Development of Civil Government in Wisconsin

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the defendant is to be punished, let his sole punishment be meted out to him in a criminal suit, where he may come prepared to meet a specific criminal charge in a sworn indictment, where he will be given the benefit of presumed innocence and where he must be proved to be guilty beyond a reasonable doubt, where he will be free from double jeopardy, where he will be safeguarded by criminal procedure against unfair attack, where he will be sure of the aid of counsel and where his fine will go to the injured public and not to the injured individual who has already been fully compensated in the civil suit for the same act.

Howard A. Hartman.

THE DEVELOPMENT OF CIVIL GOVERNMENT IN WISCONSIN

Many volumes could be, and actually have been, written on the development of civil government in the state of Wisconsin, and it is not pretended that the present short discussion is in any sense of the word an adequate or complete treatise on the subject. Its scope is limited to a brief résumé of the chief elements which have contributed to the formation of our state government as it exists at the present time. The treatment is for the most part historical,—a bare outline statement of the fundamental facts and influences which have united to produce the governmental system of Wisconsin. If the arrangement is not logical, it is at least chronological.

Broadly speaking, the subject divides itself under two main heads: the first is the period of the evolution of Wisconsin government, beginning with the visits of the first French missionaries, and continuing up to 1848, when Wisconsin became a state with a constitution of its own; the second is the period of the development of Wisconsin government, beginning with the statehood of Wisconsin, and continuing up to the present.

The period of evolution was one of instability and change: the period of development is one of stability and change. But the change of evolution was essential—a new building on a new foundation; while the change of development is incidental—a solid structure which is worthy of improvements and able to bear their weight. The first was the government of Wisconsin prior to 1848; the second is the government of Wisconsin since 1848.
CIVIL GOVERNMENT IN WISCONSIN

The governmental history of Wisconsin began with the first touches of civilization. In 1634 Jean Nicolet visited this district, which was made a part of the French dominions in the New World and placed under the control of the French governor-general at Quebec.

Much of our knowledge of this early period of the history of Wisconsin is based upon the chronicles of James Marquette, a French Jesuit missionary, who first visited this state in the spring of 1673. At the head of a small expedition, Marquette and Joliet came down the western shore of Lake Michigan in canoes. Entering Green Bay, they made their way up through Lake Winnebago and thence up the Fox River to its source. Making the portage, they proceeded down the Wisconsin River to the Mississippi, which they explored for some distance, returning in the fall of the same year (1673). Marquette was the historian of this expedition; his voluminous reports of these early explorations are the sole source of most of our information on the subject.

In 1674, after spending the preceding winter at Green Bay, Marquette traveled in a canoe down the west short of Lake Michigan to establish a mission at the mouth of the Illinois River. On this voyage he is supposed to have stopped at the present site of Milwaukee, on October 26, 1674. He died in May, 1675, while returning to the mission of St. Ignace at Mackinac.

The name of Marquette is inseparably connected with the history of Wisconsin, not only for what he actually accomplished here in the interests of civilization and such progress as was then possible, but also for the invaluable records by which he has preserved for us the story of these early days of our state.

The activity of the French missionaries was equaled only by the apathy of the French civil authorities, who exercised little or no control over the inhabitants of this region; the people were left to their own devices, and what little government there was must have been purely local. This state of affairs continued without material change until 1763, when this region became a part of the colonial possessions of England.

Aside from the fact that the allegiance of the people was transferred from France to England, governmental conditions remained for a time exactly as they had been under the nominal rule of France. But in 1774 England passed the Quebec Act,
which established a form of civil government for a large region of which Wisconsin was a part. By virtue of this Act, Wisconsin became, to all intents and purposes, an integral part of Canada, and continued so until ceded to the United States by the Treaty of 1783, at the close of the Revolutionary War.

It is at this point that the strictly American history of Wisconsin government begins. Though the Declaration of Independence was adopted while Wisconsin was under English rule, it is of importance in the history of our state as the act which opened the way to the establishment of the free and independent government of the United States.

It appears that government in Wisconsin remained in a somewhat uncertain condition until 1787, when Congress passed the Ordinance of 1787, an act establishing a government for the Northwest Territory, of which Wisconsin was a part. It is scarcely possible to over-estimate the importance of this document, not only to the welfare of our state and the Northwest Territory, but even to the whole country. One historian has expressed the opinion that the "Ordinance of 1787 deserves to rank among immortal parchments both for what it accomplished and what it inspired", and that it is no exaggeration to say "that save for the adoption and unflinching execution of that Ordinance by Congress in early times, the American Union would ere today have found a grave".

The Ordinance was sufficiently comprehensive and admirably fitted to meet the situation for which it was intended. The general plan of government was simple and effective. It provided for the appointment of a governor, and for a court consisting of three appointed judges. The governor and judges together constituted a legislative council, with power to adopt and publish such laws of the original States as were necessary and best suited to the circumstances, their action being subject to the approval of Congress. When the population reached five thousand, the people were permitted to elect a house of representatives, which, together with a governor and legislative council of five members appointed by Congress, governed the district. This legislature was empowered to elect a congressional delegate who had a voice in congressional discussions, but no vote. The district was to be divided into three, four, or five states, and as soon as any state had sixty thousand free inhabitants, it was to be admitted to the Union. The people of the district were
guaranteed religious freedom, benefit of writs of habeas corpus, trial by jury, and other important rights secured by our present Constitution. Slavery was forbidden, but the same clause provided for the return of fugitive slaves escaping into the district from other states. Property rights were defined by rules as to descent, dower, wills, and conveyances; and thoughtful provision was made for the maintenance of schools and the encouragement of education.

So complete and effective was the Ordinance of 1787 that Chief Justice Chase of the Supreme Court of the United States said of it: "Never, probably, in the history of the world did a measure of legislation so accurately fulfil, and yet so mightily exceed, the anticipation of the legislators. The Ordinance has been well described as a pillar of cloud by day and of fire by night in the settlement of the Northwestern States. When the settlers went into the wilderness, they found the law already there."

Wisconsin remained under this form of government until 1836, when Congress passed an act making it a territory. Under this territorial government, the governor was appointed by the President of the United States and approved by the United States Senate. The territorial legislature, consisting of a Senate of thirteen members and a House of Representatives of twenty-six members, was elected by the people; but all of its legislative acts were subject to the approval of the governor and of Congress. This legislature was empowered to prescribe qualifications for voters, with the single restriction that only citizens of the United States were to be allowed to vote.

In 1846, after an affirmative vote by the people of Wisconsin on the question of becoming a state, Congress passed an act authorizing the formation of a state government, whereupon the people immediately elected delegates to a constitutional convention. The Constitution prepared by this convention did not meet with the approval of the people, and was rejected by popular vote in 1847. In December of the same year another convention assembled and drafted a Constitution which was accepted by a vote of the people in March, 1848, and which is still the fundamental law of Wisconsin.

On May 29, 1848, Congress passed an act admitting Wisconsin as a state.
Up to this point the growth of civil government in Wisconsin was, for the most part, a process of evolution; the various forms of organization were temporary, and, as we have seen, many changes were made. These changes were more than mere modifications; they were essential, going to the very nature and root of the matter. They were not mere changes of degree, but changes of kind; the successive systems of government were replaced by new and fundamentally different systems, each founded on a new and different basis; there was no single and firmly established starting point for the new organizations. As we have suggested, this period of evolution came to an end with the adoption of the Wisconsin Constitution and the organization of the state government in 1848, and the state then entered upon the period of development.

The very idea of development necessarily implies a sound and substantial basis upon which to build; in the present connection it is the consistent working out of a predetermined purpose, following a carefully pre-arranged plan made for the attainment of that purpose. The Constitution of the state of Wisconsin was, and still is, such a plan; it is the basis upon which the present government of our state is firmly and inseparably founded. So long as that Constitution is followed, the course of government in Wisconsin will be a course of development.

The purpose of the Constitution of Wisconsin, as recited in its preamble, is “to secure the blessings of freedom, form a more perfect government, insure domestic tranquility, and promote the general welfare”. Its provisions were well calculated to attain these ends.

In the Bill of Rights, which appears to have been closely modeled after the first ten Amendments to the Constitution of the United States, our State Constitution guarantees the freedom and individual rights of the people. Then follow provisions as to the boundaries of the state; the right of suffrage; the legislative, executive, administrative, and judicial departments of the state; taxation and state finances; eminent domain and state property; education; corporations; and miscellaneous regulations.

In short, our Constitution is the comprehensive and fundamental law of the state. In addition to the Constitution, our government is regulated by statutes which must be consistent with the Constitution, and by the common law so far as it is consistent with both the Constitution and the statutes. As the statutes
reach out further and further, we have less and less of the common law. The statutes have abrogated many of the old common law rules; the legal rights and duties of the people have been modified to suit the new situations which are constantly arising. A great amount of work which was formerly done by cumbersome and slow-moving governmental machinery is now delegated to various state commissions created by legislative enactment; in this way it is possible to accomplish swiftly and accurately work which could scarcely have been done at all under the old system. The government has been speeded up without impairing its reliability; the necessity for this is apparent in this age of quick thinkers and doers. But the main point for us to consider is that all these developments are founded on the State Constitution adopted in 1848; it serves its purpose as well now as it served it then.

To summarize briefly, we may say that our present state government (consisting in our Constitution, statutes, and the common law so far as it is consistent with the Constitution and statutes), though still fundamentally simple in the abstract, is a highly complex organization from a standpoint of concrete and detailed practicability. With the assistance of our Legislature, it will no doubt become even more so as the years pass.

Year by year the difficulties of government increase; but with thoughtful study for the lessons of the past, with energetic and consistent effort for the present, and with cautious and unselfish ambition for the future, there is every reason to believe that the government of the state of Wisconsin will continue to serve so well the purpose for which it was created.

CHARLES F. WRATTEN, ’19.