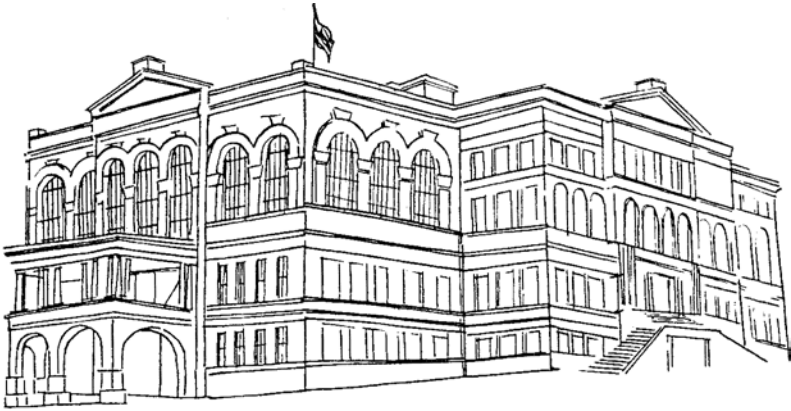


CHAPTER 10



The Making of a State

THE WESTWARD ADVANCE of the American frontier was accompanied by the establishment of territorial and state governments. In 1787 the Congress of the United States had provided that when the newly settled lands had a sufficient population, they were to be admitted to the Union on a basis of equality with the original states. Until there was sufficient population for statehood, Congress provided territorial governments. As the system evolved, the governor and other officers were to be appointed by the President of the United States, and the legislature was to be elected by the people of the territory. Territorial government, then, was a stage of tutelage in which both local and outside control had a part.

Generally the period of tutelage was a short one. Minnesota, for example, became a territory in 1849 and a state in 1858. But the region organized as Dakota Territory in 1861 was not admitted—and then as two states—until 1889. The long period of tutelage brought about a protracted struggle for statehood: for political equality of status in the nation. While it was in progress, the farmers, organized into the Dakota Farmers' Alliance, revolted against outside exploitation by the railroads, the banks, the grain trade, and the manufacturers of farm machinery: the farmers sought economic equality of status in the nation. Thus at the same time there were two struggles against outside control, one political and the other economic. The political battle culminated in the writing of a constitution for the new state; the economic fight, though less successful, helped to shape the provisions of that constitution.

The statehood movement, the struggles of the Farmers' Alliance, and the writing of the constitution—all revealed the problems with which the people of North Dakota had to contend. Moreover, they helped to channel the psychology of North Dakotans into patterns of revolt against

outside control, against colonial status. Both the patterns of revolt and the provisions of the constitution, made in the climate of opinion of 1889, would long influence the history of the state.

One of the harsh realities of North Dakota life was the power of the railroads. Albert S. Parsons, a delegate from Morton County and an employee of the Northern Pacific, told the constitutional convention in 1889:

We are largely dependent on corporations. Corporations in North Dakota will always have a stronger influence than they have elsewhere. With all due justice to them—we wish to encourage them—we wish to help them—but we must beware the day when they will shackle us and control our people.

Martin N. Johnson of Petersburg, also speaking to the convention, put it more bluntly: “[The Great Northern] controls everything in our part of the country.” The Northern Pacific was also influential. The federal government had given it 10,700,000 acres of land in what was to become North Dakota. The land grant, 24 percent of the state’s area, gave the Northern Pacific a huge economic stake in the government.¹ So for years the railroads and the people struggled for control. Who would dominate the government and economy of North Dakota?

THE STATEHOOD MOVEMENT

Statehood was a quiet revolution, accomplished by less than two hundred men. The first leaders were Yankton politicians, but all came from southern Dakota and all were Republicans. With few exceptions, they were conservative, middle-class business and professional men—bankers, lawyers, ministers, railroad employees, and newspaper editors. They were of the older American stock and came from New England, New York, or the states of the Old Northwest. They were Republicans because Dakota was a one-party region—a result of the long years of territorial status when the Republican party had control of the United States government.

These men wished to throw off outside control. They were tired of the President’s appointing the governor and other officials from outside the territory. They aspired to win elective office for themselves. In 1877 the *Yankton Press and Dakotian*, the chief newspaper of the territory, wrote:

We are so heartily disgusted with our dependent condition, with being snubbed at every turn in life, with having all our interests subjected to the whims and corrupt acts of persons in power that we feel very much as the

¹Robert S. Henry, “[The Railroad Land Grant Legend in American History Texts](#),” *Mississippi Valley Historical Review*, XXXII (September 1945), 194.

thirteen colonies felt when they flung away their dependent condition.

Statehood leaders had nothing but contempt for the graft and corruption of the territorial system. They brought into the movement reformers, prohibitionists, and the best elements in every town: ministers, lawyers, and members of women's clubs. But the Democrats—the workmen of the towns and the Black Hills, the saloon element, and some of the merchants—took little interest in the movement.

From the beginning the Yankton leaders, a small oligarchy with much influence, planned for the division of the territory at the forty-sixth parallel. Division seemed natural. The railroads ran east and west, so that southern and northern Dakota had little contact with each other. The economic ties of the Red River Valley were with St. Paul and Minneapolis. Moreover, the Yankton group feared the influence of the Northern Pacific. In 1877, four of the seven seats allotted to northern Dakota in the territorial council were held by men connected with that railroad.

The oligarchy became hostile to federal control when Secretary of the Interior Carl Schurz tried to break up an Indian ring in 1878. The feeding and clothing of nearly twenty-five thousand Sioux and the troops needed to watch them had turned Yankton and other Missouri River towns into virtual "quartermaster depots." When Schurz arrested some Dakota Indian agents for fraud, there was an outcry against him. Although evidence against them was overwhelming, the defendants were acquitted by sympathetic juries. The Yankton leaders, allied to the Indian agents, felt that they were being persecuted by the federal government.

The demand for statehood also grew because of corruption in the office of the territorial governor, Nehemiah G. Ordway. He had been sergeant at arms for the House of Representatives, but in 1880, when he was appointed governor, he was a member of the state senate of New Hampshire. The appointment was made through the influence of New Hampshire businessmen with investments in Dakota. Ordway was a tall and distinguished-looking leader; his sanctimonious manner hid an able, scheming mind. He brought a number of people with him—his son was to become territorial auditor—and soon built up a powerful political machine, using the patronage of public-land-sales advertising to enlist newspaper editors.

Ordway made an alliance with Alexander McKenzie, the sheriff of Burleigh County who was to become the boss of North Dakota. As a young man McKenzie had worked on Northern Pacific construction crews then pushing the road toward the Missouri River. He settled in Bismarck in 1873, and the next year, at the age of twenty-four, he was elected sheriff, a position he held for twelve years. A natural leader of men, McKenzie was tall, handsome, and courageous, with a friendly handshake and greeting for everybody.

Although McKenzie could scarcely write his own name, the Northern Pacific chose him as its political agent in northern Dakota, and he came to represent the powerful interests of Minneapolis and St. Paul, which held the region as a colony. McKenzie was to be the Republican national committeeman for North Dakota until 1908; he was to become “Alexander the Great, Boss of North Dakota”; he was to die a millionaire and, even though he had never held a state office, to be given a funeral in the state capitol at Bismarck.²

By means of his alliance with Ordway, McKenzie pulled off his first political coup, the removal of the territorial capital from Yankton to Bismarck. In 1882, McKenzie and an associate, perhaps in anticipation of removal, bought a 160-acre tract on the northern edge of Bismarck. Although Yankton was inconveniently located in the southeastern corner of the huge territory, the real reason for removal was the Northern Pacific’s desire to have the capital on its main line at Bismarck.

The removal bill set up a commission of nine members to decide upon the location of the new territorial capital. The town chosen must provide 160 acres of land and \$100,000. Ordway secured some votes for its passage by refusing to sign bills for normal schools and a prison unless the representatives from the towns in which those institutions were to be located would vote for the removal bill and confirm his son’s appointment as territorial auditor. For the support of George H. Walsh, a member of the territorial council and the “boss of the number one hard counties” of the Red River Valley, Grand Forks got the University of North Dakota, so named in anticipation of the division of the territory.

Before making its choice, the commission visited many aspiring towns. It was entertained extravagantly at Bismarck. Then, after long balloting, it voted five to four to make that place, although it was located far beyond the area of settlement, the new territorial capital. The Northern Pacific furnished the required 160-acre tract, but Bismarck, a small town, raised the \$100,000 only after considerable difficulty. There was a short-lived boom in town lots. In September, 1883, Henry Villard, president of the Northern Pacific, laid the cornerstone of the new capitol.

The members of the Yankton oligarchy bitterly resisted the action. They challenged the constitutionality of the removal commission in the courts; they broadcast accounts of Ordway’s corrupt dealings (he had, they said, offered positions as county commissioner for sale to the highest bidder); they charged that he had received thirty thousand dollars in cash for his part in moving the capital to Bismarck. President Chester Arthur finally removed Ordway as territorial governor in June, 1884, but the capital remained in Bismarck. The Yankton leaders had advanced the cause of statehood, however, for they had made the territorial government seem hopelessly corrupt.

²Kenneth J. Carey, “[Alexander McKenzie, Boss of North Dakota, 1883-1906](#)” (Unpublished M.A. thesis, University of North Dakota, 1949), *passim*.

To further their cause, the Yankton group had organized the Dakota Citizens League in 1882. It called constitutional conventions which framed a constitution at Sioux Falls in 1883 and revised it in 1885. The most notable feature of the document concerned school lands. At the suggestion of General William Henry Harrison Beadle, territorial superintendent of public instruction, the Sioux Falls constitution pledged the state not to sell its school lands for less than ten dollars an acre. Receipts were to be placed in a perpetual fund for the support of schools. Beadle's "Dakota plan" was inserted in the Omnibus Bill of 1889, authorizing statehood, and in all of the state constitutions written that year.

The people twice approved the Sioux Falls constitution, but the vote was small. There was not really much popular interest in statehood. Ordway, McKenzie, and their newspaper allies opposed the constitution. And so did the Dakota Democrats.

There were also obstacles on the national scene. Through the 1880's the Democrats controlled at least one house of the Congress. No Democrat would think of admitting states which would send Republican senators and representatives to Washington and add Republican votes to the electoral college. Eastern investors likewise opposed statehood. Having put millions into Dakota, they would scarcely want to have the debtors control the loans. For example, after Yankton County deliberately refused to redeem its railroad bonds, in spite of a United States Supreme Court decision, its creditors petitioned that southern Dakota not be admitted to the Union.

The railroads, too, opposed statehood. They preferred the lenient territorial railroad laws, and could influence or control territorial appointments from Washington. After his removal, the Northern Pacific sent Nehemiah G. Ordway to Washington as a lobbyist against statehood, and he may well have prepared the Democrats' bill for the admission of Dakota as a single state. It was strongly resisted by all of the pro-statehood men and so was really a maneuver against statehood. McKenzie and the Bismarck leaders opposed statehood, preferring that Bismarck remain the capital of a large territory.

After the Democratic victory in 1884, President Grover Cleveland appointed Louis Kossuth Church, a New York lawyer and a friend of James J. Hill, as governor and Michael L. McCormack, a member of the Bismarck ring, as secretary of the territory. These men opposed statehood, for the Democrats wanted to enjoy a territorial patronage. They believed that with a few years of Democratic control northern Dakota might enter the Union as a Democratic state. Democratic influence was seen in November, 1887, when northern Dakota voted against division of the territory by a margin of 18,000 to 8,000.

Finally, the program of division, with southern Dakota becoming a state and northern Dakota a territory, was dropped in favor of a bill to admit two states. Senator Benjamin Harrison of Indiana pushed it hard,

and the large population of Dakota (in 1890, North Dakota alone had 190,983 inhabitants and South Dakota 348,600) made further denial seem unjust and irresponsible. In the presidential campaign of 1888 the Republican platform called for admission of two states. Ordway and the Dakota Democrats finally dropped their single-state bill. Both Republicans and Democrats voted for the Omnibus Bill of February 22, 1889, authorizing the framing of constitutions in North Dakota, South Dakota, Montana, and Washington. When the bill finally passed the House of Representatives, some of the members threw books and papers into the air in celebration and there was a general handshaking of congratulation. A step toward equality of status had been taken.

THE DAKOTA FARMERS' ALLIANCE

Like the statehood movement, the organization of the Dakota Farmers' Alliance was a revolt against a dependent, colonial status. But it was directed at exploitation by eastern financial interests and thus was economic rather than political in nature. Many farmers felt that unless they could control the railroads, the market for wheat, and the terms of credit, their dream of a better life on the Dakota prairies would vanish.

By the early 1880's the wheat farmers of northern Dakota harbored a number of real grievances against the grain trade. Minneapolis millers had formed an association to eliminate competition among themselves in the buying of wheat. They and other large dealers controlled both lines of elevators which bought wheat at rural points and the terminal markets. These large shippers formed an alliance with the railroads of the region: the Northern Pacific and the St. Paul, Minneapolis and Manitoba. The railroads aided them by giving the line elevators rebates on freight charges, making rules against track loading by farmers and track buyers, and dictating the size and location of elevators along their rights of way.

These practices drove the independent buyers out of business and gave the line elevators a monopoly. With such rigid control, the latter could and did abuse the farmers with low grading and low prices, with false weights and excessive dockage. The farmers, helpless before the combination of the railroads and the large purchasers of wheat, were the victims of much irregularity and intentional fraud.

Settlement of the Red River Valley was scarcely well under way before protests began. As early as 1881, George B. Winship, editor of the *Grand Forks Herald*, began to publish vigorous editorials denouncing the abuses of railroad, elevator, and financial interests. By 1884 the Grand Forks Chamber of Commerce thought that the elevator monopoly, by means of undergrading and unfair weighing, threatened the prosperity of the region. In 1884 and 1885 the farmers began to organize, forming such groups as the Ellendale Farmers' Mutual Protective Association. These organizations helped their members to sell their wheat cooperatively and to buy such commodities as coal and twine. Some of them built farmers' elevators.

In December, 1884, W. F. T. Bushnell, editor of the *Dakota Farmer* (published at Aberdeen), called at Huron a meeting of delegates from all of the farm organizations. From this and subsequent meetings came a territorial organization, the Dakota Farmers' Alliance. Its purpose, declared its constitution, was to unite the farmers "for their protection against... the encroachments of concentrated capital and the tyranny of monopoly." Its chief goal was a free market, and it sought to elect farmers and their friends to office.

The Dakota Farmers' Alliance affiliated with the National Farmers' Alliance, founded in 1880 by Milton George, a Chicago farm editor, and commonly called the Northern Alliance. Later the Dakota group affiliated with the National Farmers' Alliance and Industrial Union, popularly known as the Southern Alliance. It adopted the *Dakota Farmer* as its official paper and created a system of local and county chapters. Rapid growth followed. Henry L. Loucks, a young Canadian immigrant, was elected president in 1886; he gave vigorous leadership as an organizer, speaker, and writer. Drought and low prices convinced the farmers that reform was needed, and by the end of 1886 there were 256 local alliances in Dakota. By 1888 there were 744, with 28,000 members.

The greatest Alliance leader in northern Dakota was Walter Muir, a farmer living near Hunter in Cass County. Born in Scotland, he had taken part in the Pikes Peak gold rush, fought in the Civil War, farmed in southern Minnesota, and served in the Minnesota Legislature. In 1879, at the beginning of the Great Dakota Boom, he came to Cass County to homestead. He was fascinated by politics, read widely, and spoke and wrote on the tariff, the money question, and practical farming. When the North Dakota Alliance was formed in 1889, Muir was elected president.

Alliance leaders saw that the farmers' battle would have to be fought on many fronts—political, legislative, economic, and social—so the local chapters brought farmers and their wives and children together in friendly neighborhood gatherings. They met in halls or homes, and after supper, the men would go out to the barn or elsewhere to talk Alliance affairs while the women visited. For dues of one dollar or a dollar and a half, the member received a subscription to the official paper, such as the *Dakota Farmer*, the *Jamestown Capital*, and, finally, the *Normanden* (a Norwegian-language paper) and the *North Dakota Independent*, both printed on the same press in Grand Forks.

The Alliance papers, meetings, and picnics helped to break down isolation on the vast and lonely prairie. But an even more basic need was to increase farm income. From the beginning, local and county organizations had made cooperative purchases of coal and twine, and in 1888 the territorial organization set up the Dakota Farmers' Alliance Company at Aberdeen to centralize such buying. It lacked capital and often found manufacturers and wholesalers reluctant to deal with it, but

it sent out an illustrated catalog of the items available, pooled the orders of the locals, and signed a four-year contract with a plow manufacturer. Although coal and twine were the basic commodities, the company also sold an "Alliance buggy." By 1889 the Dakota Alliance was doing more business than any of those in the other six northwestern states and territories in the national organization. It also formed the Alliance Hail Association, which saved its members forty to fifty cents an acre on hail insurance.

However helpful, insurance and cooperative buying did not meet the farmers' chief need, a free market for wheat. At the outset some of the local alliances had built elevators, but by 1888 there were only forty-two farmers' elevators and warehouses in Dakota, and they suffered from discrimination. Moreover, control of the terminal market was necessary to correct such abuses as short weights, undergrading, and heavy dockage. In 1887 the leaders of the Dakota and Minnesota alliances planned to build a terminal elevator in Minneapolis and to unite the independent rural elevators.

All efforts to build a terminal elevator ended in failure. Alliance leaders incorporated a series of companies, starting with the Scandinavian Elevator Company. But English investors, though at first interested, failed to put up any money, and the Minneapolis Chamber of Commerce, the master of the wheat market, blackballed Henry Loucks, the president of the company. The necessary capital was not available, especially after the Panic of 1893. The hard fact was that the farmers, in debt for their own farm enterprises, lacked the money to provide themselves with terminal marketing facilities.³

THE ALLIANCE PROGRAM IN THE LEGISLATURE

Before trying these terminal-elevator schemes, Alliance leaders had sought the goal of a free market through government action. The organization's platforms steadily called for laws forcing the railroads to supply cars and grant elevator sites without discrimination, and to refrain from giving passes to government officials. The Alliance also called for an elective board of railroad commissioners that should have the power to set maximum railroad rates, to watch over elevators and warehouses, and to fix grades for wheat. These things would bring about a free market. But as a matter of justice, the farmers also wanted taxation of corporate property on the same basis as other property, taxation of mortgages, and a law setting the maximum interest rate. Later they came to favor such broad reforms as prohibition, the secret ballot, and woman suffrage.

To accomplish these aims, the Alliance would have to enter politics

³Glenn L. Brudvig, "[The Farmers' Alliance and Populist Movement in North Dakota, 1884-1896](#)" (Unpublished M.A. thesis, University of North Dakota, 1956, pp. 41-100.

and elect farmers and their friends to office. It began to investigate candidates, endorsing only those who would support the farmers' demands and nominating its own when there were no satisfactory Republicans or Democrats. Such tactics promised success, yet the conservatives, while offering little open opposition, managed to defeat the Alliance. In 1885 the territorial legislative assembly, although it had only seven farmer members, passed a "Free Market Act." The law gave an appointive board of railroad commissioners supervision of the railroads and the grain trade. But it was of little use; the commissioners could neither fix railroad rates nor enforce any of their decisions.

The election of 1886 looked hopeful for the farmers. The Democrats adopted the Alliance platform, and twenty-five farmers were elected to the legislature. In the 1887 assembly a leading Alliance man was elected speaker of the house, and the legislature passed a bill stating that all elevators and warehouses were subject to control by the railroad commissioners, who were to set up "Dakota grades" for wheat. But again the commissioners could not enforce the law: some sections were too vague; the appropriation of five thousand dollars for enforcement had been eliminated; and the elevators threatened any persons who might complain against them.

During that 1887 legislative session, the Alliance failed in other ways. It could not get through its usury law. The one in effect fixed the interest rate at 7 percent, but allowed a higher rate to be set by mutual consent. The Alliance could get no railroad legislation; two important railroad bills disappeared in the closing hours of the session, a dishonest but common conservative tactic. The *Grand Forks Herald* sadly pointed out that the representatives of the farmers did not have "the experience to cope with the representatives of the corporations."

The Alliance was very active in the election of 1888. Members were urged to vote only for candidates who would pledge to support Alliance bills without change. These bills had been prepared by Henry Loucks and a committee of four lawyers selected in the fall of 1887. Porter J. McCumber, who was to serve for many years in the United States Senate, prepared the railroad bill. Both the Republican and Democratic parties adopted the Alliance platform, but farmers' conventions endorsed tickets selected from both parties and added some candidates of their own. It was the first campaign in which the Alliance played a large part, and many members resigned in protest against such independent political action. But the Alliance elected a majority in the 1889 assembly; Smith Stimmel, president of its Cass County chapter, was chosen president of the council, the upper house of the assembly, and appointed the committees.

Yet the Alliance legislative program did not get through. The law on fair distribution of cars was ineffective; the usury bill passed both houses but was lost or stolen in the last days of the session; Governor Louis K. Church vetoed a prohibition bill; and other Alliance bills were

sidetracked or vetoed. This astonishing defeat of the Alliance came not only from conservative scheming but also from a split among Alliance leaders, some more radical than others, on details of the legislation.⁴ For all their struggles, the farmers could not break the grip of the railroads, the elevator monopoly, and their allies upon the government or the economy of Dakota.

THE CONSTITUTIONAL CONVENTION

The farmers' struggle against the corporations was, of course, reflected in the constitutional convention. Yet the fundamental decisions of the convention had been made before it met; the structure of American state government had already been fixed beyond any real possibility of change. Congress had also decided many things in the Enabling Act of February 22, 1889, the Omnibus Bill, which authorized statehood. The act divided Dakota at the seventh standard parallel. It forbade discrimination in civil or political rights "on account of race or color, except as to Indians not taxed." The law endowed the state with 3,191,770 acres of land, about 7 percent of its area, for educational and other public purposes and forbade it to sell the land grant for less than ten dollars an acre.⁵

The act also provided for a constitutional convention of seventy-five members, with three to be elected from each of twenty-five districts. On May 14, in a late blizzard, the voters went to the polls, many of them in sleighs, and the convention opened at Bismarck on July 4. A big parade celebrated the event; five hundred Sioux from Standing Rock, led by Sitting Bull, who carried a huge American flag, took part.

In general the delegates, some of the best citizens, were young men from the more humid part of the state, and most of them were farmers or lawyers of the older American stock. Fred B. Fancher, Martin N. Johnson, Roger Allin, Alexander Griggs, William Budge, and Burleigh F. Spalding were prominent members of the convention. Thirty-three delegates, or 44 percent, came from the six counties of the Red River Valley. While Cass County alone had nine, the sparsely settled western part of northern Dakota had only six (five of them from Mandan and Bismarck). Only nine delegates were over fifty years of age, and some were even in their twenties. There were fifty-one Republicans, nineteen Democrats, two Prohibitionists, two Populists, and one Independent. A third were lawyers, but the largest group consisted of twenty-nine farmers. Of the seventy-five delegates, fifty-two had been born in the United States, ten in New York and thirteen in Wisconsin. All but five of the foreign-born came from Canada and the British Isles. There were only ten of Scandinavian stock.

⁴*Ibid.*, pp. 102-118.

⁵Harold A. Hagen, "[North Dakota Land Grants](#)," *North Dakota History*, XVIII (January 1951), 24.

The convention was subjected to many outside influences. The very fact that not a single delegate had been born in Dakota Territory was in itself a pervasive influence. The delegates' experience and background reflected the humid East, but they were writing a constitution for a semiarid state. That document inevitably did little to provide institutions suitable for a semiarid country.⁶ Indeed, the delegates had before them as models the constitutions of many states with much more rainfall than North Dakota. The convention, however, was urged to make adaptations to the semiarid country by Major John Wesley Powell, director of the United States Geological Survey, who argued that the state must retain possession of the waters usable for irrigation. Such a provision was placed in the constitution.

It was appropriate, perhaps almost inevitable, that one important outside influence on making the constitution should come through the Northern Pacific. Henry Villard, then chairman of the railroad's board of directors, asked Professor James Bradley Thayer of the Harvard Law School to prepare a draft constitution for North Dakota. Thayer's draft was a carefully constructed model constitution, not a dishonest effort to create a government favorable to the railroads. It was introduced to the convention by Erastus A. Williams, a delegate from Bismarck. Although it was obviously not Williams' own handiwork, he refused to divulge its origin, causing much speculation.⁷

The constitution finally adopted by the convention followed the phrasing of Thayer's draft in many places. Yet the convention was in fact dominated by reform ideas. It reflected both the radical spirit of the exploited region and the nation-wide concern about the growth of monopolies and corruption in government. Reform influence was seen in the election of Fred B. Fancher as president of the convention; he was vice-president of the Dakota Farmers' Alliance. Many Alliance leaders, such as Martin N. Johnson, also played an active part in the convention. There were, of course, conservatives as well as reformers.

Many reforms were considered. A strong effort was made to adopt a unicameral legislature, considered less subject to corporation corruption, but it failed. Woman suffrage, compulsory arbitration of labor disputes, the prohibition of railroad passes for public officials, and reform of the jury system were also considered but not adopted.

The most important problem was the control of corporations. Above all else, the delegates feared the influence of corporations upon government. Indeed, the very first proposal placed before the convention, introduced by Martin N. Johnson, dealt with common carriers. It was then widely believed, as John D. Hicks has written, that

⁶Carl F. Kraenzel, *The Great Plains in Transition* (Norman: University of Oklahoma Press, 1955), pp. 165-170.

⁷Clement A. Lounsberry, *Early History of North Dakota* (Washington: Liberty Press, 1919), pp. 398-399.

“as the power of capital increased, legislatures grew less trustworthy, or were subject to greater temptations.”

This feeling was national, but in Dakota Territory it was strengthened by fresh evidence of danger as seen in the corruption under Ordway and the repeated frustration of the Alliance’s efforts toward government correction of abuse. For such reasons it was impossible for the delegates to heed the advice of Judge Thomas M. Cooley. Addressing the convention as a visiting statesman, he told the delegates that they must trust the government: “Don’t in your constitution making legislate too much.... You have got to trust somebody in the future and it is right and proper that each department of government should be trusted to perform its legitimate function.”

Distrust, however, prevailed, and the convention set out to block corporation influence by limiting the powers of the governor and the legislature. To deal with some functions of government fostering educational institutions, controlling railroads, managing the school lands it set up independent administrative boards. It also usurped the powers of the governor and legislature by placing a huge mass of legislation in the constitution itself. The result was a very long document, about six times as long as the federal constitution. The legislation in the constitution placed a heavy responsibility upon the whole body of voters, for changes could be effected only by constitutional amendments, decisions which had to be made by the people themselves. By June, 1960, seventy-three amendments had been adopted and countless others defeated.

The bitterest struggle was over the location of state institutions. These were the spoils. Four were already in existence: the capital and the penitentiary at Bismarck, the hospital for the insane at Jamestown, and the university at Grand Forks. In 1883 the territorial legislature had located an agricultural college at Fargo but had made no appropriation for it. At the convention in 1889, Fargo wanted an agricultural college. and Bismarck, of course, wished to be the capital of the state as it had been of the territory. Fargo, Bismarck, and the Northern Pacific combined to gain these ends.

To secure votes, they devised an article to locate thirteen institutions (one for almost every town) throughout the settled parts of the state. Article XIX of the constitution provided that Bismarck was to have the capital (it also had the penitentiary, but the article tactfully omitted any mention of that fact), Grand Forks the university, Fargo the agricultural college, Jamestown the hospital for the insane, Mayville and Valley City normal schools, Mandan a reform school, Wahpeton a school of science, Ellendale an industrial school, Devils Lake a school for the deaf and dumb, Pembina County a school for the blind, Lisbon an old soldiers’ home, and some place in Rolette, Ward, McHenry, or Bottineau counties a school of forestry. Thus, to insure the capital to Bismarck and the agricultural college to Fargo, the new state, with a population of only

191,000, was to start off with fourteen institutions, ten of them new. This was more than the state needed or could adequately support a mistake in undertaking too much that was to plague it for many years.

Most of the forty-five delegates favoring Article XIX came from counties receiving institutions and from communities served by the Northern Pacific. Thirty delegates led by the Grand Forks men, remembering the McKenzie-Ordway-Northern Pacific steal of the territorial capital in 1883, demanded that Article XIX be submitted to a separate vote of the people. This procedure had already been agreed upon for the prohibition article. Most of the delegates who opposed Article XIX came from Grand Forks, Walsh, and Pembina counties and their neighbors; with few exceptions, they also came from communities served by the Great Northern Railroad. There was apparently a hidden struggle in which Grand Forks and the Great Northern sought to seize the capital from Bismarck and the Northern Pacific. But the opposition to Article XIX failed, and the next day, August 17, the convention ended its 45-day session.

The aftermath or the struggle over institutions was evident in the opposition to ratification. On October 1 the voters ratified the constitution by a vote of 27,441 to 8,107 and approved the prohibition article by a vote of 18,552 to 17,393. Almost all of the vote against the constitution came from the counties opposed to Article XIX. The majority in Grand Forks, Walsh, Nelson, and Steele counties and large minorities in Pembina and Traill voted against ratification.

THE FRAMEWORK OF STATE GOVERNMENT

The constitution drafted so painstakingly at Bismarck in the summer of 1889 is still important. Though amended many times, it is still fundamentally the same; it has been added to rather than changed. Both its virtues and its defects have helped to shape the course of events in the state. The convention did four things in the constitution: it constructed a defective framework of government; it amply guaranteed a free and democratic society; it provided wisely for the management of a great landed estate; and it tried unsuccessfully to control corporations in the public interest.

The executive, legislative, and judicial departments are defined in three articles. The governor has the power to call the legislative assembly into special session and the duty to make recommendations to it. He can veto a bill passed by the assembly, and he can also veto individual items in appropriation bills. The legislature, however, can pass bills over the governor's veto by a two-thirds vote.

But the constitution, although it charges the governor to see that the laws are faithfully executed, does not really make him the head of the executive department. Instead, it makes the heads of the separate executive branches elective: the secretary of state, the auditor, the attorney general, the treasurer, the superintendent of public instruction,

the commissioner of agriculture and labor, and the three railroad commissioners (later changed to the Public Service Commission). They are independent of the governor, a most significant fact.

Moreover, the constitution restricts the governor's powers of leadership. Any governor who seeks to influence the vote of any member of the legislative assembly by threatening or promising to use his veto power, or his appointive or removal power, shall forfeit all rights to hold any office of trust or honor in the state.

This same distrust of government—crippling that body's effectiveness—is seen in some of the provisions for the legislative assembly. The legislature is composed of a senate and a house of representatives. The senate shall have from 30 to 50 members, elected for four-year terms. The state is to be divided into senatorial districts of roughly equal population, each of which is to elect one senator. One-half of the senators are to be elected every two years. The house of representatives is to have not less than 60 nor more than 140 members. The members are to be elected at large from the senatorial districts for two-year terms (in 1960 there were 49 senators and 113 representatives).

The constitution lays down safeguards against trickery in law-making. At the request of one-sixth of the members present, the yeas and nays on any questions are to be entered in the journal. The presiding officer of each house must sign the bills in the presence of the members. Further, the constitution provides that if any member of the legislative assembly offers or uses his influence or vote for or against any measure in return for any other member's using his vote or influence for or against any other measure, the member shall be deemed guilty of soliciting a bribe, or of bribery, and shall be expelled from the assembly.

Distrust of the assembly is also seen in other restrictions. The regular meeting is limited to one biennial session of 60 days, although the first assembly was allowed 120 days. The constitution lists thirty-five subjects on which the assembly is forbidden to pass a special or local law. In addition, the assembly may not pass a special or local law on any subject that can be dealt with by a general law.

The most important limitations, however, are on taxation and debt. The constitution forbids the legislative assembly to levy taxes of more than four mills on the assessed valuation of all taxable property. It limits state debt to \$200,000 (the constitution assumed North Dakota's share of the territorial debt, \$539,807), except when a vote of the people authorizes additional debts for special purposes.

These limitations, born of hard times and the extravagance of the territorial government, which had contracted a debt of \$1,200,000 for public institutions, were to force the state government to be economical. The convention felt that the most important objective was to keep from going into debt. The importation of eastern capital—the means by which railroads, banks, farms, and marketing agencies were being established on the prairies of North Dakota—was thus renounced for public purposes.

The constitution also forbade any governmental subdivision (county, city, town, or school district) to contract debts in excess of 5 percent of the valuation of the taxable property therein, except that by a two thirds vote this limit might be raised to 8 percent.

Drastic limitations could not, in the nature of things, be applied to the powers of the courts. The convention placed the judicial powers of the state in a supreme court, district and county courts, justices of the peace, and police magistrates. The supreme court was to be made up of three judges elected for six-year terms (now there are five elected for ten-year terms). It has mainly an appellate jurisdiction and has supervision of the lower courts. The constitution set up six district courts, their judges to be elected for four-year terms (by 1960 there were sixteen district judges elected for six-year terms). The district courts are given original jurisdiction in all causes in law and equity. To deal largely with probate matters, each county elects a county judge for a two-year term, but counties with over two thousand population may extend the power of the county court to have concurrent jurisdiction with the district court in lesser criminal and civil actions.

In addition to establishing the framework of the state government, the constitution guarantees basic human rights and a democratic society in the American tradition. First come the liberties of the individual: freedom of worship, habeas corpus, jury trial, freedom of speech and publication, the right of assembly, and no imprisonment for debt. The convention granted suffrage to all males twenty-one years of age who were citizens or who, though of alien birth, had declared their intention of becoming citizens not less than one nor more than six years before the election, and also to civilized persons of Indian descent who had severed tribal relations two years before the election. Women might vote in school elections.

Married women could control their own property. Hiring children under twelve to work in mines and factories was prohibited. Corporations were forbidden to exchange black lists. The first legislative assembly was required to establish a system of free public education extending from the primary grades through the collegiate level.

By the Enabling Act, Congress had endowed education in North Dakota with land grants. The grants as they were eventually selected gave 2,523,383 acres to the common schools; 129,999 acres to the Agricultural College; 86,066 acres to the University of North Dakota; 39,997 acres to the Industrial and Normal School at Ellendale; 80,005 acres divided three-eighths to Mayville Normal and five-eighths to Valley City Normal; 40,003 acres to the School of Mines; 39,997 acres to the School of Science; 30,025 acres to the School for the Blind; 39,966 acres to the School for the Deaf; and 40,024 acres to the Training School. The school lands, 3,049,465 acres in all, were worth, at the ten-dollar minimum, more than \$30,000,000—a large endowment.

The constitution placed the management of the grants in the hands

of the Board of University and School Lands, composed of the governor, secretary of state, attorney general, state auditor, and superintendent of public instruction. The board was to appraise the lands and sell them at public auction to the highest bidder, but not for less than ten dollars an acre. It might also lease the lands for five-year terms. Receipts were to be put into a permanent fund, any losses in which were to be made good by the state.

The major problem confronting the constitutional convention, however, was how to control the railroads. Starting with the general proposition that corporations were not to conduct their business in such a manner "as to infringe the equal rights of individuals or the general wellbeing of the state," the constitution went on to declare certain practices illegal: stock watering, consolidation of competing railroads, and combinations to fix the price of any product. It required the railroads to keep books showing their stockholders, assets, and liabilities open for public inspection and to make annual reports to the state auditor. Most important of all, the constitution declared that the railroads were subject to control by the legislative assembly and that the assembly or the Board of Railroad Commissioners (later replaced by the Public Service Commission) could fix railroad rates within the state. The railroads might appeal to the courts to determine the reasonableness of the rates, but the government rates were to hold until the case had been settled.

It is clear, then, that distrust, born of past corruption, placed crippling curbs on the governor and the legislative assembly in the constitution of North Dakota, just as it had in the constitutions of most of the states. Thus much of the burden of government falls upon the people themselves. Because the constitution established a government without adequate powers, not only the major policies but also much of the detailed provisions of government had to be determined in many instances by the people themselves. In the very nature of things, they must lack detailed knowledge of the problems involved, and they are inevitably deprived of the benefit of any full-discussion before they make the decisions. This is a heritage of the fear of corporation influence.

Although the struggles of the 1880's resulted in a modest measure of success for the people, those holding North Dakota as a colony were not really curbed. The state was long to be exploited economically by outsiders who also held much political power. For many years Alexander McKenzie, representing the railroad, elevator, and banking interests of the Twin Cities, was to exercise great political influence in North Dakota. It was to continue to be a colonial hinterland, holding the same unenviable status as other regions producing raw materials for outside markets.