considered by thinking men as being applicable to present conditions, while others, although they have been known for generations, are still struggling to maintain their position against the encroachments of later forms of government. At any particular time it is no easy task to say how the tide of battle is moving; but it is not so difficult to look back over the century that is past and see the turning point in the history of some institution. This is true of the history of the legislative body in its struggle to maintain its position against the encroachments of

the executive. Representative government, which had its origin in the middle ages, came into existence as a means by which the different estates voted their contributions for the support of the state. Although checked for a time during the seventeenth century by the growth of the centralized monarchy, it triumphed over the forces of absolutism and made a place for itself among the enlightened governments of the world. It has been a potent factor in reducing the tyranny of kings and has given to the people a predominant share in the government. Indeed it would be impossible to enumerate the advantages that have come to mankind as a result of the development of representative government. But the work of our representative bodies has not been as satisfactory as many of its advocates believed it would be.⁴ Along with the numerous advantages have come a great many disadvantages not foreseen by those who saw in the system a perfect and flawless method. / It is true that the benefits have been so many that few who have lived under a representative government would think of returning to the old system super~~ceded~~ by it. On the other hand

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- 1 - Shepard: The Decline of Representative Government, Manuscript.
  - 2 - Lowell: Public Opinion and Popular Government, p. 130.
  - 3 - Shepard: Decline of Representative Government; Ms..
  - 4 - Lowell: op. cit., p. 130.

only the least critical of observers would be willing to defend the statement that all which could be desired has been attained. Since the time of the introduction of the representative system thinking men have observed its defects, searched for their causes and endeavored to supply the proper remedies. While these proposed remedies have been many, the one which has perhaps received the greatest amount of attention has been to increase the power and influence of the executive. Even a cursory survey of the history of democratic states is sufficient to convince one that the power of the executive in such states tends to grow at the expense of the legislative body. Evidence of the existence of this tendency among the more democratic states will be given by quotations from well informed writers who are familiar with the situation existing in England and the United States.

While in almost all countries with representative governments, the executive has been gaining power at the expense of the legislature, this tendency has been most evident in England where the relation between the two departments is most intimate. ⁵ This tendency has been especially noticeable since the reform bill of 1832, when

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5 - Allen: The Position of Parliament, Pol. Sc. Rev. Vol. 29, p.216

the electorate was substituted for the house of commons as⁶ the ultimate authority to which responsibility was due. Since that time there has been a continuous decrease in the legislative power, the deliberative power and the executive control which had formerly belonged to parliament. Sidney Low has said that a member of parliament outside the cabinet has little more real power to make laws than a private citizen. He further states that in recent years votes are not changed by discussion and that a man is not elected to parliament to decide whether a particular measure is wise or⁷ unwise, but to vote for or against a particular ministry. In the middle of the last century there were always from one to nine amendments to government bills carried against the ministry in each session. In the twenty years following 1886 there was only one session in which two such amendments were carried, in seven sessions but one, and in twelve sessions, none at all were carried.⁸ A member of the house of commons would be sure to ruin his political career if he should undertake to desert the party to which he belongs. His constituents would consider that he had betrayed their

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6 - Shepard: The Decline of Representative Gov't; Ms.

7 - Low: If the House of Commons were Abolished;
Forum, Vol. 36, p. 848.

8 - Shepard: The Decline of Representative Gov't; Ms.

confidence and would no longer think of supporting him.⁹
In view of these facts supported by the statements of men who are familiar with the situation in England it must be concluded that at present the ministry has little opposition in carrying out its policies.

But if it can be shown that individual members are successful in introducing measures and securing their passage they still have a very important position even though they are unable to defeat those of the ministry. This question is answered by a quotation from Mr. Godkin as follows:-"Practically a private member can not originate a bill or get it discussed, except with the consent of the ministry. Indeed as a legislator he is always in a certain sense an intruder. The functions of the two houses are essentially not the drafting or proposing laws, but seeing that no law is passed which is not expedient and constitutional. The British ministry in fact legislates as well as administers. Any private member who should attempt to introduce a bill would be frowned down on and silenced. His business is to hear what the ministry proposes and to pass judgment on it".¹⁰ We may conclude then

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9 - Low: If the House of Commons were Abolished;
Forum, Vol. 36, p. 850.

10 - Godkin: Unforseen Tendencies of Democracy, p. 99.

that, since the private member does not propose laws and does not amend the ones proposed by the ministry without the consent of that body, it is quite evident that his legislative powers are very small.

After noting the weakness of parliament as a legislative body it will be valuable to observe how much power it has as a deliberative body. In this again we find a weakness that is only recent in its appearance. Discussion to^{be}/powerful must have at least some degree of freedom. This freedom is no longer permitted in the British Parliament. The great press of business before the House of Commons and the necessity of holding within bounds the attempts to obstruct the action of that body have made very strict rules necessary.¹¹ Both the closure and the guillotine are brought into frequent use to check¹² discussion of measures under consideration. There is no time for debate and frequently no need of it. The question before the house has been fully discussed in the

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11 - Jellinek: Parliamentary Obstruction, Pol. Sci. Quar., Vol. 19, p. 379.

12 - Ogg, The Governments of Europe, p. 139.

press and on the platform and little could be said that has not already been said by newspaper editorials and public speakers. Lord Salisbury said in 1894, "Discussion of a measure is possible in the cabinet, but for any effective or useful purpose, it is rapidly becoming an impossibility in the house of commons."¹³ Since the members can not fully discuss the measures of the ministry, it is impossible for them to win supporters to their way of thinking or even to point out to the ministry in an adequate manner the weaknesses of the proposed bill.

But if it can be shown that parliament has effective control over the ministry, it will follow that that body will take pains to learn what the will of the majority is and propose such laws as will be acceptable to that majority. If as the Duke of Devonshire has said, parliament makes and unmakes ministries and revises their actions, that ministers make peace and war at pain of instant dismissal by parliament from office and that in affairs of internal¹⁴ administration the power of that body is equally direct, then it must be true that, without the power of enacting

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13 - Quoted by Low in Forum, Vpl. 36. 351.

14 - Shepard: The Decline of Representative Gov't. Ms.

laws and without the privilege of deliberation, parliament, through its power of executive control, can still be the governing power in England. But this statement was made by a man who had not kept pace with the march of political events and who was only describing what was at one time the true condition of parliament.¹⁵ (The following statement by Mr. Low furnished rather conclusive evidence that there has been a great change in the British constitution, ~~since the time the Duke was describing~~:- "The house of commons no longer controls the executive; on the contrary the executive controls the house of commons. The theory that the ministers must justify their measures before the representatives of the nation until recent times corresponded, more or less, to the facts; but it certainly does not do so now. Under the present circumstances, the control of the house of commons over the executive is little greater than that of the congress of the United States over the executive. The electorate chooses the prime minister; the house only acquiesces in the selection."¹⁶ It is true that the members of parliament may cause the resignation of the ministry by

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15 - Shepard: op. cit., Manuscript.

16 - Low; If the House of Commons were Abolished, Forum, Vol. 36, 855.

a vote of lack of confidence, but it is no less true that the cabinet, by appealing to the electorate, may throw the refractory members out of office.¹⁷ Since the ministry and the opposing members of parliament have an equal chance of defeat on the decision, the whole question depends upon the support of the electorate. In such a contest a powerful ministry whose acts are public and which has the machinery of the government behind it has every advantage over the dissenting members. The result is that the private members have every incentive to keep silent unless there is an unusual opportunity to overthrow the ministry. It is, therefore evident that the ministry is not dependent on parliament for its existence.

In a financial way the legislature of England has less control over the executive than has the congress of the United States over the president. In the latter country the executive must depend entirely upon the legislative body for appropriations, but in England parliament has lost control¹⁸ of the budget. All specific measures for the expending of money and all proposals for the imposing of fresh

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17 - Allen: Position of Parliament, Pol. Sci. Rev. Vol. 29. 234.

18 - Ibid., p. 234.

taxation or the increase of existing taxation must emanate from the crown, i.e., in practice from the cabinet. A private member may go no further in this direction than to introduce resolutions of a wholly general character favoring some particular kind of expenditure, except that it is within his right to move to repeal or to reduce taxes which the government has not proposed to modify.¹⁹ The house of commons has not exerted the right to withhold supplies from the crown since 1688.²⁰ After such a long period of disuse it seems hardly possible that this right could now be exercised without arousing unusual excitement and resentment throughout the Kingdom. The facts which have been given seem to offer conclusive evidence that parliament has little actual power of legislation, very limited power of deliberation and only a small control over the executive. In comparing its present position with the one which it held during the past century, we become convinced that the legislative body of England is losing in importance while the executive is increasing in power and prestige.

In the United States the executive power has a

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¹⁹ - Ogg: The Governments of Europe, p. 135.

²⁰ - Shepard: Doctrine of the Budget, Pol. Sci. Rev. Vol. 4.

basis unlike that of England. The president has never been the creation of congress as the ministry of England was at one time the creation and tool of the house of commons. But there has been a tendency towards executive growth in the American republic of little less importance than that of Great Britain. When the American people attempted to form a central government after declaring themselves free from the control of Great Britain, they were smarting under what considered the tyranny of executive power. The British king and the colonial governor appointed by him had won the undying hatred of the american patriot. Hence he felt with absolute certainty that no form of government in which the executive held an important position could be endured. Such was the feeling when the Articles of Confederation were formed and adopted. The result was that no provision was made for an executive officer to take charge of the administrative part of the government. Experience soon proved the necessity of an executive and, in the constitutional convention of 1787, there was little or no disposition to leave that official out of the plan of government. But even here the old

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fear of executive tyranny manifested itself and caused no little dissention among the members as to the best way to elect the president. Many thought it an absolute necessity that the executive power be entirely within the control of the legislative body. It was proposed and adopted that the president be chosen by congress and this provision remained in the proposed constitution until the very last moment when the method of selection by the electoral college was²¹ adopted. /

The original conception of the presidency was quite unlike the present one. He was thought to have no other duties than to enforce the application of the laws and the execution of public policy. He was to be something like a committee of one to take care that the laws enacted by congress should be properly applied. In legislation he was to exercise only a negative influence, restraint rather than guidance. He was expected to have little or no positive share in the determination of legislative policies and was in no sense to be held responsible for the enactment of good laws. It probably never occurred to the framers of the

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21 - Cleveland: Independence of the Executive, p. 2.

constitution that he should become the leader of his party and the guide of the nation in the shaping of political policies.²² But the presidency has not remained what the framers of the constitution supposed it to be. As President Wilson has said "it has been one thing at one time, another at another, varying with the man who occupied the office and with the circumstances that surrounded him."²³ It has however through all these changing conditions continued to grow in power and influence.

The framers of the constitution probably did not consider that the power of the president in foreign affairs was sufficient to cause any considerable difficulty between the United States and other countries. And yet this has happened many times during the short history of our country. In 1845 President Polk sent American troops into the disputed territory between the United States and Mexico and then declared that a state of war existed by the action of that country because these troops had been attacked by Mexican soldiers. In 1895 President Cleveland sent to Congress such a war-like message with reference to the boundary dispute

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22 - Garner: Woodrow Wilson's Idea of the Presidency;
Rev. of Rev. Vol. 47, 48.

23 - Wilson: Constitutional Government in the United States;
p. 51.

between Great Britain and Venezuela as to make war between the former country and the United States imminent. President McKinley sent the battleship Maine to Havana on his own initiative. The result was the sinking of the ship and the immediate crystalization of warlike feeling throughout the United States. President Roosevelt made an executive agreement with San Domingo embracing terms which had been rejected by the senate and sent battleships to assure its enforcement. He also recognized the independence of Panama immediately after its revolt against Columbia and thereby aroused strong resentment on the part of the latter against the United States government. President Wilson sent an army into Mexico to capture a military chieftain and caused an increase of the feeling of hatred which the Mexican has long had for the American. Precedent has been added to precedent until the power of the chief executive in dealing with foreign affairs has reached a height that the earlier students of the constitution must have thought impossible.

The power of direction and control over the national administration which the president exercises is far greater

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than would be supposed from a reading of the constitution. There was little in that instrument to suggest the great amount of administrative power which is now universally accepted as belonging to him.²⁴ The organization of the administrative system in the early years of the history of the United States gave evidence of the opinion of congress that the chief executive had only a limited control and power of directing over officers doing administrative work. The act organizing the treasury department did not mention any power of the president to direct. The secretary of the treasury was to perform such duties as he should be directed to perform; but these directions were to come, not from the president but from congress. The act organizing the post office department was of a similar character. The appointment of all officers in that department was given to the postmaster-general who was responsible to congress and not to the president.²⁵ How the older conception has changed is shown by an opinion given by Mr. Cushing, the United States attorney-general during the administration of President Pierce who says, "I hold that no head of a department can

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24 - Goodnow: Principles of Administrative Law, p. 78.

25 - Ibid, p. 79.

lawfully perform an official act against the will of the president and that will is, by the constitution, to govern all such acts."²⁶

The great increase in the power of the president to direct administrative officials has been due in great part to his power of removal. In the first congress the question as to the proper method of removing any administrative official was raised and aroused considerable debate. Finally by the vote of the vice-president as president of the senate it was decided that this power belonged to the president. Although this decision was upset for a time by the struggle between President Johnson and congress and the resulting tenure-of-office acts, it is now universally accepted that the chief executive has both the legal and moral right to remove any officer whom he appoints or nominates without being required to give cause for his action.²⁷ So far as the express terms of the constitution provided, the president received no administrative powers outside his powers of appointment. But as Mr. Goodnow states, "American development has completely changed the conception of the

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26 - Quoted by Goodnow, op. cit., p. 81.

27 - Beard, American Government and Politics, p. 198,

president's position. The duty imposed upon him by the constitution to see that the laws are faithfully executed, has been construed by congress as giving it the power of imposing duties and conferring powers upon him by statute, and has led to the passage of almost innumerable laws which have greatly increased the importance of the president's position, and have given him authority relative to the details of many administrative branches of the national government. Even in the absence of such statutes he is now considered to have vested in him, by the constitution, great powers of administrative detail."²⁸

The military power of the president needs but little discussion to show the remarkable expansion in that field. The acts of President Lincoln during the Civil War justify the statement made by Mr. Beard that greater military power than that exercised by President Lincoln would be difficult to imagine.²⁹ The same idea was expressed by Mr. James Bryce who said that, "Abraham Lincoln wielded more authority than any other single Englishman since Oliver Cromwell."³⁰ The action of President Cleveland in sending troops to Chicago

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28 - Goodnow: op. cit. p. 75.

29 - Beard: op. cit., p. 195.

30 - Quoted by Ashley; American Government, p. 332.

during the Chicago strike is an indication of the power of the president over the military forces of the state even during times of peace.³¹ Although the constitution confers upon congress the power to declare war the president may easily bring about such conditions as to make war unavoidable as was done by President Polk at the beginning of the Mexican War. The examples which have been given show a practice much out of harmony with the early contention that congress can provide "that a particular officer shall be assigned by the commander-in-chief to a particular division, or that in case a regiment or company has been dispatched to a certain point by presidential order, congress can countermand the order."³²

The legislative power of the president is very great and is yearly becoming greater. So long as the conception remained that the purpose of the government was merely to maintain order among the citizens, the haphazard methods of congress were fairly capable of coping with the problems presented for solution; but with the growing belief that government in a democracy should be largely a means of promoting the welfare of the individual and of society, and that

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31 - Cleveland: Presidential Problems, p. 106.

32 - Henry: Administrative Influences of the Legislature; Ind. Vol. 60, p. 1216.

the efficiency of the government consists in its ability to lend itself to the attainment of this end, the legislature has failed to meet the test and has consequently been compelled to give way to the executive which has given evidence of its ability in this respect.³³ Not only does the president influence legislation by his formal messages, but he and his cabinet members meet with members of the legislative committees where their knowledge and prestige give them great opportunities to influence the final shaping of a bill.³⁴ What is perhaps still more important in enlarging the influence of the executive in legislation is the increasing tendency on his part to veto bills that are not satisfactory to him and the increasing tendency on the part of the people to agree with him rather than with congress. Down to Jackson's administration but seven bills were vetoed. Jackson vetoed twelve bills; Johnson, twenty-one; Grant, forty-three; Cleveland over three hundred; McKinley, fourteen; and Roosevelt, forty-two. Out of about five hundred bills vetoed, only about thirty were subsequently passed over the veto, and fifteen of these were during the administration of President

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³³ - Matthews: The New Stateism. Mo. Am. Rev., Vol. 193, p. 809.

³⁴ - The Executive as Legislator, Nation, Vol. 82, p. 507.

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Johnson. Since in normal times the chances of passing a bill over the veto of the president are so small, the threat of using the veto power is evidently of great value to that official in securing measures satisfactory to him. A quotation from a statement made by Senator Bacon of Georgia during the administration of President Roosevelt gives some notion of the influence exercised over legislation by the executive at the present time. "It must be admitted, he says, "by all having knowledge of every day occurrences that the most influential and controlling part of the government is the White House. People formerly went to congress to get laws passed, now they go to the president to regain a position lost or to advance still farther some measure they are supporting. Such a condition means that the controlling factor in national legislation is not in congress where the constitution vested it,, but in the president. It is openly and undisguisedly recognized and asserted with almost daily reiteration in the public press that legislation depends solely on whether or not the measures are made administration
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measures." That President Wilson has in no sense allowed

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35 - Guitteau: Government and Politics, P. 309.

36 - Bacon: President and Congress; Ind, Vol. 60, p. 546.

the legislative influence and prestige of his office to decline during the time he has been president, is quite apparent from even a casual reading of our daily papers. Perhaps no better description of the present day conception of the president has been given than the one given by President Wilson many years before he attained the office he now holds. In speaking of the president he says, "He is the political leader of the nation, or has it in his choice to be. The nation as a whole has chosen him and is conscious that it has no other political spokesman. His is the only national voice in affairs. Let him once win the admiration and confidence of the country, and no other single force can withstand him. His position takes the imagination of the country. He is the representative of no constituency, but of the whole people. If he rightly interpret the national thought and boldly insist upon it, he is irresistible; and the country never feels the zest of action so much as when its president is of such insight and calibre. Its instinct is for unified action, and it craves a single leader. A president whom it trusts cannot only lead it, but can form it to his views."³⁷

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37 - Wilson: Constitutional Government in the United States; p. 68.

A study of the governor as he is seen in the American states furnishes more complete evidence of the growing power of the executive. The distrust which was felt toward the executive in the latter part of the eighteenth century has been mentioned in discussing the powers of the president. ✓ In the states this fear of executive tyranny had even more influence than in the national government. As Madison said in the constitutional convention of 1787, the executives were little more than ciphers; the legislatures³⁸ were omnipotent. The prevailing theory was expressed by Mr. Roger Sherman when he said that, "The legislature is the depository of the supreme will of the people and it should be responsible not only for the enactment of new laws but also for the enforcement of old ones."³⁹ In only a few of the states were the early governors selected by the people, in the majority of cases they were to be elected by the legislature. In most of the states there was an executive council, chosen either by the legislature or the people, which acted as a check on the governor in the exercise of his executive powers. In a large majority of the states

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38 - Eliot's Debates, Vol. 5, p. 327 .

39 - Quoted by Alger in Atlantic Monthly; Vol. 102, p. 577.

his term of office was only one year, and in none of the states was it longer than three years. His power of appointment was small and was further limited by the requirement that all appointments must be approved by the executive council. His legislative powers were almost negligible and his pardoning power was usually limited by various requirements and restrictions which in some cases almost destroyed it. Since in only one state constitution was the amount of his salary definitely stated, he was compelled to depend⁴⁰ upon the legislature for whatever remuneration he received. As stated by one writer the dependence of the executive on the legislature both in respect to salaries and appointments could quite easily absorb all administrative powers not expressly conferred upon him, and could even seriously cripple the executive in the exercise of those powers which were ex-⁴¹pressly conferred upon him by the constitution.

But there has been a great change in the relative positions of the legislative and executive departments since the time of the first American state constitutions. The confidence in the legislative body has been destroyed and the

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40 - Mathews: Principles. of Am. St. Adm. pp. 31-35.

41 P Quoted by Mathews, op. cit., p. 35.

belief in the superior wisdom of the representatives is
42 gone. The mass of foolish, useless and in many cases
harmful legislation has had its effect and people have ser-
iously doubted whether the legislature is the proper "depos-
itory of the supreme will of the people" as Mr. Sherman said.
The tendency of the legislatures to waste their time in
quibbling over local and unimportant measures has created
a strong impression that they do not represent the will of
the people at all but only their own, and that of the nar-
43 row constituency which they serve. The logrolling methods
which have resulted from the method electing by small dis-
tricts have made it certain that the majority of the members
are unable to look beyond the selfish interests of those
who elected them and see the greater interests of the whole
state. 44 X The prominence of party politics has become so
great that it is no unusual thing for a law to be passed, not
because it is believed to be the best thing for the state,
but because it will strengthen the party in power or weaken
the minority party. Men whose private interests will be
greatly influenced by governmental measures can well afford

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42 - Lowell: Public Opinion and Popular Government; p. 130.

43 - Lowell: op. cit., p. 134.

44 - Godkin: Unforeseen Tendencies; p. 121.

to buy their way into the legislature where they may defeat legislation hostile to their business or promote legislation which will increase their financial returns.⁴⁵ Other men with no business of their own to protect find their way into the legislature to protect the interests of any one who is willing to pay for it. These men not uncommonly go so far as to introduce bills especially injurious to the business of certain individuals and then demand a bribe in return for killing their own bill.⁴⁶ The lobbyist has dogged the steps of the honest legislator and put temptation in his way until no man is safe from the accusation that he has been bribed. The economic development has opened up such a field of conquest that the abler minds have turned from the uncertain field of politics, with its unpleasant campaigns, to the more certain and profitable field of industry, where one may be free from the vexations of political scandals, with the inevitable result that the men who hold positions in political life are, generally speaking, only second or third rate men whereas such positions were formerly held by the ablest men of the state.⁴⁷ The entrance of the best

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45 - Lowell; op. cit., p. 134.

46 - Lowell: op. cit., p. 139.

47 - Shepard: J. S. Jr. The Decline of the Principle of Representation in Popular Government, Forum; Vol. 43, 642.

men into the legislature has also been discouraged by the fact that the later constitutional conventions, forced by necessity, have so limited the powers of that body that men of ability hesitate to take a position where they feel that nothing has been left for them to do except mere routine work which, however great in mass, is unimportant in subject matter.⁴⁸ The enormous amount of business which must be done by the legislature has tended to hasten action in that body by limiting the amount of debate, with the result that the assembly is no longer a deliberative body but "only a place where arguments made in the press and on the platform are repeated and conclusions made on the outside are written into laws."⁴⁹ Although the most capable men of the state are refusing to accept positions in the legislature the problems confronting that body for solution are daily becoming greater with the increasing importance of social and economic questions.⁵⁰

These defects and others have brought to the people a realization of the fact that our legislative bodies have not and can not serve the purpose for which they were created.

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48 - Sheppard: op. cit., 642.

49 - Maine: Popular Government, p. 38.

50 - Sheppard: op. cit., 642.

But to make matters worse the voter is unable to place the responsibility for the failures of the legislature. He may be painfully conscious that nothing good and much that is bad has been done, but he can not place his finger on the guilty person. Each representative can point with pride to the many acts which he as an individual performed and to the wise suggestions made by him which, if they had been followed, would have saved the day. The sad part is that the individual can not be sure whether or not his representative is telling him the truth. The whole political system seems to him so full of inefficiency, graft and corruption and withal so full of mystery and complexity, that he is constrained to turn away from the whole thing in disgust. Too many have taken this position and even refuse to exercise the privilege of voting. But the greater number of thinking men have seen that, to solve the question of inefficiency and corruption they must first remove the mystery and complexity. This has been done by placing more power in the hands of the executive whose acts are before the public eye and who does his work under the full glare

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of publicity. If he acts wisely, his wisdom is evident and if he acts foolishly or with evil motives his deeds can not be hidden.✓ That the people of the United States have realized the need of bestowing upon the governor greater power is suggested by a quotation from an article by Mr. Bradford in the Nation in which he says, "Governor after governor has been making of himself the chief fountain of legislation in his state. There is no more suggestive sign of the times. East as well as West, the phenomenon presents itself. Governor La Follette in Wisconsin has been imitated by Governor Johnson of Minnesota and Governor Hoch of Kansas. To the initiative of Governor Hughes of New York comes an immediate response from Governor Woodruff of Connecticut and Governor Fort of New Jersey. All of them press critical matters upon their legislatures. All of them tacitly assume that the governor must intervene with prompting and public advocacy of important legislation, or else it will fail. Nor is this attitude much resented by the legislatures. As for the people, they accept it enthusiastically." 51

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51 - Bradford: A Real Governmental Change; Nation, Vol. 86, 208

The tendency toward a decline in the power and position of the legislature and a corresponding enhancement of that of the executive is one which has been widely observed and commented upon. Probably no single tendency is so evident or so important in modern government. There has, however, as yet been no detailed study of the process by which this transformation has taken or is taking place. It is a general tendency which may be observed in the governments of all countries, yet the statutory and constitutional changes which reflect the changes which it has produced and is producing have not been sufficiently studied. ✓ As a contribution toward this general purpose it is the object of this essay to attempt to trace the development of the power of the executive in Missouri since the beginning of the state's history. It has been possible in this study only to follow the growth of the governor's power as it is exhibited in the constitutions, constitutional amendments and statutes. And this, because of limitations of time, has not been pursued farther than through the constitution of 1875. It is the writer's hope to complete the study at a later date

by completing the canvas of statutory and constitutional material, and also to investigate other sources of information, particularly those which may shed a light upon the underlying currents of public opinion in the community at different periods. In its present form, this essay must be considered as in the nature of a partial and preliminary study of the subject.

Chapter Two.

The Constitution of 1820.

When the Missouri Constitution of 1820 was formed, ^{changes in the} the power of the executive had been taking place for more than fifty years. For this reason we shall not expect to find existing here the same conditions and ideas that existed in 1780 when the memory of the tyranny of colonial governors was still fresh in the minds of the constitution makers. Even a hasty glance at the Missouri constitution will show that there had been a change, that the fear of the executive tyranny was rapidly becoming a thing of the past and that the legislature was no longer occupying the entire field of government as it had done in the early history of the American States.¹ There were several causes for this increased confidence in the executive. In the first place the experience of the older states which had gradually extended the power of their governors was conclusive evidence that the disastrous results which were

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¹ Missouri Intelligencer, Nov. 18, 1820.

once thought to follow executive participation in government had not come. On the other hand many advantages had appeared as a result of permitting him to take a greater part in the work of the state.² In the second place the territorial governors who had occupied a very important place in the government had accustomed the people to the idea of an executive with considerable influence. These governors had all been able men and, with one exception, very popular.³ Such men as William Henry Harrison, Meriwether Lewis, and William Clark were capable of appealing to the imagination of the frontiersmen. They were looked upon as being men who felt and thought as every frontiersman did. Under such conditions it was rather difficult for the practical Missourian, who knew little about government except what he himself had seen, to feel much fear of executive tyranny and despotism.[✓] That these early governors filled an important place in the territorial government in looking after the more general interests of the people and in being persons whom the people could hold

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² Merriam: Political Theories in America, p. 183

³ Viles: History of Missouri, p. 44

responsible for any neglect to serve these interests is suggested by the message of Governor M'Nair to the second general assembly.⁴ In this message he expressed the opinion that he should confine his remarks to matters of general concern. He also spoke of himself as being the power whose responsibilities to the people were immediate and undivided. M'Nair was no political philosopher or student who had gained his ideas of government from the writings of philosophers; but a man of the common people whose ideas may well be taken as an index of the opinion of at least a considerable portion of the citizens of Missouri.⁵ A third cause for the increasing power of the governor is to be found in the fact that the territorial legislature had suffered in reputation in the few years of its existence. Among the charges that were brought against that body and its immediate successor, the state legislature, were ignorance,⁶ over legislation,⁷ wasting of time over local and insignificant matters,⁸ lack of familiarity with the needs of the state,⁹ and corruption.¹⁰

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⁴ Intelligencer, Nov. 12, 1822

⁵ Ibid., Aug. 5, 1820

⁶ Ibid., Aug. 26, 1820

⁷ Ibid., May 8, 1824

⁸ Ibid., Dec. 10, 1822

⁹ Ibid., Sept. 2, 1820

¹⁰ Ibid., Sept. 23, 1820

The personnel of the constitutional convention had no little influence in determining the strength of the executive as created by that instrument. The men ~~who~~ were most influential in forming the constitution were men of the more liberal type who saw more danger in the radical and irresponsible legislature with which they were familiar than in a strong executive. They had escaped that fear of executive tyranny that had characterized earlier constitution makers and had not yet become adherents of that excessive democracy which objected to executive influence, not because of fear, but for no other reason than that it seemed undemocratic. There were several reasons for this conservative liberalism. In the first place the western and presumably more democratic^{ic} settlements were not fully represented. When the Missouri delegate to Congress, John Scott, made his report to that body upon the number of delegates to which each county was entitled, he failed to take into consideration¹¹ the rapid growth of the northern and western settlements. Not only was this section not fully represented in numbers in the convention, but it was discriminated against when the

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Intelligencer, Aug. 12, 1820

committees were appointed to draft the constitution. On the four original committees only four of the twelve members were from this section while there was only one member from it on the final select committee.¹² Had this half of the state been fully represented it might have made a difference in the character of the convention. In the second place members of the convention were as a class well educated men, three fifths of them being men of college training and a large number of the others were men who had read widely.¹³ The early training of the men in the convention was also of importance in determining their attitude on the question of executive power. A considerable portion of them were from Kentucky or from that portion of Virginia that had become Kentucky and so were attached to the institutions of that state. Consequently many features of the Missouri constitution were copied from that of the older state and many more were unmistakably influenced by it.¹⁵ Another important factor in determining the action of the members of the convention in conferring upon the governor a position of prominence was the fact that a majority of

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Shoemaker: Missouri's Struggle for Statehood, pp. 184-187

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Shoemaker: Missouri's Struggle for Statehood, p. 159

them were wealthy. Fourteen of the forty-one members were among the wealthiest men of the territory while all but four received large incomes either from business or from legal practice.¹⁶ The fact that the business and lawyer class predominated in the convention also helps to explain the conservative attitude with reference to the power of the executive. A strong executive meant to them a more stable government. It was not so much in number however that these two classes predominated; but in influence. The main work of the convention was placed in their hands. Of twenty-five committee places on eight committees there were one surveyor, three teachers, three landed men, one politician,¹⁷ three business men and fourteen lawyers. According to Shoemaker the principal authors of the constitution were Barton, Bates, Cook, Jones, Findley and Scott. Five of¹⁸ these were lawyers and the sixth was a pedagogue politician. When we remember that the great amount of litigation over the Spanish land grants had attracted some of the best legal talent in America to Missouri we can well understand that the

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¹⁶ Shoemaker: Missouri's Struggle for Statehood, p. 163

¹⁷ Ibid., pp. 158, 210.

¹⁸ Ibid., p. 210

lawyer class exerted an influence out of proportion with their numerical strength.¹⁹

That the position of the governor was looked upon with considerable respect in the convention^{of 1820} is shown by comparing in a general way the executive office as established by the constitution which it formed with that office in other states. In the Missouri constitution it was provided that he be selected by the qualified voters of the state for a term of four years.²⁰ He was required to be thirty-five years old and a natural born citizen of the United States, or an inhabitant of that portion of the Louisiana territory later embraced within the territory of Missouri, at the time the Louisiana purchase was made.²¹ The method of election provided was at that time the rule rather than the exception. However in seven of the twenty-three states of the Union in 1820 the legislature elected the chief executive.²² The term for which he was elected was greater than was found in a majority of the states. Ten states still held to the one year term, in six states the term was two years, the constitution of four states provided for a three year term while

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Shoemaker: Missouri's Struggle for Statehood, p. 156

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Constitution of 1820, Art. IV, Sec. 1

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Shoemaker: First Constitution of Missouri, p. 62

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Ibid., p. 64

while only three states had the four year term.²³ The age requirement was higher than that of any other state in the Union, the greater number being thirty years.²⁴ In only three other states was the governor required to be a natural born citizen of the United States.²⁵ It will be noted however²⁶ that he was given only the supreme executive instead of all executive power as was given to the President by the constitution of the United States.

Finally ✓ In Missouri's first constitution we find that the administrative power of the governor was of considerable importance. This was especially true with reference to his power of appointment. With the consent of the senate he was to appoint for a term of four years the secretary of state,²⁸ the attorney general,²⁹ and the auditor of public accounts.³⁰ The supreme court judges, the circuit court judges and the chancellor were appointed by him with the consent of the senate to serve during good behavior.³¹ It was also provided that he should fill any vacancy without the action of the senate.³² In the same manner he was to appoint the sheriff and coroner of new counties who were to serve until the

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23 - Shoemaker: First Constitution of Mo. p. 64

24 - Ibid, p. 62

25 - Ibid, p. 62

26 - Constitution of 1820, Art. IV, Sec. 1

27 - Constitution of U. S. Art. II, Sec. 2

28 - Constitution of 1820, Art. IV, Sec. 21

29 - Ibid, Art. IV, Sec. 18

30 - Ibid, Art. IV, Sec. 12

31 - Ibid, Art. V, Sec. 13

32 - Ibid, Art. IV, Sec. 9

next regular election.³³ The adjutant-general and other militia officers not otherwise provided for by the constitution were also to be appointed by him.³⁴ It will be seen that the governor's appointive power was very similar to that of the president of the United States.³⁵ Besides the lieutenant-governor the treasurer was the only official that he did not appoint.³⁶ Evidently it was felt that the legislature must keep control of the treasurer to be sure that the money should not be misspent.³⁷ A similar feeling controlled the action of the national congress when it established the department of the treasury.³⁷

In comparing the appointive power of the Missouri governor with that of other state governors, we find that the former had greater power in that respect. As in Missouri nearly all the state constitutions authorized the governor to fill vacancies.³⁸ In only seven other states was the secretary of state appointed by the governor. In two states he was elected by the people and in fourteen states he received his position at the hands of the legislature.³⁹

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33 - Constitution of 1820, Art. IV, Sec. 23

34 - Ibid, Art. IX, Sec. 2

35 - Constitution of the U. S. Art. II, Sec. 2

36 - Constitution of 1820, Art. III, Sec. 31

37 - Beard, American Government and Politics, p. 188.

38 - Shoemaker: The First Constitution of Missouri, p. 68.

39 - Ibid, p. 77.

In about half of the states of the union the governor appointed the sheriffs and coroners of the counties;⁴⁰ but in Missouri he was not given this power by the constitution. It was provided that, until the legislature should otherwise provide, these officials should be elected by the qualified voters of the counties.⁴¹ In Missouri as in nearly all of the states at that time the treasurer was to be elected by the legislature.⁴² The general rule was also followed in Missouri with reference to the adjutant-general⁴³ and the attorney-general,⁴⁴ both being appointed by the governor. In about half of the states the judges were appointed by the governor; in the remainder, with the exception of two states, the judges were elected by the legislature.⁴⁵

✓ The removal power of the governor as given by the constitution of 1820 was very small. Any one of the judges of the supreme and circuit courts and the chancellor might be removed from office by him on the address of two-thirds⁴⁶ of each house. This does not seem to have been a very important power so far as the governor was concerned. In

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40 - Shoemaker: First Constitution of Missouri, p. 80

41 - Constitution of 1820, Art. IV, Sec. 23

42- Shoemaker: First Constitution of Missouri, p. 54

43- Ibid, p. 110.

44 - Ibid, p. 99

45 - Ibid, p. 95

46 - Constitution of 1820, Art. V, Sec. 16

fact his part in it was so small that Shoemaker seems to ignore him entirely in saying that the general assembly was given power to remove judges.⁴⁷ The governor did however have some choice in the matter; for the constitution merely provided that he might remove, not that he should remove, the judge on the address of the legislature. In the majority of the states were to be found provisions similar to the one found in the Missouri constitution with reference to the removal of judges.⁴⁸

Outside of the appointive power of the governor there was little in the constitution conferring upon him the power of direction of administrative officials. His appointive power was an important means of securing control over the officials appointed. In the first place he could select men for the various offices with views relative to public policies similar to his own. And then he was able to appeal to the gratitude of his appointees to secure the performance of the things desired by him. But since he had no power to remove these officials his control was very incomplete. It depended entirely on the good will of the

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47 - Shoemaker: Missouri's Struggle for Statehood, p. 230.

48 - Shoemaker: The First Constitution of Missouri, p. 110.

officers that he appointed. The fact that the section of the constitution dealing with his power of executing the laws⁴⁹ is identical with the one in the national constitution⁵⁰ conferring this power upon the president, suggested great possibilities for the development of his power in this respect. But in Missouri as in the other states of the union the governor derived very little power from this part of the constitution.⁵¹ Whatever may have been the intention of the framers of the constitution, the power of the governor to direct civil administrative officials must depend on the generosity of the legislature and the personality of the governor.⁵²

Besides his power to direct the civil administrative officials the executive of any state is given some administrative services which he performs personally. This power of the executive may be divided into ordinance power, financial power and power to perform miscellaneous duties.⁵³ There was little in the constitution of 1820 that specifically authorized the governor to perform administrative services. The general executive power which he possessed

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49- Mo. Constitution, Art. II, Sec. 8.

50 - Constitution of U. S., Art. II, Sec. 3.

51 - Goodnow, Principles of Administrative Law, p. 95.

52 - Beard, American Government and Politics, p. 187.

53 - Goodnow, Principles of Administrative Law, p. 105.

would seem to confer upon him the authority to do this; but, as in the case of direction of administrative officials, this clause granted but little power until supplemented by laws of the legislature. Since the constitution established four other executive officials with specified duties, there was evidently very little left to be done by the governor at that time. The vesting of supreme executive power in him by the constitution seems to have had no other purpose than to require that, whenever any important administrative service needed to be performed, the legislature should place the performance of that duty in his hands. Evidently whatever power he might exercise in consequence of this grant would depend upon the action of the legislature and the interpretation given by the courts to this clause of the constitution.

Under the political power of the governor will be discussed his ⁵⁴military power, his legislative power and his judicial power. His military power may be divided into his power to command and his power of military administration. By the constitution of 1820 the chief executive

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54 - Goodnow. Principles of Administrative Law, p. 96

was made commander-in-chief of the militia and navy of the state except when they should be called into the service of the United States; but he was not required to command in person unless he should be advised to do so by the legislature.⁵⁵ This merely gave him the power to issue orders after the military forces had been called into action and did not give him authority to call out the militia at his discretion. The power given to the Missouri governor in this respect was very much like that held by the other governors of the United States.⁵⁶ The constitution was not very specific as to the organization and administration of the militia forces. Since all residuary power not prohibited could be exercised by the legislature it was evidently the purpose to leave the organization to that body. But it is of importance that there was nothing in this constitution as in a later constitution prohibiting the legislature from conferring upon the governor the power to organize the entire forces of the state.⁵⁷ ✓ There was little in the constitution granting to the governor military administrative control. His power of appointment was not of sufficient importance to do so.

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55 - Constitution of 1820, Art. IV, Sec. 5.

56 - Shoemaker, First Constitution of Missouri, p. 66.

57 - Constitution of 1865, Art. X, Sec. 2.

since he was authorized to appoint only the adjutant-general and any other officer not otherwise provided for by the constitution.⁵⁸ As a military official his power differed from that of any one of the majors-general only in the fact that he was an officer of higher rank and had command over all of the forces of the state.

The legislative power of the governor was important. By the constitution he was given the suspensive veto which could be overcome by a majority of all members elected to each house.⁵⁹ This applied to bills and to all resolutions to which the concurrence of both houses was necessary except the resolution to adjourn.⁶⁰ It was further provided that, if a measure should not be returned by the governor to the legislature within ten days, not counting Sundays, it should go into effect as if he had signed it, unless the legislature by its adjournment should have prevented its return, in which case it was not to become a law. It was almost as easy numerically speaking to pass a bill over the veto of the governor as to pass it originally. In the latter case only a majority of the members present was required while after a veto a majority of all members elected to the house must vote for a bill to secure its passage. But the influence

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58 - Constitution of 1820, Art. IX, Sec. 3.

59 - Ibid, Art. IV, Sec. 10.

60 - Ibid, Sec. 11.

of the veto was more than what came from the fact that a greater number of votes was required to repass it. The return of the measure with the objections appended would tend to cause its more lukewarm supporters to desert it and thus render it more difficult to secure even a majority of those present. An attempt was made in the convention to provide that a two-thirds vote of all the members present should be required to pass a measure over the veto of the governor. A provision to that effect was inserted in the constitution and remained unchanged until after the report of the committee on style when it was removed and the section as stated above substituted.⁶¹ In comparing the veto power of the governor of Missouri with that held by the president of the United States, it will be seen that the latter held a more important position since it required a two thirds majority to overcome his veto.⁶² In comparing his power in this respect with that held by the executives of other states the case is not so clear. In ten of these states the veto power was not given to the executive, in seven a two-thirds majority was required to overcome the

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61 - Shoemaker: The First Constitution of Missouri, p. 69.

62 - Constitution of the United States, Art. I, Sec. 7,

veto, in one only a majority of those present was necessary to pass the measure after the veto, and in five the requirement was similar to the one in Missouri.⁶³

✓ The requirement that the governor should give to the general assembly information concerning the state of the government⁶⁴ had a double significance. It seemed to confer upon the legislature the right to inquire how the executive department had conducted the affairs of the state. It thus offered a basis for a discussion of the stewardship of that department. On the other hand it gave to the governor an opportunity to put before the assembly such a statement of the condition of affairs as to command the attention of that body and of the people of the state as well. Connected with his power to give information concerning the state of the government was his power to recommend to the consideration of the legislature such measures as he might deem necessary.⁶⁵ Thus he was not only given the right to state the needs of the government, but it was his business to point out the remedies for any defects present. Just how much attention his recommendations would receive from the legis-

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⁶³ - Thorpe's Constitutions, Vols. I to VII, pp. 104, 542, 797, 978, 1065, 1283, 1386, 1655, 1894, 2040, 2482, 3094, 3774.

⁶⁴ - Constitution of 1820, Art. IV, Sec. 7.

⁶⁵ - Ibid.

lature would depend a great deal on the temper of the particular legislature and the ability of the governor. He was also authorized to call special sessions, the purpose of which he was required to state in his proclamation.⁶⁶

This power enabled him to call the attention of the people of the state to the plans which he had in mind more forceably perhaps than any other device which he might use. The provision that he must state the purpose for which the meeting was to be called suggests that no other question was to be discussed; but the implication was not strong enough to prevent the discussion of other measures and it was not until the constitution of 1865 that such a prohibition was inserted.⁶⁷ ✓

The clause conferring upon him the power to call extra sessions and send messages differed but little from that of the president of the United States. The president was not required to state the purpose of the extra session as the Missouri executive was. Another difference was that the national executive might call either house in extra session while no such power was given to the governor. The power of sending messages and calling extra sessions was exercised by

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⁶⁶ - Constitution of 1820, Art. IV, Sec. 7.

⁶⁷ - Constitution of 1865, Art. V, Sec. 4.

the governors of fourteen states. In five of the states he was given the power only to convene the legislature in special sessions and in only one of these five was he free from the participation of the council in issuing the call. The constitution of one state gave him the power only to send messages while in three states he was not allowed either to call an extra session or to send messages.⁶⁸ It will be noted that here again Missouri was placed in the class of the more progressive states.

✓ The judicial powers of the governor do not need a very complete discussion. He was permitted by the constitution "to remit fines and forfeitures, and, except in case of impeachment, to grant reprieves and pardons".⁶⁹ It seemed to require a long time for the members of the legislature to understand the significance of this clause and to learn that the granting of pardons was an executive and not a legislative function.✓ The gradual development of this idea forms an interesting story which will be taken up under the discussion of the growth of the judicial powers of the governor under the constitution of 1820. This constitution differs from a similar clause in the national

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68 - Bhoemaker: The First Constitution of Missouri, p. 67.

69 - Constitution of 1820, Art. IV. Sec. 6.

constitution in that the latter mentions only ~~reprieves~~ and pardons and leaves out fines and forfeitures.⁷⁰ ✓ Seven of the other states of the union had provisions almost identical with this one in the Missouri constitution. In no state was the governor excluded from the exercise of this power; but in sixteen of the states his power in this respect was limited either by the requirement that it be shared with some other body, that he be allowed to exercise it only in certain circumstances or by both these restrictions.⁷¹ ✓

After studying the various powers of the governor as conferred by the constitution of 1820 it seems worth while to observe the relation between him and the other departments of government. The constitution provided that the powers of government should be divided into three distinct departments, each of which should be confided to a separate authority; but stated that certain exceptions would be made.⁷² In spite of the intention of the makers of the constitution to prevent one department from exercising control over the others, many means of control were contained in the expressed terms of the constitution. Perhaps a more

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70 - Constitution of the United States, Art. II, Section 3.

71 - Shoemaker: The First Constitution of Missouri, p. 66.

72 - Constitution of 1820, Art. II.

logical treatment would be to discuss the means by which the executive was controlled by and exercised control over both the legislative and judicial departments; but, since the purpose of this paper is to trace the changing power of the governor primarily with reference to the legislature, we shall confine the discussion of the question of control to these departments only. It seems unnecessary to repeat the discussion of the means of control exercised by the executive over the legislative department since they were treated in detail in a former paragraph. An enumeration of them seems sufficient. These powers were as follows; the veto power, power to issue writs of election, power to convene the legislature in extra session and state the purpose for which it was called and the power to give information and to recommend measures. His power of making appointments was very important in that it enabled him to keep under his control members of the legislature who desired an office either for themselves or friends. To the governor who wisely refrained from making all of his appointments at the beginning of his term this power offered a means of

control not to be attained in any other way. Similar to this power ~~but~~ greatly inferior to it in importance was his power of granting reprieves and pardons. It might mean a great deal to some member of the legislature to secure from the governor the pardon of a friend of the leading politician in his county or district.

The legislature was given various means by which it might control the executive. Since the legislature could do any thing not prohibited by the constitution and the executive could do nothing unless he was authorized to do so⁷³ either by the constitution or by statutes,⁷⁴ it is easy to see that the former had a great advantage over the latter in matters of control. This fact seemed to place in the hands of the former the power either to make the executive office great and powerful or to leave it with only its constitutional powers which must be necessarily inadequate as the increasing complexities of social life should demand a vast expansion of the duties to be performed by the departments of the government. But the legislature was not confined to its residuary powers as a means of control over the governor.

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73 - Goodnow, Prin. of Administrative Law, p. 447.

74 - Ibid, p. 95.

Numerous grants of power were conferred specifically by the constitution. One of the most important of these was the power of impeachment. By this power the governor might be removed from office and be disqualified from holding any office of honor, profit or trust under the state.⁷⁵ Since the acts for which he might be impeached were not carefully defined in the constitution, a great deal was left to the honesty, wisdom and discretion of the legislative body. Its power to remove was absolute, not subject to review by any other body. Another source of control was the power of the legislature to control the purse strings of the government.⁷⁶ In an indirect way the provision that the legislature should fix the salary of the governor offered that body a means of control over the executive office.⁷⁷ The salary of the governor could not be changed during his continuance in office and, since he could not succeed himself,⁷⁸ the change of salary could make no difference to him personally. But if the legislature should have so decreased the salary attached to the office as to keep all but the most ordinary men out of it, or should have so increased it as to attract the most able men of the state, that legislative act

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75 - Constitution of 1820, Art. III, Sec. 29, 30.

76 - Ibid, Art. III, Sec. 31.

77 - Ibid, Art. IV. Sec. 13.

78 - Ibid, Art. IV. Sec. 4.

would have been a powerful factor in determining the character of the executive. Still another method of control was the constitutional requirement that either house might demand that a register of all the official acts of the governor with all papers relative thereto should be laid before it.⁷⁹ This gave a chance to the legislature to make public and criticise his official acts. Another section of the constitution which gave a similar control to the legislature was the requirement that the governor should give to the general assembly information relative to the state of the government.⁸⁰ As previously suggested this offered another means of criticising the stewardship of that official. The right of the assembly to determine who should be governor in case of a tie or contest might have worked so as to put the executive under obligation to certain members of that body in return for influence by which he secured his position.⁸¹ In case of war the governor was not required to command in person unless advised to do so by a resolution of the general assembly.⁸² The purpose of this section was

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79 - Constitution of 1820, Art. IV. Sec. 21.

80 - Ibid, Sec. 7.

81 - Ibid, Secs. 3, 20.

82 - Constitution of Missouri, Art. IV, Sec. 5.

probably nothing more than to allow the legislature to give to the governor a vote of confidence in his military ability. That the power might have been used in times of excitement when, in the opinion of the legislature, the governor could best be prevented from interfering with the plans of that body by being placed at the head of troops, seems possible; but this would have been, to say the least, a most unusual method of getting the executive out of the way. A method of control that was always present was offered by the requirement that the senate should ratify the appointment of the most important officials.⁸³ This tended to prevent the patronage of the governor taking a too commercial aspect and gave to the senate an opportunity to check him in his attempts to build up a personal machine. It also offered to the senate the opportunity to prevent him from making good appointments if that body should choose to do so. At the best it so divided the responsibility of the appointee as to seriously weaken the control of the chief executive over his assistants. The numerous examples of means by which the general assembly could influence the executive show clearly that it would require a man of ability and force of character to hold his own against a hostile legislature.

Chapter Three.

Personnel of the Administrative Officials: Appointment and Removal.

After examining the constitution of 1820 the next problem is to determine the changes in the power of the governor under that instrument. These changes were the results of three factors,-judicial decisions, executive aggression and legislative enactment. The last of these three factors was by far the most important, embracing as it did not only the ordinary laws but constitutional amendments as well. The first was almost negligible in influence and the second possessed only a minor importance. During this period of Missouri history there seemed to be two tendencies controlling the action of the people in determining what authority should exercise the powers of government. In the first place they wished to gather into their own hands every power which they could possibly exercise and, in the second place, put all delegated power into the hands of the body that could best exercise it. These two tendencies apparently worked against each other; for, while the executive was losing power as the result of the first, he was gaining it as the result of the second. In tracing the changes in the

power of the governor these tendencies must be kept in mind. The first of these was shown most clearly in the constitutional amendments, while the second found its clearest expression in the ordinary laws of the legislature; but evidences of both may be found in both the laws and amendments. Since these tendencies were antagonistic in their results, it seems best to discuss them separately.

The years immediately following 1820 were in theory and in fact years of legislative supremacy in the determination of the personnel of administrative officials. There was at this time a feeling that the constitution had gone too far in bestowing upon the executive the power held by him. It will be remembered that it was provided by that instrument that the governor should appoint the auditor, the attorney general, the secretary of state, the adjutant general, and the judges of the supreme and circuit courts.¹ There seems to have been little difficulty in the convention over this question; for in neither case was there an amendment offered to change the method of election.² But immediately following the adjournment of that body efforts were

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1 - Constitution of 1820, Art. IV, Secs 21, Art. V. Sec. 18, Art. IV. Sec. 12, Art. V. Sec. 13.

2 - Shoemaker: The First Constitution of Missouri, pp. 71, 77, 93, 99.

made to change this part of the constitution. Shortly after the beginning of the first general assembly in 1820 it was proposed in the house to abolish the office of chancellor and that the judges of the supreme and circuit courts should serve for six years only and be elected by a joint vote of both houses. These measures lacked two votes of receiving the two thirds majority of that house and were consequently lost but similar measures were passed in the senate.³ When the legislature met in special session in 1821 both houses adopted resolutions by the constitutional majority which, in addition to abolishing the office of chancellor and making judges elective by the legislature for a term of six years, also provided that the attorney general, auditor, and secretary of state should be appointed by the same body.⁴ But when the second assembly met in 1822, the reaction against the constitutional powers of the governor seemed to have spent its force and only that amendment abolishing the office of chancellor was ratified.⁵ It may be worth while to remember at this point that, in order to amend the constitution, it was necessary that the amendment

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3 - Shoemaker: Missouri's Struggle for Statehood, pp. 279, 280.

4 - Session Acts, 1821, p. 38.

5 - Session Acts, 1822, p. 146.

be ratified by a two thirds vote of each house in two consecutive legislatures. It did not need to be ratified by the electorate.⁶

There were various reasons for the change in the attitude of the legislature. One of these was the widespread popularity of Governor M'Nair.⁷ Already very popular when elected, he became more so when it was seen that he was willing to keep in the background when questions of law making were before the legislature. By his lack of aggressiveness he was able to drive away any fear of executive tyranny which had confronted the people. What was still more important was the character of the legislators who had taken part in the action of the first assembly. Their lack of qualification was so frequently mentioned that one must be convinced of the truth of such accusations.⁸ The unpopularity of this assembly is strongly suggested by the fact that, of sixteen senators who sat in the second assembly, only six had been members of the first, while only six of fifty-four representatives had been members of the previous house.⁹ Something of course must be allowed for

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6 - Constitution of 1820, Art. XII.

7 - Viles, History of Missouri, p. 85.

8 - Stevens, Missouri, the Center State, p. 364.

9 - Official Manual 1915 - 1916 p. 113.

the very common notion that there should be rotation in office; but even this alone is not sufficient to explain so great a change.

So strongly were the members of the legislature impressed by this change in public opinion that they were in no hurry to make another attempt to take from the governor any of his constitutional powers. In 1825 however a law was passed taking from the governor the power to appoint members of the county courts throughout the state and provided that all vacancies in that body should be filled by the court itself.¹⁰ This law not proving satisfactory, the governor was in 1827 again given the power to appoint the judges.¹¹ ~~X~~ But the desire of the people to choose their own officials, aided by the belief that local officials should be chosen by the local units, became so powerful that in 1831 this power was given to the voters of the different counties.¹²

In the meantime an unsuccessful attempt had been made on the courts. From the beginning there had been a strong feeling of jealousy between the legislative and the

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10 - Revised Stat. 1825, p. 271.

11 - Session Acts, 1826-1827, p. 18.

12 - Territorial Laws, Vol. II, p. 253.

departments of government. It seemed intolerable to the adherents of the belief in legislative supremacy that the courts should presume to declare unconstitutional laws which had been passed by the general assembly. Such an idea was entirely out of harmony with their notions of the exalted¹³ position of that body and was bitterly resented by them. They were therefore determined to make the judges more obedient to public opinion. Consequently an amendment was proposed in 1828 making the terms of these judges only four years, but leaving their appointment in the hands of the governor. This would of course have increased the power of the executive immensely by giving each governor the power to fill every position in the supreme and circuit courts. The proposal was lost in the senate and did not reach the house.¹⁴ Taught by the experience gained in 1828 the enemies of judicial supremacy did not again attempt to decrease the power of the courts by increasing too much the power of the governor. Instead, in the seventh general assembly which met in 1832 an amendment was proposed and received the constitutional majority providing that the judges of the supreme

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13 - Missouri Intelligencer, ^{May 21,} March 20, 1822, May 28, 1822.

14 - Ibid, Dec. 26, 1828, March 20, 1829.

and circuit courts should be elected by a joint vote of the two houses for a term of six years. This was to be arranged so that no assembly should elect all of the judges.¹⁵ The term was longer than the one proposed in the law of four years before and the chances of the judiciary being swamped by a sudden gust of passion were not so great as in the former case. But even this amendment failed to receive the required vote of the next assembly which met in 1834.¹⁶ It is well to notice, that unlike the one proposed in 1821, this amendment did not attempt to remove from the governor the appointment of any officials except the judges. This is significant of the fact that the opposition was not so much to the appointive power of the governor as to what was considered the tyranny of the courts.

After a period of ten years another attempt to shorten the term of the judges was made. In 1842 it was proposed and carried by a two thirds majority that the judges of the supreme court should hold office for the term of twelve years while the term of the circuit judges was to be six years,¹⁷ They were still to be appointed by the governor.

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15 - Session Acts, 1832-1833, p. 3.

16 - House Journal, 1834-1835, p. 120.

17 - Session Acts, 1842-1843, p. 9.

It will be noticed that this amendment sought to avoid the difficulties of the four year term by so arranging the expiration of the judicial term that no governor would be able to appoint all the judges and thus determine the character of the entire judicial system. It also attempted to meet the opposition of those who objected to a decrease in the appointive power of the governor. But even then the amendment failed of ratification in 1844 when the next assembly¹⁸ met. A study of the various attempts to decrease the independence of the judiciary shows that a majority of the people probably favored the change, but that there was a great amount of disagreement as to the way it should be done. One faction favored having it done by giving the power of appointment to the assembly while the other faction desired to leave the appointing power in the hands of the governor for a shorter term. The friends of the existing method of appointment were of sufficient strength, when combined with either of the two factions, to defeat any measure proposed by the other. This attack on the judicial department was in line with the tendency of the people to exercise

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18 - Senate Journal, 1844-1845, p. 108.

as much influence as possible in governmental control. But the movement in that direction was retarded by a lack of agreement as to the best method of securing this influence. This had been attempted in two ways and had failed each time. It was not until a few years later that the successful method was tried, that of election by the voters.

Another proposal of the assembly that met in 1842¹⁹ was that a constitutional convention be called. This action was ratified by the electorate and the constitution of 1845 was drawn up. By the terms of this instrument the governor was given the same power of appointment that he had held before with the exception that the judges of the supreme court were to be appointed for a term of twelve years only, while the election of the circuit judges was given to the electors of the several circuits for a term of six years.²⁰ Here again evidently the chief motive for the change was to make the judges more responsive to public opinion, not primarily to lessen the appointive power of the governor. But the constitution of 1845 was defeated at the polls. It seems evident that much of the opposition

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19 - Session Acts, 1842-1843, p. 26.

20 - Constitution of 1845, Art. V. Sec. 5.

to this instrument was offered by such conservatives as William Campbell of St. Louis because they objected to any decrease in the independence of the judiciary.²¹ They were especially opposed to that section of the constitution which took the appointment of the circuit judges from the governor and gave it to the people. No doubt their extremely conservative position caused them to make many utterances that were bitterly resented by the apostles of Jacksonian democracy.

As might have been expected the efforts of Mr. Campbell and men of his type did^{his cause} more harm than good. When it was seen that the constitution, which was in no sense a radical one, had been defeated by the efforts of ultra conservatives, there was a strong reaction against the conservative forces of the state. The result was that a democrat^{ic} wave swept over the state which did not stop until it had deprived the governor of the appointment of every administrative official whose appointment had been vested in him by the constitution. In the fourteenth assembly which met in 1846 amendments were

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21 - Stevens. Missouri, the Center State, p. 16.

proposed by a two thirds majority of each house to make the term of the supreme judges twelve years and that of the circuit judges eight years, all however to be appointed by the governor.²² Not only was this ratified in 1848 but it was proposed by the constitutional majority in each house that the auditor, attorney-general, treasurer, registrar of lands, and judges of the supreme and circuit courts be elected by the voters of the state.²⁴ This amendment was ratified in 1850 by the sixteen th assembly and became a part of the constitution. Thus it was that thirty years after the first constitution was formed the governor was deprived of the appointive power given him by that instrument. By the same assembly it was provided by statute that the judges of the common pleas courts which had been appointed by the governor were to be elected by the voters of the various counties.²⁶ It is a fact not to be overlooked that the treasurer who had formerly been elected by the general assembly, was, by the amendment of 1850, required to seek his election at the hands of the voters.²⁷ Evidently it was not the governor alone who was called upon to surrender.

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22 - Session Acts, 1846-1847, p. 5.

23 - Session Acts, 1848-1849, p. 4.

24 - Ibid, p. 3.

25 - Session Acts, 1850-1851. p. 37.

26 - Ibid, p. 201.

27 - Ibid, p. 37.

a constitutional power in response to the demands of an ambitious electorate. The legislature too was losing power as the result of the democratic wave that was passing over America. The movement was not yet finished. In 1853 the office of superintendent of public schools was again established. The governor was authorized to fill the office until the next general election when the position should be filled by the electorate.²⁸ With this law the visible results of the tendency of the people to gather to themselves all power which they could possibly exercise was completed. Not until after the constitution of 1865 were there any more additions to their elective privileges.

From what has been said the governor does not seem to have gained any power. Indeed he had lost all power to appoint administrative officials given him by the constitution. But while he was losing power as a result of the tendency of the people to gather to themselves every power which they could possibly exercise, he was gaining as a result of the tendency to place all delegated power in the

hands of the body that could best use it. It will now be necessary to go back over the history of Missouri from 1820 and trace the development of this second tendency.

As was said before the years immediately following the formation of the constitution of 1820 were years of legislative supremacy. When the convention had adjourned the people set themselves the task of examining the power granted by the constitution to the executive, legislative, and judicial departments. Evidently the decision was that the executive and judicial departments had received a greater share than they could safely exercise. One result was the attempt to remove this power by a change in the constitution as has been described in the preceding paragraphs. Another result was the attempt to prevent any addition to be made to this power. Consequently the first assembly gave to the governor only the appointment of the members of the county courts²⁹ while the legislature was to appoint all justices of the peace throughout the state until they could be elected by the local tribunals,³⁰ three commissioners for each of four loan office districts,³¹ commissioners to select the permanent seat of government,³² commissioners to select various county

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29 - Session Acts, 1820, p. 43.

30 - Session Acts, 1820, p. 6.

31 - Session Acts, 1821. p. 11.

32 - Session Acts, 1820, p. 15.

³³
seats, trustees for numerous academies chartered at that
³⁴
time, and commissioners to select six of twelve salt springs
³⁵
granted to the state by congress.

Just as in the case of the constitutional amendments, the ordinary laws of the second assembly showed a backward swing of the pendulum from the position of extreme opposition to the power of the governor as shown by the first assembly. Because of conditions which have been described the people were beginning to doubt the wisdom of placing so much power in the hands of the general assembly. That body had not proven a very wise steward. The result was that, while the legislature made no appointments in 1822 and 1823 the governor was authorized to appoint a com-
³⁶
mission to select the six remaining salt springs and com-
missioners for each of the several road districts laid out
³⁷
by the assembly. In 1824 when the third general assembly met and again in 1826 the situation was much the same as in the second. Here again the appointive power exercised by the legislature was small and that of the governor even larger than before. He was authorized by the third assembly

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33- Session Acts, 1820. p. 17.

34 - Ibid, p. 18.

35 - Ibid, p. 79.

36 - Session Acts, 1822-1823. p. 602.

37 - Ibid, p. 100.

to appoint notaries public throughout the state for a term³⁸ of four years, and, with the consent of the senate, he was to appoint all the probate judges in the state for the same³⁹ term. The following assembly abolished the office of probate judge, but gave the governor the authority to appoint three judges of the county court of each county of the state⁴⁰ for a term of four years. He also made other appointments of minor importance.

In the period between 1828 and 1842 the pendulum seemed to swing back in the other direction again. There was a noticeable increase in the appointive power exercised by the legislature. This was especially true in dealing with the selection of public lands and the management of the penitentiary which was established in 1833. This leadership continued through the ninth, tenth, and eleventh general assemblies. During this time the directors of the⁴¹ bank of Missouri, the superintendent of public schools,⁴² the⁴³ curators of the state university, the judges of the St. Louis criminal court,⁴⁴ the keepers of the penitentiary⁴⁵ and the com-⁴⁶missions to select county seats were all to be appointed by

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38 - Revised Statutes. 1825, p. 602.

39 - Ibid, p. 270.

40 - Session Acts, 1826-1827, p. 18.

41 - Session Acts, 1836-1837, p. 12.

42 - Session Acts, 1838-1839, p. 112.

43 - Ibid, p. 174.

44 - Ibid, p. 29.

45 - Ibid, p. 95.

46 - Ibid, p. 19 ff.

the legislature. The governor received authority to appoint, with the consent of the senate, a board of internal improvement and a chief engineer.⁴⁷ But these offices were⁴⁸ abolished by the next assembly in 1841. He was also to⁴⁹ appoint an inspector of beef and pork and a judge for the⁵⁰ St. Louis Common Pleas Court.

Beginning in 1842 with the twelfth assembly and extending through the sixteenth which ended in 1851 there was a slight increase in the relative appointive power of the governor. In spite of the fact that the sixteenth assembly removed from his hands the power to appoint the judges of common pleas courts and gave it to the electorate,⁵¹ the tendency was toward a greater participation by him in the determination of the personnel of the statutory state officials. He not only retained the appointment of officers connected with questions of public health and external affairs,⁵² but there was added to this the power to appoint to positions in the charitable and penal institutions⁵³ and to offices connected with the public lands.⁵⁴ He continued this leadership in making appointments during the

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47 - Session Acts, 1838-1839. p. 68

48 - Session Acts, 1840-1841. p. 96.

49 - Ibid, p. 92.

50 - Session Acts. 1840-1841, p. 50.

51 - Session Acts, 1850-1851. p. 201 ff.

52 - Session Acts, 1844-1845. p. 12.

53 - Session Acts. 1846-1847, p. 60 ff.

54 - Session Acts, 1842-1843 p. 78, 1850-1851, p. 236.

period between 1850 and 1865. Among his appointees may be mentioned the managers of the asylums,⁵⁵ officers of the penitentiary,⁵⁶ members of the board of public works,⁵⁷ directors of banks in which state money was deposited,⁵⁸ state geologists and assistants,⁵⁹ bank commissioners,⁶⁰ and a board of immigration of which he was himself a member.⁶¹ During the last five years of this period the Civil War so upset the ordinary course of events as to make any close study of the period of little value in a study of the civil administrative powers of the governor. There seems to have been an increase in his power, but this was chiefly the result of military necessity and need not be considered here except for its influence on later developments.

In tracing the tendency of the people to select the agent that could best exercise the delegated powers there are found to have been five fairly distinct periods between 1820 and 1865. ✓ The first period was short, extending only through the years of 1820 and 1821. It was a period of legislative supremacy which was evidently the result of the reaction against the strong appointive power

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- 55 - Session Acts. 1854-1855, p. 142.
56 - Session Acts, 1852-1853, p. 114.
57 - Session Acts, 1864-1865, p. 97.
58 - Session Acts, 1856-1857, p. 14 ff.
59 - Session Acts, 1852-1853, p. 104.
60 - Session Acts, 1856-1857, p. 14.
61 - Session Acts, 1864-1865, p. 44.

of the governor conferred by the constitution. The second period began with the second assembly in 1822 and extended to the end of the fourth assembly in 1827. This was a period of executive influence in appointment and resulted from a counter reaction against the ultra radical tendencies of the first assembly and from the increasing appreciation of the fact that a governor need not be a tyrant. The third period was one in which the legislature again took the position of leadership. This period began with the fifth assembly in 1828 and ended with the eleventh in 1841. It was probably due to the democratic wave which was passing over America⁶² and perhaps to some extent to a reaction against the influence of Governor Miller who possessed a more aggressive disposition than had his predecessors.⁶³ The fourth period began with the twelfth assembly in 1842 and extended to 1860. It was another period in which executive influence in making appointments surpassed that of the legislature. It seems difficult to explain this tendency at this time.✓ Including as it did the period of Missouri history in which the people were taking to themselves greater powers, it shows conclusively that the two tendencies which have been mentioned were distinct and separate. It is true that there was

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62 - Viles, History of Missouri, p. 95.

63 - Senate Journal, 1826-1827 p. 11.

in Missouri, as in the whole nation, a change in the leadership and character of the Democratic party.⁶⁴ From the old Jacksonian democracy there was developing a new democracy in which the influence of the South was becoming more noticeable. Just as the rising tide of Jacksonian democracy tended to decrease the appointive power of the governor, so did its ebb tend to its increase. The fifth division of the period covered the years between 1860 and 1865. During this time, the question of war superceded every other question and any power exercised by either executive or legislature was a war power. Since the governor was, by the constitution, made commander-in-chief of the state forces and since during most of this time he was acting under the authority of the state convention, his power in that respect would be increased to a greater extent. But outside the military life of the state there was no development. Consequently the number of appointments made by the governor was smaller than it was during the preceding period when the state was establishing new institutions to meet the growing demands of the social and economic development of the state.

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64 - ~~Valles~~, History of Missouri, p. 131.

The question of whether the appointive power of the governor had been increased between the years of 1820 and 1865 remains to be answered. We have seen that, as a result of one tendency, it had become smaller while as the result of the other, it had become larger. But some estimation of the governor's position with reference to both tendencies considered together must be made. This becomes a problem of comparing the relative importance of those officials whose election was taken from him and the officials whose appointment was placed in his hands and, in addition, a comparison of the actual influence which the governor had over his appointees as a result of his appointive power. This can be answered with greater satisfaction after a study has been made of the governor's power of removal and his power to direct administrative officials. It may be pointed out at this point however that, for the most part, the offices that were to be filled by the electorate were offices whose duties were pretty definitely defined not only in the laws of the state but in the minds of the people. On the other hand the offices which were to be filled by

the governor were of uncertain character and in the formative stage. What they were to become would depend a great deal on the kind of men appointed to them. As a result of this fact, the governor could exert an influence out of proportion to the temporary importance of the office.

The removal power of the governor did not become very great during this period of Missouri history and yet there was a gradual growth during this time. By the constitution of 1820, besides the method of impeachment, there was another method provided for removing the judges of the supreme and circuit courts. The governor was given permission to remove any of these officials upon the address of two thirds of each house. This power might be exercised or not as he chose since the constitution did not require that the judge be removed upon the address of the legislature.⁶⁵ At the first assembly an amendment was offered and carried in the house making the address of two thirds of each house mandatory on the governor.⁶⁶ This did not become a part of the constitution however and never received the vote of either house at any later period. By an act of

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65 - Constitution of 1820, Art. V. Sec. 16.

66 - Shoemaker, Missouri's Struggle for Statehood, p. 278

the third assembly the constitutional provision was made to apply to any judge or other officer.⁶⁷ The procedure to be followed in voting the address was very similar to the one used in impeachment cases. This could not have been worth a great deal to the governor in exercising control over these officials; for he could not act in any case until the matter had been considered by a two thirds vote of each house. At best his power was extended ~~no~~ farther than to check any unwise action of the legislative branch. The tenth general assembly in 1838 authorized the governor to appoint a chief engineer to work under the direction of the board of internal improvements. For misconduct in office during the recess of the legislature the governor and the board acting together might remove this official.⁶⁸ This was not of very great importance however; for the governor could remove him only during the recess of the legislature and then only with the consent of the board. His influence over the board was very small; for though the members were appointed by him, they could be removed by a majority vote of each house. It was not until 1840

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67 - Revised Statutes 1825, p. 90.

68 - Session Acts, 1838-1839, p. 72.

that the governor received the absolute power to remove any official. He was authorized by this assembly to appoint an inspector general of beef and pork and to remove him at pleasure.⁶⁹ But even here his power was not so absolute as it seems. There were to be appointed by the inspector general not less than two deputies in each county for a term of two years without conferring upon the inspector the power to remove any of them for misconduct in office. Thus the men who actually did the inspecting were, after their appointment, free from any control by the governor. In 1842 the twelfth general assembly enacted three laws giving to the governor some removal power. He was authorized to appoint a register and a receiver in each land district of the state for a period of two years and, upon good causes known to him, remove either of them and appoint their successors.⁷⁰ This seemed to place no restrictions on his powers with reference to these officials; but the offices were only temporary ones, intended to exist only two years. The second act of this assembly giving the removal power to the governor was one which the penitentiary was leased for

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69 - Session Acts, 1840-1841, p. 92.

70 - Session ACTs. 1842-1843, p. 78.

a period of ten years.⁷¹ It was provided that, if the inspectors should think that the keepers were failing to live up to their part of the contract, they should make charges against them whereupon a board of arbitrators composed of three men, one appointed by the governor, one by the keepers and a third by these two, should investigate the situation. If they should decide that there had been a breach of faith, the governor was required to declare the lease forfeited and the keepers dismissed. He was then to take charge of the penitentiary. This was not a very clear cut case of removal power; but, when taken in connection with his power to appoint one of the arbitrators, it is seen to have been of more importance. But even then the governor was helpless until the board of inspectors, composed of the treasurer, the auditor, and the attorney-general, should take the initiative. The third act of this assembly dealing with the removal power was of local importance only. The assembly elected a man to superintend street improvements before the governor's house and authorized the governor to remove him for misconduct. In 1846 a law was passed author-

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71 - Session Acts. 1842-1843, p. 95

izing the governor to appoint in each territory of the United States one or more ~~com~~missioners to take depositions. These commissioners were to hold office during the pleasure of the governor.⁷² This was an absolute power; but not of much importance except in showing the tendency. In 1852 X the seventeenth assembly provided that the chief penitentiary officials including the warden, treasurer, clerks, and physicians should be appointed by the governor and be subject to removal at his pleasure.⁷³ The inferior officers including the deputy warden might be removed by the warden and inspectors; but in case that the inspectors should not agree to the removal of any official the governor might, on the appeal of the warden, remove the official himself. There seems to have been no restrictions here on the removal power of the governor. Because of his control over the warden, he might remove the highest or lowest official connected with the penitentiary in spite of the action of the inspectors. This act conferred upon the governor the greatest power of removal which he possessed during this period. In 1862 the general assembly in the excitement of the Civil War authorized the

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72 - Session Acts. 1846-1847, p. 49.

73 - Session Acts, 1852-1853, p. 114.

governor to reorganize the board of managers of the lunatic asylum by appointing men of "known loyalty".⁷⁴ This of course was only for temporary use.

It can not be said that the governor gained any considerable power of removal during the period between 1820 and 1865; but when his powers in that respect at the beginning and at the end of the period are compared, it is quite evident that there was a marked tendency in the direction of a greater removal power.

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74 - Session Acts.1862, p. 24.

Chapter Four
Direction and Administrative Services.

As we have seen, the constitutional power of the governor to see to the execution of the laws failed to confer upon him any authority to direct administrative officials. Whatever authority the constitution makers may have intended to confer upon him by that grant, that instrument failed to give adequate machinery to enable him to exercise this authority. As a result he was forced to depend upon the generosity and wisdom of the general assembly for the means of exercising control over subordinate officials. This power of direction might be conferred in four ways:- by giving him appointive power, the power of removal, the power to demand reports and make investigations, and the power of direction in particular cases as specified by the statutes. It will perhaps be more easily understood if the power of direction is discussed under the five periods marked out by the appointive power of the governor. It will be remembered that these periods were first, between 1820 and 1822; second, between 1822 and 1828; third, between 1828 and 1842; fourth, between 1842 and 1860;^{and} fifth, between 1860 and 1865.

As may be supposed the governor was not given the power of exercising any great administrative control during the first period. It is true that he possessed his constitutional power to appoint the chief administrative officials¹ and might presumably select men who would do his bidding; but the legislature added but little to his appointive power, giving him only the power to appoint the members of the county courts throughout the state.² No power of removal was placed in his hands. Neither was he authorized to demand any reports by means of which he might hold up to the gaze of the public any official who had failed to meet his responsibilities. It was required that he approve the bonds of the chief officials of the administration;³ but this was of little importance since it conferred upon him little influence that he had not possessed as a result of his power to appoint all of them except the treasurer. The law establishing the loan office gave him by express statement the authority to direct the action of the auditor and treasurer while issuing loan certificates; but even here he seems to have been little more than a harmless spectator; for no

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2 - Session Acts, 1820, p. 41.

3 - Session Acts. 1820, chapter 34, 43.

method was provided whereby he might stop any illegal or
unwise act.⁴

During the next period which came between the years 1822 and 1828, there was a slight increase in the administrative control of the governor. As we have seen his appointive power received a more important place than it had held during the former period. This was a very important factor in increasing his administrative control. As yet no power of removal, except upon the address of the legislature was open to him; but it was provided in 1824 that this process be extended to other officers besides the judges of the supreme and circuit courts.⁵ This gave him a slightly better opportunity to control these officials; but since he could act only after the legislature had, he gained but little influence from this power. The administrative power resulting from his power to make investigations and demand reports also was increased. The road commissioners who were appointed by the governor were to make reports to him.⁶ These reports were then to be placed before the assembly. It is probable that the reason for demanding the report was that

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4 - Session Acts, 1821. Chapter 12.

5 - Revised Statutes, 1825, p. 90.

6 - Session Acts, 1822-1823, Chapter 68.

the assembly might have some means of knowing what was being done by the commissioners; but it offered to the governor a basis upon which he might make recommendations to the legislature concerning the work of the commission and thus influence the laws concerning their activities. The governor received a considerable addition to his power of control as the result of laws giving him direction of officials in particular cases. In 1822 it was provided that the votes for members of congress should be counted in the presence of the governor. Since he was authorized to give certificates of election to the candidate receiving the highest vote, he was in a position to check any illegal act of the secretary of state who counted the votes.⁷ An act of more importance was the one enacted in 1824 providing that the attorney general, when called upon by the governor, should aid any circuit attorney in the discharge of his duty.⁸ But even here, although the law seemed to give the governor unquestioned authority, the only recourse open to him in case of refusal on the part of the attorney general was an appeal to the assembly for his removal.

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7 - Session Acts, 1822-1823, Chapter 13.

8 - Revised Statutes, 1825, p. 156.

In the third period beginning with the fifth assembly in 1828 the governor's power of control continued to increase. This seems remarkable when we consider that this was a period in which the legislature took the lead in making appointments. There was a tendency however during this time to increase his power of removal. An act passed in 1830 gave him the authority to dismiss the register and the receiver of public lands for failure to give additional bond, neglect of duty, or for any good cause. This act is suggestive of the peculiar situation existing at that time in which the appointive power of the governor seemed on the decline while his means of controlling officials after appointment was greater than before. These two officials who were so much under the control of the governor after their appointment, received their position, not from him, but from the legislature.⁹ In 1838 a law was passed establishing the board of internal improvements and extending the governor's power of removal a little farther. Although the board, which was appointed by the governor, could be removed only by the legislature, the governor was given the authority,

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9 - Session Acts, 1830-1831, p. 75.

with the consent of the board, to suspend the chief engineer during the recess between sessions.¹⁰ It must be admitted that the power of the legislature over the members of the board was so great that the authority given to the governor to control the chief engineer sank into insignificance in comparison. Another act increasing the governor's power of control by increasing his removal power was the one passed in 1840 authorizing him to appoint an inspector of beef and pork and to remove him at his pleasure. Evidently this control was complete so far as it applied to the inspector himself; but as previously pointed out, this control did not extend to the numerous deputies appointed by him.¹¹

There were several laws enacted during this period which conferred upon the governor the power to demand reports and to make investigations. In 1829 an act was passed giving him authority to demand from the treasurer and auditor any document in the possession of either of them which he might need. Of course he had no way of enforcing his demands, and it was possible no doubt for either of the officials to take the position that the documents demanded

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10 - Session Acts, 1838-1839, p. 72.

11 - Session Acts, 1840-1841. p. 92.

by the governor were not needed and that therefore they were under no moral or legal obligation to surrender them.¹² In 1837 the governor was authorized to require from the officers of the Bank of the State of Missouri, including the board of directors, a semi-annual statement of all of the affairs of the bank.¹³ He was authorized by the same law to appoint a commission of three members of the legislature to examine the general condition of the bank and then make a report to the general assembly. While the report of these commissioners was not to be made to him, his power to select the men who were to make the report enabled him to secure the kind of report that he desired and thus put into his hands the means of influencing the action of the bank officials.¹⁴ Of course the fact that the assembly also had the power to appoint a different committee tended to neutralize the influence of the committee appointed by the governor; but even then the report of the first committee would have its influence. The act passed in 1839 establishing the board of internal improvements gave the governor the right to investigate the affairs of the board at any time.¹⁵ This did not

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12 - Session Acts, 1828-1829, p. 35.

13 - Session Acts, 1836-1837, p. 12.

14 - Ibid, p. 22.

15 - Session Acts, 1838-1839, p. 72.

give him any considerable power since he was not allowed to remove any member of the board; but he ~~was~~ in a position to expose any corruption or extravagance on the part of the members of the board. He might also^{so}/advertise the fact of any inefficiency or criminal act of the chief engineer as to compel the board to agree to the discharge of that official even when they had before been silent participants in his acts. Another act conferring on the governor the power to demand reports was the one passed in 1840 which required the register of lands to give any information required by the chief executive.¹⁶ This power was however^{also}/conferred upon the auditor and the general assembly. It is important to note that during this period it became much more common to give X the governor the means of inquiring into the affairs of the administrative officials and in this way exercising an increasing control over their actions.

This period also witnessed numerous laws giving the governor the authority to supervise and direct the activities of different administrative officials. One of these laws dealt with the bank of the state of Missouri.

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16 - Session Acts, 1840-1841, p. 118.

This bank was not to issue any paper money until it had received a statement from the governor that every requirement had been met and that such issue would be proper.¹⁷ Another example of such power was furnished by the law establishing the board of internal improvements. No salary could be paid by the board without the consent of the governor. This power enabled him to exercise considerable control over the work of the board; for he could virtually control the selection of men by the salary allowed.¹⁸ An act passed in 1840 gave the governor a similar power of supervision over the auditor who was required to act under the direction of the governor while depositing money in banks and in using this money to pay the debts of the state.¹⁹ A second act of this year authorized him to direct the work of the commissioner of the permanent seat of government while making improvements in the executive mansion.²⁰ One would not expect any thing else than that the governor should be allowed to direct the work done in the house in which he was living; but the other acts passed by the legislature during this period give conclusive evidence that the governor was receiving recogni-

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17 - Session Acts, 1836-1837, p. 82.

18 - Session Acts, 1838-1839, p. 72.

19 - Session Acts, 1840-1841, p. 21.

20.- Ibid, p. 80.

tion as the proper official to direct the work of administrative officials.

The fourth period under discussion began with the twelfth assembly in 1842 and lasted until 1860. This was a period of rapid development and many new institutions were being created. The appointive power of the governor was an important factor in increasing his power of control during this period as will be seen by a glance at the list of officials to be appointed by him. His removal power was also of great importance in increasing his control. A law of 1842 provided that the register and the receiver of lands might be removed by him for any good cause known to him. These officials were to be appointed by the governor until 1845 when they were to be chosen by the general assembly.²¹ Another act passed by the same session authorized him to dismiss the keepers of the penitentiary who had been elected by the legislature. This power however depended so much on the initiative of the inspectors as to greatly diminish its importance.²² In 1852 the control of the governor over the penitentiary was still further increased by the law providing that all the chief officers of that institution should be

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21 - Session Acts, 1842-1843, p. 77.

22 - Ibid, p. 95 ff.

appointed by him and that either directly or indirectly every employee in its service could be removed by his action.²⁵

The year 1852 marked the highest point in the governor's power of direction just as it had done in his power of removal. His removal and appointive power were the two most important factors in producing this result; but the other means of control offered to him were ^{also} of considerable importance.

One of the other means of control which contributed greatly to the power of the governor to direct the work of the administrative officials was his authority to supervise the official acts of certain of them. The law of 1842 dealing with the register and the receiver of public lands authorized him to issue ordinances for their control throughout the state.²⁴ An act of the sixteenth assembly which met in 1850 authorized the governor to prescribe regulations for the use of the swamp land commissioners. This power gave him considerable authority in regulating and controlling the action of these officials.²⁵ An act passed in 1852 establishing the office of state geologist provided that the money

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23 - Session Acts, 1852-1853, p. 64.

24 - Session Acts, 1842-1843, p. 77.

25 - Session Acts, 1850-1851, p. 228.

appropriated should be spent under the direction of the governor.²⁶ In 1858 an act was passed providing that the governor should approve the salary of the steward of the asylum for the deaf and dumb. This financial means of control was of such a nature that it could be used easily and with every possibility of success.

The power of the governor to demand reports and to make investigations was also of importance during this period; but there was a slight tendency to require more of these reports to the legislature. This was probably due to the fact that, since that body had put more of the appointive and removal power in the hands of the governor, it wished to have in its hands some means of checking the officials appointed by him. This fact is seen in the act of the assembly in 1846 establishing the insane asylum. While the superintendent was appointed by the governor all reports were made to the legislature.²⁷ In 1850 an act was passed establishing the asylum for the deaf and dumb which contained similar provisions concerning the reports.²⁸ But another act of this assembly gave the governor the right to

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26 - Session Acts, 1852-1853, p. 104.

27 - Session Acts, 1846-1847, p. 60.

28 - Session Acts, 1850-1851, p. 211.

demand a report from the swamp land commissioners.²⁹ These reports were to be laid before the general assembly by him. The managers of the juvenile reform school were also to report to the assembly.³⁰ The act of 1852 dealing with the penitentiary provided that the governor might examine all books and documents belonging to that institution.³¹ The general bank act of 1856 provided that the bank commissioners should report to the governor semi-annually, the report then to be laid before the assembly. He was also permitted to inspect the books and papers belonging to the various institutions.³²

The fifth division which occupied the period between 1860 and 1865 was not a period of new institutions as the previous period had been. Instead many of the offices³³ which had been established in previous years were abolished. The few institutions whose organization was changed during this period indicate that the governor was holding his former position with reference to his control of administrative officials. But whatever power was conferred upon him was chiefly the result of his military power, not his civil

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29 - Session Acts, 1850-1851, p. 223.

30 - Ibid, p. 283.

31 - Session Acts, 1852-1853, p. 114.

32 - Session Acts, 1856, 1857, p. 14 ff.

33.- Adjourned Session Acts, 1863-1864, p. 8.

power. Consequently this can be discussed to better advantage when his military powers are being considered. It may be worth while to mention the establishment of the military institute with a board of visitors to be appointed by the governor and to report to him annually. This report was then to be placed before the general assembly.³⁴ Another act provided that the governor and the inspectors should lease the penitentiary. The lessees were authorized, with the consent of the governor and inspectors, to employ any number of prisoners or other persons to assist in the manufacture of arms.³⁵ In 1862 the governor was authorized to reorganize the board of managers of the lunatic asylum so as to secure men of known loyalty.³⁶ This of course gave him complete control of the board for that time; but the act was by its nature of temporary application only. This period has little or no significance in a study of the power of the governor to exercise control over civil administrative officials.

The administrative services of the governor were not very extensive in the period before 1865. Many of his

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34 - Called Session Acts, 1860-1861, p. 55.

35 - Ibid, p. 57,

36 - Session Acts, 1862-1863, p. 24.

duties required merely ministerial acts that might have been done by a careful secretary to the legislature as well as by the chief executive of the state. These services will be discussed under the following heads: financial powers; powers to issue ordinances; and miscellaneous powers, dealing with elections, public lands, and external affairs. His connection with finance was perhaps the most important during this period. Although there was a state treasurer appointed by the legislature, the first assembly, jealous of executive influence as it was, authorized the governor to receive proposals for a loan to finance the loan office.³⁷ However these proposals were to be submitted by him to the legislature for ratification. In 1829 the governor was authorized to contract for a specified loan without the ratification of the senate.³⁸ The seventh assembly which met in 1830 went farther and provided that, should there be any deficiency in the state revenue for the purpose of paying any appropriation made at that session, the governor should borrow an amount equal to the deficit.³⁹ Similar laws were enacted by subsequent assemblies. Sometimes the

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37 - Session Acts, 1821-, p. 11.

38 - Session Acts, 1828-1829, p. 34.

39 - Session Acts, 1832-1833, p. 94.

amount to be borrowed was definitely specified, sometimes the maximum only was stated, and as in the example mentioned, sometimes the governor was left to decide how much was to be spent. But in all cases the issuance of bonds was given into the hands of the governor with rather complete powers to act. There was evident a more careful policy near the middle of the century; but this was probably not so much due to a fear of executive misuse of financial power as to a realization that the methods which had characterized the actions of former assemblies had tended to encourage extravagance on the part of the legislature.

Besides the act of issuing bonds the governor had other financial duties. He had a general oversight of banks, railroads and other similar institutions with the power to decide when they had reached the standard necessary⁴¹ to allow them to receive state money and, in the case of banks, to issue notes.⁴² This was an important power and gave him considerable control over these institutions. By this power he was able to prevent frauds being practiced by them against the public. As these institutions became more

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41 - Session Acts, 1850-1851, p. 266.

42 - Session Acts, 1856-1857, p. 14 ff.

common, the power of the governor became greater. Not only was he to make sure that banks were in good condition before the funds of the state were to be deposited in them, but he also was to remove this money whenever there seemed to be any danger of a bank becoming insolvent.⁴³ He had a similar service to perform as a member of the school fund and the seminary fund commissioners. The financial powers of the governor tended to increase during the later years of this period, chiefly due perhaps to the fact that so many more activities were being entered into by the state.

The ordinance power of the governor did not become of much importance. , In fact the small power in ~~that~~ respect exercised by him can not be truthfully called a part of his administrative services; for it never went beyond the control of administrative officials. The first example of the exercise of this power was given by an act of the sixth assembly in 1831.⁴⁴ This act provided that the governor should give written instructions to the registers and receivers of land. These instructions were in no sense laws and were intended only as explanatory material. In 1837

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43 - Session Acts, 1850-1851, p. 14 ff.

44 - Session Acts, 1830-1831, p. 86.

an act was passed giving the governor authority to recommend to the trustees of the Missouri Life Insurance and Trust Company such alterations and amendments in their by-laws as should be deemed requisite for the public good.⁴⁵ These recommendations evidently had no significance; for there was no way of securing their acceptance. In 1842 an act was passed dealing with the disposal of public lands. It provided that, in order to carry fully into effect the provisions of the act, the governor should, from time to time, prescribe such further regulations as he might deem advisable. A similar law was enacted in 1850.⁴⁶ These regulations apparently had the same force as the ones made by the legislature and mark the highest point in the ordinance power of the governor.

Connected with external affairs there were three duties which the governor was frequently required to perform.

The first of these was to send resolutions of the legislature and papers of a similar character to the national president or congress. This duty was always given him to perform.⁴⁷ Another duty was to cause to be brought back from

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45 - Session Acts, 1836-1837, p. 197.

46 - Session Acts, 1850-1851, p. 233.

47 - Session Acts, 1836, 1837, p. 328.

other states criminals who had escaped beyond the state borders and to deliver to the governor of any other state criminals sought by him.⁴⁸ The third duty was in connection with the boundary lines between Missouri and other states. At the beginning of the period the legislature attempted to play an important part in the negotiations between this state and the states of Iowa and Arkansas;⁴⁹ but after the dispute with the former state had continued for more than twenty-five years with an increasing violence, that body was willing to withdraw from the fight and to authorize the governor to agree with the governor of Iowa to submit the question to the United States supreme court.⁵⁰

In elections the governor ordinarily performed such services as issuing writs of elections,⁵¹ adding up the votes for important officials⁵² and in giving commissions to persons elected.⁵³ It was provided in 1825, that, whenever the number of electors from Missouri should be changed, the governor should lay off the state into new districts.⁵⁴ This was the most important part that the governor was called upon to play with reference to elections. His power with

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48 - Revised Statutes, 1835, p. 406 ff.

49 - Statutes, 1824-1836, p. 292. Sess. Acts 1840-41, pp. 23-24.

50 - Session Acts, 1844-1845, p. 12.

51 - Constitution of 1820, Art. III, Sec. 9.

52 - Session Acts, 1822-1823, p. 27.

53 - Ibid, p. 27.

54 - Revised Statutes, 1825, p. 354.

reference to the selection and disposal of public lands was of increasing importance throughout this period. Starting in 1821 with the authority to notify certain land officials that a site for a permanent seat of government had been⁵⁵ selected, he was permitted in 1831 by the sixth assembly to cause land and other property belonging to the loan office to be sold,⁵⁶ by the eighth he was requested to complete the sale of seminary lands,⁵⁷ by the twelfth he was made the final judge in disputes between persons claiming land by right of preemption,⁵⁸ and in 1858 he was given authority by the twentieth assembly to determine the genuineness of certificates of payment of every person who, having lost his certificate for the purchase of swamp land, had only a⁵⁹ duplicate to offer to substantiate his claim.

In 1865 the twenty-third general assembly suggested new possibilities in the administrative services of the governor. By this assembly the board of immigration was created⁶⁰ with the governor as a chairman. This was in a sense the beginning of a new era in Missouri government. From this time it became more and more common for the chief

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55 - Session Acts, 1821, p. 236.

56 - Session Acts, 1830-1831, p. 55.

57 - Statutes, 1824-1836, p. 475.

58 - Session Acts, 1842-1843, p. 97.

59 - Session Acts, 1858-1859, p. 51.

60 - Session Acts, 1864-1865, p. 43.

executive to receive important duties as a member of boards of this type. These boards were brought into existence in response to the growing certainty that the legislature, with its cumbrous methods, could never solve the innumerable and difficult problems which the complexities of social and economic conditions furnished. To turn the solution of these problems over to the governor alone seemed undemocratic; so a compromise method was used and the board was created. In summing up the development of the governor's powers to perform administrative services it may be said that not a great deal had as yet been accomplished. There was some advance made; but as yet the legislature had not learned, as it was then beginning to learn with reference to the appointment of officials, that such things could be done better by the executive branch of the government. But enough had been accomplished to establish the fact that his powers in this respect were slowly but surely increasing.

Chapter Five.

Political Powers.

While the development in the legislative influence of the governor during this period was probably very great, it would require a more careful study than the present one to gain any adequate conception of this growth. Much of the influence which was used by the later governors to secure legislation was exercised by extra legal methods and left in the acts of the legislature and messages of the executive no evidence of having existed. It depended much on the personality of the governor and his skill in securing the support of the legislators for his measures. But it necessarily followed that, as he became less feared and more fully trusted and, as the legislature more and more completely lost the honored position which it had once held, his position came to be one of greater influence. During this time there was no proposed constitutional amendments or even statutes that had for their purpose an increase in the executive power in legislation. Neither was there any

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attempt to decrease this power. Some notion of the increase in the legislative power of the governor may be secured from the nature of the messages sent to the legislature. At the beginning these messages were made up chiefly of general statements about the condition of the state with few or no special recommendations. This was especially true of the first messages of Governor M'Nair who evidently¹ had no thought of taking a leading part in legislation. As we near the end of the period we find the messages more comprehensive and more specific. Neither were they free from criticisms for failure on the part of the legislature to enact certain legislation recommended by the executive.² The practice of calling special sessions to consider measures which had failed to pass at the regular session became more common. Appeals by the executive to the people in which he sought to persuade them to bring pressure to bear on their representatives in the legislature also became more frequent.

The exercise of the veto power also gives some notion of the increasing participation in legislation by

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1 - Missouri Intelligencer, Sept. 30, 1820.

2 - House Journal, Adj. Session. 1859-1860, p. 349.

the governor. The veto acts of early governors were not only few, but they were used only against acts that were manifestly unpopular with the mass of the people. The veto by Governor M'Nair of the bill increasing the salary of members of the legislature³ and the veto by Governor Bates⁴ of the bill making whipping the punishment for duelling were examples of this kind. Both measures were extremely unpopular; the first because it meant the expenditure of money, the second because it attached an ignominious punishment to an act that was considered honorable. The majority of the vetoes which came in the later period dealt with topics which at best were unable to arouse any enthusiasm either for or against them. They dealt with matters of policy which for the most part appealed to the intellect and not to any deep seated sentiment or conviction. The number of vetoes increased during this time, the maximum number being reached during the administration of Governor Stewart who returned with his objections about fifteen bills.⁵ Evidently his veto was able to exert an influence; for in his farewell address he boasted that, in no instance, had a

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3 - Missouri Intelligencer, Nov. 11. 1820.

4 - Senate Journal, Jan. 19, 1825.

5 - Governor's Messages, 1859-1860.

bill, vetoed by him, become a law. While his case was an exception, it indicates the fact that the governor was by 1860 able to interfere with legislation in a way that would have caused great excitement and resentment in 1820.

The judicial power of the governor during this period need not receive a very lengthy discussion. The constitution seemed to state very clearly that the granting of reprieves and pardons was an executive act; but it required several years for the meaning of this fact to be understood by a majority of the members of the legislature. By the third general assembly three persons who had been convicted of crime in the courts were pardoned by the legislature.⁶ In his message to the senate concerning the pardon of two of them Governor Bates expressed his opinion that pardons, reprieves and remissions were in ordinary cases so clearly a part of the governor's powers that he was unable, by any deliberate act, to sanction the exercise of these powers by any other branch of the government. But, as he said, inasmuch as the cases involved other principles confessedly within the legislative department, he cheerfully

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6 - Session Acts, 1824-1825, Chapter 10, 13.

a man named Sloss sought to be released from a lower court and was successful. The state appealed to the supreme court where it was held in 1857 that the pardon properly¹⁰ belonged to the executive branch of government. It is worth observing that this decision was not made by the old supreme court whose members had received their position from the governor and who retained these positions during good behavior. This court was made up of men who had been elected by the qualified voters of the state and who expected in a few years to go before these voters seeking reelection. This suggests very strongly that there had been considerable change in the popular conception of the powers of the governor.

The third political power of the governor was his military power. This will be considered under his power to command and his administrative powers. The constitution gave the power of commanding the military forces of the state to the governor.¹¹ On the other hand it withheld from him a considerable portion of the administrative power by providing that all field and company officers should be elected by the persons subject to military duty and that, until otherwise provided by law, the brigadiers and majors general

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10 - State vs. Sloss, 25 Missouri, 291.

11 - Constitution of 1820. Art IV. Sec. 5.

should be elected by the officers of their respective units.¹²
It was with reference to the military administrative work of the governor that he gained in power during this period. This will be discussed with reference to his powers of appointment and removal power and his power of regulating the militia by organization of the different divisions and by ordinances.

The first assembly did not make any addition to the power of the governor either to appoint or remove officials in the militia.¹³ Even vacancies were to be filled by election. His removal power extended no farther than to order courts martial to try disobedient officials and to be final judge in appeals from the courts martial. Acts passed by the second and third assemblies increased his appointive power slightly by adding the office of quarter master general and division and brigade judge advocates to the list of those to be appointed by him; but the great body of the officials were, by the constitution, still to be elected by the men or the officers of the different units. In 1832 the power to appoint judge advocates was taken from him.¹⁶ In 1846 the

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12 - Constitution of 1820, Art. IX, Sec. 2.

13 - Session Acts. 1820. Chapter 30.

15 - Revised Statutes, 1825, p. 543.

16 - Session Acts, 1832-1833. p. 84.

fourteenth assembly authorized him to appoint the chief

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musicians and several assistants, while in 1856 he was
authorized to appoint a division inspector for each mili-

¹⁸
tary district of the state. These officials were the direct
representatives of the governor in the several districts.

Their duty of presiding at elections, inspecting troops,
and preferring charges against officers, brought the militia
more completely under his control than it had ever been before.
In 1860 these inspectors were to be appointed by

him only in those military districts in which the number of
¹⁹
companies was less than twenty-four. In 1860 he was author-

ized to appoint, with the consent of the senate, a brigadier
general in each military district of the state; but it was
provided that, whenever any district should have as many as
twenty-four companies that officer should be elected by the

²⁰
commissioned officers. An ordinance of the state convention
approved in October, 1861 conferred upon him the power
to appoint any official above the rank of captain and to
remove any commissioned officer that he might judge unfit

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for the service. In 1865 the twenty-third general assembly

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17 - Session Acts, 1846-1847, p. 99 ff.

18 - Session Acts, 1857- p. 36.

19 - Session Acts, 1860 p. 72.

20 - Session Acts. 1861, p. 5.

21 - Journal State Convention, Oct. 1861, p. 17.

enacted a law continuing this power in the hands of the governor.²² These acts conferred upon him almost absolute power over the military forces of the state and presented a situation in marked contrast with the one existing in 1820.

The increase in the power of the governor in controlling the organization of the militia was no less remarkable than his power of appointment. In the first assembly, as might have been expected, he was given no power in this organization. The legislature marked out the lines of the divisions and brigades and authorized the majors general of each division to further subdivide the divisions.²³ In 1824 the governor was given the power to arrange the militia into divisions, brigades and regiments leaving the arrangement of the lower units in the hands of the regimental officers.²⁴ In 1830 the sixth assembly changed this law and arranged the militia in brigades and divisions but left to the chief executive the division of the brigades into regiments.²⁵ The eighth assembly in 1835 again gave the governor the power to arrange the militia into regiments, brigades, and divisions, but left the organization of the lower units to the commanding officers of the brigades.²⁶ By an act of the

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22 - Session Acts, 1864, p. 51 ff.

23 - Session Acts, 1820, p. 30

24 - Session Acts, 1825, p. 543.

25 - Session Acts, 1830-1831, p. 58.

26 - Statutes 1824-1836, p. 514.

nineteenth assembly in 1837 military districts were designated by the legislature and the division inspectors of each military district, who were appointed by the governor, were to have charge of the organization of the militia.²⁷ In 1860 an act was passed providing that the organization of the militia should be in the hands of the commander of the military districts.²⁸ This removed from the governor the right to organize the military forces and gave it to the elected military officials. This organization was continued by the next assembly but, since under the law passed at that time, the commanding officers of the military districts were for the most part appointed by the governor, his control over the organization was more complete than before.³⁰ By the action of the state convention of 1861 and again³¹ in 1865 by the act of the twenty-third general assembly the governor was given almost absolute power over the organization of the state militia, with the authority to make such organization of the military forces as he might deem necessary.

The account of the ordinance power of the governor with reference to the militia shows much the same increase

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27 - Session Acts, 1857, p. 36.

28 - Session Acts, 1860-1861, p. 44.

30 - Journal State Convention, Oct. 1861. p. 17.

31 - Session Acts, 1864, p. 51 ff.

that we have observed in his appointive power and his power to organize the military forces. By the first assembly it was provided that the militia laws of the United States should regulate the Missouri militia. The third assembly in 1824 undertook to prescribe regulations which were to supplement the national laws.³³ In 1835 the eighth assembly provided that the discipline should conform as much as possible to that of the United States, but authorized the governor to make regulations relative to the elections and appeals and relative to the distribution of arms, ammunition, and militia stores.³⁴ In 1860 the twenty-first assembly provided that the military board which was to be appointed by the governor from officers in command of the various military districts should, with the approval of the governor, make all rules and regulations for the militia.³⁵ In the fall of 1861 the state convention, which had taken charge of affairs in Missouri, provided that the governor should prescribe such rules and regulations for the government of the militia as he might deem necessary.³⁶ This provision was also contained in the militia act passed by the twenty-third general assembly in 1865.³⁷

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33 - Session Acts, 1820, p. 30.

34 - Statutes, 1824-1836, p. 514.

35 - Session Acts, 1860-1861, p. 36.

36 - Journal State Convention, Oct. 1861, p. 17.

37 - Session Acts, 1864, p. 51 ff.

In tracing the military administrative power of the governor with reference to the appointing and removal of officers, the organization of the forces and the issuing of regulations, the increase in his power has been very evident. The same development might be shown by taking up other phases of his military power; but it seems unnecessary to carry the discussion farther. In 1820 his influence in this respect was very small, in 1865 his control over the military life of the state was almost absolute. It must be admitted that this remarkable development was not the result of a natural growth. Without the Civil War crisis there would have been no such sudden change as came during the period between 1860 and 1865; but even before that time there were evidences of a tendency towards conferring greater military authority upon the chief executive of the state. This seems the more remarkable when we remember that, with the advancing civilization in the state, there was less fear of Indian troubles and therefore less need of a strong military force.

Chapter Six.

Constitution of 1865.

When the convention met to form the constitution of 1865, the Civil War was drawing to a close. The defects of the constitution of 1820 no longer received the attention which had been given them before, but were forced into the background by the more prominent questions of slavery and suffrage.¹ In the presence of so much bitterness as was engendered by the great struggle it is remarkable that the constitution contained so much that was good. But it is evident that a constitution made at such a time cannot be taken as the product of the deliberate judgment of the people. At such a time they were more likely to be influenced by the impressions received during the years of the war than by the knowledge gained through a period of forty years of peace.

In comparing in a general way the position of the governor as described by the constitution of 1865 with the one which he held as the result of the earlier constitution,

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1 - Viles: History of Missouri. p. 188

it is seen that there had been no great advancement. The eligibility requirements were not the same as before. By the constitution of 1820 no one but a natural born citizen or one who had been an inhabitant of the territory occupied by Missouri when the Louisiana territory was purchased could be governor.² By the later constitution the only requirement was citizenship in the United States for a period of ten years.³ Of course such a provision in favor of foreigners might have been expected from a convention whose president was a native of Prussia and in which almost fourteen per cent of the members were foreign born.⁴ The most important thing in connection with the governor's loss of prestige was the shortening of his term of office from four years to two.⁵ He might however be reelected one time in a period of six years. There were several reasons for this decrease in the length of the term. In the first place it was in line with the democratic theory that all officers should be brought as close as possible to the people. Another reason was that it was the personal opinion of Charles Drake, the moving spirit of the convention, that two years was long enough for a governor to serve. After a committee had reported the article on the executive with a four year

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2 - Constitution of 1820, Art. Iv. Sec. 2.

3 - Constitution of 1865, Art. V, Sec. 2.

4 - Journal Missouri Convention. 1865, pp. 3, 4.

5 - Constitution of 1865, Art. V. Sec. 3.

term for the governor, this gentleman moved that it be changed to two years and, after some debate, the motion⁶ carried. He offered as reasons for his stand that, if a governor should turn out to be a bad one, a two year term would be too long for him and that if he should turn out to be a good one, he might be reelected by the people. This profound political philosophy was bolstered up by the statement that from a study of the constitutions of other states, he had learned that seven of them elected the governor for a term of one year, fifteen for two years, two for three years and ten for four years. A remark made by Mr. Weatherby of DeKalb county during the debate helps to explain what Mr. Drake probably had in mind when he said⁷ that a two year term was too long for a bad governor. Mr. Weatherby stated that he believed the governor should be frequently brought before his constituents and that this was especially true at that time when the public mind was undergoing very rapid change. Evidently he had in mind the action of Governor Jackson who, as was stated in the convention, "with the oath of fidelity to the Federal constitution

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6 - Journal Convention 1865, p. 133.

7 - Missouri Statesman, March, 3, 1865.

on his lips, prostituted his official position to place Missouri among the rebel states against the will of a large majority of her citizens".⁸ This action must have been bitterly resented by the radicals who were in control in the convention. To them it had become extremely necessary to shorten the term so that no future governor should have time to make treasonable plots against the peace of the state. Even Governor Gamble after his election by the convention of 1861 was very unsatisfactory to many of the most radical men of the state. He was a conservative and was accused by many of being disloyal. So strongly was he distrusted that a movement was set on foot to secure his resignation as well as that of lieutenant-Governor Hall who later served a short time as governor on the death of Governor Gamble. To make matters worse Governor Fletcher who had been elected as a Radical was developing conservative tendencies and even used his influence against the adoption of the new constitution. This was too much for these intensely earnest but passion blinded men who felt that every act of kindness toward the South was an act of disloyalty.

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8 - Journal Convention 1865. p. 229.

The succession of four disloyal governors, as many of them believed, was enough to cause them to distrust that official and to use their influence to lessen his opportunities for doing mischief.

In his power of appointment as given by this constitution the governor possessed little influence. He was given no power in this respect except to fill vacancies and¹¹ appoint officers for new counties and new judicial districts.¹² The only vacancies that he was authorized to fill were vacancies in the circuit and supreme courts and vacancies not¹³ otherwise provided by law.¹⁴ His power to fill vacancies¹⁵ in the courts was limited by the requirement that he must call an election whenever a vacancy in the circuit court should occur more than six months before a general election. It was also provided that he should appoint company and regimental officers if they should not have been appointed within the time prescribed by law or by the order of the¹⁶ governor. In comparing these powers of appointment with those given him by the constitution of 1820, there is seen to be a great difference. By that constitution there were

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11 - Constitution of 1865, Art. V. Sec. 23.

12 - Ibid, Art. VI. Sec. 15.

13 - Ibid, Art. VI. Sec. 14.

14 - Ibid, Art. VI. Sec. 8.

15 - Ibid, Art. V. Sec. 8.

16 - Ibid, Art. X. Sec. 3.

to be appointed by him the secretary of state, the attorney-general, the state auditor, the judges of the supreme and circuit courts, the adjutant general and other militia officers not otherwise provided for by the constitution. His power under the constitution of 1865 was even less than that possessed after the amendments of 1850; for at that time he was permitted to retain the appointment of the adjutant-general. But it must be noticed that, although he was not given the power to appoint the adjutant-general and other higher military officials, their appointment was not given to any other body by the constitution. And since, at that time, he held the right to appoint these officials by law it was probably intended that he should retain these powers.¹⁷

The removal power of the governor was the same as granted by the constitution of 1820. As by that instrument it was provided that any judge of the supreme or circuit court might be removed on the address of two-thirds of the members of each house of the general assembly to the governor for that purpose; but not for any cause for which he might be impeached.¹⁸ This clause had never given, either

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17 - Session Acts, 1864, p. 51 ff.

18 - Constitution of 1865, Art. VI. Sec. 19.

to the assembly or to the governor, a sufficient amount of power to arouse any antagonism and so was allowed to remain as before.

The constitution of 1865 failed to provide the governor with much power either to direct administrative officials or to perform administrative services. He was given even less machinery for the direction of administration of officials than he had possessed by the former constitution. This loss was for the most part the direct result of his lack of appointive power. So long as he was allowed to select the officials who carried on the work of the government of the state, he was in a position to choose men who were to some extent bound to him by ties of friendship and gratitude and who at least possessed ideas concerning state policy in some degree similar to his own. But when all of these officials were elected by the voters, there was a great chance of persons of opposite political faith being selected, and even those who were members of the same party were in no sense under obligation to support his policies. Since the removal power was not changed, he

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received no help from this source. As in the former constitution it was provided that he should take care that the laws be faithfully executed; but as before, since he had no means of exercising this duty except that given by the legislature he was left in this respect at the mercy of that body. His power to perform administrative services was unchanged. There was nothing in the constitution except the clause just mentioned which authorized him to perform any service and this clause, as in the case of his direction of administrative officials, was entirely worthless until after the action of the legislature. It must be understood however that the members of the constitutional convention probably had no intention of limiting the power of the governor as much as the expressed terms of that instrument would seem to indicate. At the time that these articles were being drawn up the governor was exercising great power both in the direction of administrative officials and in the performance of administrative services. That these powers actually exercised by him were not mentioned shows that the members of the convention were not so greatly

dissatisfied with his position as prescribed by the laws of the state. To put them into the constitution would have been useless and harmful since it would have impeded further progress in this respect. If the constitution may be considered as indorsing all that it permitted to exist, the power of the governor with respect to these two functions was not so small as it at first seems.

The principle just mentioned is well illustrated by the military power of the governor as given by the two constitutions. While by the constitution of 1865 he was not given the power to appoint any military official, except minor officers whose election had not been attended to by proper authorities, in reality his appointive power in this respect was greater than before when he was permitted by the constitution to appoint the adjutant-general and any other militia officer not provided for by the constitution. In the earlier constitution it was provided that brigadiers and majors general should be elected by the men and officers of the militia until otherwise directed¹⁹ by law, while the later instrument merely stated that the

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19 - Constitution of 1820, Art. IX.

assembly should provide for the organization of the militia.²⁰
At that time the governor possessed by an act of the legis-
lature the power to appoint these officials.²¹ In each case
the right to decide how these officers should be elected was
left to the legislature; but, since in 1820, they were, by
law, chosen by the members of the militia and in 1865 were,
by law, to be appointed by the governor, the latter consti-
tution, since it put the stamp of approval on the existing
law by failing to change it, really conferred more appoint-
ive power on the governor than he had been given by the for-
mer constitution. While the appointive power of the gov-
ernor with reference to the militia may be considered to
have been increased by the constitution of 1865 he seems to
have been deprived of the power of organizing the militia
as he had been allowed to do by legislative enactment on
former occasions. It was provided that the general assem-
bly should, by law, provide for the organization of the
militia. No similar clause may be found in the constitu-
tion of 1820. Its purpose seems to have been to prohibit
the legislature from conferring upon the governor the power

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20 - Constitution of 1865 Art. X. Sec. 2.

21 - Session Acts. 1864-1865, p. 53.

to take complete control of the military forces of the state. ✓
Apparently the memory of Governor Jackson was still so fresh in the minds of the members of the convention that they felt constrained to remove from the hands of the governor the opportunity to organize the militia.

✓ The legislative power of the governor was not greatly changed from that given by the former constitution. As before he was given the right of veto which required only a majority of all members elected to each house to overcome.²³ Since it was also provided by this constitution that no bill should become a law unless receiving a like majority,²⁴ the veto had only a suspensive effect; for it was as easy to pass a bill over the veto as to pass it in the first case. In the former constitution it was stated that all resolutions to which the concurrence of both houses should be necessary, except in cases of adjournment, should be presented to the governor.²⁵ The latter constitution included within the exception questions of going into joint session and of amending the constitution.²⁶ This was really no change; for in practice these two questions had not required the sanction

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23 - Constitution of 1865. Art. V. Sec. 9

24 - Ibid, Art. IV, Sec. 24.

25 - Constitution of 1820. Art. IV, Sec. 11.

26 - Constitution of 1865, Art. V. Sec. 10.

of the governor. Another change which was of more importance was the one giving the governor some time after the adjournment of the legislature to act on bills presented to him during the last ten days of the session. By the constitution of 1820 it was provided that if any bill should have been presented to him, it should become a law as if he had signed it, unless the legislature by adjournment should have prevented its return, in which case it was not to become a law.²⁷ Authorities do not agree as to the proper meaning to be attached to this clause, which is also to be found in the national constitution.²⁸ By some it is maintained that the governor might approve a bill after the legislature had adjourned provided that it was done within ten days after it had been presented to him.²⁹ Others take the position that all bills not signed at the close of the session are dead.³⁰ Evidently the Missouri legislature took the latter view; for a careful search through the statutes fails to show any examples of action by the governor after the close of the session. This was changed by the constitution of 1865 in which it was provided that the governor

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27 - Constitution of 1820, Art. IV. Sec. 16.

28 - Constitution of U. S. Art. I, Sec. 7.

29- Hart: Actual Government;

30.- McClain, Constitutional Law. pp. 206-208.

might have ten days after the presentation of the bill for its consideration even though the legislature should have adjourned before the end of that period.³¹ This extension of time was of great service to him as it enabled him to study more carefully the nature and probable effect of the great number of poorly drafted, useless and harmful bills that were so frequently dumped into the executive office during the closing days of the session. Before this time he was in little better position to judge of the merits of a bill than the ordinary legislator was; but now, with this additional time for studying all of the bills before him, he was able to act with greater intelligence with reference to them. The result of this fact would be wiser veto acts which would in turn encourage a greater respect for the veto power.

The authority of the governor to give information to the assembly and to recommend to them such measures as he might deem necessary was the same as he had possessed under the authority of the former constitution. But a provision of great importance was added to the clause authorizing him to call extra sessions of the legislature. It

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31 - Constitution of 1865, Art. V. Sec. 9.

was provided that he should state specifically each matter to be discussed and that the general assembly should have no power, when so convened, to act upon any matter not mentioned in the proclamation.³² This provision added materially to his legislative powers. Before this time it had been possible for a stubborn legislature to ignore the suggestions of the governor in his proclamation calling for a special session and yet so occupy their time with other matters as to cloud the issue and thereby prevent their constituents from finding out how grossly they had misrepresented. But this provision enabled the governor to so limit the subjects for discussion that the general assembly must either pass a favorable law, run the risk of enacting an unpopular measure or go home without having taken any action at all. Of course this could be accomplished with the greatest success only when the issue should be clear cut. This power of the governor gave him the opportunity of putting a proposition squarely to the legislature and compelling them to discuss it while the eyes of their constituents were upon them. It gave him a good chance to

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32 - Constitution of 1865, Art. V. Sec. 7.

remind them of their responsibility to the people "back home".

With reference to his judicial powers the governor was not given as free rein as under the constitution of 1820. The earlier constitution provided that the governor should have power to remit fines and forfeitures, and, except in³³ cases of impeachment, to grant reprieves and pardons. The constitution of 1865 provided that he should have power to grant reprieves, commutations and pardons, after conviction³⁴ for all offenses except treason and cases of impeachment. Evidently by the older constitution the pardon might have been granted either before or after conviction while in the latter case no act could be performed by the chief executive until the courts had convicted. It will also be noted that, while under the pardoning power of the governor, the latter constitution removed from him not only the right to pardon³⁵ in cases of impeachment but also in cases of treason. This was doubtless the result of the feeling that the governor might misuse his power to free traitors from a just punishment, another response to the action of Governor Jackson. In addition to this narrowing of the field of those who

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33 - Constitution of 1820, Art. IV. Sec. 6.

34 - Constitution of 1865, Art. V. Section 6.

35 - Ibid.

might be pardoned by him, further limitations were made as to the procedure to be followed in securing pardons. The legislature was authorized to pass laws directing the manner in which applications for pardons should be made. The governor was also required to make to the assembly a report of numerous facts concerning the reprieves, commutations or pardons, including his reasons for giving them. This offered to the assembly and to the people of the state an opportunity to criticise his action in this respect and doubtless influenced him in issuing pardons.

✓ As has been said before, the constitution of 1865 did not show much increase in the power of the governor. This was partly the result of the tendency of the people to get into their own hands as much power as possible and partly the result of the feeling that was so common among the radicals that the governors had not been as strong in their loyalty as they might have been. In his administrative power there was an actual decrease if one considers only the power actually granted by the terms of the constitution, without reference to the laws which were at that time on the

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statute books. The officers who were appointed by him and who were subject to his direction were not constitutional, but statutory officers. Their work was not defined in the minds of the people with sufficient clearness to make it safe to prescribe their duties in the constitution. Neither was it thought worth while to give their election to the voters. It will be noticed, however, that there was no tendency to give any of the administrative power such as making appointments to the legislature. The day of that body for active participation in administrative work was past. It had been discovered by the people that, whenever any work of this kind must be delegated it could ~~not~~ be given with greater safety into the hands of the executive. Unfortunately they had failed to see the necessity of placing all of this power in the hands of one executive; but had divided it among several of them so that no one of them had sufficient power to make his influence felt very greatly. In his political power the governor had gained. While he lost slightly in his judicial power and gained but little if any in his military power, his legislative power had been

considerably strengthened. This was the only power that had not had an opportunity to develop abnormally as a result of the war and consequently the only one that had not aroused the envy and fear of the people of the state. This increase was evidently in response to a need which had manifested itself during the time of peace previous to the war and is an indication of what might have been expected had the excitement of that time not overthrown the natural development in the power of the executive.

There was little change in the relative position of the governor and the legislature under the two constitutions we have studied. As in 1820 the governor had the right of veto which could be overcome by a bare majority of all members elected to each house. But since by the later constitution a bill required the same majority before going to the governor as after being vetoed by him, the veto was comparatively of less importance than before. On the other hand the requirement that only such provisions as had been recommended by the governor could be considered by the legislature when assembled in extra sessions, increased the

control of the executive branch over the legislative. As before the governor was to give information and recommend measures. He still could influence by his pardoning and his appointive power; but the former power might be restricted to some extent by the legislature while the latter was almost entirely denied him. He still retained his power of issuing writs of election to fill vacancies in either house and could occasionally exercise some influence in this respect. ,But the control which he might exercise over the legislature was on the whole of less importance than that possessed by him under the former constitution.

While the executive had lost in his means of control over the legislature, that body had gained slightly in its control over him. The power of impeachment, the power to make appropriations, to decide elections in cases of tie and contest, the control over the salary of the governor, the right to advise him to command the militia, the power to demand a record of the official acts of the governor and copies of all papers relative thereto, and the power of the senate to criticise the appointments made by him were

possessed by the legislature as under the former constitution. Besides the means of control offered by these powers, the legislature was given the opportunity to influence the pardons of the governor by the requirement that he should send to that body a detailed statement and explanation of all his pardons. These facts justify the statement that the control exercised by the legislature over the executive was greater than under the constitution of 1820.

Chapter Seven.

Development between 1865 and 1875.

✓ The period between 1865 and 1875 was still under the influence of the conditions resulting from the Civil War. It was not until near the end of that period that normal conditions again existed. The first five years were years of radical supremacy during which the question of the test oath and other similar questions growing out of the war occupied the attention and energies of the people and little opportunity was offered for real constructive work in the legislature. And then too the country was so exhausted from the effects of the conflict that little besides the most necessary things could be done. Consequently we need not expect a great amount of legislation for the development of the natural resources such as had occurred in the decade before the war. The year 1870 at which time the conservatives gained control of the state

government marked the beginning of a new ¹era. The state was rapidly recuperating from the effects of the war, a saner view of the conflict was becoming prevalent and everything pointed to a renewal of those activities that had been checked by the struggle.

The assembly which met in 1867 did not add anything to the appointive power of the governor. The office of the agent to select swamp lands, which had been filled by appointment of the governor, was abolished.² By 1869 conditions in the state were becoming more favorable and new offices were created and old ones which had been abolished during the war were reestablished. The legislature which met in that year established the insurance department with a superintendent who was to be appointed by the governor with the consent of the senate.³ At the adjourned session of that assembly which convened in 1870 it was provided that the board of curators of the University, which had formerly been elected by the legislature, was to be appointed by the governor with the consent of the senate; but it was further provided that one third of the number should be made up of

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1 - Viles, History of Missouri,

2 - Session Acts, 1867, p. 122.

3 - Session Acts, 1869, p. 23.

the state board of agriculture which filled vacancies in its own membership as they occurred.⁴ By the same assembly the bureau of mines, metallurgy and geology was established to be controlled by a board of managers with the governor as president. The other members of the board were to be appointed by him for a term of four years. The state geologist who was the active official of the bureau was also to be appointed by the governor.⁵ It was further provided that the board might establish the office of assayer of ores which should be filled by the governor's appointment. He was also authorized to appoint inspectors of coal oil and petroleum oil for St. Louis, Kansas City, St. Joseph, Hannibal and other towns that might petition for the office.⁶ The term of the inspector was to be one year. The office of public printer which had been filled by the action of the legislature was abolished and the work of public printing was put into the hands of a commission composed of three of the executive officials.⁷ This assembly also established two normal schools to be managed by a board of regents composed of the state board of education and four others to be

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4 - Session Acts, 1869, p. 23,

5 - Session Acts, 1863, p. 44.

6 - Ibid, p. 77.

7 - Ibid, p. 79.

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appointed by the governor.

By the twenty-sixth assembly which met in 1871 the bureau of mines, metallurgy and geology was reorganized, but the governor retained the same power with reference to it that he had held under the former law.⁹ This assembly also authorized him to appoint inspectors of tobacco in St. Louis and in other towns which should petition for such official.¹⁰ The term of office was to be two years. In the adjourned session of this assembly which met in 1872 a board of guardians for supervising public charitable, reformatory and penal institutions was established.¹¹ The members of the board were to be appointed by the governor for a term of four years. Another act of the adjourned session provided that a second asylum should be established. The chief executive was to appoint fix commissioners to select the site and construct the asylum building. He was also to appoint with the consent of the senate a board of managers for the asylum.¹² In 1873 an act was passed establishing the Southeast Missouri Normal School and providing that the governor should appoint four persons who, with the state board of

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8 - Session Acts, 1870, p. 134.

9 - Session Acts, 1871, p. 34.

10 - Ibid, p. 81.

11 - Session Acts, 1872, p. 80.

12 - Ibid, p. 160.

education, should be the board of regents.¹³ He was also authorized to appoint a committee from the legislature to examine all claims against the state on account of the pen-¹⁴itentiary. In 1874 an act was passed by the adjourned session of this assembly authorizing him to appoint two persons who, with the quarter-master general should examine, adjust and audit the claims of citizens then on file in the office of the quarter-master general.¹⁵ Another act of this assembly repealed the former laws defining the boards of regents of the normal schools and provided a board for each school which was composed of the state superintendent of schools and seven members appointed for a term of six years by the governor with the consent of the senate.¹⁶ Another act passed by this assembly removed the requirement that one-third of the board of curators of the University should be composed of the board of agriculture and provided that all members should be appointed by the governor.¹⁷ In 1875 an act was passed by the twenty-eighth assembly authorizing the governor to appoint an agent for a term of two years to assist in compromising debts of counties which had voted bonds

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13 - Session Acts, 1873, p. 80.
14 - Ibid, p. 82.
15 - Session Acts, 1874, p. 102
16 - Ibid, p. 143.
17 - Ibid, p. 183.

for improvements which had never been made.¹⁸ He was also authorized to appoint notaries public for each county in the state and for each territory of the United States for a term of six years¹⁹ and a board of state centennial managers for the exposition at Philadelphia.²⁰ Another act authorized him to appoint three railroad commissioners to hold office until the first of January 1877 when their successors, elected by the voters of the state should take possession of the office.²¹

✓ This completes the enumeration of the offices created between 1865 and 1875 which were to be filled by the governor. ✓ During this time nearly twenty classes of officials were to be appointed by him while only one of the offices created was to be filled by the electorate and only once did the assembly undertake to make appointments. This was in 1872 when that body elected commissioners to construct the Kirksville Normal School building. There were added to his appointive list during this time more classes of officials than he had been allowed to appoint in 1865. These facts suggest very strongly that the legislature was no longer considered as being the

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18 - Session Acts, 1875, p. 23,

19 - Ibid, p. 102.

20 - Ibid p. 27.

21 - Ibid, p. 115.

proper authority for making appointments.

The removal power of the governor during this ten year period was of considerable importance. While only three of the numerous laws conferring appointive power on him, also gave him the power of removal, the work of the officials created by these laws was by far more general and important than that of any other of the other officials. The first law, which was passed in 1869, established the office of superintendent of insurance. This official was to be appointed by the governor with the consent of the senate for a term of four years. He might be suspended from office by the governor who, with the consent of the senate, might also remove him. The superintendent was to appoint a deputy²² and might remove him at pleasure. This of course placed the deputy under the control of the governor as a result of the power of the latter to suspend the superintendent. The second law was passed in 1870. This was the one creating the bureau of mines, metallurgy and geology under the direction of a board of which the governor was to be president. This board had authority to remove from office the state

geologist and his assistants.²³ The position of the governor on this board gave him great influence over it so that a determination on his part to remove any of the employees would, in all probability, have resulted in their removal. In 1872 the third law established the board of guardians who were to supervise all public charitable, reformatory and penal institutions. The members of the board, who were appointed by the governor for a term of four years, might be suspended by him or removed by the senate on charges made by him.²⁴ It will be observed that all of the officials who were given the most important duties with reference to the policies of the entire state were in some measure subject to his removal power.

The laws passed during this period gave to the governor a position of considerable importance in directing the work of administrative officials. He received some of his influence as a result of his authority to approve or disapprove some of the actions of the officials appointed by the electorate. An example of this is found in the case of the register of lands who was elected by the voters but

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23 - Session Acts, 1870, p. 66.

24 - Session Acts, 1872, p. 151.

was required to secure the consent of the governor to ap-
point assistants. ²⁵ Another example is furnished by the
law authorizing the fund commissioners, by and with the
consent of the governor, to prepare and issue bonds. ²⁶ A
third example is found in the law requiring the auditor,
upon the requisition of the paymaster-general approved by
the governor, to draw his warrant on the union military
fund. ²⁷ But the chief source of his power to direct ad-
ministrative officials was his power of appointment and
removal. Since this has been treated before it is not
necessary to repeat the discussion in detail. As has
been suggested his power to appoint, suspend and, with the
consent of the senate, remove the superintendent of in-
surance and the board of guardians, and his power to ap-
point and, with the consent of the board of managers, re-
move employees of the bureau of mines, metallurgy and
geology, gave him a great amount of power to determine
the action of all officials created by these three laws.
His membership on the last mentioned board and the re-
quirement that the other two boards should make annual

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25 - Session Acts, 1870, p. 57.

26 - Session Acts, 1875, p. 19.

27 - Session Acts, 1867, p. 8.

reports to him gave him an additional means of control by placing in his hands full information concerning the work accomplished. His control over the remaining officers was not so great since he had no power to remove them. Most of them however were required to report to him annually either directly or through some higher official as in the case of the curators of the University and the regents of the normal schools, who reported to the state superintendent of schools who in turn laid his report before the governor.³⁰

As in the earlier chapters, the governor's administrative services will be discussed under the headings of financial powers, ordinance power and miscellaneous powers. One method by which he exercised financial power was offered by the requirement that he should oversee the expenditure of state money.³¹ This occurred most frequently when the money was to be paid out to some railroad company as in the case of the South Pacific Railroad. In this case the road which had been forfeited to the state was turned over to the new company. This company was required to deposit in some bank approved by the governor the sum of one million dollars which

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30 - Session Acts, 1874, p. 143.

31 - Session Acts, 1867, p. 62.

the state was to return to it in installments to be used for the improvement of the road. To secure the payment of these installments, the company was required to prove to the satisfaction of the governor that the previous installment had been expended in good faith.³² A second financial duty of the governor was to issue bonds. While the laws authorizing this act were not so frequent as before the power of issuing the bonds when authorized was³³ intrusted to him.

The ordinance power of the governor was not very extensive. By an act passed in 1867 by the twenty-fourth assembly it was provided that the North Missouri Railroad Company and the Missouri Railroad Company should each have the right to transport its freight and passengers over the road of the other upon such terms as they might agree upon. In case they should be unable to agree it was provided that the governor should prescribe the rates.³⁴ Another law was passed by that assembly authorizing the Kansas City and Cameron Railroad Company to construct a bridge across the Missouri River and provided that all railroads having their

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32 - Session Acts, 1868, p. 118.

33 - Session Acts, 1872, p. 153.

34 - Session Acts, 1867, p. 139.

terminal at the bridge might use it upon such terms as they might make with the Kansas City and Cameron Railroad Company. As in the previous law the governor was authorized to fix³⁵ the terms in case the companies should be unable to agree. These regulations, although they conferred upon the governor the rather important power of issuing ordinances with reference to the roads interested, were of such limited application as to be of little significance.

The laws conferring upon the governor administrative services with references to land were also of rare occurrence. In 1869 a law was enacted by the twenty-fifth assembly giving him the authority to pass upon the genuineness of land certificates which had been issued by the state for land erroneously sold. If it should be found by the governor that the certificate had been secured in good faith, he was to authorize the auditor to draw a warrant on the treasurer for the amount paid by the person owning the certificate.³⁶ No other laws of importance were enacted during this period bestowing upon him the power to perform administrative services.

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35 - Session Acts, 1867, p. 144.

36 - Session Acts, 1869, p. 63.

The political powers of the governor received little attention from the legislature between the years 1865 and 1875 if the laws passed during that period may be taken as an indication. No change of importance was made in his legislative or judicial powers. In his military powers there were changes of only minor significance. In 1867 the twenty-fourth general assembly provided that the governor should appoint in each county an enrolling officer to take the names of all persons liable to do military duty.³⁷ A law passed by the twenty-seventh assembly in 1874 tended to emphasize the weakness of the governor in calling out the state militia for ordinary purposes. This law provided that whenever the governor should be satisfied that there was any band of robbers or outlaws within the state beyond the powers of the ordinary officers and process of law to arrest and bring to justice, he should be authorized to call into active service such a force of men, not to exceed twenty-five in number, as he might deem necessary for the purpose of arresting such band.³⁸

It may be said in conclusion that the period between

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37 -Session Acts, 1867, p. 125.

38 - Session Acts, 1874, p. 5.

1865 and 1875 did not bring any great increase in the power of the governor. In his power of appointment, removal and direction of administrative officials he made substantial gains. In his power to perform administrative services he gained slightly over the position which he had held at the beginning of the period. His legislative and judicial powers were unchanged and little more can be said of his military powers. In view of the fact that the greater portion of the period was given to rebuilding the institutions and fortunes of the state and that during this time the country was financially unable to begin new undertakings, it is not surprising that so little was accomplished. It was not until the last years of the period that any advancement was able to be made. /

Chapter Eight.

The Constitution of 1875.

✓ The constitution of 1865 was not a very satisfactory document, to the people of Missouri. It had not received a large majority of the votes of those who were permitted to vote on it and doubtless would have been defeated by an overwhelming majority had the privilege of voting been allowed to all persons who had formerly possessed the right of suffrage.¹ Containing as it did such drastic measures against those who had in any way aided the South, it was especially displeasing to the great number of Missourians who were bound by ties of blood and friendship to the people of that section. Another objection was that the Democratic party which before the war had been so powerful in the state had taken only a minor part in the formation of this constitution.³ Added to these reasons was the growing certainty that the legislature was badly in need of reorganization. ✓

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1 - Viles, History of Missouri. p. 189.

3 - Columbia, Statesman, Oct. 22, 1875.

There seemed to have been two general plans by which changes should be made. One was to make that body more representative by allowing to larger counties representation more in accordance with their population. The second was to restrict its powers so as to avoid some of the evil legislation which had always been so common and which seemed to have become worse during the last decade.⁴

✓ The constitution of 1875 has been called conserva-³⁰
tive because it contains so many restrictions on the power of
the legislature.⁵ However conservative it may now be consid-
ered, it was only a continuation of that tendency of the peo-
ple to gather into their own hands the exercise of every
power capable of being exercised by them. This tendency had
been manifested by the constitutional amendments of 1850,
which increased the participation of the people in the admin-
istrative functions of government⁶ and was later made evident
by the constitutional amendments of 1908 establishing the
initiative and referendum, which increased the participation⁷
of the people in the legislative functions of government.
The constitution of 1875 did in a negative way what the con-

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4 - Columbia, Statesman, Jan. 1, 1875.

47 5 - Viles, History of Missouri, p. 198.

48 6 - Session Acts, 1850-1851. p. 47

49 7 - Ibid, p. 190.

stitutional amendment of 1903 did in a positive way. It limited the power of the legislature and increased the power of the people.⁸ It not only took from the legislature powers which it had always held, but it greatly increased the powers given to the governor. ~~✓~~ Evidently the people were beginning to realize that it was safer to place some of the delegated power in the hands of the chief executive than to let it remain in the control of the general assembly. It is evident that the legislature was losing power, not only as the result of the tendency of the people to get all possible power into their own hands, but also as a result of the tendency to select wisely the authority to which delegated power should be given. ✓

The fact that the term of the governor was again made four years instead of two indicates the tendency to increase his influence.⁹ ~~As~~ was said by the Columbia Statesman; the two year term had not "worked well, but to the contrary".¹⁰ While it was possible for any governor to receive a second term, no one of the four men who were elected during

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8 - Constitution of 1875 Art. IV. Sec. 1 a.

9 - Ibid, Art. V. Sec. 2.

10 - Columbia Statesman. Apr. 16, 1875.

this period was elected to succeed himself. It is probable however that the length of the governor's term as decided by the constitution of 1865 had not caused any great popular dissatisfaction. The short term fit in too well with the idea of rotation in office to cause much disturbance among the great mass of the people. The interesting thing is that, in spite of the firmly fixed notion that the official should be frequently required to seek his election at the hands of the people, the term of the executive officers was changed from two years to four. No doubt the desire to restore everything destroyed by the Drake constitution contributed to the success of the longer term plan; but, when taken in connection with other evidences given by the new constitution of increased confidence in the executive, it confirms our belief that there was a strong feeling that the power of the chief executive should be greater. The only change made in the qualifications of the governor was the one leaving out the word "white". As before he was to be thirty-five years old, a male citizen of the United States for ten years and a resident of the state for seven years.

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11 - Constitution of 1875, Art. V. Sec. 5.

✓ The appointive power of the governor was increased by the constitution of 1875. In the former constitution he had received no power of appointment other than that depending on some future contingency such as a vacancy or the creation of a new office. The new constitution put into his hands the power to appoint, for indefinite terms, the curators of the University,¹² the majors-general, the brigadiers-general, the adjutant-general, the quartermaster-general and his other staff officers.¹³ The appointment of the board of curators and the majors and brigadiers-general was required to receive the ratification of the senate. The other appointments did not require this ratification. Besides these new powers given to the governor, he retained the power of filling all vacancies not otherwise provided for,¹⁴ to appoint all regimental and company officers who should not have been elected within a prescribed time,¹⁵ and to appoint the sheriff and coroner in all new counties.¹⁶ He was also to appoint judges of the newly created St. Louis court of appeals to serve until the next election.¹⁷ By an amendment to the constitution ratified in 1884 he was to appoint the judges in the newly created Kansas City court of appeals¹⁸ to serve until the next election and the additional judges of the supreme

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12 p Constitution of 1875, Art. XI, Sec. 5.

13 - Ibid, Art. XIII. Sec. 6.

14 - Ibid, Art. V. Sec. 11.

15 - Ibid, Art. XIII, Sec. 8.

16 - Ibid, Art. IX. Sec. 10.

17 - Ibid, Art. VI, Sec. 27.

18 - Ibid, p. 41. Sec. 2.

court created by the amendment of 1890 were¹⁹ to be appointed by him in the same way. The appointive power which he possessed as a result of this constitution gave him more complete control over higher education and over the militia than he had possessed under any former constitutional provision. It also interesting to note that, while the additional judges of the circuit court created by the constitution of 1865 were to be appointed by the governor with the consent of the senate, the judges of the St. Louis court of appeals established in 1875, the judges of the Kansas City court of appeals established in 1884 and the additional judges of the supreme court authorized by the amendment of 1890 were all to be appointed by him without the participation of the senate. It is true that these appointments were only for a few years, but the fact that he was allowed to make them without the consent of the senate shows the tendency to leave him more free in his administrative duties.

✓ This constitution made little change in the removal power of the governor. It was provided that, in case of the inability of any judge of a court of record to discharge the duties of his office with efficiency, by reason

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19 - Constitution of 1875, prt42, Sec. 1.

of continued sickness or mental or physical infirmity, the legislature, by a two-thirds vote of each house and with the approval of the governor might remove such judge from office.²⁰ Although it is stated in the official edition of the constitution published in 1909 by Secretary of State Roach that no similar section occurred in the constitution of 1865, section nineteen of article six of that constitution differs from the one just mentioned but very little.²¹ By the former constitution it was provided that any judge of the supreme or circuit court might be removed from office on the address of two-thirds of each house to the governor for that purpose. But no judge could be removed in this manner for any cause for which he might be impeached. While it seems at first glance that the earlier constitution bestowed more power upon the governor than did the later one, a more careful examination will show that the difference was more apparent than real. In each case the consent of the governor and the consent of two-thirds of the members of each house were necessary to secure the removal of the judge. Neither could act without the consent of the other. In both

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20 - Constitution of 1875. Art. VI. Sec. 41.

21 - Constitution of 1865, Art. XIX, Sec. 6.

cases the legislature was apparently required to take the initiative in the process. The fact that in the earlier constitution the actual removal was placed in the hands of the governor while in the constitution of 1875 the legislature was given this power was of no importance; for the governor and the legislature would act with equal readiness after having consented to the removal. By the constitution of 1875 the removal power was extended from judges of the supreme and circuit courts to judges of all courts of record. This fact of course widened the control of both the legislature and the governor to that extent. Another difference was the provision that the causes for removal were specifically defined in the later constitution while the earlier constitutions merely provided that no judge should be removed for any cause for which he might be impeached, i.e. for misdemeanors in office.²³ In practice these two provisions probably secured the same results.

The power of the governor to direct the activity of administrative officials was increased by the present constitution. Indeed the constitution of 1865 gave him no

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23 - Constitution of 1865, Art. XIX, Sec; 6.

authority by which he might direct these officials except the general power to execute the powers of the state. As we have seen before this power was, under that constitution, practically worthless until supplemented by the laws of the state. In the present constitution his power to appoint the curators of the University gave him the opportunity to exercise some influence in controlling their action. But he was not limited to his appointive power as a means of securing control, but received direct authority from the constitution to do so. His power of direction of officials when dealing with financial affairs was especially noticeable. In the first place he was to receive from all officials in the executive department a semiannual statement²⁴ of the disbursements of all moneys made by them. This report was to be made under oath. In the second place he was to designate the manner in which the treasurer should²⁵ issue quarterly statements of the state's finances. In the third place he, acting with the attorney-general, was required to approve the action of the state treasurer in²⁶ selecting banks for the deposit of state money. Besides

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24 - Constitution of 1875. Art. V. Sec. 22.

25 - Ibid, Art. X. Sec. 16.

26 - Ibid, Sec. 15.

being given these powers which were purely financial he was authorized to require at any time from the officials of the executive department and all officers and managers of state institutions information in writing and under oath upon any subject relating to the condition, management and expenses of their respective offices and institutions. It was further provided that any one making a false report should be²⁷ guilty of perjury and punished accordingly. These provisions gave to the governor far more extensive control over the administrative officials than he had possessed under the former constitution. He had within his grasp the constitutional authority to expose the corruption or inefficiency of any administrative official. With evidence gained from these reports he might go before the house of representatives and ask that the guilty official be impeached, he might give the evidence to the attorney-general and demand prosecution in the courts of the state, or he might simply publish the facts and recommend to the people that so corrupt and inefficient an official be defeated at the polls. In either case he had in his hands great power to bring injury and

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27 - Constitution of 1875, Art. V. Sec. 22.

disgrace to the guilty person. This power was incomplete however in that he was able to exercise this influence with most success only in cases of evident inefficiency or corruption in office. With respect to matters of public policy about which honest men might be expected to differ his influence was of much less importance. But even in this case a determined governor who had the people behind him could render the position of any stubborn official unpleasant and unsafe by pointing out weaknesses in the policies followed by him. Unfortunately for the power of the governor to control these officials he had no power either to suspend or remove them, but must be content to place his evidence before some other body in order that punishment might be given. He was left with no ~~other~~ means than to appeal to the legislature, the courts, the electorate, or public opinion to enforce the laws of the state. But the opportunities offered him for making such an appeal were decidedly superior to those contained in either of the former constitutions.

By the constitution of 1875 the power of the

governor to perform administrative services was increased considerably. As before he was given the power to see that the laws were executed but he received the additional²⁸ authority of calling out the militia for this purpose. This evidently put into his hands a greater power to perform his constitutional duty. But besides the power given him by this section he also received some specific grants. In addition to his rather doubtful power to prescribe regulations setting the time of elections in the militia, he was made a member of the board of education which was to²⁹ supervise instruction in the public schools. This gave him a position in which he could be a potent factor in shaping the policies of the public school system which, by the constitution, was to receive not less than twenty-five³⁰ percent of the state revenue. By the constitution of 1865 the governor had received no such power in this field; for by that constitution the supervision of instruction was vested in a board of education consisting of the superintendent of public schools, the secretary of state and the³¹ attorney-general.

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28 - Constitution of 1875. Art. XI, Sec. 7

29 - Ibid, Art. XI, Sec. 4.

30-- Ibid, Sec. 7.

31 - Constitution of 1865, Art. LX. Sec. 3.

His financial powers were also greatly increased. While this increase came chiefly in his legislative power and his power of direction it was also important in his power to perform administrative services. He was made a member of the state board of equalization which was to adjust and equalize the valuation of real and personal property among the several counties of the state.³² Because its members have been too busy to attend to its duties properly this board has not accomplished all that was perhaps expected of it. But whatever it has done has been done with the governor in a position to exert a considerable influence over its action. No such influence over taxation was given him by either of the former constitutions. Besides the power over taxation given him by his position on the board of equalization, he was also made responsible, in conjunction with the attorney-general, for the approval of banks in which state money was to be deposited by the treasurer.³³ While the laws of the state had granted to the governor similar powers with reference to banks, the former constitutions had failed to include such grants among their provisions.

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32 - Constitution of 1875, Art. IX, Sec 3.

33 - Ibid, Art. X. Sec. 15.

Just as the administrative powers of the governor were made greater by the constitution of 1875 so were his political powers increased by that instrument. The military powers of the governor furnish an example of this increased power. As before he was made commander-in-chief of the militia of the state; but in addition to this it was provided that he might call out the military forces to execute the laws, suppress insurrections and repel invasions.³⁴

This power was in marked contrast with that granted him by the former instrument under which it was necessary to pass a special act before he might even call out as few as twenty-five men to quell disturbances in the state.³⁵

His powers with reference to military administration were also increased. By the former constitution he had not been given the authority to appoint any military officer except company and regimental officers which the respective units had failed to elect within the time prescribed by law or by executive order.³⁶ By the present constitution he was authorized to appoint not only these regimental and company officers under the conditions described,

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34 - Constitution of 1865. Art. V. Sec. 7

35 - Session Acts, 1874 p. 5.

36 - Constitution of 1875, Art. X, Sec. 3

but he was also to appoint all majors-general, all brigadiers-general, the adjutant-general, the quartermaster-general and other staff officers.³⁷ The first two classes of officers named were to be appointed by and with the consent of the senate while the others were to be appointed by the governor without the action of the senate. It must be remembered in this connection, however, that the former constitution left the matter open to the action of the legislature which might and did provide that these officials be appointed by the governor.³⁸ On the other hand the fact that by the constitution of 1875 the power was placed in the hands of the governor so that it could not be removed by the legislature is significant. Ten years before the location of the power to appoint these officials was an unsettled question; in 1875 it was settled and settled in favor of the executive. Apparently the section providing for the organization of the militia left the legislature the privilege of performing this task by law as under the constitution of 1865,³⁹ or by conferring the power upon the governor.⁴⁰ The only requirement which the legislature

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37 - Constitution of 1875, Art, XIII. Sec. 6

38 - Session Acts, 1864, p. 53.

39 - Constitution of 1875, Art. XIII. Sec. 2.

40-- Session Acts. 1864, p. 53.

must meet was that the organization, equipment and discipline of the militia should conform as nearly as practicable to the regulations for the government of the armies of the United States.

The governor received a greater increase in legislative power than in any other division of his powers. This was especially true with reference to the veto. As in the constitution of 1865, it was provided that every⁴¹ bill and every resolution to which the concurrence of the two houses might be necessary, except on questions of adjournment, of going into joint sessions, and of amending⁴² the constitution should be presented to him. But after this point the constitutions differed considerably. By the constitution of 1865 a bill became a law if not returned by the governor within ten days (Sundays excepted)⁴³ after the bill was presented to him. In the later constitution this period was extended to thirty days from the time of presentation allowing him eighteen or nineteen⁴⁴ days more for consideration than was allowed before. This was an important addition to the veto power. As was said

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41 - Constitution of 1875, Art. V. Sec. 13.

42 - Ibid, Sec. 14.

43 - Constitution of 1865, Art. V. Sec. 9.

44 - Constitution of 1875, Art. V. Sec/ 13.

in discussing this provision of the constitution of 1865, the additional days gave him an opportunity to study the laws more carefully before taking his decision as to their disposal. The ten days period was not long enough to secure the best results; for just at the time he needed his energies to secure the passage of important bills which were always left to be considered during the last three or four days of the session, he was required to examine the laws that had been presented to him in the early part of the ten day period immediately preceding adjournment. After the time had been extended to thirty days, he could leave the measures already passed for later examination and enter the fight for the passage of the administration bills. But a still greater change was made with reference to the veto power. By the old constitution a bare majority of all members of each house was sufficient to pass a bill over the veto. The new constitution provided that a veto could be overcome only by a two-thirds vote of all the members elected to each house.⁴⁵ No discussion is necessary to make clear the importance of this change. What was before little

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45 - Constitution of 1875, Art. IV. Sec. 39.

more than the right to discourage the passage of bills disliked by the governor had now become a power by which he could, except in unusual cases, stop the passage of any law. But even this does not exhaust the discussion of the additional powers granted to the executive in connection with his right of veto. By the former constitution he must either approve or veto a bill as a whole. Consequently it was an easy matter for the politician to place in appropriations bills by log-rolling methods items that had no value and no other purpose than to satisfy personal greed. Since these items were contained in bills which were absolutely necessary for carrying on the government and since such bills were usually passed too late in the session to be reconsidered, the governor did not dare veto them. The result was that his veto power was useless so far as such bills were concerned and would have been no less so had his power been absolute; for few governors would risk stopping the work of the government merely to eliminate such items. The robbing of the treasury was the inevitable result. Under the new constitution all this was changed. It was

provided that, if any bill should contain several items of an appropriation of money, he might object to one or more items while approving other portions of the bill.⁴⁶ With such a provision the check of the governor over appropriation bills was immensely increased. Only a failure on his part to do his duty could allow any corrupt appropriation to be made. It is true that he was still handicapped by not having the power of reducing the amount of particular items in the bill; but certainly his power in this respect was vastly increased by the constitution of 1875. Even the president of the United States has no such power with appropriation bills.

The legislative power of the governor was not limited to his veto powers. As before he was given the power to call extra sessions and to state specifically each matter upon which he should wish legislation enacted. It was provided by the former constitution that the general assembly should have no power when so convened to act upon any matter not specially designated in the proclamation.⁴⁷ The constitution of 1875 contained a similar provision, but added that any subject recommended by the governor after the

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⁴⁶ - Constitution of 1875. Art. V. Sec. 13.

⁴⁷ - Constitution of 1865, Art. V. Sec. 7.

convening of the assembly might also be acted upon.⁴⁸ Thus, the new constitution retained the limitation placed upon the legislature by the former constitution, and increased the power of the governor by conferring upon him a right which he had not formerly possessed. The power of the executive to send messages, give information and recommend measures to the legislature were very similar to that conferred upon him by the former constitution. The duty was more fully defined however by requiring that, at the commencement of each session of the legislature and at the close of his term of office, he should give information of the condition of the state by a message and recommend such⁴⁹ measures as he should deem necessary. While this had not been in either of the former constitutions, the custom of sending such messages had been followed since 1820. Another provision contained in the same section required him to present to the legislature at the commencement of each regular session, estimates of the amount of money required to be raised by taxation for all purposes. This provision had within it the germ of the budget system and considered in

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48 - Constitution of 1875, Art. IV. Sec. 55.

49 - Ibid, Art. V. Sec. 10;

connection with his power to veto items of appropriation bills, would seem to have given him almost complete control over the voting of money. It seems altogether reasonable to believe that any governor with sufficient determination could control the appropriation of money almost completely, with the powers given him by these two sections. It is probable however that such action on his part would so antagonize the members of the legislature as to destroy his influence with them and thus bring about the defeat of other measures which he might wish to see passed.

The section of the constitution of 1875 granting to the governor judicial powers was copied verbatim from the constitution of 1865. It will be remembered that by this constitution he was given the power to grant reprieves, commutations and pardons after conviction for all offences except treason and cases of impeachment, subject to the regulations made by law concerning the manner of applying for pardons. He was also to report to the assembly every case of reprieve, commutation or pardon granted, with numerous details concerning the case.

✓ In comparing the power of the governor under the constitution of 1875 with his powers under the constitution of 1865, the later instrument is seen to confer upon him much greater influence than he received from the earlier one. This was true in every division of his power except two- the judicial power and the power of removal - and in these he received the same amount of authority that he had held before.

His appointive power, his power to direct administrative officials, his power to perform administrative services, his military power and his legislative power were all much larger than before. Such facts furnish unmistakable evidence that in Missouri, as in the other states of the Union, the executive department has continued to grow from the time of its establishment until the present moment.

The means offered to the governor for exercising influence over the legislature differed from that of the two former constitutions for the most part only in degree. As has been said the veto power was increased in three different ways:- first, by increasing the number of votes required to overcome it; second, by extending the time for consideration of bills after the adjournment of the legislature; and third, by permitting separate items in appropriation bills to be vetoed.

All three of these powers were important in increasing his influence with the legislature. As before the power to convene extra sessions and the requirement that only such measures as he should suggest might be considered by the legislature gave to the governor considerable control over that body. The right to give information and to recommend measures which he had possessed since 1820 was still held by him as a means of influencing the action of the legislative branch. The appointive power, while not so great as under the first constitution, was larger than under the second. His power of pardon was, just as it had been in 1865, placed under greater restrictions than it had been in 1820. He still retained his right to issue writs of election in case of vacancy in the legislature. The only absolutely new means of control was the one offered him by his right to present to the legislature estimates of the probable expenditures. As a whole there had been given to him a means of control over the legislature much greater than that possessed by him under either of the former constitutions.

While the means offered the governor for controlling the legislature were being increased so much, the legislature was receiving but little additional control over the

executive and was losing some control which it had previously held. As before, that body possessed the power of impeachment,⁵⁰ power to make appropriations,⁵¹ the power to decide elections in case of a tie, or contest,⁵² the power to determine the salary of the governor, with some restrictions as to change⁵³ during the term, power to advise him to take command of the militia,⁵⁴ power to criticize his appointments and pardons, and the power to demand a record of his official acts and all papers relative thereto.⁵⁵ As we have seen the second of these powers was greatly decreased by the increased veto power of the governor. All the others remained much as they had been under the constitution of 1865. One additional means of control was offered the general assembly by the provision that the governor should account to that body for all moneys received and paid out by him from any funds subject to his order.⁵⁶ This gave to the legislature an opportunity to keep watch over his expenditures and thus prevent any fraudulent act on his part while dealing with the state's finances. But the increased control of the legislature over the executive was in no sense as great as the increased control

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51 50 - Constitution of 1875. Art. VII. Sec. 1.

52 51 - Ibid, Art/ V. Sec. 35.

53 52 - Ibid, Art. V. Sec. 25.

54 53 - Ibid, Sec. 24.

55 54 - Ibid, Sec. 8.

56 55 - Ibid, Sec. 21.

57 56 - Ibid, Sec. 10.

of the executive over the legislature. In the race for power between the governor and the legislative body, the former was winning. Not only was he able to do many things which he had not been able to do in 1820, but he was moving out from under the control of the legislature and was at the same time receiving increased control over that body.

UNIVERSITY OF MISSOURI
COLUMBIA

DEPARTMENT OF POLITICAL SCIENCE

May 15, 1917.

Dean Walter Miller:

The accompanying manuscript of Mr. D. H. Holloway's thesis lacks a bibliography and a table of contents. These would have been in place but for Mr. Holloway being summoned to Fort Riley. He has promised to supply them at the first opportunity. I believe that there are two or three footnotes which have not been properly included. These also will be added when he returns to Columbia. I approve the thesis, and recommend its acceptance for the requirement for the A.M. degree.

Yours very truly,

I approve, and recommend acceptance.

Z. B. Veblen

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