

**THE TERRITORIAL BASIS OF
GOVERNMENT UNDER THE STATE
CONSTITUTIONS, LOCAL
DIVISIONS AND RULES FOR
LEGISLATIVE APPORTIONMENT**

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THE TERRITORIAL BASIS OF GOVERNMENT
UNDER THE STATE CONSTITUTIONS

Local Divisions and Rules for Legislative Apportionment

BY

ALFRED ZANTZINGER REED

SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS
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PREFACE

IN the extremely elaborate political structure of the United States, as, indeed, of any nation, the local units within which governmental and party organs operate constitute, in more senses than one, the foundation lines of the entire edifice. The division of the Union into States is, of course, the prime fact in our political life; but of hardly less importance than this is the division of the States themselves into counties and towns, and into districts for legislative representation. The purpose of this study is to present, in form convenient for reference, and with due regard to their historical relationship with one another, those provisions of our American State Constitutions which bear upon the formation of these, and other, interior districts.

I should like to explain why I have chosen a subject of enquiry which, on its surface, seems far removed from the pressing political problems of the day; and why, having chosen it, I have treated it in a highly technical manner.

The constitutional history of government is the veriest dry-bones of an exceedingly human topic. It is not merely that Constitutions contain only a small portion of the law on the subject, needing to be supplemented by judicial construction, by legislative enactment, by those party regulations which are as much a part of our common law as the customs of the British Constitution. Law itself is meaningless until we include the dominating personality who works within its forms, influencing legislators, cajoling the popular vote, making those evershifting combinations which we

term "majorities", evoking and making active those powers, in short, which of themselves merely "reside" in plural organs. All this on the side of structure alone. There remain the procession of external events which determine this structure, in large part, and determine entirely the problems which it has to face—the cast of popular thought and feeling, without adjustment to which no political system can long endure—the consideration, finally, that politics itself is only a means to an end, and that the question of what the government of a people shall be is of infinitely small importance compared with the question of what happens to the people thus governed. What value has any system of government except as a means for conserving free institutions? On what does our belief, not merely in democratic rule, but in law and order itself depend, other than a conviction that these afford the only sure guarantees for freedom? No one who is incapable of seeing the topic of government as a whole is fit to treat any part of it.

Because the topic should be seen as a whole, however, it by no means follows that it should be so treated. Quite the reverse. Politics is an exceedingly technical profession—how technical, I think few understand who have not had even a slight practical acquaintance with it. It is a pity that it must to some extent always be so, because of the complexity of modern life. It is a defect of our system of government that it is needlessly so, because of unpruned excrescences and traditional deadwood. But there is nothing to be gained by blinking facts and thinking that it can be pursued on an old-fashioned amateur basis. Those who accomplish most in it are those who have studied it most carefully in all its wearisome and often degrading detail. And even they usually know very little about it. It is a profession to be practiced by experts, and only pseudo-experts exist—the men who have picked up an empirical knowledge

of its present-day intricacies, but are rarely capable of enacting broad remedial measures, because the broader aspect of their profession is one they have had little time or opportunity to study. They are the nearest approach to experts we possess, and it is fortunate that they exist. They accomplish wonders in simply making a cumbersome system work. Our government would go to pieces if the guiding hand of the professional politician were removed from it. But his deficiencies are well known. Until he, or his successor has been put in possession of the truths which study of past experience reveals, his hold upon the present will only lead to further groping. A wider horizon, on the part of those who are in a position to put their views into practical effect, seems to me the great need of American politics.

It is because I have in mind this specialized class, rather than the average citizen who, in the intervals of a busy life, aspires to take an intelligent interest in politics, that I have picked out a small topic, and treated it in a manner calculated to enhance, rather than to veil, its essential technicality. In particular, I have tried to include every relevant constitutional provision, with precise references to each, for the following perfectly concrete purpose. We are likely to have in New York, for instance, in a few years, one of our periodic Constitutional Conventions. The New York provision affecting the formation of counties, say, is found to be decidedly different from the prevailing treatment. Will it not be of assistance to the particular committee within whose province this provision falls, to be able to see how this question has been handled in all the other States, so that, on the basis of the wide range of suggestions thus obtained, they may decide what in their judgment is the wisest treatment? When they have decided what policy they wish to pursue, will it not be of further assistance to have at hand precise references to provisions in other States,

so that the most accurate wording may be followed? This, in general, but with a much more limited survey of past instruments, is the way in which most Constitutional provisions have actually been drafted. I seek only to perfect an established procedure. On the general principle that out of a multiplicity of suggestions one or two turn out to be good, I have, it is true, included a few constructive ideas of my own. I have not much belief, however, in the value of irresponsible advice, and know no reason why my own should be considered better than other people's. The man in the Convention or the Legislature—not the man in the study or the street—is the man who, by the exercise of his own judgment, ultimately decides all except the broadest principles. Our best service to him, and, through him, to the community at large, is to put him in a position to decide intelligently.

If my work has been properly done, then, I foresee for it, not a wide appeal, but an immediate practical usefulness.

I have said that it is a small topic which I have chosen to treat in this detailed manner. It is needless to say that, feeling the value of this general method as I do, I should like to see it extended to other elements of the political structure. This takes time, however. Meanwhile, the present instalment, although small in proportion to what might be said, involves questions of fundamental importance—more fundamental than even the suffrage, which is itself defined in terms of political subdivisions—and more in need of our consideration to-day, because, as the following pages will reveal, much farther from being answered. The continuance of amicable relations between country and town; a fair representation of the voters in Legislature and Convention; the protection of minorities against intemperate majority rule; a simplified legal and party system—all these are certainly important ends of political endeavor, and will

become pressing ones the moment public opinion chooses so to make them. All depend for their attainment in large degree upon the dry mechanical details of State subdivision.

It would be impossible for me to express, as I should like to, my acknowledgments to all who have helped me, and yet to emphasize, as I must, three especial obligations. Coming to my graduate studies in this university with an, I fear, not too malleable mind—making no secret of convictions, in regard to certain features of our political life, to which I attach perhaps exaggerated importance—I have experienced at all times ready helpfulness and patient consideration. In particular, however, I am indebted to three gentlemen. First, and foremost, Professor Frank J. Goodnow has taught me that the problem of municipal government—that political problem which, to the average city-dweller, comes most nearly home—cannot be approached as a topic by itself, but only as a part of the problem of State government in general. Incidentally, Professor Goodnow has taught me virtually all I know in regard to this broader topic. It was Professor William A. Dunning, again, who first turned my attention to the importance of State Constitutions, and to the comparative neglect of this field of study. My acknowledgments are due to him not only for this, but for the kindly sympathy and encouragement with which he has lightened what has been at times a tedious task. Finally, I owe especial thanks to Professor Charles A. Beard for invaluable suggestions of detail, and for assistance in an unusually laborious task of proof-reading.

A. Z. R.

COLUMBIA UNIVERSITY, 4 APRIL, 1911.

