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CONTENTS

PRINCIPAL PAPERS

	PAGE
ACLAND, F. A. The Canadian Industrial Disputes Investigation Act	419
AILES, MILTON E. National Banking System and Federal Bond Issues	592
ANDREW, A. PIATT. The Problem Before the National Monetary Commission	479
BAKER, HARVEY H. Private Hearings—Their Advantages and Disadvantages	80
BAKER, WILLIAM F. The Sweating or Third Degree System..	9
BARNETT, GEORGE E. The Growth of State Banks and Trust Companies	613
BINGHAM, THEODORE A. Administration of Criminal Law—Third Degree System.....	11
VON BRIESEN, ARTHUR. Respect for Law in the United States.	207
BRYAN, J. WALLACE. Proper Bounds of the Use of the Injunction in Labor Disputes.....	288
DAVIS, KATHARINE BEMENT. Reformation of Women—Modern Methods of Dealing With Offenders.....	37
DE LACY, WILLIAM H. Functions of the Juvenile Court.....	61
DOYLE, CORNELIUS J. Compulsory Arbitration in the United States	302
ECKARDT, H. M. P. Branch Banking Among the State Banks..	626
ELKIN JOHN P. General Problems Connected with the Administration of Justice.....	3
EMERY, JAMES A. Use and Abuse of Injunctions in Trade Disputes	127
FALCONER, MARTHA P. Causes of Delinquency Among Girls..	77
FLEXNER, BERNARD. The Juvenile Court—Its Legal Aspect..	49
FOLKS, HOMER. The Treatment of the Offender.....	20
FORSYTH, RALPH KENDALL. The Wage Scale Agreements of the Maritime Unions.....	349
FRAME, ANDREW J. State and Federal Control of Banks.....	603

	PAGE
FURUSETH, ANDREW. Use and Abuse of Injunctions in Trade Disputes	137
GOMPERS, SAMUEL. Free Speech and the Injunction Order...	255
HART, HASTINGS H. Distinctive Features of the Juvenile Court	57
HUSTON, J. P. The Use of Credit Currency by Country Banks.	654
JACOBS, LAURENCE MERTON. English Methods of Lending as Contrasted with American.....	511
JOHNSON, JOSEPH FRENCH. The Canadian Banking System and Its Operation under Stress.....	538
KENNADY, PAUL. Settlement and Prevention of Industrial Disputes in New Zealand.....	438
KENT, FREDERICK I. Financing Our Foreign Trade.....	492
KIRCHWEY, GEORGE W. Respect for Law in the United States.	212
KRAUSKOPF, JOSEPH. Necessity of Industrial Arbitration.....	311
LEAVITT, JOHN BROOKS. To What Extent Should Insane Persons be Amenable to Criminal Law?.....	161
LEWIS, T. L. The Settlement of Disputes Among the Mine Workers	333
LITTLEFIELD, CHARLES E. Use and Abuse of Injunctions in Trade Disputes	104
LUCE, ROBERT. The Next Legislation on Industrial Disputes in Massachusetts	407
LUNDRIGAN, JOHN. State Agencies for Dealing with Labor Disputes—The Experience of New York.....	397
MAYER, JULIUS M. Administration of the Criminal Law in the Inferior Courts.....	169
MCROBERTS, SAMUEL. The Extension of American Banking in Foreign Countries	502
MERRITT, WALTER GORDON. The Law of the Danbury Hatters' Case	265
MINER, MAUDE E. Probation Work for Women.....	27
NEILL, CHARLES P. The Scope and Limits of the Injunction..	87
NIBECKER, F. H. Fallacies in the Treatment of Offenders....	43
NICHOLLS, T. D. The Anthracite Board of Conciliation.....	366
NICHOLS, FREDERIC C. The Operation of the Mutual Savings Bank System in the United States, and the Treatment of Savings Deposits	640

Contents

v

	PAGE
PRATT, C. O. The Sympathetic Strike.....	391
RALSTON, JACKSON H. Use and Abuse of Injunctions in Trade Disputes	89
ROBERTS, GEORGE E. Utilization of Bank Reserves in the United States and Foreign Countries.....	523
SCHAFFNER, MARGARET A. Effect of the Recent Boycott De- cisions	277
SHERMAN, JAMES S. Respect for Law in the United States....	193
STAAKE, WILLIAM H. Juvenile Courts and Probation in Phil- adelphia	71
STEVENS, FREDERICK C. Respect for Law in the United States.	199
STEWART, ETHELBERG. Trade Agreements.....	321
STOCKWELL, HERBERT G. State and National Examinations of Banks	669
SYLVESTER, RICHARD. The Treatment of the Accused.....	16
TRAIN, ARTHUR C. The Jury System—Defects and Proposed Remedies	175
UNTERMYER, SAMUEL. Evils and Remedies in the Adminis- tration of the Criminal Law.....	145
VANCE, TRUMAN S. Welfare Work as a Way to Prevent Labor Disputes	381
VAN CLEAVE, JAMES W. The Work of Employers' Associa- tions in the Settlement of Labor Disputes.....	373
WARNE, FRANK JULIAN. The Trade Agreement in the Coal Industry	340
WEINSTOCK, HARRIS. The German Courts for the Arbitration of Industrial Disputes.....	445
WHEELER, EVERETT P. Reform in Criminal Procedure.....	185
WHITE, HORACE. The Stock Exchange and the Money Market	563
WILDMAN, MURRAY SHIPLEY. The Independent Treasury and the Banks	574
WILKIN, ROBERT J. The Responsibility of Parenthood.....	64
YOUNG, STANLEY. Enlargement of Clearing House Functions.	607

BOOK DEPARTMENT

CONDUCTED BY FRANK D. WATSON

REVIEWS

	PAGE
<i>Appleton's New Practical Cyclopedia</i> . 6 Vols.—E. R. Johnson	463
BOYCE, R. Mosquito or Man.—W. S. Tower	244
CHADWICK, F. E. The Relations of the United States with Spain.—C. L. Jones	245
CHAILLEY, J. Administrative Problems of British India.—C. L. Jones..	708
CLARK, J. M. Standards of Reasonableness in Local Freight Discriminations.—E. R. Johnson	709
COLE, W. M. The American Hope.—J. P. Lichtenberger	709
CORY, G. E. The Rise of South Africa. Vol. I.—C. L. Jones	464
CURTIN, J. A Journey to Southern Siberia.—W. S. Tower	245
DAWBARN, C. Y. C. Liberty and Progress.—H. R. Mussey	710
<i>Documentary History of American Industrial Society</i> . 10 Vols.—E. R. Johnson	465
DOWNNEY, E. H. History of Labor Legislation in Iowa.—J. L. Barnard..	711
DYER, H. Japan in World Politics.—C. L. Jones	470
ELLIOTT, E. G. The Biographical Story of the Constitution.—J. A. Fairlie	246
EVANS, H. Sir Randal Cremer, His Life and Works.—E. C. Stowell ..	711
FITE, E. D. Social and Industrial Conditions in the North During the Civil War.—D. Y. Thomas	247
FOSTER, G. B. The Function of Religion in Man's Struggle for Existence.—C. Kelsey	250
GARNER, J. W. Introduction to Political Science.—C. L. Jones	712
GODOY, J. F. Porfirio Diaz, President of Mexico.—L. S. Rowe	248
GRAY, J. C. The Nature and Sources of the Law.—T. R. Powell	471
HALL, T. C. Social Solutions in the Light of Christian Ethics.—J. P. Lichtenberger	248
HUGHES, C. E.—Conditions of Progress in Democratic Government.—C. L. Jones	472
HUGHES, E. H. The Teaching of Citizenship.—Jannette Stern	472
KING, I. The Development of Religion.—C. Kelsey	473
LAFRADE, W. T. England and the French Revolution, 1789-1797.—W. E. Lingelbach	474
MCCONNELL, R. M. The Duty of Altruism.—Amey B. Eaton	475
MCLAUGHLIN, J. My Friend the Indian.—J. P. Lichtenberger	476
O'DONNELL, F. H. A History of the Irish Parliamentary Party.—E. D. Adams	712
ODUM, H. W.—Social and Mental Traits of the Negro.—C. Kelsey.....	476

	PAGE
SELIGMAN, E. R. A. <i>The Shifting and Incidence of Taxation.</i> 3d Ed. — <i>R. V. Phelan</i>	249
SHACKLETON, E. H. <i>The Heart of the Antarctic.</i> 2 Vols.— <i>W. S. Tower</i>	249
SMITH, S. G. <i>Religion in the Making.</i> — <i>C. Kelsey</i>	250
VAN DYKE, H. <i>The Spirit of America.</i> — <i>R. E. Chaddock</i>	252
WELSFORD, J. W. <i>The Strength of England.</i> — <i>E. P. Cheyney</i>	477
WILCOX, D. F. <i>Municipal Franchise.</i> — <i>C. L. Jones</i>	713
WINES, F. H. <i>Punishment and Reformation.</i> — <i>J. P. Lichtenberger</i>	253

NOTES

ADAMS, E. D. <i>British Interests and Activities in Texas, 1838-1846.</i>	453
BAILEY, L. H. <i>Manual of Gardening</i>	229
BANFIELD, E. J. <i>Confessions of a Beachcomber</i>	229
BATESON, W. <i>The Methods and Scope of Genetics</i>	229
BATTEN, S. Z. <i>The Christian State</i>	453
BEARD, C. A. <i>American Government and Politics</i>	453
BLAKESLEE, G. H. (Ed.). <i>China and the Far East</i>	230
BRUCE, H. A. <i>Daniel Boone and the Wilderness Road</i>	454
CARRÉ, H. <i>Histoire de France.</i> Vol. VIII	454
CARSON, W. E. <i>Mexico</i>	230
CASSON, H. N. <i>Cyrus Hall McCormick, His Life and Work</i>	230
CHANCE, W. <i>Poor Law Reform</i>	231
COLBY, F. M. (Ed.). <i>The New International Yearbook</i>	231
COLEMAN, NANNIE McC. <i>The Constitution and its Framers</i>	231
CROMER, EARL OF. <i>Ancient and Modern Imperialism</i>	232
CROSBY, O. T. <i>Strikes</i>	699
CULLEN, A. <i>Adventures in Socialism</i>	232
DAVENPORT, E. <i>Principles of Breeding</i>	233
DAVIS, C. G. <i>The Philosophy of Life</i>	699
DEWE, J. A. <i>Psychology of Politics and History</i>	699
DOCK, LAVINIA L. <i>Hygiene and Morality</i>	700
DOLE, C. F. <i>The Ethics of Progress</i>	233
DRAPER, A. S. <i>American Education</i>	233
DRAPER, A. S. <i>The Rescue of Cuba</i>	455
FARRINGTON, F. E. <i>French Secondary Schools</i>	455
FICKLEN, J. R. <i>History of Reconstruction in Louisiana</i>	700
FULLER, T. E. <i>The Right Honorable Cecil John Rhodes</i>	455
GODFREY, H. <i>The Health of the City</i>	486
GREENE, M. LOUISE. <i>Among School Gardens</i>	700
GREENFELL, W. T., AND OTHERS. <i>Labrador, the Country and the People.</i> ..	234
HALL, G. S. <i>Youth, Its Education, Regimen and Hygiene</i>	234
HALL, W. E. <i>A Treatise on International Law</i>	235
HAMILTON, J. J. <i>The Dethronement of the City Boss</i>	701
HAVIS, C. H. <i>Sources Relating to the Germanic Invasions</i>	235
HICKS, R. D. <i>Stoic and Epicurean</i>	701

	PAGE
HILGARD, E. W. Agriculture for Schools of the Pacific Slope	235
HOLT, H. Commercialism and Journalism	236
HOWE, F. C. Privilege and Democracy in America	236
HOYT, C. O. Studies in the History of Modern Education.....	236
IRVINE, A. From the Bottom Up	701
JAMESON, J. F. (Ed.). Johnson's Wonder-Working Providence, 1628- 1651	456
JOHNSON, R. The Story of the Constitution of the United States.....	702
JOHNSTON, A. History of American Politics	702
KAUFFMAN, R. W. What is Socialism?	237
KAUTSKY, K. The Class Struggle	457
KEELING, F. The Labour Exchange in Relation to Boy and Girl Labour..	237
LAFARGUE, P. Evolution of Property	702
LAMONTE, R. R. Men vs. the Man	238
LANE, C. B. Business of Dairying	238
LINDSEY, B. B. The Beast	238
LLOYD, H. D. Men, the Workers	703
LOCK, R. H. Recent Progress in the Study of Variation, Heredity and Evolution	457
MACCLINTOCK, S. Aliens under the Federal Laws of the United States..	703
MACLEAN, ANNIE M. Wage-Earning Women	703
MACPHAIL, A. Essays in Fallacy	703
MARRIOTT, C. How Americans are Governed in Nation, State and City.	239
MARRIOTT, J. A. R. Second Chambers; An Inductive Study in Political Science	704
MATHEWS, S. The Social Gospel	457
MENCKEN, H. L. Men vs. the Man	238
MILL, J. S. Principles of Political Economy	239
MOORE, J. H. The New Ethics	239
MUNDY, F. W. The Earning Power of Railroads, 1910	704
MÜNSTERBERG, H. American Problems	704
MYERS, G. History of Great American Fortunes (Vol. II)	458
MYERS, G. History of Great American Fortunes (Vol. III)	705
O'HIGGINS, H. J. The Beast	238
O'SHEA, M. V. Social Development and Education	458
OSTERHOUT, W. J. V. Agriculture for Schools of the Pacific Slope	235
OVERLOCK, M. G. The Working People	458
PALMER, F. Central America and Its Problems	459
PHILIPP, E. L. Political Reform in Wisconsin	459
POST, L. F. Social Service	240
REID, D. C. Effective Industrial Reform	459
RICHARDSON, BERTHA J. The Woman Who Spends	459
RITCHIE, J. W. Primer of Sanitation.....	240
ROE, A. S. China As I Saw It	460
SCHOLEFIELD, G. H. New Zealand in Evolution.....	460
SILBURN, P. A. The Colonies and Imperial Defence	241

	PAGE
SPEARS, J. R. The Story of the American Merchant Marine.....	241
<i>The Statesman's Year-Book</i>	705
STELZLE, C. The Church and Labor	461
SULLIVAN, J. J. American Business Law	241
TALBERT, E. L. The Dualism of Fact and Idea in Its Social Implications	242
<i>Tenement House Administration</i>	705
TRENHOLME, N. M. An Outline of English History	461
VEILLER, L. Housing Reform	242
WARREN, G. F. Elements of Agriculture	243
WATKINS, E. Shippers and Carriers of Interstate Freight	706
WEEDEN, W. B. Early Rhode Island	706
WHITE, B. The Book of Daniel Drew	461
WHITE, W. A. The Old Order Changeth	461
<i>Who's Who In America</i> (Vol. VI)	462
WILKINSON, M. The Latest Phase of the League in Provence, 1558-1598	462
WILLIAMS, N. B. The American Post Office	706
WILLIAMS, S. C. The Economics of Railway Transport	707
WILLIS, J. C. Agriculture in the Tropics	243

Report of Fourteenth Annual Meeting of the American Academy of Political and Social Science, April 8 and 9, 1910	219
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SUPPLEMENTS

COMMERCIAL RELATIONS BETWEEN THE UNITED STATES AND JAPAN. Proceedings of the Session of the American Academy of Political and Social Science, held October 28, 1909. THE SIGNIFICANCE OF THE AWAKENING OF CHINA. Proceedings of the Session of the American Academy of Political and Social Science, held December 14, 1909. July, 1910. Pp. 38.	
THE WORK OF THE NATIONAL CONSUMERS' LEAGUE. September, 1910. Pp. 75.	



I. The Treatment of the Accused and the
Offender



GENERAL PROBLEMS CONNECTED WITH THE ADMINISTRATION OF JUSTICE¹

BY HON. JOHN P. ELKIN,
Justice of the Supreme Court of Pennsylvania.

The administration of justice in the United States, the general topic for discussion at this meeting, is one that may be considered from so many points of view as to preclude the possibility of covering the entire field at a single meeting of your society. It is a theme fruitful in suggestion and serious in import to those who look beneath the ebb and flow of surface waters to discover the currents and causes which control the movements of greater bodies. The consideration of this general topic, and of those particular subjects growing out of it to be discussed at this meeting, is timely because in the natural evolution of governmental affairs we have reached a period in which all thoughtful persons are concerned not only as to the proper functions of each branch of government, but as to the manner in which those functions of whatever kind or character shall be performed. The administration of justice is a broad and comprehensive subject. It is perhaps not too much to say that the individual citizen must of necessity depend upon the proper administration of justice in the courts for protection to life, liberty and property more than upon any other force or power in government. The courts are the tribunals which are and always should be open to every citizen, rich or poor, humble or powerful, to redress every injury suffered and to protect every right guaranteed to him by the constitution and laws of his state or country.

When our forebears, dissatisfied with conditions existing in their fatherlands, turned their faces westward it was in the hope of establishing here upon new and virgin soil a representative government under which all men should enjoy the equal protection of just laws. Through the trials and privations of the Colonial period they fostered the spirit of independence and steadily advanced the cause of popular government. Those were years of trial and tri-

¹Introductory remarks at the Fourteenth Annual Meeting of the American Academy of Political and Social Science, held in the Witherspoon Building, Philadelphia, Friday and Saturday, April 5 and 9, 1910.

umph. The people lived close to nature and drank deep from the fountains of eternal truth. They looked upon government as a means to an end—the end being that all men should be treated as free and equal, and that each citizen should be entitled to the fullest protection of the law. The minds and hearts of men were united in an effort to work out these results. Strong minds and resolute hearts were developed in that period, so that when the Revolution came we had men—strong, sturdy, capable men—to cope with every situation presented in the formation of a new and at that time experimental form of government. It was a psychological moment in the governmental affairs of mankind. It was the beginning of a new order of things in which greater rights and liberties were vouchsafed to the people, and less arbitrary and dictatorial power lodged in the ruler. They were momentous questions which confronted the wise and patriotic men of those days. Unrestricted liberty to the people meant license and anarchy, and no nation could long endure upon such a foundation. Unlimited power lodged in the executive was not to be thought of, because this was the evil from which they sought an escape. It was neither feasible nor practicable to attempt to conduct the multitudinous affairs of the people by direct legislative action. The best thought of the best minds of the original thirteen colonies was seriously and earnestly directed to the proper solution of these great questions. The federal constitution is the result, and looking at it from this distance I am impressed with the force of the thought once uttered by a great statesman, not of our own country, who said in substance, that as a wise solution of the governmental affairs of a great people, it was the most wonderful instrument ever formulated at a given time by the brain and purpose of man.

This is strong language and naturally suggests the inquiry, what does the constitution contain to deserve such a tribute? We who from youth up have enjoyed as of course the protection and privileges of a free government are prone to treat indifferently, or indeed to entirely ignore the foundation causes from which our blessings flow. In periods of business depression and social unrest there is a tendency to disregard what is and has been, and to drift out upon the uncertain sea of doubtful expedients. At such times it is well to study again the lessons of wisdom taught by our forefathers, and learned and approved by succeeding generations. It

is pertinent in this connection to inquire what kind of government was established under our constitution. The answer is simple, because it is written in plain language all over our organic law. It is a government of co-ordinate branches, each branch having its own particular functions, and one intended to be a check upon the other. The whole scheme is one of checks and balances in the performance of governmental functions by the co-ordinate branches. The legislative branch, most quickly responsive to public opinion, makes the laws. The judiciary, intended to be conservative, construes the laws and defines the constitutional limitations which the people by the adoption of the constitution placed upon themselves and upon every branch of government. The executive is clothed with power to make recommendations to the legislative branch, and to enforce through the various departments the laws as enacted and construed. If there is doubt as to the validity, or scope, or meaning of a law, it is the duty of the judiciary to determine every such question. A government of co-ordinate branches, each acting within its own proper sphere, makes an orderly and well-regulated system.

Our experience for more than one hundred and twenty years, with a rapidly increasing population made up by the intermingling of all races, and the development of a new country with vast areas and unlimited resources, has demonstrated the wisdom, power and efficiency of the form of government adopted. Under the constitution the judiciary was intended to be and is the great conservative force in government, and no one who studies its judgments and decrees can doubt that it has met fearlessly and patriotically the responsibilities cast upon it. Our judges are selected from the people, and as a rule live in close touch with them. They are actuated by good motives and honorable purposes. Their decisions may not always be popular, but they are in nearly every instance right under the law. They believe that ours is a government of law, and that it is the duty of a court to construe the law as written, rather than to attempt by construction to write into its provisions something not intended. It sometimes happens that in the administration of the law a seeming injustice may be done an individual suitor, but I am quite sure that it is the disposition of every judge to work out the equities of each particular case, so far as it can be done, without violating established and settled rules of law.

It is a mistake, however, to disregard wholesome and settled

rules and principles in order to work out what seems to be an equitable result in a particular case. It is safe to say that as a rule a precedent established on the equities of a particular case makes bad law generally. It is of vital importance that rules of law affecting the rights and liberties of the people should be fixed, permanent and settled. No higher duty rests on any court than fearlessly to maintain and impartially administer settled rules of law. This applies to both civil and criminal actions. It is much better that a rule of law should be settled, even if at times we question the rule, than that it should be unsettled and doubtful, so that no one with certainty can say what the rule is, or indeed that there is any rule at all. The doctrine of *stare decisis* grows in favor with the tenure of judicial life. At the beginning of a judicial career it is not uncommon to take the view that old laws should be amended, and that old rules are antiquated and not suited to modern conditions.

It is but natural for any one holding such views to doubt the value of precedent, and to attach but little importance to the rule of decided cases. A few years' experience on the bench has a wholesome tendency to check such a predisposition. The task of making a new rule to cover the exigencies of each particular case as it arises is hopeless, and if such a thing could be done there would be no settled law, and no one could assert with confidence a supposed legal right. My experience teaches me that it is better to know what the settled law is than to speculate about what it ought to be. It is of the highest importance that stability, certainty and permanency should characterize the administration of justice by the courts in order that the people may know what the law is, and be in position to enjoy and demand its equal protection. The court of which I have the honor to be a member has for two hundred years stood on the ancient ways, with a wholesome regard for the wisdom of those who preceded them in judicial office and a tenacious adherence to settled principles in the administration of the law.

It is true that methods of procedure have been changed from time to time to meet new conditions, but fundamental rules of property and principles of law have been upheld from time immemorial. It may be argued, indeed it is often asserted, that this view is too conservative and not in keeping with the march of progress in the affairs of mankind. My answer is that courts were never intended to be crusaders, and that their true function is in the exercise of

proper restraints upon radical and unwholesome tendencies. Of course in the exercise of such power courts must act upon statutory authority and within constitutional limitations. When disease is epidemic every quack has a nostrum, but such nostrums as often kill as cure. So, too, when the body politic is disordered there are always those both in public and in private life with a stock of cure-all remedies to prescribe. The prescriptions generally take the form of proposed new legislation. The modern tendency is to attempt to regulate the morals and business affairs of the people by statute. Just how far we should go in this direction is a great question. There is but little in the experience of mankind to warrant the belief that men can be made good or just by act of assembly. It is true, of course, that crimes must be defined, rights declared and rules of property prescribed by law, else there could be no orderly and well-regulated government.

The great question now is and always has been where to draw the line. Many thoughtful men think there is just as much danger in having too many laws as in not having enough. It has seemed to me that what is needed at the present time is not so much new laws, but respect for and enforcement of old ones. At such a time courts must and can be depended upon to administer impartially the law as it is written. The enforcement of existing law is more efficacious in producing just and equitable results than the more doubtful expedient of hasty and drastic legislation. Every right-thinking person should be in sympathy with any movement that has for its purpose the uplifting of his fellow man and the improvement of his social conditions. I believe with the old Psalmist, that righteousness exalteth a nation, but in no proper sense can a nation be deemed righteous that is not law-abiding. Law defined and administered by courts of justice is the foundation upon which righteous action must be predicated in dealing with the secular affairs of men.

Respect for law and order is one great need of our present civilization. The duty of respecting and obeying the law rests equally upon the rich and the poor, the great and the small. The law must be no respecter of persons, and the highest duty of a court is to administer it without fear or favor, so that its restraints may be felt by the most powerful individual or corporation, as well as by the humblest citizen. We hear some complaints about delays in the trial of cases, and if these complaints are well founded, courts

should do what they can to extend relief. This is a practical question the facts of which are not familiar to me. Speaking for our own court, it is gratifying to be able to state that our lists are disposed of with reasonable expedition. During the past few years the average time from the date of the argument to the handing down of the opinion was sixty days.

At the October term, in Pittsburg, last year, two hundred and thirty cases were on our list. All of these cases, with the exception of five, were heard or disposed of, and the opinions handed down in Philadelphia on the first Monday of January following. It is safe to say that at the close of the present term, sometime next June, there will not be a half a dozen cases undisposed of in the eastern district. It seems to me this is about as expeditious as is consistent with good work. But I have trespassed upon your time too long, for you have come to hear those who are to discuss the particular topics assigned them. I thank you for the privilege of presiding over your deliberations at this session. In behalf of the American Academy I extend a cordial welcome to all, strangers and members, assembled here, either to hear or participate in the proceedings of this annual meeting.

THE SWEATING OR THIRD DEGREE SYSTEM

BY HON. WILLIAM F. BAKER,
Police Commissioner of New York City.

After the accused is arrested, the law compels his arraignment before the nearest and most accessible magistrate, which we always comply with. Contrary to the usually accepted notion, there is no physical punishment of any kind whatever inflicted upon the accused. If confined here, his meals are given to him regularly. "The Sweating or Third Degree System" is an imaginary something—derived from the brain of some bright news writer. The only interrogation of an accused person, and he must be one accused of a serious crime, is to ascertain from that person, by examination and questioning, how much he may know of the crime he is accused of committing.

A police officer, conducting an examination of an accused person, if he has any information in his possession which makes him feel morally sure or have grave suspicion that the person before him has committed a crime, must contrive to so place the information before the prisoner, that, if guilty, it will overwhelm him with the idea that more is known than has actually been told to him, thereby in many cases obtaining a confession. Much information is obtained from an accused person by the cleverness with which a police officer can ask questions; also in many instances where from a mere nothing a police officer makes good guesses. But there is absolutely no torture nor punishment, physically or mentally, and nothing except clever arguments and the presentation of facts or correct impressions, thereby convincing an accused person that it is useless for him to withhold any knowledge which he may possess of the crime of which he is accused.

Contrary to the usual ideas of many people, an ignorant person is often harder to obtain a confession from than a person of higher mental caliber. If the policeman conducting the examination or investigation makes strong points during the course of such questioning, an intelligent man has a more receptive mind, not backed up perhaps by strong will-power, every point the officer scores

strikes as forcibly as though struck with a hammer. On the other hand, if an ignorant person has an obstinate disposition, in many instances he may be too stupid to recognize how strong the evidence is against him, and consequently makes no admissions whatsoever. Whether mentally strong or stupid, much depends upon which of the two persons, the accused or the officer conducting the examination, has the stronger will-power.

There is no suggestion whatever of any hypnotic influence, and if there are any police officials or persons having such hypnotic power, we have not heard of them. Nevertheless, no matter what statement or admission an accused person may make he is protected by the law, for the simple reason that no person can be convicted on his own uncorroborated statement. I would also state that, preliminary to the examination of a prisoner, he is informed of his rights under the law and told that he can make a statement or not, as he may see fit, and that anything he may say can be used against him at his trial, if such a trial is held.

ADMINISTRATION OF CRIMINAL LAW—THIRD DEGREE SYSTEM

BY GENERAL THEODORE A. BINGHAM,
Ex-Police Commissioner, New York City.

The main topic of discussion for this fourteenth annual meeting of the American Academy of Political and Social Science, viz.: "The Administration of Justice in the United States," has attracted the attention even of the President of the United States, who has publicly said that improvement was necessary. From so accomplished a lawyer and able a judge, such a statement establishes the fact that such improvement is necessary, and that a very widespread movement among the people, of dissatisfaction at present conditions is not without good cause. It is commonly acknowledged that we have a vast deal of unnecessary and altogether too much legislation. For this, however, the people have only themselves to blame. It is by them that legislators are elected, and if the people will not elect sensible and able representatives, they must suffer for it.

But taking the laws as they stand, the administration of *justice* must depend upon the judges. For judges to complain, as some have, of a growing disrespect among the people for the law, and an occasional expression of distrust of the courts, is weak and childish; for if the courts prove themselves worthy of respect by the people they will never fail of it. No honest, able judge ever yet failed to command the respect of his profession and of the people at large.

It is the existence of weak or corrupt judges that has given rise to criticism of the judiciary in the first place. But it is with the judiciary itself that rests the burden of obtaining and holding the respect of the people, by deserving it.

Therefore, among defects in present criminal administration I rank first the low grade of the average police magistrate and of the judges of the lower civil courts. These are the courts of first instance, and could be more beneficial than any other to our whole future as a people, if properly manned. It is where our wisest, ablest and most common-sense judges should be—because the police

court and the lower civil courts are closest to the people—to their petty faults and troubles, to the events of their daily lives, to their joys when on a spree and their sorrows afterward. Moreover, it is in the police court and in the lower civil courts that the millions of ignorant foreigners gain their first and, for the most part, only impressions of our government and our boasted liberty. As it is, they get the worst impressions instead of the best.

Honest, able judges in our lowest courts would put a stop to more than half of the troubles we have with policemen everywhere, and would set a high tone at once for the relations between police and public, which we must grudgingly admit could be greatly improved. The right kind of judges in the lower courts, as well as those above could do away almost entirely with shyster lawyers, the whole silly mass of trivial technicalities, the whole outrageous system of pre-arranged postponements of trial, releases on bail, etc., and secure an increase of righteous judgments—an increase in *justice*.

This brings me to a defect of the legal profession which is very general and probably too common to us all; namely, the exaggeration by the individual of his own insignificant and selfish interests.

Legal men, like some other professional men, say physicians, for instance, fall into the habit of making a mystery of their profession. They wind a mysterious cloak about themselves called legal or professional etiquette; which, at times, seriously interferes with the administration of justice. I have known men worried into their graves because of delays due to this cause alone. I have known men die while doctors were fussing over their own whims.

Another large part of legal mystery is made up of the mario-nette juggling of technicalities and precedents.

Some technicalities *are* important and some precedents are worth being followed more than once; although a man who cannot make up his mind on the facts of a case, and guided by law, without finding a precedent is, in other walks of life, regarded as weak or cowardly.

The practice of the English criminal courts in sweeping aside technicalities, and in getting at the merits of the case, ought to be followed by us. There has recently been a very encouraging case of this sort in Oklahoma. To get at the merits of a case is the last thing the public find in the courts. The legal profession as a whole makes an imaginary deity of "The Theoretical Law," and seems to

forget that it is but a paper image. That it exists for the people, and not the people for it, and that it was created to ascertain the merits of a case, not for the polemical gymnastics of legal hierophants who live by the ceremonials of their self-invented idol.

Another defect in the criminal laws is the almost unintelligible language in which they are written—which is the very fruitful ground of a large part of our troubles. Here again we meet the ghosts and witches, the dust and cobwebs of antiquity—all sacredly kept and worshipped by the modern priests of the cult—who worship the idol, but utterly fail in the great idea which the idol merely figures and figures but imperfectly.

The Ten Commandments cannot be improved on for conciseness, and the people who re-enact these and make other laws are entitled to understand them.

How our poor people let themselves be fooled!

How can they endure the present legal tomfoolery!

Laws are now so obscurely drawn, and often by intention, that much time of the courts is spent in trying to find out what the wording does mean, or in devising a meaning which may be taken to fit the words as nearly as possible.

Simple, clear, forceful language in the laws would enormously reduce not only the labors of the courts, but the present possibilities of trickery in litigation. But I have been asked to discuss particularly the so-called third degree from a police standpoint.

There is a notion in some quarters that this is a mysterious, carefully concealed, dreadful method of torture, like some forgotten device of the Inquisition. This idea has been nourished and spread and exaggerated by the newspapers. So far as New York is concerned, it is an entirely false idea. The third degree is neither more nor less than a severe cross-examination—not under oath—and in no respect worse than many of those grilling cross-examinations to which witnesses, on oath, are subjected by lawyers in open court—to which no objection has yet been raised. Whatever the so-called third degree may have been in the past, there is not in my knowledge or belief any physical feature of blows or pain, and still less of torture connected with it. The object is to find out the truth about the case, get the truth as to facts, or accomplices, or where stolen goods are, or any other facts necessary to society in the administration of justice.

Let me emphasize here my belief that the New York police are not as a body a brutal or unsympathetic body of men. They are very human, and certainly the Celts among them are very sympathetic.

No doubt most of them are somewhat rough and compelled to be so by their work—and they are not intended to be philanthropists. No doubt there are brutal men on the force, but I have seen too much of their general good treatment of prisoners, of generosity to them out of the policeman's own pocket, of restraint and self-control under exasperating circumstances, to give credence to any tales of torture, and rarely do I believe in tales of unnecessary clubbing. I know our men too well, and believe conditions are steadily improving. This is really all I can tell about the third degree, for it is all there is to it.

But what I have said leads directly to the following, about which I am very earnest, and which I wish words of mine could make sink into your minds as a permanent influence. In our liberty of thought, of which we are so proud, nothing is too deep or too shallow for us to discuss. Whether we are at all fitted by experience or education to form any opinion at all, cuts no figure. We run after anything new—as a people we are becoming very mercurial—perhaps it is the natural evolution of a democracy.

Anything like what the papers call "the human element" moves the crowd—sometimes to anger, sometimes to sentiment—and mob instincts are always primitive.

One of the latest fads is that crime is a physical defect and can be reduced by surgery. If so, the surgery would have to be widespread and continuous. By the way, are you aware that a very large percentage of present-day physical defects among children are due to the social evil, and in circles, too, where it would be unpardonable even to mention such an evil? As a people, we are too hypocritical to face cold facts.

But while perhaps many crimes are of the head, most are of the heart, and those who have had experience with crime, and, therefore, are qualified to speak, know of the vast cloud of mere wickedness that prevails—simple cussedness. There is an old Adam—there is some kind of a devil—and only when the human *heart* is converted will you have a sure reduction in crime. What has the Church to say about this? Society, or the general community, being merely

human, cannot wait for the surgeons or the Church, but, on the principle of the greatest good to the greatest number, has taken steps to protect itself and must continue to do so—has been compelled to do so in all ages or be swamped by anarchy.

Shall society be protected in its liberties, its lives, its property; yes, even in its general business and social morality? Or shall it become the victim of an hysterical, maudlin flabbiness, mistakenly called mercy; which is, after all, a "fad," not a virtue. If society is to be protected, and real progress made, force must be used against the very real and active simple wickedness of this selfish world.

Taine, in his "History of the French Revolution," tells you that one of the causes of the French Revolution was the high degree of refinement and moderation reached by the French people—so gentle had they become that the judges shrank from harsh measures and were always hopefully good natured. There was a horror of severity and bloodshed. A reading of his book will astonish you at the similarity between conditions in France before the Revolution and conditions in our own country at the present time. About one hundred chief scoundrels carried France down from its pedestal among the nations.

Let us face the facts honestly and fearlessly. Society, in a thousand years, has learned that it must protect itself by force. The police are the guardians of civilization and of progress. They are and must be an instrument of force, not of philanthropy or polite persuasion; and they must be backed up by society at its peril. True, the police must be wisely used, and that is why no selfish politics should control them, and why discipline should be rigidly enforced. But for a spirit of maudlin and false sympathy to join hands with the howls of criminals for mercy is fatal; is itself criminal, for it is treason to the general good.

I should think these remarks would be of peculiar interest to you in the light of recent events, as well as the fact of what rigid discipline and honest administration can accomplish, even in a small body of men. To obtain the results you seek, to obtain justice, let the laws even as they stand be enforced; let the judges show themselves strong, and fearless for the *public* good, and utterly immovable by anything but the merits of each case brought before them, guided not by the hair-splitting of the lawyers, not by a presumptuous spirit of legislating to suit their own ideas, but by the evident intention of the law as it is.

THE TREATMENT OF THE ACCUSED

BY MAJOR RICHARD SYLVESTER,
Superintendent of Metropolitan Police Department, Washington, D. C.

There were periods in the history of the world when individuals who had been proven guilty of crimes under process of law were burned alive, had their hands or ears severed, their nostrils slit or their hands or faces branded. It was settled in the period of Henry I, that for theft and robbery a person should be hanged. Solon introduced a law whereby every individual had to state in writing how he gained a livelihood, and, if false information was given, or he obtained it in an unlawful manner, he was punished by death. By the Persian law murderers were pressed to death between two stones. In ancient times, before the manners of mankind were softened by the arts of peace and civilization, murder was not a capital crime, but the more barbarous nations settled such matters by private revenge or by pecuniary compensation. King Alfred I made murder a capital offense in England.

In the progress of civilization the nature of all crimes and criminals became better understood, and during the nineteenth century these subjects received the attention of able writers and legislators, to the end that penalties for violations of the laws were invoked, more in keeping with the gravities of the cases, and, gradually looking to the more humane treatment of those who made up the offending classes. Not only did discussions follow, having for their purposes the application of humanitarian conduct for those who were convicted, but the questions of police organization, and the modes of apprehending and handling those accused, came in for a full share of attention by these earlier students of prevention, protection, detection and disposition. It was then considered that officers of the law, while they conducted themselves with purity of purpose, were truly the safeguards of the community, destined to protect the public against the outrages and depredations of miscreants who were the declared enemies of the state. That the police, when they acted properly, should be esteemed as "the civil defenders of the lives and properties of the people." If it is a patriotic and

honorable profession to break down by force the foreign enemies of the state, why should it not be equally so to subdue the domestic invaders of property and destroyers of lives who are continually engaged in criminal warfare. Everything that can raise the standard of the police officer should add to the safety of the life and security of the property of every individual.

While there was a cessation of visitations of the criminal classes to our shores during the War of the Revolution, during the War of the Rebellion, eighty years later, when our population had grown to tremendous proportions, and our commercialism extended from ocean to ocean, the disruption demanded extraordinary military and civil police activity, due to our domestic disturbances. The marauder, the bank robber and highwayman, thieves and criminals of every kind, took advantage of the exciting times to engage in their nefarious undertakings. At the close of the conflict, during the period of reconstruction, soldiers and the police were required to meet unusual conditions in the cities. Many of those arrested, criminals and suspects, were subjected to many kinds of inquisition and torture prior to court trials, in order that confessions, implicating themselves or others in the commission of violations, might be had. It was closely following upon these exciting times that the practical "sweat box" was described.

As pictured, it was a cell adjoining which in close proximity was a high iron stove of drum formation. The subject indisposed to disclose information which might be securely locked within his bosom would be confined within this cell, and without ceremony or formality a scorching fire would be encouraged in the monster stove adjoining, into which vegetable matter, old bones, pieces of rubber shoes and kindred trophies would be thrown, all to make a terrible heat, offensive as it was hot. It became at last so torturous and terrible as to cause the sickened and perspiring object of punishment to reveal the innermost secrets he possessed as the compensation for release from the "sweat box." This is the origin of the torrid appellation which has been so much discussed within the past few years.

The existence of any such contrivance in these enlightened days would be followed by raid and suppression. On the other hand, the criminal and those who would use the criminal vernacular apply the effervescent term to the office, or room adjacent at detec-

tive headquarters, where, in secrecy, consultation may be had or questions be asked of prisoners.

In this progressive age, when the heads of police departments, mainly at individual expense, gather in convention annually and advocate the establishment of houses of detention; in other words, separate respectable looking edifices for the placing therein of women and juvenile offenders rather than in station houses, when these men endorse the probation system, when they study the infirmities and defects of criminals of record in order that the courts may be enlightened in these respects before penalties are imposed, when these members argue for kind treatment of the child and the establishment of juvenile courts, when these chiefs submit intelligent written discussions as to the humane treatment of prisoners, it should need no argument to condemn any assertion that "little drops of water" or superheated moisture weep through the pores of a prisoner's skin through torture in a "sweat box." It is to be regretted that there are exceptions to such rules, but the members of the International Police Association, who number quite two hundred chiefs, have subscribed to the principles of humanity. There are officials who do not practice what they preach, some who are imposed upon by ignorant subordinates, but the well-disposed superiors will far outclass the others of their calling.

We have heard of the other vulgarity—"third degree." In police and criminal procedure and practice the officer of the law administers the "first degree," so-called, when he makes the arrest. When taken to the place of confinement, there is the "second degree," and when the prisoner is taken into private quarters and there interrogated as to his goings and comings, or asked to explain what he may be doing with Mr. Brown's broken and dismantled jewelry in his possession, or take off a rubber-heeled shoe he may be wearing in order to compare it with a footprint in a burglarized premises, or even to explain the blood stains on his hands and clothing, that, hypothetically, illustrates what would be called the "third degree."

The prisoner is cautioned by the reputable officer to-day that he need not incriminate himself, and, in some places, the authorities have blank forms in use stipulating that what a prisoner states is of his own volition and without coercion. In the pursuit of their investigations there is no law to prevent the officers of the law questioning any person, who, in their opinion, may be able to give

information which would enable them to discover the perpetrator of a crime. It becomes the bounden duty of the police to locate the violator. There is no justification for personal violence, inhuman or unfair conduct, in order to extort confessions. The officer who understands his position will offer admissions obtained from prisoners in no other manner than that which is sanctioned by the law. If a confession, preceded by customary caution, obtained through remorse or a desire to make reparation for a crime, is advanced by a prisoner, it surely should not be regarded as unfair.

No well-informed and schooled police officer would undertake to make himself liable before the court for disreputable practices. On the other hand, the well-directed officer in these times will endeavor to see to it that justice is done a prisoner. If demented, a drug fiend, a physical wreck, a first offender, if misled by others older in crime, he considers it proper that he should be informed, in order that the court may be fully enlightened before passing judgment. Volunteer confessions and admissions made after a prisoner has been cautioned that what he states may be used against him, and diligent inquiry of a prisoner for explanation of facts and circumstances, are all there is to the so-called "third degree," as countenanced by supervising officials in these modern times.

Some years ago a rough usage was resorted to in some cities in order to secure confessions, but such procedure does not obtain at large nowadays. There are those who come in contact with the authorities who are always ready to condemn on slight provocation, those who are waiting to even up for some fancied wrong, or for some contact with the authorities they may have had through their own wrongdoing, and who are ever ready to condemn the police. On the other hand, the principles of the police, as announced and discussed in their own circles, are that the closest co-operation and friendly feeling should exist between them and the good citizen. If the latter would applaud the creditable deeds of the police and criticise their shortcomings, it would be just, and lead to a better condition for all concerned. Every year the forces, through the medium of the International Police Association, are improving intellectually and morally, and this, in the face of many obstacles, in an endeavor to raise their calling to a higher standard and in order to better unfortunate humanity.

THE TREATMENT OF THE OFFENDER

BY HOMER FOLKS,

Secretary, New York State Charities Aid Association; President, New York State Probation Commission.

The student of social economy fifty years hence, looking back on our existing social agencies and practices, will find nothing more difficult to understand, and to harmonize with the possession of intelligent purposes on our part, than our treatment of the offender. He will not criticise us because our policy in dealing with the offender was too lenient, nor because it was too severe; not because our treatment of the offender was too largely institutional, nor too little institutional; but because we had no policy. He will criticise us because we vacillated between accepting, on the one hand, the findings and teachings of scientific study and research in social conditions and criminology and adhering on the other to the medieval idea of punishment.

In thus generally condemning our treatment of offenders, I am not unmindful of progress made. I remember that we have an Elmira Reformatory, and that there are similar institutions in other states; that improvements have taken place in equipment and discipline in some prisons; that the indeterminate sentence has been adopted, coupled more and more with some form of parole oversight; and that juvenile courts and the suspension of sentence with probationary oversight for both children and adults have been quite generally authorized.

The fact that notwithstanding these improvements, our system of dealing with offenders must as a whole be pronounced a failure, is, in my judgment, due, among other reasons, largely to four things, viz.:

1. The persistence of wrong notions as to the purpose of punishment.
2. The failure to provide adequate machinery for making the suspended sentence with probationary oversight, and the indeterminate sentence with oversight during parole, really effective.
3. The failure to collect adequate and comprehensive informa-

tion as to the actual operations of our correctional institutions and reform systems, by means of which we could elaborate a broader, more consistent and more effective program, and defend it against all comers.

4. The traditionalism of most of our magistrates and judges, and the attitude encouraged by many lawyers and some others, of not subjecting courts to criticism as we do other institutions.

Time permits but a brief amplification of these four points:

I. The latest reactionary statement to attract general notice is an address before the Association of District Attorneys of the State of New York, March 17, 1910, by Charles C. Nott, Jr., a leading member of the staff of the District Attorney of New York City. Mr. Nott probably expresses in considerable degree the sentiments of the staff of that office, and to some extent of the present and past efficient incumbents of the office of District Attorney, Mr. Whitman and Mr. Jerome. Mr. Nott begins his paper with the following assertion:

"It seems safe to assert that for many years it has been held by all intelligent people interested in penology, that the purpose of imprisonment for crime is to safeguard the interests of the community by deterring others from the commission of crime."

While agreeing with some of the positions taken by Mr. Nott, I must distinctly take issue with this statement. The chief purpose of punishment in the mind of the average man, and, therefore, of the community as a whole, in my judgment, is to prevent the commission of further crime, not by other offenders, but by the particular offender in question. I appeal to general experience and instinctive feeling in regard to crimes committed in our neighborhoods or within the range of our personal knowledge—is not our first and most insistent feeling the desire to be protected from further crimes by this particular offender? It is for this reason that we instinctively wish to put him behind bars, and in an earlier age instinctively wished to take off his head. We may hope that incidentally others who may be wavering may also be deterred from wrongdoing, but experience seems to show that it is very uncertain as to whether the punishment of one offender does have much effect upon others.

Fortunately, the deterrent effect of punishment upon an offender

is one which we can very accurately measure. We can, if we will, be fully informed as to the extent to which our actual dealings with convicted offenders do deter them from further crimes. We know their names, their places of abode. We can, if we will, identify them by a system which precludes doubt. We can make such identification of convicted offenders general, and we can, if we think it worth while, and, of course, it is supremely worth while, know beyond peradventure what proportion of convicted offenders who are treated in penal institutions subsequently repeat their offenses, and what proportion of those released on probationary oversight or suspended sentence again offend.

If, however, the chief object of punishment is to deter others from committing crime, we can never know to what extent that object is accomplished. It is doubtful whether our statistics in regard to crime will be such for a long time to come that we can form any accurate notion as to the actual amount of crime at one time as compared with another. Even if we achieved a reasonably accurate measurement of the volume of crime, its causes are too obscure and complicated to enable us to single out the effect at one period and at another of this particular factor, the deterrent effect of punishment on others. The impossibility of securing definite information is, in fact, probably one of the chief reasons for the persistence of the idea, in my judgment erroneous, which Mr. Nott makes the corner-stone of his paper.

II. The indeterminate sentence with parole oversight and the suspended sentence with probationary oversight are already too firmly established to be overturned by the reactionary attacks which will doubtless be made upon them from time to time. They are correct in principle; they have come to stay; and the area of their application will be extended rather than restricted. I am far, however, from saying that their present administration is satisfactory. It is, in my opinion, in most localities and in most courts highly unsatisfactory, and it is unsatisfactory principally because we have failed to provide the facilities by which we can secure effective supervision of persons so released. Specifically, we have utterly failed in most courts to provide anything like an adequate number of qualified probation officers, and we have failed still more lamentably to devise an adequate system for the direction of the work of probation officers. It is absolutely essential in probation work

that the offender shall be kept under an actual, vital, effective oversight, and that, if such oversight shows that he is continuing in wrongdoing, the suspended sentence should be revoked and the proper sentence be imposed.

Mr. Nott criticises particularly the number of suspensions of sentence and questions the effectiveness of probationary oversight in the Court of General Sessions in the city of New York. The number of suspensions of sentences increased from 460 in 1904 to 1160 in 1908, and 982 in 1909. As to whether there is an undue number of defendants so dealt with; as to whether sentence has been suspended in wrong instances and by reason of ignorance of the facts or of improper motives, I have no data on which to base an opinion. I am perfectly clear, however, that, as Mr. Nott implies, the number of persons released in that court under suspension of sentence is such as to require for their effective oversight a large, well-organized staff of competent probation officers, devoting their entire time to the work, and properly superintended.

The judges of that court have not seen fit to ask the city authorities to provide salaries for any probation officers whatever. They rely upon voluntary assistants provided by private organizations. It is manifestly impossible for the representatives of these organizations, with the other duties imposed upon them, and in some instances with private occupations, to perform efficiently the amount of work placed upon them by the court. There is no chief probation officer to direct the work of these volunteers. The State Probation Committee informally but strongly urged the judges of this court more than a year ago to make an application to the city authorities for salaries for a staff of probation officers, and has offered to support a request for such an appropriation. It will doubtless be forthcoming, as it has been when requested by other courts.

Still more notably deficient in my judgment, both in method and facilities, is the oversight of persons released from penal and reformatory institutions on parole. To determine when an offender may properly be paroled is a matter requiring careful inquiry and great discretion. It should be determined with very full knowledge of the offender's conduct, both in the institution and before commitment. It is a highly individual matter. The machinery provided for a determination of the proper time to release a prisoner on

parole, is woefully inadequate. The presumption that all offenders who have behaved tolerably well in prison are entitled to parole at the expiration of the minimum period of imprisonment is absolutely inconsistent with the idea of the indeterminate sentence. Yet this appears to be an accepted practice in New York, and on this basis a member of the State Parole Board justified the release, at the expiration of the minimum term, of a most notorious offender against the election laws. And when the offender is actually paroled, with an indeterminate sentence still hanging over his head, what sort of a method have we worked out for keeping informed as to his conduct? Who selects the parole officers; who directs them from day to day; who works out the standards on which the question of the return of an offender to a penal institution is to be determined; who sees that these standards are impartially enforced? Our management of penal and reformatory institutions has improved much faster than our management of the processes of getting persons into and out of such institutions?

To the question, "Is Christianity a failure?" some one objected that it had never yet been tried. Should any one remark that probation and parole are failures, I am inclined to reply that they have never yet been thoroughly and effectively tried. There is nothing flabby, weak, sentimental or ineffectual in the theory or in the proper administration of probation or parole. The supervision which they pre-suppose may be even more objectionable to an offender than actual imprisonment. The crying need, however, is for methods, facilities, agencies, officers, which will permit the theory of probation and parole to be put into actual practice.

III. The lack of comprehensive, trustworthy and instructive statistics in regard to offenders and their treatment, is notorious. It must be referred to because it is one of the important elements in the situation. By reason of it we are still asking, after thirty-two years of Elmira, whether reformatories reform. We are still in the dark to an unpardonable extent as to whether persons released under suspended sentence and under probation repeat their offenses. We are still in the dark as to the extent to which prisoners released from penal institutions under indeterminate sentence again offend, either during the term of parole or subsequently. The curious thing about it is that not only do we fail to collect such information, but curiously enough we apparently fail to realize that without it

we cannot develop an intelligent and consistent policy in dealing with offenders. It is for this that we will be criticised most sharply fifty years hence. Not even to know that we are groping in the darkness is unpardonable.

IV. Lastly, but in my judgment of exceeding importance, is the attitude of mind entertained and inculcated by many in regard to the courts generally. We are told that we must not criticise the courts; that they are in some way different from other human institutions; that they must be accepted, supported, obeyed, revered, but not criticised. This tends to maintain an attitude of superstition; it tends to dry rot in the court; it encourages political favoritism and downright corruption; it perpetuates hoary abuses in the business and administrative sides of the court's work. We shall not reach a consistent, defensible policy of dealing with offenders until we recognize generally that judges are very human; that to err is human, but that erring calls for criticism and correction. Lots of sunlight, fresh air, and ventilation will tend to prevent abuses in the courts, as well as to prevent tuberculosis.

If you have happened to call at the executive chamber in Albany, you may have noticed that at 12 o'clock and at 5 o'clock daily the representatives of the press are admitted, and meet the governor in person. In its superficial aspect this is a meeting between a very distinguished man and a few young men representing newspapers. In reality it is the highest executive official in the state giving twice daily an account of his stewardship to the people of the state. Similarly, every act of the legislature is daily under the searchlight of publicity. In some way our criminal courts, in my judgment, should be made subject to equally potent, constructive influences. We must know the facts; we must know them promptly; and we must be ready to express judgment upon them and to act upon them if need be. We must bear constantly in mind the human quality of the court. That which we deem judicial severity we must remember may be due in part to a too elaborate dinner on the part of the judge the night before. That which we deem striking confidence in the prisoner's good faith may be born of a favorable turn the day before in the properties in which the judge's savings are invested.

The fact that people know so little about the courts and that they have been taught to have an attitude of almost fetish-worship

toward them, leaves them in a state of mind to readily go to the other extreme and unjustly and unreasonably condemn particular courts or particular judges as corrupt or hopelessly unenlightened.

An attitude of open-minded criticism toward the courts would, in my judgment, be a most helpful factor in the development of their work. The recent report of the Commission to Inquire Into the Courts of Inferior Criminal Jurisdiction in Cities of the First Class in the State of New York is an admirable example of impartial, wholesome criticism of court methods, procedure and results. It is unfortunate that it is the report of a temporary body. We should have some similar continuing organ of government by which at stated intervals the important facts in relation to criminal courts, especially of inferior jurisdiction, would be stated in such a way as to inform the public, and form the basis for remedial and constructive measures. The courts, as well as the penal institutions, should be studied, inspected and improved. The most important factor in this process is that of securing reasonably continuous, well-informed, intelligent publicity, in place of the present long periods of obscurity, broken by brief intervals of often undeserved public condemnation.

PROBATION WORK FOR WOMEN

BY MAUDE E. MINER,

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Probation is no longer an experiment, but has become as truly a part of the correctional and reformatory system as the reformatory itself. It is for the convicted girl or woman a system of discipline and correction—a process of character building under the guidance of a probation officer who is a counsellor and friend. The success of probation depends upon the careful selection of persons who are to receive the benefits of it, the character of supervision that is exercised over probationers and the spirit, ability and personality of probation officers charged with the execution of this most important work.

As the long procession of fifty, one hundred or one hundred and fifty girls and women passes before the bar of justice in a single night at the Night Court in New York City, between nine in the evening and three in the morning, one observes with the older and more hardened offenders some younger girls less familiar with the surroundings of the court. There are many girls and women arrested for soliciting on the streets for immoral purposes, or plying their trade of prostitution in tenement houses, and others who have been charged with intoxication, vagrancy, disorderly conduct and with being incorrigible and wayward girls. The women are no longer in the toils of the professional bondsmen as they were before the Night Court was established, when arrests were made not alone because women were guilty, but because it was known that they would pay the customary fee for the privilege of being bailed out at night. Now all have a right to an immediate trial and to be discharged at once if found innocent.

It is within the discretion of the magistrate after finding a defendant guilty to sentence her immediately, to hold for further examination or to remand for sentence. Most of the women are sentenced at once by the magistrates, and it is largely a matter of chance dependent on the opinion of the magistrate who is sitting, whether a girl is discharged, fined, placed under a good behavior

bond, committed to workhouse or reformatory or released on suspended sentence and placed on probation. If a woman who is guilty is discharged at once, she frequently has only a contempt for the law and feels that she can violate it again with impunity. It neither helps nor punishes a woman convicted of soliciting on the streets to impose a fine upon her, nor does it act as a deterrent in any way. She pays a fine of two or three dollars, and often leaves the courtroom smiling to think she has escaped so easily, and returns at once to her life of prostitution and the streets. If she is fined five or ten dollars, and does not have the money, she sends at once to the disorderly "Raines law" hotel which she frequents and which promises to protect her. The good behavior bond is as ineffective as the fine. She must pay for securing some one to furnish her bond and thereby finds herself still further enslaved. If she offends against the law during the period she is under the good behavior bond, no action is taken to secure the forfeiture of it and the bond becomes meaningless.

The workhouse sentence with imprisonment for five or twenty days does not help any girl, and if it is six months it may really harm her. Recently I went to the Workhouse to see a girl, eighteen years of age, committed for a period of six months. She had been leading a life of prostitution for two months at the time of her arrest and had never been in court before. "I wouldn't care so much if only the judge thought he was reforming me by putting me here," she said, "but he must know girls can't get better by coming in cells with such dreadful women."

During the period of the shirtwaist strike we saw girls of sixteen, seventeen and eighteen years of age placed in the same cells with prostitutes in our jails and workhouse—a severe arraignment of our method of dealing with offenders.

Our courts and magistrates are very slowly recognizing that it is better for girls who need to be separated from society for a time to be in a reformatory where they can receive industrial training and further preparation for life and for work, than to be confined in cells in a prison.

A system of careful questioning, investigation and identification and wise judgment based on these is necessary to determine who are worthy of being released on probation. It is not merely a question of age or experience or number of arrests, but of poisoned minds, diseased bodies and weakened wills.

Instructed often by the older women with whom she associates in the station house or detention pen at the court, the young girl of seventeen arrested for the first time often declares she is twenty-one years of age, gives a false name, false address and says that her parents are dead or living out of the city. If she is sufficiently brave, as she is cautioned to be, and does not appear frightened or concerned about her arrest, and if her manner of dress sufficiently disguises her age, she may slip through easily with a fine, providing no investigation is made. If placed at once on probation, she leaves the court and because of the false address the probation officer may never see her again. If, however, she is closely questioned as to the place where she is living, the addresses of parents and relatives and the place where she was last employed, and is held for examination or remanded for sentence while these addresses are verified by the probation officer, the true facts will be revealed.

To provide for the younger girls paroled in my custody while probation officer in the Night Court and so prevent them from remaining in cells in the prison, and also to care for them more effectively after they were released on probation, we opened Waverley House, at 165 West Tenth Street, February, 1908. Classes in sewing, cooking, basketweaving, English and gymnastics were organized to keep the girls employed even during the short period while they were held for examination.

Among those who have come to Waverley House have been girls of fifteen and seventeen years who claimed to be eighteen years old, arrested for intoxication and larceny, a runaway girl, sixteen years old, who had been placed in the same cell with a woman convicted three times of prostitution and a girl of seventeen who had been occupying the same cell in the prison with two women charged with her abduction.

It has been possible by winning the confidence of the girls to learn their true stories and in some cases to obtain evidence against those who were responsible for taking them away from home.

As the result of the physical examination while at Waverley House, girls found to be suffering from venereal disease have been committed to institutions from which they could be transferred to hospitals for treatment or sent directly to hospitals. In other cases, even of girls seventeen years of age, their physical or mental condition or both have been found to be due to the use of cocaine or

opium. Observations made at Waverley House have shown that at times girls were considered criminal when in reality they were feeble minded, insane or not mentally responsible, and have been committed to the Psychopathic Ward at Bellevue Hospital or sent to an institution especially adapted for them.

Waverley House has shown the need of a municipal detention house near the Night Court where there can be segregation of the different classes of offenders and where the younger girls held under order of the court can be free from the contaminating influence of the more hardened women. During the period of detention, helpful occupation should be provided and all convicted of prostitution should be required to have a physical examination.

Some system of identification is essential so that it can be determined the number of times the defendant has been previously arrested and the sentence imposed. During six months while the fingerprint system of identification was employed in the Tenderloin Station, 1217 women were arrested 3145 times. One woman was arrested 17 times during this period and never sent to the Workhouse or placed on probation and another was arrested five times during the same month for the same offense and after being fined twice and committed to the Workhouse once, was placed on probation at the time of the fourth arrest.

T. M. was arrested one week after entering a life of prostitution and fined five dollars. Six months later, when again arrested, the magistrate released her on probation. The girl was pregnant and has since given birth to a child. She declares that at the time of her first arrest she would have welcomed the opportunity to get away from her bad life if the magistrate had only offered it to her.

It remains for the magistrate who is in possession of the facts with regard to the previous record of the girl, her home environment, her health condition and her mental attitude, to consider carefully, in view of these, what is the wisest and best disposition to make. When one considers how it may affect the whole future life of a girl and determine whether it is to be useful or harmful, one is forced to conclude that it should not be merely a matter of chance whether she is fined three dollars or committed for three years, sent to the Workhouse or released on probation. There should be more intelligent handling of these cases and more uni-

formity of action on the part of the different magistrates who have in view helping instead of punishing the individual girls.

When the defendant is released on probation she is placed under the care of a probation officer, charged to be of good behavior and required to report to the probation officer. For a minor offense the period of probation varies from one to six months and for a misdemeanor or felony may be a much longer time. Card records are kept by probation officers and statistical reports sent monthly to the State Probation Commission. In supervising those under her care and in making probation a truly helpful influence the probation officer finds her real work. The following have proved to be essential to adequate supervision:

1. Visiting probationers in their homes and obtaining co-operation of relatives.
2. Securing employment for those out of work.
3. Providing medical care when necessary.
4. Bringing probationers in touch with helpful influences and establishing friendly relations with them so that they come freely for advice and help.
5. Receiving reports from probationers individually apart from the court.
6. Securing revocation of probation and commitment to reformatory institution in the event of violation of the terms of release.

If a girl has a good home it is the wisest and best thing for her to return to it and parents are usually willing to receive her when facts are explained to them. It is not always wise to tell the entire story, but enough to show them that the girl is in grave moral danger and should be more carefully guarded. The probation officer must then visit the home in order to judge of the conduct of the probationer and not depend entirely upon the girl's statement at the time she reports. When the home is not in New York and the probationer returns to another city, some one, preferably the probation officer, if probation work is organized there, should be notified of it and supervision continued. We can also continue to keep in touch with her by writing to her and her parents. Girls who have come to Waverley House from the Night Court have been returned to their homes in New York, New Jersey, Pennsylvania, Tennessee, Missouri, Indiana, Ohio and other states. Several have been sent back to their homes in other countries.

Effort should be made to secure the kind of employment for probationers for which they are best fitted. Some have had experience at housework, in factory or office, and can be placed without difficulty; others are entirely without training or experience, and must be instructed or placed at unskilled work. In placing girls in families it is best to tell the employers frankly with regard to their past record and secure their co-operation in befriending and helping the girls.

The inability to work and consequent difficulty in getting along at home, have been found to be due in some cases to physical causes which required correction. Before going to work, girls should know that they are in good physical condition and have a clean bill of health.

Helpful influences must be brought to bear upon the girls in order to hold them. There are clubs and classes in settlements, churches and various organizations open to those who have been in danger, but have not been leading an immoral life. The work with the girls who have erred must be largely individual and personal, and in this the help of some interested volunteer workers can be utilized if wisely and carefully directed.

Probationers are required to report regularly weekly or bi-weekly, and under right conditions this affords an opportunity for the probation officer to keep closely in touch with her charges and is beneficial. The real value of reporting is, however, lost if the probationers are required to report at a court or before the entire group of probation officers. It is unwise for them to be brought each week into the environment of the court and to feel that they are on exhibition before a group of men and women probation officers, or to be seen by other girls who are guilty of the same or widely different offenses. The period of probation is far too short in many cases, and a minimum of six months and maximum of two years would be far more satisfactory in cases of girls arrested for waywardness, intoxication or prostitution, as well as for those charged with larceny.

The law provides that if the probationer violates the terms under which she has been released, a warrant may be issued for her arrest and she may be sentenced in the same manner as though she had not been placed on probation. It is useless, as is done at times in our courts, to impose a fine or place under a good behavior bond

or commit for five days to the workhouse for violation of probation. Because a girl fails when the first chance has been given to her, it does not mean that there is not hope of further helping her. She may need more constant supervision than the probation officer can give her, and a period of industrial and moral teaching and training in a reformatory institution.

Approximately one-third of the girls and women placed on probation in the magistrates' courts of New York City are reported as absconding or otherwise violating the terms of their probation, and yet it is by no means true that the lives of two-thirds of the women are changed in any vital way by the probation experience. Some who ostensibly adhere to the terms of probation return to a bad life soon after the probation period expires. As I have worked constantly with girls during the period of probation, subsequently visiting them in their homes, finding work for them and helping them in every way that I could, I am convinced that about one-third have been permanently helped.

Probation has proved to be most successful with the girls from sixteen to twenty years of age charged with being ungovernable and incorrigible and in danger through bad association. Many of the incorrigible girls have run away from their homes and have been leading an immoral life for a few days or weeks and have been with dangerous companions.

Sarah was arrested on complaint of her married sister, who said that the girl had been associating with bad companions and was ungovernable. The sister was forced to admit that her husband had told Sarah to leave the house when she had no money for her board. During fifteen months of the two years she had been in this country from Austria she had worked in four different factories, earning from three to four dollars a week, and had been "laid off" from each one because work was slack. Every cent she received had been given to her sister. She had no place to stay the night she was told to leave her sister's home, and a man whom she met in a restaurant offered to provide a room for her. For a few weeks before her arrest she had been leading an immoral life, but had refused to go on the streets to earn money by prostitution as several men had tried to persuade her to do. She has married since her probation period expired and is leading a good, honest life. Recently she celebrated her eighteenth birthday.

In cases of intoxication of young girls and of women, some of them mothers of families, it is possible to do much by probation. The home visits and friendly relations of the probation officer aid much and serve to encourage the probationer.

Two young girls who claimed to be seventeen years of age were arraigned in the Night Court for intoxication and released on probation. When investigation was made the following day, the probation officer learned that it was the first offense of each, and that one was but fifteen years old. By frequently visiting the homes and securing the co-operation of their families, both girls were helped just at the time when they had begun to form dangerous friendships and were getting beyond the control of their parents.

The girl who has been leading a life of prostitution for a very short time, and has entered upon it through the influence of some man who has secured power over her or because she was temporarily in distress and did not know which way to turn, may be helped by probation. Application of probation to the older, hardened prostitutes is useless and tends to bring discredit upon the whole system.

An Austrian girl, sixteen years old, had been soliciting on the streets for three nights. She had been in the country little more than a year and had worked steadily until three weeks before her arrest. A man whom she met at a dance hall on the lower East Side, where she spent her Sunday evenings, induced her to enter upon an immoral life, and sent her to the streets to earn money by a life of prostitution. During her probation period, and for eight months since it expired, she has worked faithfully, and last week returned to her home in Europe with money she had saved by her work.

When G. R., eighteen years old, was arrested for prostitution in a tenement house, she told the true story of how she had been induced to leave her home. A young Italian man whom she met at an amusement park promised her a position where she would earn more money and have an easier time than in the Brooklyn factory where she was working. He brought her to New York and placed her in a house of prostitution. She was paroled in my custody as probation officer while careful investigation was being made, and sufficient evidence secured against the man who lived on her earnings. He was convicted and sentenced to the workhouse. G. R. returned to her home and has since been working for one year in the same factory where she was employed until two weeks before her arrest.

The New York Probation Association organized to maintain Waverley House, and to aid in the development of probation work, co-operates with the courts and with probation officers. Probation officers from the different courts are free to bring girls to Waverley House as witnesses, while pending investigation, for physical examination or until the best method of helping them is discovered. An employment bureau is maintained by the Association, and positions found for those who are able to go to work. Railroad tickets are provided for girls who are willing to return to their homes in other cities and would be unable to do so otherwise. During the summer of 1909, Hillcrest Farm was maintained by the Association as a home for probationers, where girls with their babies and those who had not been well could spend a few days or weeks out of doors before they were able to go to work.

The Association is not only interested in helping the individual girls and seeking to improve probation work, but in understanding the causes of the failure of these girls so as to prevent others from entering the ranks. We have learned that many girls have entered upon a life of immorality or prostitution through the influence of procurers, men who live on the proceeds of prostitution, and older prostitutes, because they were deserted by men who had promised to marry them, or because of ignorance or conditions at home, at work or at play. The crowded homes in the congested quarters of our city, where sweatshop work goes on, and others where there is lack of understanding and sympathy, the grinding work at low wage in factory and shop with the accompanying temptations, the love of amusement which finds its gratification in wretched dance halls, where the girls first learn to drink and meet dangerous companions—all these are partially responsible.

Extraordinary efforts must be made to convict procurers, check the spread of prostitution in the tenement districts and prevent the opening of disorderly resorts side by side with our factories or stores. Then much must be done to improve conditions under which our girls live and work and play, so that there will be fewer avenues of approach to a life of wretchedness. In helping those who are in danger of becoming morally depraved, and so preventing them from coming to the courts and in aiding probation work in the courts, a volunteer probation association finds a large field for usefulness.

With the probation officer rests the ultimate success or failure of probation work. The work for girls and women must be done by women who bring to it intelligence, common sense, tact, skill, sympathy and enthusiasm, faith in human nature and in the task they are undertaking. They must be efficient and trained workers and women with personality. Theirs is the difficult task of influencing characters and lives, of bringing others to forget the things that are behind and to reach forth to the things that are before, of stimulating ambition and inspiring to noble purpose in life.

REFORMATION OF WOMEN—MODERN METHODS OF DEALING WITH OFFENDERS

BY KATHARINE BEMENT DAVIS, PH. D.,
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In looking over the programs of recent meetings of various bodies devoted to the study of social conditions in different parts of the United States, the consideration of the duty of the state toward the delinquent woman appears with increasing frequency. It signifies a change of attitude on the part of society toward the offender, and particularly toward the woman offender, which is most encouraging. It is not so long ago that the woman who sinned was considered so far out of the pale as to be unworthy of any consideration whatever. Any effort to do more than punish her when she broke the written laws of the community was considered a waste of time and money. With the growing recognition of social responsibility for the environment which reacts on character has come the realization of the duty of society toward those who are made what they are largely by society itself.

The problem of delinquent women is complicated as the problem of delinquent men is not, by social conditions and social conventions, and this will continue to be the case so long as society tolerates two standards of conduct for the two sexes. Lombroso has stated in his work on the "Female Offender" his opinion that the prostitute among women occupies a corresponding position to the criminal among men. This is in a great measure true. It is found in studying the histories of women in the state prisons, penitentiaries and similar institutions, that a large majority of them have been unchaste, have lived loose lives sexually, even if they have not been actually among the class of prostitutes who support themselves by their profession. As a result of this it is necessary in considering methods for reformation of women to make allowances for the feelings of the society into which the women must eventually be placed.

We recognize to-day that the woman offender is divided into two general classes. The first class includes those who are delin-

quent on account of some congenital defect—physical weakness, lack of will-power—if not of active criminal tendencies. This class includes various degrees of feeble-mindedness—of mental unbalance—between which and insanity it is difficult to draw a line. Often with lack of vitality she is unfit for difficult or continuous labor.

The second class includes those for whom environment is largely responsible—those who have failed through lack of moral, mental or physical training. For this class society is directly responsible. Crowded and unsanitary conditions in our cities, the lack of enforcement of city ordinances, the failure to enforce compulsory education laws, inefficient methods in our public school system, unjust economic conditions and the low moral standard among men which prevails in our cities, all of these are the things which are directly controlled by society and which are largely responsible for the making of the delinquent women who fall into this class.

Society is indirectly responsible for the first class. The burden has simply moved back a generation, and the children are what they are because the parents are what they are. Environment and heredity are so closely related that it is difficult to draw a line. Society is getting to recognize these facts, and is getting ready to shoulder its responsibility.

While twenty-two states out of the forty-seven states have so far met their duty as to establish under various names training schools for delinquent girls, but three states in the Union are fulfilling their obligation toward the women of the state. It is a truism to say that if the obligations to the boys and girls were all properly met there would be no need for the consideration of delinquent men and women. But do the best we may, it is likely to be many years before we can dismiss the latter class from our minds and hearts.

For centuries society has tried to cure wrongdoing by punishing the offender. That it has not been successful it is only necessary to turn to the records to be convinced. Education for the hopeful seems to be the only way out. If we are to be logical, there seems to be an undebatable course open to us. First, to afford the means of education and training to all delinquents. Those who have failed through lack of these will thus be enabled to return to society, self-respecting, self-supporting, law-abiding citizens. After proper study and effort, those who are too thoroughly dis-

eased to be cured must be isolated to prevent social contamination, just as we are getting to isolate the tubercular, and so prevent the spread of wrongdoing by contagion and by direct propagation.

Three states have in a measure recognized their obligation by establishing institutions where experiments are being made in this kind of work. In each of the three states—Massachusetts, Indiana and New York—the work accomplished has fallen far short of what it might be. States are slow-moving bodies, and it is not easy to so frame laws, plan experiments and secure the necessary money to carry them out as to realize ideals at once. But there is an advance being made, and the hopeful sign is that in a considerable number of other states agitation is active at this time to secure a change in the treatment of women offenders, and to establish educational institutions for their care. Massachusetts was the pioneer in this work, as it has been the pioneer in so much that is good. When the reformatory prison at Sherbourne opened, there was no other institution of this kind in the United States. Sherbourne showed the way, but has been handicapped by unfortunate changes in the law and by its antiquated type of building. Indiana reformatory prison for women has also accomplished pioneer work, but is located in a city on the congregate plan. New York, in establishing its reformatory institutions, has profited by the work of these two other states, and has located its schools in the country and has built upon the cottage plan.

There is every reason to believe that the states which are about to start upon this work will take advantage and profit by the mistakes of the other three states.

In establishing reformatories for women two points are fundamental—location in the country and building on the cottage plan. The first is desirable for reasons of health—for the possibility of varied industries and for opportunities for outdoor life and work. The second is necessary to enable a proper system of classification to be put into effect. We are getting more and more to believe in the healing and restorative effect of life in the country and in the open air. It is my personal conviction that growing emphasis will be laid on this side of the work, not only in institutions for men, but in those for women. Our own experience along various lines of outdoor occupations has convinced us of the practicability and desirability of this. Even if it is not possible to train women

for outdoor occupations and for country life as a means of livelihood, so much that is valuable in the way of training, to say nothing of conditions essential for the improvement of general health and nervous condition is to be gained, that there is little doubt of its value as a method.

The necessity of a system of classification is almost self-evident. Women offenders are not a homogeneous body. The accidental offender may be a woman of refinement, some education, decent ancestry and with a dislike for what is vile. It is a cruel thing to compel a woman of this class to daily association with the habitual offender, and to bring her in close contact with those whose thoughts are vile and whose language, when allowed free expression, degrading.

The younger women who are full of life and spirit can be best managed by a given method of discipline. Older women, with resources in themselves, get on best when placed by themselves. Neither age, character of the offense committed, nor social condition is a safe guide in classification. The ideal thing is the study of the individual, extending over some weeks, and then the classification based on character and needs. To carry out an ideal system of classification necessitates a somewhat expensive equipment. Schoolrooms, workrooms and play spaces should be kept separate. To secure such facilities it is necessary to persuade the state authorities that the result, and, hence the money value, of the returns will be proportionate to the expenditures.

Experience seems to prove that a large percentage of women offenders are women of little education and who need to be instructed in fundamentals. Their industrial efficiency is largely on a par with their literary attainments. The industrial training to be taught in a given institution must and ought to depend largely on local conditions and opportunities for employment after leaving the institution. It is obviously wasteful to instruct women in occupations for which they cannot be placed or in which it is unsafe to place them. In different states economic conditions vary, and this should be studied when planning the industrial work in a given reformatory.

In every institution for women much stress should be laid on their physical wellbeing. It is hopeless to try to reform a woman whose nervous system is demoralized or who has some pronounced

physical ailment which unfits her for continuous effort. Every such institution should possess a skillful woman physician, a trained nurse or nurses and a properly equipped hospital, large enough, not only to care for acute illness, but to afford a place where obscure cases can be studied with a view to determining how far delinquency comes from physical causes. For all physically unfit a proper amount of proper work in the open air is advisable, and open-air exercise and play should in all cases form a part of daily life.

In all such institutions religious instruction must be of a character to avoid any accusation of proselyting, but in my judgment reformatory work of any kind will fail unless the spiritual part of the individual can be aroused. The awakening of this spiritual life, and the direction of the energies along ethical lines, need not necessarily include any doctrinal teaching. The sensitiveness of some religious bodies as to what is vital is considerable, and it will probably be sometime before we are broad enough to make it unnecessary to hold distinctively denominational services, at least for Catholics, Protestants and Jews. It is not easy to find the right person to conduct such services, but they should exist in each community.

Beyond anything that can be accomplished by means of formal religious instruction of whatever sort is the influence of the lives of those in charge of these institutions. Too much cannot be said of this. The old anecdote of Mark Hopkins that he on one end of the log and a boy on the other would constitute a college, is pertinent to this point. More important than location or equipment is the character of the officers of an institution. No institution will succeed which fails to include on its staff a majority of men and women who are devoted to their work from other motives than that of merely earning a livelihood.

Not less important along modern reformatory lines is the principle of parole. The logical accompaniment of a proper parole system is a truly indeterminate sentence. So far as I know, no state has as yet been brave enough to attempt this. So soon as an inmate of an institution is able to go out in the world, and lead an honest, self-supporting life, he should be encouraged to do so, under the watchful care of the officers of the institution, and, knowing that failure to make good means the return to the institution, while success means a full discharge.

From my viewpoint the reform of the offender is only one phase of the large subject of the administration of justice. The making of just laws and their impartial enforcement, the sure and speedy consequences meted out to those who prove themselves incapable of social living, either by probation or by a term in a training school and the subsequent release on parole, and the inevitable corollary of permanent segregation of those who prove themselves socially unfit, all are parts of one whole. We cannot say that any one part is more important than the other. We each have our work along our special lines, but we each should be able to do that work better if we can come together and find out what each is doing, in order that co-operation may be both sympathetic and intelligent. Only in this way shall we finally secure the ends for which we are all working.

FALLACIES IN THE TREATMENT OF OFFENDERS

BY F. H. NIRECKER,
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I had in mind to enunciate that old fallacy, for so it seems it is, that the administration of justice is for the protection of society; that it is not a reformatory measure; that it is not an effort for the benefit of any particular individual, but is for the protection of society, and that our dealing with the accused and the convicted offender should be such that it will result primarily in the protection of society in general, and not primarily benefit any offender in particular. Now that may be an extreme fallacy in the view of the wisdom of fifty years hence, but still that is the idea which had somehow lodged in my mind after the observation and consideration of twenty-five years of looking at things that are abnormal and anti-social in the world. If I had not been driven away from that point, I would have held next that the great obligation resting upon the courts in the administration of justice, that is, dealing with the offender both before and after conviction, is to reduce crime. Optimism may say that the reason crime seems to be increasing, is because we have better statistics, but somehow or other the people, including some who read statistics, have a notion that crime is increasing; that there is a great deal of crime, but that may be another fallacy. Now if our present methods of dealing with crime have been a failure and it continues to grow apace, and society is not protected from the criminal, then the courts of law and the system of jurisprudence under which they act, are not such as are required in order to fulfill their proper function.

Another equally fallacious notion had lodged in my brain during these few years of observation, and that is a fearful looking forward to a judgment to come had something to do with men's conduct in the world. Indeed, I believe I have heard talk of this kind in churches of all kinds. It has been something like an appeal to the people to look out, or something would happen if they did not behave themselves. This notion has been sustained by a little book I have at home which may be known to some of you. Now, being of that

common mind that takes up with the folklore and superstitions of the ages, I had gotten it into my head that the effect of an act might deter a man from committing it; and therefore I should have said that anything in the administration of justice, either through the lack of apprehension of or in dealing afterwards with those who have committed crime, leading to the greater possibility of evasion of the punishment of crime by making the result of doing the act uncertain, weakens the deterrent effect of punishment upon the community. I am perfectly sure that I have known boys in my youth, who would have taken apples from an orchard across the street, if there had not been a dog in the orchard. I am very sure of it, because they lived on the same street that I did. I am sure that young men, because of the possible effect of certain acts upon their bodies or reputations, never committed those acts. There were dogs in that orchard, too. It may be true that those who are influenced by such motives are only a weak kind of humanity who are not governed by the pure moral law. We ought to do a thing because it is right, perhaps, but still there are many who are thus weak, and law-breakers are hardly the morally strong. I was going to argue that anything which weakened the deterrent effect upon the community was to be avoided. I can conceive that you might save a criminal, and, by the way, it is done, do harm to hundreds by losing and making uncertain the results which should follow criminal acts. If, however, punishment of crime has a deterrent effect upon men, and that idea is not an antiquated notion, then whatever laxness there is in the administration of law, whatever makes for easy evasion of the penalty of crime, also makes for crime in the community, and thus does not help society, whether it saves the individual or not.

Those of us who deal with social questions are thinking too much of the individual. There is the great social being which is just as full of life and is just as much of an entity as the single individual, and we lose sight sometimes of the fact that it is the law's business so to deal with the offender that that great social body shall not suffer because of eagerness to protect the single individual. I know it is also an old saying that "Better a hundred guilty persons escape than a single innocent one suffer." That may possibly be true, but it is not salutary teaching for society. How many hundred innocents suffer in every good cause, in every good work, in fighting fire, in protecting you in bed at night—how many innocents suffer

in order that the community at large may be saved. I tell you those hundred guilty ones that escape are a terrible incubus on society. Now if we can impress upon the community the fact that the administration of the law should be something like natural law, if we could only make it self-executing, if we could only bring it about that a man would know that if he took that which did not belong to him, if he violated any right of his neighbor or of the state, the penalty would be just as sure as would be the burn when he put his hand into the fire, I do not believe he would violate the law often. If the first time an individual disregards the warning of "punishment to come," he is "sent up," and he finds that in everything save personal liberty, he is better off than ever before; if his desire for and habit of idleness are gratified, almost to satiety; if his surroundings are such as to lift him above all unsatisfied desires; if in short he enjoys himself, he will be very likely to come back again.

If, however, law could be self-executing just as natural law is self-executing, and as moral law is self-executing, where the soul that sins dies, it would have a much greater effect upon the individual and would reduce crime. Just so long as laws are not self-executing; just so long as there are hundreds of crimes committed without arrests; just so long as there are 8,800 homicides and one and one-tenth per cent. of the slayers are brought to execution, the law will not deter very pronouncedly one who may be subject to criminal impulse.

We have heard some people say that the law is not to punish crime, but to reform the criminal. We have heard others say that crime has no moral character, that it is a disease. Just so long as we foster these notions in criminals, the results will be disastrous. There was a little fellow in Camden who was guilty of a most heinous offense, and when he was talked to he said, "Well, you know, I never was very strong, I never went further than the second grade; I do not know—that must be the reason why I did this thing." Where did a child of thirteen get such a notion? Is it far to seek when the newspapers are so often filled with advanced thinker's expositions of the innocence of criminals and the general applause given to such doctrines by the large part of those publicly identified with social work? So long as the public neglects and minimizes the moral quality of acts, as shown by an illustration in one of our papers, one that we all swear by in Philadelphia, crime will not grow less.

It was a picture of a street car surrounded by a crowd, with several well-grown boys and young men in the foreground, and under it this line, "The usual way the riot begins, some thoughtless boy throws a stone and starts a riot." Is it any wonder that the boy and the man do not think it a very serious thing to violate the law, when it is minimized in that fashion? I am not criticising that paper, for I am sure there are many people in this audience who have talked more foolishly than that. The fact is, if we are to reduce crime, we must bring every influence to bear that will prevent crime, and not make it less serious by sugar-coating its consequences after belittling its viciousness. But all of this is not to say every thing possible should not be done to set right our erring brothers.

II. Juvenile Courts and the Treatment of Juvenile Offenders

THE JUVENILE COURT—ITS LEGAL ASPECT

BY BERNARD FLEXNER,
Louisville, Ky.

The framers of the Illinois legislation of 1898 and 1899, which led to the establishment in Chicago of the first juvenile court in the United States, had in mind a distinct legal principle upon which the legislation was based. The child, they said, henceforth shall be viewed as the ward of the state, to be cared for by it, and not as the enemy of the state, to be punished by it. The court thus became, in the minds of its founders, a concrete expression of the state's obligation to the child; a recognition that the child, in court as the result of conditions not of his own making, had a valid claim against the state, and was to be saved to the state and not punished by it. This principle is not new; on the contrary, it is old, and is found in many of the early English chancery cases.

The primary legal question involved, the one that we always meet in the thousands of cases coming before the juvenile courts, involves the right of the court to control the custody of the child; to take it from its parents or guardian upon the broad ground that the welfare of the child and the good of the state require that this be done. The whole structure rests upon this proposition. Courts of last resort in this country, when called upon to construe laws creating juvenile courts, have uniformly upheld the right; they have rested the decisions upon the broad principle that the court is exercising a power used from the earliest times by the English chancellors. In the old cases the chancellors went so far as to hold that the right to take the child from the custody of its parents existed where the father ill-treats or shows cruelty to his infant children, or is in constant habits of drunkenness or blasphemy, or professes atheistical or irreligious principles, or where, living in debauchery, his domestic associations are such as tend to the corruption and contamination of his children.

It is claimed by many lawyers that the jurisdiction exercised by the juvenile court is a usurpation of power; that the precedents do not justify the procedure; that, although we do find the English

chancellors removing children from the custody of worthless parents, it was never done under circumstances analogous to the cases presented in the juvenile court; that, whereas it is true that courts of equity would undertake in certain cases to disturb the parents' custody, it was done only in cases where the child had some property interest involved; that, the question of the preservation of the child's estate being at issue, the chancellor would assume jurisdiction for the purpose of protecting the property of the child, and, as a mere incident of the exercise of this jurisdiction, would throw his protection around the person of the child; that where there was no property involved the chancellor could not step in to save the child. Protection of the child itself could follow only where it had property that needed protection. The question as to whether or not the child has any property is not material; that, given a particular case involving a dependent or delinquent child, the court will not hesitate to remove the child if the facts call for it. The supreme question is: Is the parent a fit person to continue as the guardian of the child, and if not, what should be done with the child?

What is the background for this, as found in judicial precedent? In 1790 we find a case (*Creuze vs. Hunter*, 2 Bro., C. C., 449) in which the father's affairs became embarrassed; he became an outlaw and resided abroad; the mother had been living apart from her husband, and had been directing the child's education. It appeared that gross charges had been urged both against the father and the mother. Lord Thurlow restrained the father from interfering with the education and care of his child, observing that he would not allow the color of parental authority to work the ruin of his child. The jurisdiction of the court to protect the child being questioned, the Lord Chancellor stated that he knew that there was such a notion, but that he was of the opinion that the court had arms long enough to reach such a case and to prevent a parent from prejudicing the health or future prospects of the child, and that whenever a case was brought before him he would so act.

The judgment indicates the existence of the power to protect the child against a worthless guardian for many years prior. It is striking that a principle so enlightened should have been announced by a judge who was notorious in his day for his immoral and profligate habits. In 1828, however, Lord Eldon (*Wellesley vs.*

Wellesley, 2 Russ., 1; 2 Bligh N. S., 124), delivered a judgment which has become the leading authority in England and in this country on the whole subject. In that case the Lord Chancellor took from the Duke of Wellesley his children because of his profligate and immoral conduct. It was sought to prevent the Lord Chancellor from interfering as between the father and his children because no property interest was involved. Lord Eldon, in an elaborate discussion, disposed of this contention and placed his judgment upon the broad proposition that the crown is the ultimate parent of the child, and that where the parent by nature has, by misconduct, forfeited his right to have the custody of his child, the king, as *parens patrie*, through the chancellor, will step in and protect the child by removing it from the environment that must make for its undoing.

The greatest difficulty that confronted the early chancellors, where the custody of the child was disturbed, was how to exercise the jurisdiction so that the child could be maintained. Where the parent or child had property, it was simple: An order was made setting apart some of the estate for the purpose of maintenance. But where there was no property the court was powerless to reach out and protect the child, for the reason stated by Lord Eldon in the case to which I have referred, "because the court could not take upon itself the maintenance of all the children in the kingdom." This defect has been met in later days in two ways. Courts of equity have compelled the father to contribute a certain amount monthly or yearly for the support of the child, as was done in an early case in Illinois (*Cowls vs. Cowls*, 3 Gillman), and is now the universal rule, and the state itself has provided the means, by establishing institutions to which children may be sent, and by providing further by statute that children may be boarded out under certain conditions. It will be seen, therefore, that the difficulty of which the early chancellors complained has been remedied by simply enlarging a power which has existed for centuries, and by providing through state aid the means by which the power may be exercised. This legislation is distinctly in line with the theory that the crown in England, and the state in this country, is the ultimate parent of the child.

In so far, then, as the child, known under our laws as the dependent child, or the child having improper guardianship, is con-

cerned, the lawyer will be compelled to admit that the power exercised by the juvenile court is the same as the power exercised by courts of equity, and that there is abundant authority for it. With the lawyer convinced of the soundness of our position regarding the neglected child, there is still the question of the delinquent child to be disposed of. What authority, he asks, is there for handling the delinquent child under this legislation? He is a lawbreaker; he is an offender against the public peace; there is but one way known to the law of reaching him, and that is through a conviction for a specific offense. This point of view is due to a misconception of the principle underlying the legislation. The dominant idea in this argument is the act complained of, the thing with which the child is charged. No distinction is made in this point of view between the offending child and the adult criminal. They have both violated the law, and they must both be punished. But, as a matter of fact and history, even at common law, a distinction was made between the two. A child of seven had reached the age of criminal responsibility, and below that age he could not be held to be responsible for his criminal acts.

From time to time statutes have been passed in this country and in England fixing the arbitrary age-limit below which the child is not to be deemed criminally responsible, and above which he may be punished as an adult for his wrongdoing. The juvenile court legislation carries this idea forward. It raises the age limit, and says that a child of sixteen or seventeen, or under, for violations of law, shall not be deemed a criminal. At common law and in those states which have raised the age at which criminal responsibility begins, the child who is within the age exemption cannot be brought into court. This is the specific addition made by the juvenile court legislation. It thus establishes the principle that children under the jurisdictional age are neither to be treated nor punished as criminals for violations of law, yet they shall not "go quit," because they are exempt under the statutes. The court undertakes to apply the same procedure to the delinquent as it would to the neglected child. Proper regard for the principle underlying this legislation demanded at the outset that the court; *i. e.*, the judges and every part of the judicial machinery, be socialized. It is striking that, while the West has made consistent effort to work out the thought behind the movement, in many places in the East the attitude toward it is still hostile.

These children's courts continue to be mere criminal courts. In these courts every detail of the criminal law is worked out against the child. The sole question, so far as the child is concerned, is, "Did he commit the act with which he is charged? Is he guilty of larceny, or burglary, or robbery, as the case may be?" And, following the rigid rules of evidence, if the crime of larceny, burglary or robbery is not technically made out, the child is dismissed. If it is made out, he is convicted, fined, committed, is paroled to a day certain, or sentence is suspended. Back of the appearance of the child in court there may be conditions that cry out for correction. This is not, however, the material part of the proceeding. This, the main point of interest in an enlightened and humane public policy, is a secondary consideration. The inquiry is directed to the consideration of the evidence bearing upon the commission of a crime. Notwithstanding it has been generally conceded that the proceeding is equitable in its nature; that in it the state, as the ultimate parent of all children within its borders, stands in *loco parentis*; that it is not a criminal trial wherein the outraged state demands toll from the child for a wrong against the peace and dignity of the state, though we still find in the juvenile court laws some reminders of the older idea of a criminal trial, and certain suggestions indicating the hesitancy with which the framers of these laws moved in drawing them.

The right of trial by jury, for instance, is given to the child unless it is waived. This was done, in a large measure, on the theory that courts of last resort might hold that the proceeding was criminal or quasi criminal, and that, therefore, the constitutional guarantee of a jury trial to the accused could not be taken from it. As a matter of fact, whenever the courts have been called upon to construe these laws, they have declared, in no uncertain terms, that the constitutional provision of a jury trial is not violated by a failure to have a jury pass upon the evidence. The number of cases in which juries are called is negligible. The provision is, to all intents and purposes, a dead letter. For this reason, and because I believe that every part of the law that involves a criminal conception of it should be eliminated, I would strike from the law all that relates to a jury trial. In this new legislation I would not leave a vestige to be pointed at by the advocates of the older method as an evidence of adherence still to criminal procedure.

I would, therefore, write more clearly into these laws than has yet been done, the beneficent principle that the proceeding involving the child is not criminal, and that the child, furthermore, itself, is not to be treated as a criminal. We have stopped short of what it is possible to do. The laws now define "a delinquent child" or a "wayward child" or a "juvenile delinquent" as one who does any of the acts inhibited in the law; and the judgment at the conclusion of the hearing is that the child is a "delinquent child" or a "wayward child" or a "juvenile delinquent." In other words, while we have greatly softened the proceeding, it is, nevertheless, difficult to get away wholly from the idea that it is a proceeding involving a charge against the child, and while we have, likewise, softened the character of the judgment, it remains still a judgment against the child. I would, therefore, rewrite the sections of the law that define a "delinquent child." Instead of saying, as we do now, that a "delinquent child" or a "wayward child" or a "juvenile delinquent" is one who violates any law of the state or city, or village ordinance, etc., I would say any child who violates any law of the state or city, or village ordinance, who is embraced within any of the numerous things set out in the law, shall be deemed to be a child in need of the care and protection of the state; and instead of a judgment against the child, adjudging it to be a "delinquent child" or a "wayward child" or a "juvenile delinquent," the judgment should follow the original definition and merely adjudge that the child is in need of the care and protection of the state.

The language, as it now exists, is a concession to conservatism, made at a time when it was thought the courts might insist upon a specific charge being made against the child. The language above proposed is a logical development of the chancery principle upon which the whole structure rests. It merely means writing more emphatically in the law, than now appears, the principle that the whole proceeding is for the purpose of protecting the child. It would take away the last remnant of any stigma that attaches to the judgment entered in the case.

It may be suggested here that, under the definition proposed, it would be obviously unjust to include the child variously called the dependent or destitute child, the child whose case presents to the judge the single question of relief. Most of the laws, as they exist now, embrace such children, and there are few courts in which cases

of this kind do not now arise. They are not properly cases for the court, and should not reach the court. They should be cared for by organized relief agencies and should reach the court only when the question of parental neglect enters in.

We may modify and soften the proceeding in court to the greatest possible extent and take away from it all of the sting. It will, nevertheless, be a grave injustice to the court and to the dependent or destitute child to bring it into court. The jurisdiction, as I view it, should be narrowed so as to exclude wholly cases of this kind.

For the purpose of emphasizing still further the nature of the proceeding, one step more should be taken. We need to get away, more completely, from the criminal terminology, still employed. With striking inconsistency, we institute a proceeding in chancery with the idea dominant that we want to protect the child, that we want no stigma to attach to it; and yet we publish elaborate reports dealing with every phase of crime, from idling and loitering to the worst offenses against public morality. I confess that I am unable to see any possible value that can attach to the fine distinctions of the criminal law as illustrated in the published statistics of the juvenile courts. An examination of the reports discloses the fact that the cases are sub-divided according to the rigid definitions of the criminal law. We find grand and petit larceny, burglary, robbery and arson and the entire list of crimes. The classification is adhered to in some courts on the theory that the time required for the cure of the child is to be determined in some measure by the act with which the child stands charged. In practice, however, it is doubtful if this theory is worth much. The act is merely the local evidence of pathological social conditions. The conditions that are responsible for the appearance of a child in court on the charge of loitering may take quite as much time to correct as those embraced in a charge of robbery. As a matter of fact, some of the most difficult cases presented to the courts are those covered by the inclusive term "incorrigible" or "habitually truant" from school.

The criminal terminology is another survival of the older method. It is adhered to because there is still doubt as to the nature of the proceeding and because the feeling still persists that it is necessary to charge the child with the doing of a particular act. The statisticians will, doubtless, insist that we must cling to the old

classification. If we are to continue to deal with the child as a criminal and in terms of crime, I grant we would have to continue to use some such terminology; but with the attitude of society to the offending child completely changed, some classification in harmony with the spirit of the law should, and can, be worked out.

It is clear that what I have said concerns the court, in the main, from the legal viewpoint. Important as this side is, the measure of the court's work in a community will depend on the efficiency with which it is administered on the social side. The probation office, the detention home, the clinic, each carefully and systematically organized, with efficient officials, go to make up the machinery by which the real problems confronting the court will be worked out.

A court which endeavors to do its work without such a force, or without realizing its importance, is but a poor makeshift and is doomed to failure. On the other hand, a court that realizes the importance of these functions, and that, through them, touches all the larger social activities in the community, is fulfilling its real purpose, and such a court must become a powerful agent in uncovering hideous social wrongs.

DISTINCTIVE FEATURES OF THE JUVENILE COURT

BY HASTINGS H. HART, LL. D.,

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The question often arises: How does the Juvenile Court, as established in Illinois in 1899, differ from the children's courts which were established earlier in Massachusetts and New York? The essential difference is that the children's courts of New York and Massachusetts were criminal courts, in which it was necessary to convict the child of a crime before he could be paroled or could enjoy the remedial influences of the court.

Hon. Harvey B. Hurd, who was the author of the Juvenile Court Law, made provision for taking children's cases out of the jurisdiction of the justices of the peace, the police courts and the criminal courts, and placing the jurisdiction in the county courts and the circuit courts. The law made provision for dealing with these cases, not as a criminal proceeding, but as a chancery proceeding, in which the child was treated not as a prisoner at the bar, but as a ward of the state. The statute was carefully drawn, so as to free the proceedings from all taint of the criminal court, and provided that, where children's cases were brought before justices' courts or police courts, it should be the duty of the justice to transfer the case to the Juvenile Court. Under the Illinois Juvenile Court Law, there is no indictment or complaint, and the child is not accused of any crime, but a petition is filed alleging a condition—namely, the condition of the delinquency or the condition of dependency.

As a rule, no warrant is issued, but a summons is issued to the parent, guardian or custodian of the child. The summons runs as follows:

"We command that you summon A. B. before the Circuit Court of Cook County, on the 19th day of March, 1910, at 10 o'clock in the forenoon, to answer under the petition of C. D., alleging that E. F., now in the custody and control of the said C. D., is a delinquent child, and that the said C.D. then and there have said child in open court."

The law provides that a warrant may issue only on affidavit

that such summons will be ineffectual to secure the presence of the child; but in ordinary cases the child is not brought in court by a policeman or deputy sheriff, but by his parent or guardian, or by a probation officer, without a warrant.

The child is not imprisoned, but the law expressly provides that no child shall be kept in any jail or police station, but that, if necessary, he shall be kept in some suitable place provided by the city or county outside of the enclosure of any jail or police station.

When the child is brought into court there is an absence of criminal proceedings. There is no prosecutor present, but the law provides that if practicable a probation officer shall be notified in advance and shall be present in court "to represent the interests of the child." The law provides further that the probation officer shall make such investigation of the case before and after the trial as the court may direct.

In the trial of children's cases in the juvenile court the ordinary rules of evidence are not enforced. Witnesses are subpoenaed, but the probation officer is allowed to testify to hearsay evidence; what he has learned from the child, the parents and the neighbors, the policeman on the beat, the school teacher, the employer. In many cases the judge halts the proceedings and calls the child to the bench and allows him to tell his own story in his own way.

The law provides that a jury may be called at the discretion of the court, or on demand of the friends of the child, but this jury consists of six men, not of twelve. The jury finds no verdict as to the innocence or guilt of the child, but simply finds the child delinquent or dependent, and there its duties cease. There is no verdict of "guilty" or "not guilty," but a verdict as to the condition of the child.

When the child is found delinquent, no sentence is pronounced. The judge has a wide discretion. He may return the child to his own home, under the friendly watch-care of a probation officer. He may instruct the probation officer to find a foster home for the child. He may commit the child to the friendly care of some child-helping society, or he may commit the child to a reformatory or some other institution—not for punishment, but for care and training. The judge may retain jurisdiction over the case for the further watch-care and guardianship of the child.

It may be said: Why should we disregard the sacred rights of

the child and remove the safeguards which are provided in every criminal court against the introduction of hearsay evidence? The reason why it is right to do this is that the proceeding is not *The State vs. Johnny Jones*, but *The State for Johnny Jones*. The proceeding is not against the child, but in behalf of the child. The effort of the judge is not to determine the guilt or innocence of the child, but to obtain such information as will enable him best to exercise those chancery powers of guardianship and friendly care which are conferred upon him by the law.

While the child is not on trial in any criminal sense, it often happens that the parent unexpectedly finds himself on trial. The big, husky father comes into court, holding by the hand a little boy of nine or ten. He says, "Judge, your honor, I wish that you would do something with this boy. I cannot do anything with him. He won't mind me, he runs the street nights, he runs away from school; I wish you would put him somewhere where they will make a good boy of him."

As the case proceeds, such a father is often treated to a very great surprise. The judge calls him up, and says: "I find from the evidence here given that it is you who are responsible for the delinquency of your child. You have allowed the boy to run the streets at night, you have failed to keep him in school, you have lived in a disreputable neighborhood, you have spent your money in drink and neglected your family. I find you guilty of contributing to the delinquency of this child, and I hereby impose a fine of \$100. I will suspend this fine on condition that you immediately change your practice with reference to this point. You are to see to it that he goes to school, or you are to keep him out of bad company, or you are to move into a better neighborhood, or you are to change your occupation." It is often a revelation to a neglectful parent to discover that he is to be held responsible for the care and training of his own child.

Judge Julian W. Mack, of Chicago, called attention in a recent address before the American Bar Association to the fact that although the New York law was so changed in 1909, that a child brought before the children's court "shall not be deemed guilty of any crime, but of juvenile delinquency only," "this would seem to effectuate merely a change in the name of every crime or offense from that by which it was heretofore known to the crime of juvenile

delinquency." In other words, the proceeding continues to be a criminal proceeding, and the child carries the stigma of a criminal conviction.

The essence of the juvenile court idea, and of the juvenile court movement, is the recognition of the obligation of the great mother state to her neglected and erring children, and her obligation to deal with them as children, and as wards, rather than to class them as criminals and drive them by harsh measures into the ranks of vice and crime.

FUNCTIONS OF THE JUVENILE COURT

BY HON. WILLIAM H. DELACY,
Judge of the Juvenile Court of the District of Columbia, Washington.

The establishment of juvenile courts is the most important development in the field of jurisprudence during the last decade. The first juvenile court was organized in Chicago, July 1, 1899. There, the juvenile court is presided over by one of the judges of the circuit court, a court of general, unlimited jurisdiction. The child is not regarded as a criminal. It is, rather, looked upon as needing the fostering care of the state by reason of its delinquency, which evidences the failure of its natural parents to train it to good citizenship. The court proceedings, as far as possible, are similar to proceedings in chancery. In Philadelphia, New York and elsewhere, the court is a criminal court. But, whether equitable or criminal, the attitude of the court toward the child is always the same—not that of a judge inflicting punishment, but the attitude of a father toward an erring child.

Dr. Hart did not tell you that the probation officers are used by the judge as investigators to obtain for him the sociological data necessary, that he may correct the wayward children. To do this, the judge must know of the environment of the children. Therefore, prior to the children's arraignment in court, probation officers are sent into their homes to learn the conditions there. Oftentimes this develops that well-grown children, of both sexes, have the same sleeping apartment, sometimes even the same bed. To provide the additional room required for decent living, we often find the earning capacity of the family ample if the money made were not dissipated in vicious expenditure. The very poor are encouraged to provide at least cheap screens, that the amenities may be somewhat possible.

Heredity, while an unknown quantity, is yet a force always to be reckoned with. Heredity is not a determining force, for God is good and I believe that He gives us all a fair chance.

By interviews with its parents, consideration of its personal history and its ancestry, careful consideration of its environment, and close observation of its physical condition, the court, in a sympathetic

investigation of the child's shortcomings, seeks to find out and eradicate the cause of the child's violation of the law. While maintaining the respect and even the wholesome awe of the child for the law, the court proceedings are bereft of much of the formality observed in other tribunals.

It would be a dangerous thing to disregard the rules of evidence, and these rules are observed, of course, in the juvenile, or children's, court. It is arranged so that the child may come quite close to the judge, that the judge may both reassure and have a better opportunity to study him.

Juvenile court systems tend to diminish, in a very large degree, the work of grand juries and criminal courts. This alone saves hundreds of dollars of expense to the community. In addition, a large proportion of the children tried in juvenile courts are handled by the method of probation which obviates, to a very great degree, the necessity for their incarceration at the expense of the public in institutions. While on probation, these children are under the supervision and the custodial care of the court, but are suffered to remain at their homes, where the cost of their nurture and training naturally belongs. The actual saving in dollars and cents, by reducing the number committed to institutions, is no inconsiderable item, and frequently amounts to as much as \$70,000 per annum in cities of 300,000. This saving is not all, for the earnings of these children while on probation add much to the wealth of their communities.

The work of the juvenile court is not only remedial, but preventive. The juvenile court is the most promising point at which to arrest the rising tide of crime. Its whole aim is to save the child from a life of crime and the conservation and preservation of the child to himself, to his parents and to the state. This work has the superlative value of the ounce of prevention.

Probation is character-building. That the probation system may be successful, the judge must take an active interest in its workings and be, in fact, though not in name, his own chief probation officer. No better social service is done to-day throughout the country than that rendered by probation officers.

Another great saving to the state is also made by the careful investigation of the cases of alleged dependents seeking admission into institutions maintained at public expense.

The exposure and punishment of parental neglect is a feature that stops much violation of the law; for parental neglect and parental inefficiency are prolific causes of the wrongdoing of the children. When homes are found to be morally unfit to train children to good citizenship, I thank God that there are excellent institutions to receive them and to shelter them, presided over by such earnest and cultured and zealous souls as Mr. Nibecker, to whom we listened this afternoon.

The enforcement of the parental obligation to support the family is another preventive feature of the work of many juvenile courts. The family is the real unit in the state. If the children are fed in their homes they are less likely to beg or steal. In Washington, during the past three years, over \$85,000 was thus collected from delinquent husbands and fathers, and paid through the clerk of the court to wives for the benefit of these children, without any deduction for costs or otherwise. This result has been made possible by the co-operation of the police force, under whose supervisory care these men found guilty of non-support are released either on probation or by parole.

Finally, the juvenile court is the natural center in the community around which to group all the social efforts made to remedy defective home conditions, to safeguard the health and morals of the young, and to insure the children an atmosphere friendly to the development of the highest citizenship.

THE RESPONSIBILITY OF PARENTHOOD

BY HON. ROBERT J. WILKIN,
Justice of the Children's Court, Brooklyn, N. Y.

It is interesting to us all who have given any consideration to the present provisions of law, relative to the care of neglected, destitute or delinquent children to notice the really recent recognition by the public of the necessity for the special study of this subject. Some one has said that if the present age was to be recognized in some special way, it perhaps would best be known as the "Children's Age," for such an awakening to the necessities for their special care and protection has not been before seen in this world, so far as we know.

To be sure, the law had considered the disposition of the property of infants and made special effort to safeguard and protect this. It had provided also with a great deal of precision for the care, education and happiness of those children who were endowed with property and was jealous to look after their rights. The law had been particular to regulate the relationship between parents themselves and their children; in fact, it seemed that the law considered every phase of the question of the interest of a child, so long as he or she might be entitled either by relationship or property rights to a financial or social standing. If, however, none of these particularly interesting and desirable qualifications being in existence, the child should be found destitute either on the highways or elsewhere, should it be in the custody of a drunken or otherwise brutal parent or guardian, should it be under any other disability, the law seemed to feel that it was none of its business, nor was it called upon to concern itself in the regulation of such cases as might occur. This was not so much due I think to the fact that the peoples of the world were less considerate of the unfortunate child and its sufferings, as it was to the fact that the legal system of government in most countries was based on the plan of the family, and, therefore, the laws all pointed to recognize, uphold and regulate this particular phase. Even in this country, which sought almost from its beginning to be developed along the line of the special protection and

benefit of those who were apt to suffer from injustice, the subject was not developed into a satisfactory law until quite recently.

The State of Massachusetts, I believe, was the first one to recognize this new condition, and in 1736 a statute was passed providing that "when persons were unable or neglected to provide the necessities for the sustenance and support of their children, such children might be placed in charge of the overseers of the poor and bound out." It also provided for the giving of the children "a decent Christian education." Later, and up to about 1825, other states passed statutes providing for the binding out of such children, and also their commitment to poorhouses when they were found begging in the streets or whose parents were beggars.

The first statute in the State of New York provided for the establishment of the Society for the Reformation of Juvenile Delinquents, in 1824, and this society had a building where the old Fifth Avenue Hotel stood on Twenty-third Street and Fifth Avenue, in New York City, which was known as the "House of Refuge." Certain powers were given the justices in the city to commit children to this institution. From 1824 legislation in relation to children was not generally increased, and no particular idea seemed to be considered even in the legislation that was enacted in any of the states, except to care for the destitute or whose parents might be delinquent.

The origin of special ideas and the date where first applied have always been an interesting subject for study, and some writers have held that what appeared to be the beginning of a thought was simply the evidence of increasing interest in many sections which had only found its development and announcement in this particular place. Such, in all probability, was the condition in relation to the special study of children and child legislation.

After the termination of the War of the Rebellion the United States took on a new activity along lines that had not been developed or considered prior to that time. The great excitement regarding human slavery which culminated in that great war was subsiding and the mental activities of the people were allowed to consider other phases of domestic relationship.

The organization of the great Society for the Prevention of Cruelty to Animals by Henry Bergh, in the late sixties, suggested to the people of this country, and, in fact, to the world at large, the

thought that the rights of the individual human being was not the only subject that should be considered by the citizens of this free Commonwealth. I have no doubt at all, as the origin of the sister Society for the Prevention of Cruelty to Children indicates, that the idea of the protection of animals, which was spreading itself throughout the states of the Union, also attracted to the attention of people the heartless cruelties that were enacted against children. You will remember the story of the little child in a tenement of New York City, whose sufferings were discovered by the volunteer charity worker, and who was rescued and her tormentor punished through the agency of Mr. Bergh's society. You will remember also that when this case was published in the papers it attracted wide attention, and also tended to discover many other cases of a similar character. The Society for the Prevention of Cruelty to Animals became overloaded with these complaints for investigation, and finally Mr. Bergh, together with the Hon. Elbridge T. Gerry, the counsel for the society, and a life-long friend of Mr. Bergh's, organized at a public meeting the now well-known New York Society for the Prevention of Cruelty to Children. This was in 1874. The Legislature was applied to in 1875 to enact the first statute for the protection of children from cruelty. Since that time legislatures of the country have been studying carefully, and with great steps of advancement, the subject of the protection and care of children.

It is interesting to note also, as stated by President G. Stanley Hall, of Clarke University, in a recent article, that the movement "for the scientific study of children began barely thirty years ago with a comprehensive census in Berlin of the contents of children's minds upon entering the public schools of that city." On the one side of the Atlantic the organization of a great movement to protect from physical cruelty the children of the land, and on the other side the beginning of a great movement scientifically to study the welfare of children.

Since 1875, then, legislation in the several states, and, in fact, in the world, has been secured to protect and benefit children. The idea also of recognizing in the state its right to look upon the child with the parental idea has been the foundation thought and authority for this legislation. The state has assumed in the first place the protection of the child from physical abuse on the streets and in public, as is evidenced by the legislation against assaults; the use

of children in dangerous performances; as street beggars, or in mendicant occupations, and the various other statutes where children were publicly improperly used or abused. It protected them from ill-use in the various occupations, it protected their health as suggested by the health laws, and it protected their morals by making provisions more severe in relation to the public exposure of children, increasing the age of consent from the common law period of ten years to sixteen or eighteen years.

That the law should do this was eminently proper, because if the child grew to manhood or womanhood with weakened mind or body or in a diseased condition, the state would first be deprived of the benefit and protection of its active participation as warrior or mother and would be compelled for its own protection to support it if diseased and incapacitated. The principle of self-preservation compelled the state to assume the attitude of *pater patriæ*, and the legislation naturally followed.

The laws for the protection of children even down to the present day, including the beneficent legislation establishing children's or juvenile courts, have been based on this fundamental idea, and have in their workings rendered excellent service. Natural selection, however, or perhaps we might say the laws of nature, provide a somewhat different aspect with which to view the parent on one side and his child on the other. The state, for its protection, should prohibit the ill-use or neglect of the child which is some day to become the citizen, but in doing so the fundamental idea of the family should not be forgotten. With few exceptions the legislation has been along the line of caring for the child in one way or another, relieving the parent from the responsibility of his duty, and placing upon the shoulders of the public, in other words, the state, the expense and the care of the child. The public school system, that most excellent institution of the people of this country, which we are all proud to point to as peculiarly a development of our system of government, in reality places upon the shoulders of the state the responsibility of the education of the child. While it is true that the parent by the laws must pay a few dollars in taxes and is supposed to oversee and assist the child in its home studies, at the same time in reality he is brought up to the idea that the state will educate the child, that the institution was established with that idea, and the parental responsibility is just so far reduced.

The stepping in by the state with the strong arm of the law to pluck the ill-used or neglected child from the home of the drunkard and place that child under the care of some public department or some quasi-public institution, is another movement by the state as the parent of the citizen child to relieve the natural parent of his parental responsibility. To be sure, the laws provide for the punishment of the neglectful parent; to be sure, the law, while it does not say so, probably contemplates the reform of the drunkard and the criminal, and the ultimate return of the child to the reunited family, but what does the law do directly toward this end?

I am not unmindful of the fact that the laws to-day are considering the reformation and the rebuilding of the person, rather than the old idea of retaliatory justice, and I am also not unmindful of the excellent effort that has been made in some of the states, notably Ohio, with its truant fathers' legislation, to which so much was added by the efforts of the late Hon. James M. Brown, of Toledo, nor of the United States statutes in force in the District of Columbia, which are producing so interesting and beneficial a condition under the wise administration of the Hon. William H. DeLacy, justice of the Juvenile Court, to whom, to my mind, more than any one else, is due the credit of bringing about a practical exhibition of the idea of fixing parental responsibility.

The law in the District of Columbia, as you probably all know, provides that the parent shall contribute to the support of his child, and his failure to do so renders him liable to commitment to the prison where under a fiction of the law he earns a certain sum per diem, which sum is paid over to the wife or the caretaker of the child, who in a way is repaid for the care of the child. This law, I understand, was originated by the late William H. Baldwin, of Washington, and deserves the serious consideration of all those who are interested in the child problem. I am informed that during the past year some \$38,000 was collected from fathers for the care of their children; of course, most of this money was collected from such parents as were free and could find work to do, but the ability of the state to apply a measure to enforce this payment probably in its entirety made the possibility of receiving this money a realization.

Adult contributory delinquency legislation is being considered by many of the legislatures of our states. It seems to me that the

state has gone nearly as far as it should in direct legislation toward bettering the condition of and protecting from ill-treatment the child. The attitude of *pater patriæ* should be relinquished somewhat and *pater naturæ* should be developed.

In the State of New York, some years ago, under a strong opposition, we had a bill passed which provided that the father of a child who was being supported at the expense of the public authorities, might be summoned before a magistrate to inquire into his ability to contribute in whole or in part toward the support of the child. As I said before, this measure met with opposition, and with strong opposition, but the bill became a law. While it is recognized and practiced in a few of the larger cities, it is practically a dead letter so far as the general state is concerned.

The responsibility of the mother, who has a regular financial income, with children in institutions at public expense; the responsibility of the step-parent, who has assumed the marital relationship with the parent of children similarly placed, has not as yet been considered, but it is the thought of the speaker that this phase of the relationship should receive the serious study and consideration of the thinking people of our country.

I am well aware that the tendency of the times is to forget the individual and study in concrete masses. I am well aware that it is much easier to commit to an institution out of hand the ill-cared for or neglected child, and pay the small per capita per annum, than it is by probation or dealing individually with the child's parents to retain in that parent the sense of his parental responsibility and perhaps return to the child a reawakened parental love. Are we prepared to recognize the state as the parent of all children to the exclusion of the natural guardians, or is it best for us, while it will in the first instance require much more care and effort, to retain a close relationship to the natural parents and thereby secure the natural child as the basis for the citizen?

It seems hardly necessary for the writer, who has for so many years been in touch with the charitable institutions of the great State of New York, to protest that he in no way would even suggest a criticism of the most excellent work done by these institutions which have these many years received in such large number the unfortunate children of thoughtless, if not criminal, parents, for such is not his intention. He bows his head with respect and admiration

to the services that have been rendered in the Christian spirit by the devoted sisters, the volunteer and paid caretakers, and all who have done so much to benefit the little ones in their care.

The idea set forth in this paper, however, instead of criticising these loyal and unselfish workers, is rather to further assist their work by having the natural parents educated to the responsibility of their relationship. Should we not, in our future studies, endeavor to find a solution to the problem of how to reawaken in the erring parent's mind and heart the natural feeling of love and responsibility?

JUVENILE COURTS AND PROBATION IN PHILADELPHIA

BY HON. WILLIAM H. STAAKE,
Judge of the Court of Common Pleas, Philadelphia.

When I was honored by being invited to participate in a "discussion" this evening, I came here, as you see by this envelope, loaded with some material that I thought I might seek to use in the way of discussion. I did not understand the invitation as meaning that each gentleman was to speak for himself, but that we were to discuss with each other.

I did learn something this evening from Dr. Hart, and that is that there is such a thing as the Forefathers' Society of the juvenile movement, and that these honorable, venerable men consist of Messrs. Hurd, Lindsey, Tuttle and Dr. Hart. I think they might possibly call themselves the grandfathers of the movement, and then allow some place for Judge Mack and others, who might come in the category of fathers. Does not the origin go a little higher up than any of the fathers within our recollection, and, after all, does not it really come from the great Father of all, who, in his revelation of Himself to us, has said, "Suffer the little children to come unto me and forbid them not"?

Now, I have some recollection of seeing a subject on various toast pages of menus and on sundry programs, namely, the word "Ourselves," and possibly as each of those who have preceded me has spoken about the conditions in their respective localities, I might be pardoned if I said something about Pennsylvania, and especially of Philadelphia, in connection with "juvenile courts" and "probation."

To go into the history of children's courts or the juvenile court movement would possibly carry us back—as Judge Mack showed us at Detroit last August—to the courts of chancery in England, to the children's court in New York, to the early movement in Massachusetts, to the well-framed law in Illinois and finally we might come to the history of the movement in Pennsylvania. I desire at this time to say, all honor to the good and noble women,

whose intelligent, energetic work brought about the legislation of 1901 in Pennsylvania. Although this legislation had its birth amid tribulation, because the legislation of 1901 was afterward decreed to be unconstitutional, these faithful women were not discouraged by that, but persisted most earnestly, most intelligently and very energetically, until there came the act of 1903, and that with certain supplements is the law under which the juvenile court operations in this city are conducted to-day. I would like to call your attention, ladies and gentlemen, to a passage in that law that occurs in six places—possibly even those of you who have studied the law may not have had your attention specially called to it.

The act begins, "An act defining the powers of the several courts of Quarter Sessions of the Peace within this Commonwealth, with reference to the care, treatment and control of dependent, neglected, incorrigible and delinquent children under the age of sixteen years, and providing for the means in which such power may be exercised," and then it says at the very beginning, "Whereas, the welfare of the state demands that children should be guarded from association and contact with crime and criminals, and the ordinary process of the criminal law does not provide such treatment and care and moral encouragement as are essential to all children in the formative period of life, but endangers the whole future of the child, and whereas experience has shown that children lacking proper parental care or guardianship are led into courses of life which may render them liable to the pains and penalties of the criminal law of the state, although, in fact, the real interest of such child or children requires that they be not incarcerated in penitentiaries and jails as members of the criminal class, but be subjected to a wise care, treatment and control," and so on, and in a second place I find that, "The good of the child and the interest of the state do not require a prosecution . . . under indictment under the criminal laws of the Commonwealth." In a third place, "The good of the child and the interest of the state do not require prosecution," and, fourth, "The good of the child and the interest of the state do not require," and turning over I find still again, "The child's own good and the best interests of the state," and in another place, in Section 10, "Unless after the care and oversight given such child under the probation system under this act, the court finds that the best interests of the child and the welfare of the community

demand." I call special attention to these citations because it is, after all, friends, a question of the welfare of the child and the best interests of the state which concern us.

It is further, in my humble judgment, a question of deep human sympathy. It is the real, true application of what we ought to mean by the Fatherhood of God and the brotherhood of man. I see before me in this audience a gentleman who a number of years ago first gave me an inspiration on the subject of the necessity of uniformity of legislation in the Commonwealth and nation, and as I listened to the presentations this evening, oh! how I longed for uniformity in the administration of the laws of the juvenile court, uniformity in the treatment of juvenile offenders. I often wonder how it is that one course or method of treatment could be pursued in one jurisdiction as being the very best treatment which could be pursued, and then I turn over the pages of the statute books, or read very interesting articles in the *Survey*, formerly the *Charities and Commons*, and find there is the greatest amount of disagreement among legislators and students as to what is really the very best method of treatment of juvenile offenders, and of the administration of juvenile courts. To-day, in this good old Commonwealth of ours, there exists the very same difference of opinion. I remember when that good, gifted woman who bore on her shoulders for so many years the most of the labor in connection with the introduction and administration of juvenile legislation, said to me there was danger that the probation movement might get into politics, when I suggested that I thought it was very wrong that applications should have to be made in this community to the Mothers' Council of Frankford, the Second Presbyterian Church, the Archdiocese of Philadelphia and to other associations and individuals, like dear old Dr. Duhring, of the Episcopal City Mission, to make up the salaries of probation officers. I said that in my judgment this was all wrong, and if the community could afford to pay the tipstaves of its various courts it could afford to pay the probation officers, who were also court officers. The court has in many cases to lean upon these officers, to trust in their good judgment, the accuracy of their reports, their integrity, their allegiance, and their fidelity in carrying out the orders and directions of the court; then why should they have a divided allegiance: first, to those who actually paid their salaries; second, to those who secured such payment, and then have

only the balance of their allegiance for the court? I thought this was all wrong and I am free to confess that I was one of those who took an earnest part in securing the payment of these hard-working officers out of the public treasury.

Again, there is a difference of opinion as to how we should treat juvenile offenders in the exercise of probationary efforts. We are told that the great State of New York has the commission form of supervision, that courts cannot properly administer the law, that children should not be committed to reformatories, etc. We are told in a decision in the State of New York that probation is a judicial function. Since then I have seen it heralded in print that it is not. Again, I have read that it is a deprivation of a constitutional right to have a child brought into court and dealt with, as in the juvenile courts, but that it should have a right of trial by jury. Thus we see there are these very honest, earnest differences of opinion as to how best to control and administer the juvenile court, but there are a number of things about which we can agree, and about which there cannot possibly be any difference at all, and that is to insist that the administration of the court be with a sense of human sympathy, to feel when you are dealing with these erring boys and girls that you are dealing with those who, if properly cared for, will become the future respected men and women, the future good and useful citizens of the Commonwealth and of the community. Let us deal with them with a smile of encouragement, be free with the encouraging hand upon the shoulder, look the child in the eye with a kindly glance, and say the helpful word, the word which will give the child an uplift.

I have heard it said that years ago a certain then judge, who later was also an eminent practitioner at the bar, had saved many young lawyers from absolute discouragement, because, when he would meet them on the street he would take off his hat to them with a hearty greeting of "Good morning, Counsellor!" The young man would feel that that word of recognition meant something to him—it revived his hope and kindled his ambition. These attentions cost nothing and they are often helpful. So I say about our delinquent boys and girls, do not talk about being big sisters and big brothers to them, but set about being their big brothers and sisters. Visit your neighboring social centers and college settlements, and make your sympathy and interest actualities. Go as the Israelites do at

the "Young Women's Union" and labor with and among the children. Go into the juvenile courts and see how proceedings are conducted, and if there is anything worthy of just criticism, go to the judge and talk to him, and if you do not want to do that, write to him and give him the benefit of your good counsel. I think much can be and has been accomplished by probation.

Some months ago, some time prior to the time we had laws providing for adult probation in this Commonwealth, I took upon myself the responsibility of suspending sentence in certain cases, and making myself a probation officer, feeling these were cases where the men were not of the professional criminal class, but had yielded to a sudden temptation, and had wives and children depending upon them. Was I to put the prison stigma on a man by sending him to prison and thus place the same stigma upon the wife and children? Too often when you put that stigma on the man, the wife and children have to bear the brunt of it. I decided I would experiment in the cases of certain men, and I have piles of letters from them, showing I made no mistake in my experimentation. They never fail to write to me on the first day of every month, and there is not one of these men who is not doing well to-day in honest employment, leading a right life and doing all that I could ask him to do.

Now, I am running beyond my time, I do not doubt, but I would like you, good fellow citizens of mine, to carry away one thought, that there is a great deal of truth in the old saying, "Satan finds mischief for idle hands to do." It is idleness that very often leads to truancy and delinquency. Lately I have done some work in connection with the playground movement, which, in my judgment, is one of the greatest philanthropic movements of the age. In one of the reports of the grand jury of Philadelphia, it says, "The opening of the new House of Detention emphasizes the duty of municipal governments to guard against juvenile crime in this city. The question of juvenile delinquency has been demanding attention. Chicago has spent over \$11,000,000 for playgrounds." I wish I could give you my Chicago experiences as a member of the "Playground Commission" in regard to that expenditure. In New York \$16,000,000 have likewise been expended within a similar period. One playground alone cost \$1,811,127, a block of tenement houses having been torn down to make way for it. In Chicago, play-

grounds and recreation centers have been accomplished at a cost of less than \$2 per each \$10,000 of assessed valuation. Experience teaches that the most economic scheme for handling crime is that which prevents, rather than that which, at fearful expense, is merely the engine to convict and punish after crime has been an established fact.

As the return in dollars is more or less invisible it is difficult for some people to appreciate the necessity for public playgrounds. Where the parents are, as in many cases, the sole source of support, they should not be blamed for the delinquency of the child, for the responsibility is the responsibility of the entire community. The founder of the juvenile system in the United States has declared "it is no longer a question," and as a judge I will say it is no longer a question "that playgrounds do more to prevent crime than jails, courts and policemen." The presentment further said: "A judge of Philadelphia likewise called attention to the fact that an adequate system of playgrounds will work a change in our children, will change the petitions to and the demands on the juvenile court. The playgrounds have been the greatest safeguard against lawlessness among children." This I sincerely believe. Within the next few weeks there will be presented to the Mayor and members of Councils of this city the report of the Commission on Public Playgrounds. I believe you will find it of great interest, not only in its text, but in its illustrations, and of practical interest in its plans and recommendations. I want to beseech for it that you will give it your attentive, your intelligent, and I would say with deep reverence, your prayerful consideration, because I believe, and the lesson has come home to me especially through the past three or four weeks of strike troubles, in reading the accounts each day of the offenses of the juvenile element in Philadelphia, that it is true, as was stated by one of our journals, that if we had had a system of playgrounds and recreation centers in Philadelphia, we would have had much less disorder and much less unrest than we have witnessed.

CAUSES OF DELINQUENCY AMONG GIRLS

BY MRS. MARTHA P. FALCONER,
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Work with delinquent girls is much more difficult and less hopeful than work with delinquent boys. The girls are more emotional and less reasonable than the boys. During the early years of adolescence, when the delinquent girl is apt to become troublesome, she is often a very difficult person to help; often hysterical, not knowing what she wants nor why she wants it. It is usually the girl from the broken home, and this is one of the chief causes of her delinquency, where the mother has been taken and she has been left to the care of an elder relative, or where there is a stepmother who may not have much sympathy or patience with the girl, and the home is not attractive. If there is a mother she is frequently too tired and overworked herself with the care of a large family, and the conditions are impossible for social life if the family is living in a few small, crowded rooms.

The girl wants to have a good time, and without thought of evil she must go from home to find her pleasures, especially if she has been working long hours in a mill or factory all day, it is perfectly natural that she should desire some recreation in the evening. Proper places have not been provided for this. The vulgar theater and the dance hall in connection with the saloon in too many communities are the only places open for her. There has been more public sentiment about providing recreation for boys in the way of clubs and gymnasiums than for girls, possibly because it is generally thought that a girl should be at home with her mother; an excellent place for her, provided she has a wise, sympathetic mother and a good home, but the delinquent girls are usually the girls who have no mother and who have very little or no home training.

Another cause for delinquency among girls is the lack of care for the feeble-minded girl. She is usually well developed physically, kind-hearted, a willing worker. She can be self-supporting, but should never be self-directing. There is no place in the eastern part of Pennsylvania to-day for the feeble-minded child. The ex-

cellent school at Elwyn is overcrowded. In many of the rural communities feeble-minded girls are allowed to drift in and out of the county almshouses, bearing illegitimate children, which are an added burden to the state. These girls are often the children of inebriate or epileptic parents. They should be kindly treated, but should have custodial care past the child-bearing period.

Another cause of delinquency is the inefficiency in our training. In many parts of the state in communities outside of the large cities very little attention is paid to the compulsory education law. Children are allowed to leave school at an early age because their parents think they need their financial help, and the girl has lost interest in her school work. There is no public sentiment to hold that girl in school until fourteen years of age, at least. We need more industrial and manual training in our public schools for the girls just as well as for the boys. Much more has been done to give the boys manual training and other hand work. We should give the girls the sewing, basket weaving, sloyd, domestic science, especially in the lower grades, and not confine this work to the grammar grades and high school, when so many girls do not stay in school long enough to reach the high grades. We are apt to think of the problems in delinquency and the juvenile court as belonging to the large cities; the rural communities have their problems, too, where the railroad station and the saloon are the only places open if the young girl wants a place to go and something to do. In some places the library has met this need. Where there is no library there should be the larger use of the schoolhouse, using it for a social center for the community. It should be open in the evening for classes and clubs with the right kind of supervision, which is the secret of all successful work with young people. We need in all communities, both in the cities and in the smaller places, recreation centers, whether it is a building for that special purpose or the schoolhouse; with the enforcement of good child labor laws and the compulsory education laws to keep the girls out of the factories and mills and in school until fourteen years of age, at least. We need to have the art of home-making taught to our girls in the public schools or some of them will never learn it, because of the lack of home life.

The juvenile court and probation have done much to help delinquent girls. There are very few girls compared with the num-

ber of boys, and it is much more difficult to help the girl with probation than the boy. The very freedom which the girl seeks is often hard to give her without having her abuse that privilege. The girl is usually brought into court for what is called incorrigibility. This is often the girl of foreign parents, who has become restless with the restraint of home, is unwilling to be guided by her parents. It is not an easy matter for the probation officer to hold the girl, either in that home, or by finding another place for her. A boy may be grossly immoral and his immorality does not always find him out and follow him; it is not so easy for the girl who has been immoral to be helped back to a normal place in society. This is a factor in the situation which we will always have to meet, and which makes the work with girls so much less hopeful. The probation officer for the girls should always be a woman, and she should be a tactful, well-balanced person, who has sympathy with young people. Probation has done much for the delinquent girl in giving the restless, discontented, unhappy girl the right kind of a friend, who has sometimes been able to keep the girl in her own home, or to find the right kind of place for her elsewhere. It is not wise to give the girl as many chances with probation as the boy, and it is a mistake to feel that every girl should have probation first. If a girl has commenced to lead an immoral life it is usually better to give her a period of training and then try probation, rather than to give her the freedom which she would abuse and perhaps be the cause of getting others into trouble.

PRIVATE HEARINGS: THEIR ADVANTAGES AND DISADVANTAGES

BY HON. HARVEY H. BAKER,
Justice of the Juvenile Court, Boston, Mass.

Heretofore trials of all offenders, young and old, have been open to the public. Seats have been provided for spectators, and no one has been excluded for any reason except lack of room. The newspapers have been free to report the details of cases, including the names of the parties. At present, in connection with the removal of the cases of offenders under sixteen or seventeen from the operation of the criminal law, there is a tendency to limit the publicity of the court proceedings in such cases. The limitations on publicity now being introduced in juvenile courts vary in strictness all the way from an understanding with the newspapers that the offenders' names shall not be published, to what may be called for convenience a private hearing.

The main feature of a private hearing is the reduction of the number of persons present to the minimum. In the most advanced form of private hearing the presence of a clerk and a court officer is dispensed with, and the only official in attendance is the probation officer in charge of the case which is being heard. Only one or two visitors are admitted at a time. No visitor is admitted without there being some special reason for his presence. Such a special reason exists for the presence of such persons as the following, viz.: Clergymen, teachers, legislators, social workers, officers of societies for social service, and public officials concerned with the enforcement of law and the preservation of order. At the hearing of each case the persons directly interested in that case are admitted. These persons are the parents, their attorney or any other person whom they wish to have talk for them, any person concerned about the child on account of race or religion, any person interested in the child on account of the child's or the family's connection with any such organization as a social settlement or the associated charities. If there is a trial only one witness is admitted at a time.

Some of the advantages of the private hearing are brought out

by considering what is the essential purpose of a hearing in a juvenile court. The purpose of a hearing in a juvenile court is to find out whether the child is delinquent or not, and, if he is delinquent, to find out the cause of the delinquency and a remedy for it. The most efficacious way of finding out whether a child has done wrong in any instance, and what is the cause of the wrongdoing, is shown by the action of sensible parents. The father talks with the boy alone in his study, or the mother with the girl in her chamber. The teacher similarly takes the offending pupil to his private room. The nearer conditions of the hearing in the juvenile court approach the father's study and the teacher's private room, the more fully and promptly the judge will ascertain the facts and causes of the delinquency of the child. The private hearing readily adapts itself to affording conditions exactly like those of the father's study or teacher's private room. Where the number to be present at hearings is strictly limited they can be held in a small room, and the judge and child can readily be left entirely alone in it. The child must not be talked with apart from the parents against their objection, but in most cases there is no objection and the judge can proceed from the outset after the fashion of the wise parent, and begin his investigation by talking with the child alone; though girls, of course, should never be talked with wholly alone, and, if possible, a woman should be the attendant.

The foregoing considerations show that one advantage of the private hearing is that it affords much more favorable conditions than a public hearing for finding out the facts and causes of the child's delinquency. It is well to remember in this connection that "delinquent" laws usually expressly declare that the treatment of children under them shall be as nearly as possible like that which children should receive from their parents.

Still another advantage of the private hearing is brought out by considering the other important part of the purpose of juvenile court hearings; namely, finding and prescribing the remedy for the delinquency. The best way of accomplishing this part of the purpose, and also, indeed, to some extent of finding out the causes, is indicated by the procedure of the physician. The physician talks with the parents apart from the child as to both causes and remedy, and it is desirable to have facilities for excluding the child from the room where they are talking. Furthermore, the physician finds it

desirable to talk with the parents without the presence of third persons, for parents are to some extent like the children in opening up their hearts more freely the more nearly they are to being alone with their adviser. The private hearing with the small room enables the judge to confer with the parents like a physician in his office, and thus the further advantage of the private hearing is that it affords more favorable conditions than a public hearing for determining the remedy for the delinquency.

Still further advantages of the private hearing are the following, viz.:

A bold child cannot pose as a hero in a small room with only half a dozen people and no other children present.

Children are easily precluded from hearing, or even seeing, their parents admonished. It is frequently necessary to admonish parents. To admonish them in the presence of their child, even if the child is so far away that he cannot hear, tends to further impair their already too weak authority.

Children do not hear each other's cases.

Children are not pilloried before the public.

Curiosity seekers are barred.

The judge can wholly overlook or deal informally with certain natural outbursts on the part of children, parents and others, which in a public hearing might have to be met with a formal reprimand. Such a reprimand hinders seriously reaching a satisfactory understanding between the judge and the child or its parents or friends, while a quiet expostulation and explanation with the malcontent alone in a private hearing-room, which is easily cleared for the purpose, may greatly facilitate the reaching of such an understanding.

The feelings of parents can be more effectively spared. There are frequently blameless parents who are greatly distressed by their children's delinquency, or by an order for their children to be sent to a reform school. Any one who has seen the tears of strong fathers and the prostration of sensitive mothers in such cases will appreciate this advantage of the private hearing in protecting them from the presence of strangers at such times.

To sum up in one sentence the advantages of the private hearing, it may be said that the function of the judge of a juvenile court is much like that of a physician, and the private hearing affords for the judge the closest approach to the conditions under which the physician works.

The greatest objection to the private hearing lies in its being a radical departure from the hard-won and long-established principle of full publicity in court proceedings. This is a real and serious objection. A just estimate of the weight that should be given to it and a sound decision as to what extent we should forego privacy on account of it can only be arrived at by experience. It is not wholly avoided by the fact that the constitutional guaranty of a public trial applies only to criminal cases, while the proceedings in a juvenile court are not criminal proceedings. The hearing in the juvenile court may result in the confinement of a child in a reform school and the suspension or the termination of the parental relation. That is a much more serious result in some respects than the ordinary sentence of fine or imprisonment in a criminal case. While it is true that the reform school is not a prison and the child is not sent there for punishment, but to be benefited and improved by physical care, industrial training and wholesome amusement, he is, nevertheless, deprived of his liberty and the parents are deprived of their natural authority. The analogies of the teacher and the physician fall short at this very point. Their proceedings can never have any such result as commitment of the child or supersession of the parents' authority.

Under the system of private hearings there is greater likelihood than at public hearings of harm resulting from the carelessness, eccentricities or prejudices of an unfit judge. To be sure, no one contemplates that by the establishment of private hearings all persons shall be excluded, or that children shall be talked with alone against the objections of their parents, or ordered to be committed without their parents being heard, or without hearing the other interested persons mentioned above in the description of the private hearing. Moreover, it can easily be provided by law that visitors of such classes as those previously mentioned *shall* be admitted, with proper limitations as to the number to be admitted at a time. But the persons who desire admission cannot come in as a matter of course. They must show their qualifications, and that helps an unfit judge to maintain a questionable seclusion. The conditions attending a private hearing make it easy for a judge to ignore the parents, if so disposed, and interview the child without regard to them. All this might result in findings of delinquency on insufficient evidence, in unreasonable commitments, or even improper talk with the child.

In closing, it should be said that the full extent of the advantages of private hearings cannot be appreciated without actual experience in conducting cases with the benefit of them, and, further, that the disadvantages of departing from the principle of full publicity are likely to be found, as time goes on, to have been overestimated.

Until the private hearing has been fully tested by experience, communities where the citizens are doubtful can proceed with caution, taking preliminary steps by suppressing newspaper reports of the names of the children and excluding all minors from the hearing except the offender and juvenile witnesses one at a time.

By such limitations and by keeping the spectators at a distance from the judge's desk many of the advantages of private hearings may be obtained in some degree, as, for example, the freedom of the judge in talking to the children but not their freedom in talking to him, the prevention of their posing as heroes and the prevention of their hearing the cases of other children. It is to be hoped that all jurisdictions will go that far at an early day, and then not forget that they still lack the following benefits, viz.: the most natural and efficacious method of getting at the facts of the delinquency and the causes of it, and determining the treatment for it; the protection of children and blameless parents from being pilloried before the public; and, in general, an elasticity, facility and adaptability of procedure which no judge, even the most conservative, would be likely to relinquish without serious regrets after he had once enjoyed it.

III. The Scope and Limits of the Injunction

INTRODUCTORY ADDRESS

BY THE HON. CHARLES P. NEILL,
United States Commissioner of Labor, Washington, D. C.

Ladies and Gentlemen: The subject selected for discussion this morning constitutes one of the most acute questions to-day in our industrial and in our political life. So important has it become that two years ago the two great political parties of the United States dignified it by making it a plank in each of the two platforms, which would indicate that the question had become one of vital concern to a great many adult males able to vote. It may not be amiss if, in a few words, I attempt to outline to you the situation regarding the particular point in dispute.

In a general way the difficulty in the matter results from the fact that the law is necessarily, inevitably, and, I assume we might add, properly conservative, and that we live in an age of the most strenuously dynamic society the world has ever seen. In one of the fields in which human beings come most often into contact—the field embracing the relations of employer and employee—changes have been rapid, and the law has remained stationary. The organization of wage-earners and its concomitant “the strike” present us a new social problem, and there seems to be no clear and unmistakable statutory declaration defining where the respective rights of the employer and employee begin and end.

As a consequence, a new, peculiar and critical relation, springing up as a result of industrial disturbances, is constantly being carried to the courts of equity for definition as to the respective rights of the parties in dispute.

Within the last few years with increasing frequency the employer fighting strikes has appealed to the equity courts to secure injunctions or restraining orders forbidding his former employees from doing certain things that are being done for the purpose of winning in the industrial conflict.

The employee maintains that in granting injunctions in cases of this sort the court of equity has, in theory, gone beyond its proper function and its legitimate jurisdiction, and that it has, practically,

deprived him of the right of trial by jury and other fundamental rights and privileges guaranteed him by the constitution of the country.

The employer, on the other hand, holds that the equity court has not exceeded its jurisdiction; that it is executing an ancient and proper function; and, moreover, that if he be denied that protection, he is left without any adequate remedy at law in one of the most important situations in industrial life.

So, on the one side, we have the employee claiming that the court of equity is depriving him of fundamental rights—rights which it has taken centuries and centuries of struggle to maintain. And, on the other side, we have the employer insisting that any abridgment of the power of the court means to leave him naked in the hands of his enemies, and his property interests without adequate protection at law.

I have endeavored here merely to present as briefly and clearly as I could the two extremes of the positions taken regarding the subject to be discussed. We must at least admit the question is a vital one on both sides.

We are fortunate in having secured the speakers we have for this morning's session. I doubt very much whether it would be possible to secure in the United States another group of men more competent to discuss this question, better acquainted with it, or more keenly interested in the different phases of the subject.

The opening speaker is a man of international reputation, a fellow-citizen of mine, and a well-balanced reformer. I use this last adjective advisedly. He was one of the commissioners of the suburb of Washington which made the first practical application of the single tax. He was umpire of the Caracas claims before the Mixed Claims Commission. He was also counsel for Mr. Gompers, Mr. Morrison and Mr. Mitchell in the cases arising out of injunctions by equity courts. Mr. Ralston's study of that matter has perhaps made him the best-equipped man of the American bar to discuss the attitude of the labor movement in relation to the question of injunctions.

USE AND ABUSE OF INJUNCTIONS IN TRADE DISPUTES

I. ADDRESS BY JACKSON H. RALSTON, ESQ.,
Washington, D. C.

For a number of years, the use and the abuse of the injunctive powers of courts have met with the determined protest of labor organizations and acute criticism on the part of some judges and many students of jurisprudence. Too often the growth of this branch of law brings to mind the traditional origin of the old streets of Boston. There, near three hundred years ago, the barefoot progenitors of many of us, driving cows to and from pasture would wander from a straight line, perchance to gather wild flowers, if they were sufficiently esthetic, or to escape a stubborn bowlder or marshy spot or to obtain a vantage point from which to throw a stone at their equally thoughtless charges. And this Odyssey of wanderings sufficiently repeated created a pathway which, in later years, has caused numberless passersby countless pangs of fatigue, or at least hours of uncertainty as to whether the streets were really "going south or coming back." So our judges, beguiled by rhetorical fancies or disturbed by the rudeness of the labor of thinking, or desiring to throw a stone at something with which they entertained no bond of human sympathy and which, therefore, deserved such evidence of disapproval, have beaten a pathway no less and no more logical than the ways of the older streets of Boston. But detailed criticism of the mental operations of judges forms no essential part of the purpose of this paper. We shall rather seek to discover, if we may, where the straight path of logic would lead us.

Let us assume one principle to be settled in the law and in its practice—that is, that the jurisdiction of equity in injunction extends only to the protection of property, the improvement or destruction of which could not adequately (meaning exactly or not at all) be compensated for in damages. The question which we must clearly answer, and which, if answered will serve as a touchstone is, what is this property which must be so protected? If a man crosses another's land or threatens to do so to-morrow, equity will not intervene unless the trespass may be of such character or so continued as to impair

or to endanger the very existence of the plaintiff's property by creating the foundation of title thereto in another, and in the end depriving the plaintiff of the beneficial enjoyment of that to which he has a legal right. For lesser injury—the mere trespass whether actual or threatened—the property owner is remitted to a suit for damages or has no remedy. We find, in this instance, that the property must have a physical existence.

Let us assume interference with copyright or patents. Here again the right is really physical—the monopoly claimed over the production of palpable objects.

So, if we seek to prevent illegal taxation by the aid of a court of equity, we ask that we may not be disturbed in the possession of our tangible property by being deprived thereof through the action of the taxing authorities.

Again, we are entitled to equitable aid to ensure to us the continual enjoyment of our property against nuisances which affect its value or interfere with its movement from place to place.

But suppose we seek aid against libel or slander, or even the injurious circulation of the truth. Then, quite aside from the serious constitutional question involved, we ask the courts not to protect property as such, but to exercise control over something of the most subtle character—the minds of men. For even as it has been said, that parliament may do anything short of making a man a woman, so it is true equity may do much, but may not, if it would control the character or transmission of thought, and, we are told, equity will not do a vain thing. As well might we, as Burke said, undertake to indict a nation. And yet, when dealing with trade unions, courts have often forgotten what they may protect and what things are inherently beyond their jurisdiction, and to a degree have brought disrepute upon the processes of the law.

Courts have enjoined physical acts of trade unions, such as nuisances or trespasses, which have interfered with the enjoyment or transfer of property. Of this no complaint can successfully be made. They have gone further and have said to members of unions, "You shall not say to another, not of your own membership, 'such a man is an enemy of ours, and we request you do not buy his products until we are fairly dealt with by him.'" Some judges have even said, "You shall not bind each other not to deal with that man." Those injunctions do not protect property, since the plaintiff's prop-

erty and his right thereto are equally intact, after as well as before, the supposed injury complained of; and his right to gain lucre by transferring it has not been interfered with. His market may have been restricted, not by a physical fact, but by a mental one—the attitude of the purchasers toward the seller, an attitude in which the would-be complainant has no more property than has the liquor dealer facing a wave of temperance in the appetite of his theretofore customers, or a packer in the sale to the public of beef or other special products. We grant that if the customer be driven away by a threat of an illegal character, such as of violence, relief may be sought by analogy at least to the doctrine prevailing in cases of nuisance—that is, where a person in the enjoyment of his property is more injured by the objectionable things than the rest of the community, he has a right to appeal to equity.

May we not believe that when the courts have sought to enjoin men from communicating to their fellows their opinion of another, or of the desirability of the purchase of his products, they have departed entirely from the theory that equity may only defend the rights of property as property, and have sought to create an anomalous right, not defined in any law book, and not being a right of property over which courts of equity have been believed to possess jurisdiction?

We do not, of course, for a moment dispute that the man whose reputation has been injured by word of tongue or pen has a right to be recompensed in a court of law for the injury sustained, and we do recall that there once existed the theory that the greater the truth the greater the libel. This theory—dismissed by courts of law—appears now often to have been taken up by courts of equity, at least, when dealing with trade unions. But if a trade union may truthfully say of a man that his establishment is unfriendly to the cause of organized labor, and no member of organized labor or sympathizer with it should trade with that man, no libel has been indulged in which may be punished by a court of law, and yet, as we have stated, courts of equity will interfere to prevent the making of such a statement and under certain circumstances, punish its making as a contempt. We find, therefore, courts of equity striving to fit upon themselves the cast-off garments of courts of law, and adjudging that the truth is not always to be spoken. Speaking in other terms they indulge in a sort of indirect atavism. Our judges

do this because of, as we may believe, an unconscious bias against a social institution foreign to their immediate environment, much as the bare-foot boy of Boston might have wandered from his true direction to pick up a stone to throw at some urchin who lived on the other side of the creek. And later, judges, without understanding or appreciating the mental attitude of the first judicial traveller, have made their after steps conform to his, not troubling themselves with too painstaking an analysis of the situation.

Sometimes the courts have told us that the employer was entitled to have labor flow freely to him, and some of the most obnoxious of injunctive processes have issued to enforce this supposed right. We grant the correctness of the judicial position, bearing in mind the observations we have already made, if a nuisance has been created interfering with such movement. If there be no nuisance—nothing objectionable in itself to the law, we deny that the employer has the right to appeal to courts of equity to clear away the channels of labor or trade.

For what would be the logical consequences of the contrary doctrine? The man who advertises Achilles shoes, while a competitor declares that Achilles shoes should not be bought, for the heels will quickly give way, would be entitled to an injunction. The department house which advertises to sell better and cheaper goods than another house in the city would be subject to injunction at the hands of its competitors, and if there are two stores in the town dealing in a particular object, the aggrieved merchant could successfully appeal to equity for protection. The manufacturer who publishes that his rotary engines are superior to ordinary piston engines may be haled into court. The cigar manufacturer who begs the community to smoke factory rather than sweat shop cigars, made by another, would be subject to injunction.

In none of these instances has equity been resorted to, nor, I venture to say, would such application be successful, although every such instance falls within the reasoning indulged in by certain courts of equity when they are confronted by such a trade union problem as we have instanced.

Let us consider another landmark of the law and the manner in which it has been treated. Until trade unions assumed importance in the industrial field it was believed to be the law that courts of equity had no jurisdiction over threatened or actual offences save,

at least, certain ones against minors or married women who, by reason of their helplessness were taken under the tender charge of the court, and where the offender had, by his interference with their rights, infringed upon the protection granted them by the chancellor. There was an excellent reason for this general position of the courts. Did a court of equity have injunctive power over crimes it must follow as a consequence that their commission could be inquired into by such courts, and if they were found to have been committed the wrongdoer could be punished therefor as for contempt of court. Thus a court of equity would turn itself into a criminal court, and that which primarily was a forum for the determination of the right of property would become an institution empowered to avenge wrongs done society, while the accused, entitled to a trial by jury of his peers, would be adjudged by one taught by the traditions of his occupation to suppress, as far as might be, all human feelings and to respond only to the cold dictates of logic.

Now, when courts are brought to consider charges against trade unions, speedily they forget the limits of their jurisdiction and enjoin crimes upon the theory, that although they have no right to enjoin crimes *per se*, yet, when the element of possible damage to property is intermingled with the other elements of wrongdoing, so tender would the court of equity be of its litigants that it considers that the crime is included as enmeshed in some way inextricably with the true subject of equitable jurisdiction. We find, therefore, that although equity will not enjoin theft, it will enjoin (at least some judges do enjoin) the injury to a man's business, done when two men ask a third not to trade with him, the two being trade unionists, for no instance except as affecting unionists comes to mind where such injunction has been granted. This is true although the offence, if it be one, has existed in this country since the days when our patriots refused to deal with men who sold tea upon which stamp taxes had been paid.

Judicially we are brought to a singular condition. One man may absolutely destroy another's business, may drive him, in order to gain his livelihood, from a community, and the court of equity will hold the offender guiltless, provided only the actor commit no trespass, create no nuisance, indulge in no fraud or do not render himself amenable to some other proper branch of equitable jurisdiction. (To this effect see particularly *Haywood vs. Tillson*, 75 Maine,

225, and *Payne vs. W. & A. R. R. Co.*, 13 Lea, 507.) Nor will a court of equity concern itself with the motive underlying such action. It may be that the injured party is most worthy and the aggressor vindictive and malicious, or the reverse may be the case. You will be told that the question of motive or intent is immaterial, that the sole question is whether the moving party was acting within his legal rights, and where several persons in concert, acting within the legal rights of each, and for whatever reason, have declined intercourse of a business nature with another—*the actors not being trade unionists*—and have refused business relations with those who supported the person against whom such action was directed, the courts have, as the writer believes, universally, save as influenced by the Sherman anti-trust act, held such action beyond the injunctive power of the chancellor. (See, for instance, *Francis vs. Flinn*, 113 U. S. 385.)

Let us turn, however, to the position of trade unionists, and see if such cold rules of logic are applied to them. Let us discover, if we may, whether the judiciary has not unconsciously felt the influence of class bias. And in so doing, let us bear in mind the definition oft repeated of the word "conspiracy," which is the combination of two or more persons by some concerted action to accomplish some criminal or unlawful purpose, or to accomplish some purpose not in itself criminal or unlawful by criminal or unlawful means. When two or more men agree that they will not deal with a given man until he ceases to oppress, as they believe he is doing, by giving insufficient wages; or inflicting excessive and exhausting hours of toil; by destroying the lives of children, by degrading womanhood, they may not, according to very many of the courts, publish to the world the fact, and if they do so, or threaten so to do, they may be enjoined by a court of equity which will treat such publication as an offence against the rights of property. According to the almost unanimous voice of the judges, if they proceed a step further and say that they will not trade with any man who, by the purchase of such employer's products, helps to sustain conditions which, to their minds are evil, they are subject to injunction and if the injunction be violated they have placed themselves in contempt. When such decrees are opposed and violated, the violators are by a single man, who is likely unconsciously to be prejudiced against them by the mere fact of having issued the injunction, found guilty of a new equitable crime—

conspiracy to destroy another's property—the courts ignoring the fact that one may not properly have property in a thing of which he is not possessed, or at least of which he has not in himself the power of compelling the possession.

The argument of Chief Justice Shaw in the great case of *Commonwealth vs. Hunt*, 4 Metcalf, 111, is ignored. As he expressed himself tersely and effectively:

"Stripped, then, of these introductory recitals and alleged injurious consequences, and of the qualifying epithets attached to the facts, the averment is this: that the defendants and others formed themselves into a society and agreed not to work for any person who should employ any journeyman or other person not a member of such society, after notice given him to discharge such workman.

"The manifest intention of the association is to induce all those engaged in the same occupation to become members of it. Such a purpose is not unlawful. It would give them a power which might be exerted for useful and honorable purposes, or for dangerous and pernicious ones. If the latter were the real and actual object, and susceptible of proof, it should have been specially charged. . . .

"Nor can we perceive that the objects of this association, whatever they may have been, were to be attained by criminal means. The means which they proposed to employ, as averred in this count, and which, as we are now to presume, were established by the proof, were that they would not work for a person who, after due notice, should employ a journeyman not a member of their society. Supposing the object of the association to be laudable and lawful, or at least not unlawful, are these means criminal? The case supposes that these persons are not bound by contract, but free to work for whom they please, or not to work, if they so prefer. In this state of things we cannot perceive that it is criminal for men to agree together to exercise their own acknowledged rights in such a manner as best to subserve their own interests. One way to test this is to consider the effect of such an agreement, where the object of the association is acknowledged on all hands to be a laudable one. Suppose a class of workmen, impressed with the manifold evils of intemperance, should agree with each other not to work in a shop in which ardent spirit was furnished, or not to work in a shop with any one who used it, or not to work for an employer who should, after notice, employ a journeyman who habitually used it.

The consequences might be the same. A workman who should still persist in the use of ardent spirit would find it more difficult to get employment; a master employing such an one might, at times, experience inconvenience in his work, in losing the services of a skillful, but intemperate, workman. Still, it seems to us, that, as the object would be lawful, and the means not unlawful, such an agreement could not be pronounced a criminal conspiracy."

Why should not the man who threatens to shoot me and thus destroy my ability to carry on my business be enjoined quite as much as the man who declines to purchase my wares, or proclaims that they are inferior or that they are produced under injurious social conditions inflicted upon the worker? Should not uniformity in principle be accompanied by uniformity in practice and all be subjected to injunction or none?

The answer comes that it is not the individual in these cases against whom equity has the right to address itself, but something more subtle and dangerous—that is, the combination. But if an individual man accomplishes the evil, why is not he, and why is not the combination equally liable or non-liable in the eyes of the court of equity? If you say the individual was acting within his right and so not amenable to a court of equity, how does the problem differ in essence if there be two individuals instead of one? And if you say the individual will not be enjoined, because the thing enjoined is a crime, do you escape the difficulty, for is not conspiracy equally a crime? Are courts justified in taking the position that while direct evil as a crime may not be enjoined, the lesser thing, a conspiracy to commit wrong, may be enjoined?

Bearing in mind, as you must, the definition of conspiracy as heretofore given, we may justly wonder what justification there is for the attitude of courts in holding so-called boycotts, even when absolutely peaceable in character, to be conspiracies and the subjects of injunction. Let us see if logically the courts can possibly be right.

If A and B agree to tell their fellows that they will not trade with C and go further and say that they will not trade with any man who trades with C, in what respect have A and B formed an unlawful conspiracy? They have not agreed to use any unlawful means. They have not combined to an unlawful end unless that which is legal for one can be turned into wrong when done by two or more. The vice, it is said, must be found in the purpose of the combination,

which it is argued, is to oppress C. (We may ignore, but not forget the fact that usually trade union combinations as illustrated by strikes and boycotts, are not formed to oppress anyone, but to cause the persons against whom they are directed to ameliorate their policy towards their employees). But if Z, acting within his legal right and with the avowed purpose of driving C out of his business or out of the community, may refuse to employ any persons who deal with him or who board in his hotel and thereby Z works oppression to C, and the courts may declare Z's motives to be immaterial, in what way is the combined act of several logically different and why should it receive different treatment from that accorded to the act of Z? In other words, why is the combination, the intent of which is assumed to be to oppress, more justiciable than the actual oppression? Why do our courts reject, in the case of the single individual, all inquiry into his intent, he acting within his rights, while as to trade unions the wrongful intent is inferred despite all protestations and made part of the gravamen of the complaint, and the foundation of the judicial conclusion. Are our judges thinking clearly or are they simply manifesting the not uncommon aversion of men towards those acts which they deem themselves little likely to commit?

But we are told that the offence is in the combination and the vice of the combination is in its superior power to inflict injury. (We have already sufficiently discussed for present purposes the question whether the combination was one to inflict injury and whether the doing of acts in themselves legal could constitute legal injury). To this we have to say that the courts are indulging in a legal presumption in order to find jurisdiction against several and rejecting the presumption as against one and that jurisdiction should be based upon fact, not upon inference. The fact may be that under given circumstances a combination would be powerless to inflict an appreciable inconvenience, not to say legal injury, whereas under other circumstances one man, acting with no greater and no less right in himself, may bring about ruin to hundreds. If, therefore, we are told that the superior power in the combination to inflict injury is the test, we may surely logically say that the essence of the test is the power to injure and that this may pertain to the single individual as well as to those who act in combination, and we may justly criticise the courts which hold the powerful individual innocent and condemn the impotent combination.

Thus, as we believe, the whole theory of the courts in this regard is founded upon a logical absurdity. Two men may not, in combination, without incurring the anathemas of the court, do the things which each severally may accomplish. A, living at one end of the city, and B living at the other end, without connection with each other may say to their neighbors that they do not intend to trade with Z, in the center of the town, and that their dislike for him is so great that it extends to any person who has dealings with him. These separate declarations are, in the eyes of the court of equity, legally innocent. But if A and B together agree to exactly the same thing, that which before was innocent becomes a conspiracy to oppress, and although called a crime will be enjoined by a court of equity as infringing upon a right of property belonging to Z, which right of property was not discernible by the court when attacked by A and B separately. We have therefore by combination called into being not only a power to restrain a crime, but we have created property where before none existed. We are not able to cite a more remarkable legal performance in the history of jurisprudence.

Let us look at it in another aspect. A has a right to control his own actions absolutely. He may trade where he will and he may withhold his trade. He may declare his intention of withholding his trade and not bestowing it upon any sympathizer with Z. When he does so he will be legally righteous. The same right and power exist in B. When A and B meet together to exercise jointly the rights they possess severally, then, presto! change! the very coming together destroys their individual rights. Instead of retaining the powers and privileges logically indubitably their own, they have entirely lost them.

Why should a conspiracy to injure be enjoined and not the determination, for instance, of a single man to commit arson? While the determination to injure on the part of several individuals by the refusal of trade relations is not, to our minds an injury to property in any true sense, a threat to commit arson is the declaration of an intent to destroy that which is undoubtedly property, yet our courts, preserving in this respect the right to trial by jury, will not enjoin the commitment of arson.

The situation is a peculiar one. A man has a right to refuse in any way he sees fit to trade with another or with that other's sympathizers. He has a right to publish such fact to the world, subject

only to action, if his statements be false. He has a right to enter into a combination, and do any act he might lawfully have a right to do himself, the means to be employed by the combination being peaceable and legal, but when he enters into such a combination he becomes subject to the injunctive power of equity. This is the greatest specimen of "hide-and-seek" logic on the part of the courts that has fallen within our knowledge.

Perhaps all applications to courts of equity for injunction against boycotts, peaceful or otherwise, have alleged that the defendants combined and conspired to injure or oppress the complainant by declaring him "unfair" or refusing to purchase his goods and urging others to do likewise, or refusing intercourse with those who trade with him. If these things be legally wrong in the individual, there must be a right of action on behalf of the public or on behalf of the individual affected against him. If he does these things in conjunction with another his individual liability remains, and he should be held accountable in a court of law, or a criminal court—not in equity. The fact of combination cannot make the end more or less legal or wrongful, since the combination is only the means to an end and in itself good or bad, according to the methods to be employed by it or the end to be gained. In other words, a conspiracy to oppress can only logically exist when the oppression, if an individual act, would be subject to civil judgment or criminal punishment.

Let us illustrate the whole proposition by a simple case. If A, the owner of a newspaper, advises his patrons against trading with C, because C treats his employees unfairly he may not be enjoined by a court of equity, however injurious such publication may be. If B becomes a partner with A, and thereafter similar public accusations are made, then, by the logic of a great many of trade-union decisions, however truthful such publications may be as statements of fact, A and B are subject to injunction. Wherein lies the reason for this?

Within the past hundred years many men have served terms in jail in New York, Pennsylvania, New Jersey and other states for the simple act of quitting their labors in order to secure a reduction of hours per day or to obtain some other industrial end. That the judges who sentenced them were wrong as to their conception of justice or law need hardly be argued to-day, either before the bar of public opinion or before the courts. But the reasoning in which the lower courts indulged when convicting them was in all

respects, in principle and almost in words, that employed to-day when the judge enjoins the existence of a peaceful boycott. In either case it has been argued that the vice of the offense existed in the combination, that the employer was unable to struggle against such combination, that it disarranged his business and reduced his profits.

The sole essential difference between the two situations is that in the case of the strike the power of production of the employer was diminished, in the case of the boycott the power of disposition of the products when completed was lessened. The essential thing, the ability to carry on business according to the whim or desire of the employer, was restricted. The decision of Chief Justice Shaw in *Commonwealth vs. Hunt* marked a distinct difference in the treatment of trade unions by the courts, and the exact logic of his decision has received acceptance, boycotts being in question, at the hands of such judges as Justice Caldwell, of Arkansas, and Chief Justice Parker, of New York, while Justice Holmes, in his dissenting opinion in the case of *Vegeahn vs. Guntner* (167 Mass., 92), found occasion to say that "There is an opinion which lately has been insisted upon a good deal, that the combination of persons to do what any one of them lawfully might do by themselves will make the otherwise lawful conduct unlawful. It will be rash to say that some as yet unformulated truth may not be hidden under this proposition. But in the general form in which it has been presented and accepted by many of the courts, I think it plainly untrue, both on authority and on principle."

If there be yet doubt in the minds of my hearers, that the courts of equity have been illogical in the treatment of trade unions, listen a moment to the utterance of the Earl of Halsbury in the case of *Quinn vs. Leatham* (Appeal Case, 1901; Law Reports, p. 506), a case often cited against trade unions, wherein he says, referring to the language of the case of *Allen vs. Flood* (Appeal Cases, 1, 1898), considered as favorable to them:

"I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all."

In view of the confusion of ideas and logic in which courts have involved themselves, it is natural that trades organizations and

other thinkers upon the subject are little disposed to await the long course of years which would necessarily pass until reason could triumph in judicial tribunals with reference to boycotts as it did with regard to strikes after the decision in *Commonwealth vs. Hunt*. It is not to be expected that leaders of unions will accept with equanimity injunction after injunction and sentence after sentence for contempt, in the hope that at some time or other, during the life of the present or a succeeding generation, courts will recognize their blunders, and the sufferings of the present will be atoned for by judicial triumphs in an indefinite future. And as the courts cannot help themselves within reasonable time, labor organizations have appealed, and doubtless will continue to appeal, for justice to the legislative branch of the government. The line their appeal will take is shown by several existing or proposed acts, notable among which is the "British Trades Dispute Act" of 1906, the substance of which is as follows:

"An act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act, if done without any such agreement or combination, would be actionable.

"It shall be lawful for one or more persons, acting on their own behalf or on behalf of a trade union or of an individual employer or firm in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working.

"An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other persons to break a contract of employment or that it is an interference with the trade, business or employment of some other person, or with the right of some other person to dispose of his capital or his labor as he wills.

"An act against a trade union, whether of workmen or masters, or against any members or officials thereof on behalf of themselves and all other members of the trade union in respect of any tortious act alleged to have been committed by or on behalf of the trade union shall not be entertained by any court.

"Nothing in this section shall affect the liability of the trustees of a trade union to be sued in the events provided for by the Trades Union Act, 1871, section 9, excepting in respect of any tortious act committed by or on behalf of the union in contemplation or in furtherance of a trade dispute."

Even before this act was adopted the law of England had been liberalized, and, largely based upon the legislative expression of such liberality, a bill was prepared and introduced into the House of Representatives of the United States reading as follows:

"That no agreement, combination or contract by or between two or more persons to do or procure to be done, or not to do or procure not to be done, any act in contemplation or furtherance of any trade dispute between employers and employees in the District of Columbia or in any territory of the United States, or between employers and employees who may be engaged in trade or commerce between the several states, or between any territory and another, or between any territory or territories and any state or states or the District of Columbia, or with foreign nations, or between the District of Columbia and any state or states or foreign nations, shall be deemed criminal, nor shall those engaged therein be indictable or otherwise punishable for the crime of conspiracy, if such act committed by one person should not be punishable as a crime, nor shall such agreement, combination or contract be considered as in restraint of trade or commerce, nor shall any restraining order or injunction be issued with relation thereto. Nothing in this act shall exempt from punishment, otherwise than as herein excepted, any person guilty of conspiracy for which punishment is now provided by any act of Congress, but such act of Congress shall, as to the agreements, combinations and contracts hereinbefore referred to, be construed as if this act were therein contained."

This bill three or four times passed the House of Representatives, to be pigeonholed in the Senate Judiciary Committee, save on one occasion when Senator Hoar reported it favorably. Immediately thereafter, however, upon the urgent representations of certain senators from New York and Connecticut, the bill was recommitted, and thus ended the nearest approach to its adoption in the American Congress.

Meanwhile, the idea contained in the bill became expressed in a law adopted in the year 1903 by the State of California, the act reading as follows:

"No agreement, combination or contract by or between two or more persons to do or procure to be done, or not to do or procure not to be done, any act in contemplation or furtherance of any trade dispute between employers and employees in the State of California shall be deemed criminal, nor shall those engaged therein be indictable or otherwise punishable for the crime of conspiracy, if such act committed by one person would not be punishable as a crime, nor shall such agreement, combination or contract be considered as in restraint of trade or commerce, nor shall any restraining order or injunction be issued with relation thereto. Nothing in this act shall exempt from punishment, otherwise than as herein excepted, any persons guilty of conspiracy, for which punishment is now provided for by any act of the legislature, but such act of the legislature shall, as to the agreements, combinations and contracts hereinbefore referred to, be considered as if this act were therein contained; *Provided*, That nothing in this act shall be construed to authorize force or violence, or threats thereof."

It will be noted, therefore, that the relief denied by the Congress of the United States has been granted in England and California, and, it must be confessed, without resulting in any of the dire consequences which its opponents predicted. It is not recorded that violence and wrongdoing have become, because of the passage of these acts, more common in either of the two jurisdictions where the law has been reduced to logic. Neither have the courts, because of its passage, become less efficient in any direction in which they might justly act.

Just as an appeal to the representatives of the people to correct judicial blunders with regard to the responsibilities assumed by one employee for the act of another was imperatively necessary, so likewise is such an appeal compelled by the course of events against the abuse of the injunctive powers of courts.

USE AND ABUSE OF INJUNCTIONS IN TRADE DISPUTES

II. ADDRESS BY CHARLES E. LITTLEFIELD, ESQ.,
New York.

Mr. Chairman, Ladies and Gentlemen:

It is necessary for me at the outset to premise that until I arrived on the platform I was not aware that the subject of the morning's discussion was the use and abuse of injunctions in labor controversies. It is quite true that when I received the invitation to speak before this society, I had notice that I was to speak for fifteen minutes on injunctions; not that it is embarrassing to me, but, as it takes that turn, I want to say that it is a physical impossibility for me, in an extemporaneous speech, to cover this subject in half an hour or an hour and a half, because it is a profound question of many ramifications; it concerns constitutional considerations, and the most I can do is to make some statement, so you will be able to understand what an injunction is and what the relation of the injunctive power vested in the court by the constitution is to the legislature; how far the legislature can go, not in exercising judicial power, but without invading the judicial power of the court. There is a profound difference between judicial power and the jurisdiction of the court over a subject-matter—the judicial power which the court exercises where it has jurisdiction, a distinction not very well understood not only by laymen, but by those who belong to the legal profession.

In the first place, what is the injunction? what are the remedies open to the citizen when his rights are invaded? First, we get them upon the common-law side of the court, and then upon the equity side of the court. The equity side of the court gives to the suitor a preventive remedy; the common-law side gives a remedial remedy; the equity side seeks to prevent the doing of an injury, the working of damage. The common-law side of the court gives to the suitor damages for the wrong when it is committed, for injury when it is done. The equity side of the court proceeds upon the most intelligent, civilized idea. It seeks to prevent the commission of wrong to prevent the invasion of personal rights. The common-law side gives to the suitor, when his rights have been invaded, a remedy in damages. The office of equity is to preserve the peace.

The office of the common-law side is to get redress in damages in case the peace has been violated and injustice done.

What is an injunction? An injunction is issued by a court of equity. An injunction is issued only when an irreparable injury is threatened. It is only when such circumstances exist that the court has the judicial power to issue a writ of injunction, and that applies to all the controversies to which the human body politic is heir.

Whenever and wherever, under whatever circumstances and between whatever parties, a condition is presented to the chancellor which satisfies him that irreparable harm is likely to be done where the remedy at law is inadequate, his duty, under his oath, is to issue his injunction and prevent the doing of the harm, the accomplishing of the injury. That is the fundamental legal proposition. Unless such a state of facts is presented to the chancellor, he has no power to issue an injunction. Whenever it is presented, it is his duty to issue an injunction and prevent the doing of the irreparable harm, no matter who the parties may be or what may be the subject-matter of the controversy. It is just as much his duty to give to the suitor a writ of injunction to restrain irreparable harm, as it is the duty of the common-law court to open its doors in order that the suitor may get redress for any invasion of his personal rights. They are equally the right of the suitor, and they are both equally binding upon the conscience of the court.

I want to say a word about the constitutional features of this question, because, in my opinion as a lawyer—and I take great pride in saying that the views I entertain upon these legal propositions are now precisely what they were before I became, and while I was, a member of the National House, and the fact that I became a member thereof, vested with a little brief authority, with authority to say what I should do in the matter of legislation, did not prevent their remaining precisely the same.

I have the utmost contempt for the alleged lawyer who allows his legal views to be colored or distorted by the political situation in which he happens to find himself, and I do not care what office he holds, whether it be from the highest to the lowest, whether it is executive or legislative. From my point of view, the law is not only no respecter of persons, but it has not any political affiliations. It is neither Democratic, Republican, socialistic, anarchistic nor communistic. It is precisely the same to whomsoever it may be applied. It does not even play hide and seek with any of these propositions.

I want to say here, lest I forget it—my friend has called attention in his beautifully and elaborately prepared paper to the fact that courts have issued injunctions because men have said or done this or that in connection with labor controversies. I challenge my learned friend, and any other learned friend that represents that side of the controversy, to put his finger on a single decision where an injunction has been issued preventing a man from doing an individual act, or where a man has been haled into court for contempt because of violation of an order of the court; I challenge him to produce a case, from the beginning to the end of time where cases have been reported, where a judge has issued an injunction or where a court has punished a man for violation of an injunction, where the act was not held to be done in furtherance of a conspiracy against some other man. Mark, it is not a question of slander or libel.

My proposition is that he cannot produce a case that is not based upon a combination or conspiracy. I am stating it in his presence. He cannot produce a single case where any court has restrained a man in his alleged free right of speech and his alleged free right of the press, where it will not be found to be an act claimed to be a part of the carrying out of a criminal conspiracy, or a conspiracy against the right of another man to do business or get employment. It is not in the books, and it is trifling with this discussion to stand in the presence of this audience and criticize the right of injunction because men have been restrained, and disguise the fact that under the circumstances and in every case it is because the right of speech was used for the purpose of making effective a conspiracy—a boycott, not the kind he mentions, but the same kind discussed in the case of *Callan vs. Wilson*, 127 U. S., 540. I understood him to say this morning that a boycott was an innocuous proceeding, that it was the coming together of a few individuals, against which a man had no right to complain. Let us return to this case, *Callan vs. Wilson*. It seems that Callan was the unfortunate subject of a musicians' organization's ill-will in the District of Columbia, who gathered themselves together and decided, inasmuch as Mr. Callan was not doing what they wanted him to do, they would boycott Callan and prevent his doing what he wanted to do, unless he did it as they wanted him to do it. Callan went to the courts and accused these men of being guilty of conspiracy. Mr. Wilson was convicted by a magistrate. He was not

tried by a jury, but by a single magistrate. My learned friend brought a writ of habeas corpus to release Wilson on the theory that a boycott was then a grave offense, not a minor but a grave offense, so grave that the man was entitled to trial by twelve men, and the Supreme Court of the United States sustained the contention made by my learned friend, and held that this boycott he refers to now was what?—"a conspiracy, such as is charged against him and his co-defendants, is by no means a petty or trivial offense."

If I got the significance of his paper this morning, it was no offense at all here and now, but then and there, when he was undertaking to get the benefit of the law of the land, it was by no means a trivial offense, and the court said, further, "It is an offense of a grave character, affecting the public at large." My friend does not seem to realize what it is that gives it this grave character. If he had looked up the case of *Callan vs. Wilson*, he would have seen that it was the effect on "the public at large" that made it of "a grave character." Now, as to the question as to whether a boycott is innocuous or whether it is an offense of a grave character, I appeal to my learned friend in the case of *Callan vs. Wilson*, when he succeeded in getting the Supreme Court to hold with him that it was an offense of a grave character. I want to say a word about the writ of injunction and the uses to which it is put. Bear in mind the definition with which I began, that it is preventive in its character, to prevent the commission of a wrong under circumstances where irreparable injury is about to be done with no adequate remedy at law. Perhaps I should read what the courts have held irreparable injury is. "Irreparable injury as used in the law of injunction does not necessarily mean that the injury is beyond the possibility of compensation in damages, nor that it must be very great, and the fact that no actual damages can be proved, so that in an action at law a jury could award nominal damages only, often affords the best reason why a court of equity should interfere where the nuisance is a continuous one; . . . where an injury is of such a nature that it cannot be adequately compensated in damages or cannot be measured by a pecuniary standard it is irreparable. . . . Irreparable injury justifying the issuance of an injunction may be such either from the nature of the injury itself, or from want of responsibility in the person committing it." ("Words and Phrases," vol. iv, pp. 3772-3.) That is what the courts have said irreparable injury is.

Whenever these conditions are presented in any controversy, no matter what question may be in dispute, in a controversy involving personal property, or personal rights, without which existence itself would practically be a failure, the legal principle is precisely the same. I challenge the production of any case, from the old common-law cases, hundreds of years before the constitution was written by the fathers, from then until now, where an injunction has been issued which was not predicated upon this fundamental proposition. The fact that they were not formerly applied largely to labor controversies simply illustrates the fact that we have a development of social conditions involving the application of fundamental principles of law; but do not let us get the idea that the only use of injunctions is in connection with labor controversies. Let me give you a very brief list of subjects where the writ of injunction is used, and necessarily used. Infringement of patents, copyrights, trade marks, restraints of trade, unfair competition, interference with water rights, pollution of water. An injunction may also be used in restraining nuisances, and in connection with mines and mining rights, to prevent trespass upon real and personal property, fraudulent sale of property, breaches of trust, to enforce rights of *cestui que trusts* against trustees, to prevent the prosecution of cases before foreign courts where litigants have gone in an attempt to secure different results from that reached where the case was first brought, and in connection with violations of the Sherman Anti-Trust Law.

This audience does not need to be reminded that in the conditions of unrest that now prevail throughout the country we have had a vast crop of ill-advised and unconsidered, and in some cases unconstitutional, state legislation, undertaking to deprive public service corporations of their property without compensation by depriving them of the right to secure for the use of their property reasonable compensation. Legislation ill-considered and unconstitutional, the enforcement of which the United States courts have frequently restrained. In these cases a writ of injunction is very beneficial. Also, in restraining public service corporations from making excessive charges and from imposing excessive and improper burdens and conditions upon the people who deal therewith. Also, in restraining the collection of illegal taxes. That is a very familiar use of the writ of injunction. Time and time again, in a great

many of our states, the court of equity has been called upon to restrain the collection of illegal taxes; restraining also the violation of contracts where people have contracted themselves out of a business, and finally in boycotts and labor controversies, but in every instance and in the case of every subject-matter, they are predicated upon the same legal proposition. As a matter of illustration, let me call attention to the fact that from 1903 to 1910, seven years, the Federal Reporters show 386 injunctions upon all these matters, only twenty-four of which were in connection with labor controversies. About six per cent. of the injunctions in the Federal courts were issued in connection with labor controversies during a period of seven years.

Now, I want to say a few words about questions which I believe to be fundamental. I do not believe that the legislature has the constitutional power to limit the judicial power in connection with the issue of a writ of injunction. I want to call your attention to a leading case, and to the lay reader I want to say a few words as to some pending legislation before the American Congress in connection with carrying out some of the alleged promises in what is known as the Republican platform, and I want to say that when I find a fool promise, it makes no difference to me whether it be a Republican or a Democratic platform.

In a Michigan case (25 Mich., 274) the court said:

"It is within the power of a legislature to change the formalities of legal procedure, but it is not competent to make such changes as to *impair the enforcement of rights*. . . . The functions of judges in equity cases in dealing with them are as well settled *a part of the judicial power* and as necessary to its administration as the functions of juries in common-law cases. Our constitutions are framed to protect all rights. When they vest judicial power they do so in accordance with all of its essentials, and when they vest it in any court they vest it as efficient for the protection of rights, and not subject to be distorted or made inadequate. *The right to have equity controversies dealt with by equitable methods is as sacred as the right of trial by jury*. Whatever may be the machinery for gathering testimony or enforcing decrees, the facts and the law must be decided together; and when a chancellor desires to have the aid of a jury to find out how facts appear to such unprofessional men, it can only be done by submitting single issues

of pure fact, and they cannot foreclose him and his conclusions unless they convince his judgment."

And again:

"In all ages and in all countries this distinction by nature, which was never called 'equitable' except in English jurisprudence, where it was first so called from an idea that the rights were imperfect because unknown in the rude ages, when property was scanty, and business almost unheard of in the regions outside of great cities, has been recognized and provided for by suitable methods substantially similar in character. . . . The system of chancery jurisprudence has been developed as carefully and as judiciously as any part of the legal system, and the judicial power includes it, and always must include it. Any change which transfers the power that belongs to a judge, to a jury, or to any other person or body, is as plain a violation of the constitution as one which should give the courts executive or legislative power vested elsewhere. The cognizance of equitable questions belongs to the judiciary as a part of the judicial power, and under our constitution must remain vested where it always has been vested heretofore."

Note the significance of the language:

"The right to have equity controversies dealt with by equitable methods is as sacred as the right of trial by jury."

It follows, then, that whenever a citizen presents to the chancellor a state of facts which shows that his rights are threatened, the result of which will work irreparable injury without adequate remedy at law, his right is, according to the immemorial practice of the chancellors to the present time, to have the chancellor issue for him the writ without which irreparable injury cannot be prevented. If the chancellor refuses to issue the writ, or if the legislature refuses to allow the chancellor to exercise that right, then you have a situation where the citizen is deprived of his rights. Wherever the condition of facts exists which show irreparable injury without adequate remedy at law, there the suitor is entitled, under the constitution, to the equitable right of injunction, as he is under other conditions entitled to a trial by jury, when it comes to the remedial side of the court. It follows that the legislature cannot prohibit the exercise of that power by the chancellor without interfering with the rights of the citizen. The constitution of the United States provides that the Supreme Court of the United States, and

such inferior courts as the legislature may "from time to time ordain and establish" shall be vested with the judicial power. Congress may create the court, give it jurisdiction over the subject-matter, but when thus created and given jurisdiction, the constitution vests in the court the judicial power. It is just as much the right of the citizen to ask for the writ of injunction as it is to demand a trial by jury, and if he is deprived of it by the legislature he is deprived of a constitutional right just as much as he would be deprived if deprived of the right of trial by jury. Shall a man suffer deprivation of his constitutional right for twenty-four or forty-eight hours? If the legislature can say the order shall not be issued except after forty-eight hours' notice, it can equally well say seven, ten or fourteen days. My opinion is that the legislature cannot impair the judicial power. It is vested in the courts through the operation of the constitution. We inherit the right to the equitable judicial power in the same manner and with the same indefeasible title that we inherit the right to the common-law judicial power.

I want to say here, in passing, that there is not the slightest question to-day of the right of the Federal court to issue a temporary restraining order when proper conditions are presented, without notice and hearing, purely *ex parte*. In the great Debs case, which is the most conspicuous case of its kind, the opinion in which was drawn by one of the ablest men who ever sat in the Supreme Court of the United States, recently passed to his reward, Justice Brewer—in this case there was an *ex parte* order issued. Lyman Trumbull, a distinguished lawyer, made it the first point in his brief that the injunction issued under those circumstances, for the violation of which Mr. Debs had been sentenced to five months' imprisonment, could not be properly enforced against him. The first point made was that the injunction was issued *ex parte*, without notice. The specific point was made, and the court did not dignify it by even a reference to it; so, to-day a restraining order can be issued without notice. Now, because it is understood to be a promise of the Republican party, during the campaign of 1908, a proposed bill provides that when a temporary restraining order has been issued without notice it shall be dissolved after the expiration of seven days, unless the judge sees fit during that time, after notice and hearing, to continue it. It is not within the power of Congress to decree an

injunction. It is only within the power of the court. It is a judicial power. It is for the chancellor to say whether irreparable injury is threatened and whether the complainant shall have an injunction to protect his rights. It is not for the legislature to say by an arbitrary act that at the end of seven days irreparable harm has ceased to be threatened, and that the conditions established by proof no longer exist.

It is for the same judge to determine when the injunction shall be dissolved, or for some other judge or judges to whom an appeal may be made. I do not believe the legislature can arbitrarily, without reference to the merits, say that an injunction shall expire at any specific time, where there are rights requiring continuance of the injunction. The legislature cannot issue, or, in my opinion, dissolve an injunction. This is not a government by the legislature. It is a government of law, and not of men, especially men that sit controlled, as men are in the American Congress, by overpowering political considerations. This is the great fundamental proposition in the constitution, that guarantees to you and to me the enjoyment of the personal rights that were given to us by the Creator to enjoy. For these reasons I believe that the bill now pending is no credit to the administration, nor do I believe it will be any credit to the American Congress if it passes. I am fundamentally and utterly opposed to any infringement by the legislature of the judicial power. Its free and untrammelled exercise is necessary to our freedom, and the maintenance of our rights.

I want to say a word about this platform. I want to say, first, that this plank in this platform placated nobody, appealed to nobody, was commended by nobody. The representatives of the American Federation of Labor had a right to present their contention to the conventions. The American Federation of Labor looks upon this plank with contempt. They wanted some legislation that carried out some ideas they had. The Republican party merely threw a tub to a whale, and I want to say it was a mighty poor tub. The whale was entitled to better treatment. The demand should have been refused in a manly and courageous way. Instead of this, a rhetorical subterfuge was adopted. The plank reads: "The Republican party will at all times uphold the authority and integrity of the courts, state and Federal, and will ever insist that their powers to enforce their process, and protect life, liberty and property shall

be preserved inviolate." I would like to know whether a piece of legislation that undertakes to dissolve an injunction issued by the court to protect my rights, where I am threatened with irreparable injury, without a hearing, is not an invasion of the rights of the court in the exercise of its judicial power. It does not preserve them "inviolate," as this glittering generality declares they intend to do. Again, "We believe, however, that the rules of procedure in the Federal courts with respect to the issuance of the writ of injunction should be more accurately defined by statute, and that no injunction or temporary restraining order should be issued without notice, except where irreparable injury would result from delay, in which case a speedy hearing thereafter should be granted," and that is exactly the law as it stands to-day. The convention said that when a temporary restraining order to restrain irreparable harm was issued without notice, a speedy hearing should be granted. That means that the judge who issued it should exercise his discretion speedily in determining whether or not the injunction should be continued. What does the bill do which is alleged to be a performance of the promise of the Republican party? It substitutes for the discretion of the judiciary the arbitrary fiat of the legislature, and dissolves the injunction within seven days, no matter whether the injury still threatens or not. It may be said that the literal fulfillment of the promise would be as puerile as the promise itself. If you are going to carry out a puerile promise, make the performance as puerile as the promise. If the law must be passed because of the *sacrosanct* character of the promise, then carry out the promise and go no further. The pending bill goes way beyond it and cannot be justified by the platform.

Now, I have a few more words I want to say about this great question. I cannot stop here. I do not propose to start in and discuss the legislation my friends insist upon.

I was much surprised, I am free to say, to hear my learned friend who has just addressed you quote a part, and a part only, of some English legislation on this question. I think I am entitled to say that he deliberately suppressed the balance of the statute from which he made the quotation. [For Mr. Ralston's reply to this charge, see page 118.—EDITOR.] My learned friend, Mr. Ralston, appeared before me, when I was a member of the Judiciary Committee of the House of Representatives and read this same extract

from this same English statute, when urging the passing of legislation before the American Congress which would exempt labor organizations from injunctions where the act, if committed by a single man, would not be a crime; but he failed to say then, as he did this morning, that there were important qualifications connected with the English statute which passed in 1875 and was amended in a material part in 1906.¹ I will call your attention right now to some of the profound qualifications that tend somewhat to discount the vividness of the suggestion made by him. I may say this: I do not think my learned friend had any particular occasion to leave the impression he gave you. [See Mr. Ralston's statement, p. 118. —EDITOR.] In my minority views that I wrote in 1902 I called the attention of Congress and the country, and my learned friend, to the fact that he then made the same suppression that he has made now. I do not know whether he ever read those minority views or not, but I assume he has read the statute, and that, therefore, he knows what I am going to call your attention to. It is true that the English statute provided that no one should be indicted for conspiracy for an act which, if done by a single individual, would not be a crime, yet in the same statute which was passed by Parliament—by the same omnipotent English Parliament, which can to-day, if it wishes, repeal the Magna Charta and deprive the citizen of the right of habeas corpus, because they have an unwritten constitution which does not restrain legislative action,—in that act they took care to make things punishable as crimes that I submit, without hesitation, are not punishable as crimes in any other civilized jurisdiction, either English or elsewhere. Let me call attention to some of them, and no intelligent conception of this legislation can be had, or obtained, except by a careful knowledge of these exceptions and limitations. The English statute provides, among other things, that nothing "shall exempt from punishment a party guilty of conspiracy for which punishment is awarded by any act of Parliament," so that act left them subject to indictment for all conspiracies then punish-

¹An examination of Mr. Ralston's notes shows that while he did not quote the particular paragraph I had in mind when I replied, he did refer to and purport to state its effect when he said: "Even before this act was adopted the law of England had been liberalized, and, largely based upon the legislative expression of such liability, a bill was prepared and introduced into the House of Representatives of the United States, reading as follows," etc.

able. Second, "Nothing in this section shall affect the law relating to riot, unlawful assembly, breach of the peace or sedition, or any offense against the state or sovereign."

Let me go a little further. The third exception provided that "Where a person employed by a municipal authority or by any company or contractor, upon whom is imposed by act of Parliament the duty or who have otherwise assumed the duty of supplying any city, borough, town or place, or any part thereof, with gas or water, wilfully and maliciously breaks a contract of service with that authority, or company, or contractor, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to deprive the inhabitants of that city, borough, town, place or part, wholly or to a great extent of their supply of gas or water, he shall, on conviction thereof by a court of summary jurisdiction or on indictment as hereinafter mentioned, be liable either to pay a penalty not exceeding twenty pounds or to be imprisoned for a term not exceeding three months with or without hard labor."

Now, how much of a boycott would you think could be carried on successfully in England against the water company, or electric light company, which was responsible for the supply of water or gas to the inhabitants? The act of a single individual was made punishable as a crime. There is no such legislation in this country. No one found any legislation of that sort which they could use for the situation here in the last three or four weeks. A little further: "Where any person wilfully and maliciously breaks a contract of service or of hiring, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to endanger human life or cause serious bodily injury or to expose valuable property, whether real or personal, to destruction or serious injury, he shall, on conviction thereof," be fined or imprisoned. Where would a boycott be on that proposition? How long could they carry it on successfully?

The fifth exception is found under the following proviso:

"Every person who, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority—

I. "Uses violence to or intimidates such other person or his

wife or children, or injures his property"—that is to say, whenever any individual either uses violence or intimidates any other person, or his wife or children, or injures his property, he is liable to fine and imprisonment.

2. A man cannot persistently follow another person about from place to place under this statute, in England, without such individual being guilty of a crime, punishable by fine and imprisonment. This did not occur to my learned friend when he gave you this legislation and when he gave it to my committee.

It is getting to be important that in these great discussions we should have all the facts. The statement of part of the facts is not particularly useful in reaching an intelligent and safe conclusion. If you have a good case there is no reason why you should suppress any of the important facts, especially when you expect to rely on part of that legislation to establish your contention. At least, that is my view.

(3) Provides fine and imprisonment for any one who "hides any tools, clothes or other property, or deprives him of or hinders him in the use thereof."

(4) Any one who "watches or besets the house or other place where such other person resides or works, or carries on business, or happens to be, or the approach to such house or place," is subject to fine and imprisonment.

(5) Any person who "follows such other person with two or more other persons, in a disorderly manner, in or through any street or road" shall be liable to fine or imprisonment.

Now, if human ingenuity can suggest any other thing that is done in connection with a boycott which is not specifically punishable by this act of Parliament when "committed by one person," I cannot imagine or conceive of it. Now, that would be a great boon, would it not, to the labor organizations? I submit to my friend that he is not using this audience in a candid manner. I submit to my learned friend that, after having presented this to my committee in 1902, and having characterized it since, without calling attention to these exceptions—I protest that it is not entirely candid in an institution of this kind, intended to produce intelligent thinking, to suppress the vital portions of a statute.

Now, my friends, I have taken a great deal more time than I intended to when I began. I close the whole discussion, so far as I

am concerned, with this final suggestion. This act of Congress which is now proposed is predicated upon the idea that there is neglect upon the part of the court in giving an oral hearing. Let me say this: Whenever a temporary restraining order is issued, it is open to the respondents, who are those restrained, to apply immediately to the chancellor issuing that order for a dissolution of the injunction. He does not have to wait one day or seven days. He can apply on the same day that the order is issued, and it is in the discretion of the court as to when the hearing shall be had.

I challenge the production of a well-authenticated case where a Federal judge (I do not say the judges are above criticism; the bench is fallible, it is finite, as is every other human institution)—but I challenge the production of a well-authenticated case where there has been an abuse of discretion by a Federal judge in a refusal to grant a speedy hearing on a motion to dissolve a temporary restraining order. The Federal judges are entitled to the approval expressed by the Supreme Court of the United States in the *Young* case, where the court said: "No injunction ought to be granted unless in a case reasonably free from doubt. *We think such rule is, and will be, followed by all the judges of the Federal courts.*"

Let me give you an illustration—one case which caused a great deal of disturbance in the House of Representatives and in the Senate. Great statesmen sitting there to legislate and deliberate upon great questions affecting the welfare of ninety millions of people, took occasion in public speech to assail Judge Dayton, of West Virginia, for issuing without notice a temporary restraining order, and making it returnable about thirty days after issuance. Several senators and representatives, and men holding high places, allowed themselves to become vigorously disturbed. The fact is that Judge Dayton did issue the order without notice. It was adjourned three times, and during that whole period, covering more than a year, this case of the Hitchman Coal Company was allowed to rest and the attorneys for the defendants never gathered themselves together sufficiently to even make a motion to dissolve that injunction, but had it continued on their own motion over a year. For that, Judge Dayton was without limit assailed, when the delay was wholly at the instance of the defendants, and in no sense the fault of the judge. That is one of the cases which, I understand,

is relied upon to justify this legislation. My learned friend on the other side will have some difficulty in finding any well-authenticated cases of abuse. On the whole, the Federal judiciary has discharged its duty in a way that is worthy of the approval and approbation of law-abiding, God-fearing, liberty-loving American citizens.

MR. RALSTON'S REPLY, MADE AT THE CLOSE OF MR. LITTLEFIELD'S
ADDRESS

In the heat of his discussion, Mr. Littlefield, accomplished speaker as he is, has been led into making statements which, I am sure, on cooler reflection he will be glad to withdraw. He has practically charged me with suppressing, before you, part of the trades union act of 1906. I may say that I have that written in full in the paper before you, and it was not read merely from consideration of time.

Mr. Littlefield has also stated that I was guilty of some suppression in appearing before the committee of which he had the honor to be a member, in the House of Representatives. I think he is slightly in error in his statement, as he made it. The act from which I read was passed in 1906, and my appearance before the committee of which he was a member was in 1902, and I feel that my prescience in 1902 was not sufficient to know what was passed in 1906; but if he means to say that at the time of my appearance I did not read all the act of 1871, I must say that may or may not be true. I have no recollection upon the point, but the question which was then before the house was exactly whether there should be given the modification of the statute which I have described and narrated to you fully, and I then contended, as I now contend, that peaceful boycotts ought to be absolutely out of the power of courts of equity. From the citation which Mr. Littlefield has read to you, and from the old act, which related not to peaceful boycotts, but to boycotts involving an element of wrong, which I did not then contend should escape the power of courts of equity, and do not now contend, it would have been impertinent and a waste of time to read the articles referred to to-day, and which were not involved in this discussion.

STATEMENT BY MR. LITTLEFIELD, FOLLOWING MR. RALSTON'S
REPLY

I take great pleasure in saying, first, that I assume no responsibility for what my friend did not read. He read exactly what he read, and did not read what he said he did not read. Let him publish with his remarks the Act of 1875, and when he does he will see, as he knows now, that the Act of 1906 made an amendment in only one particular.

Let the gentleman publish with his remarks, as an appendix or otherwise, the Act of 1906 and the Act of 1875, and then if anybody takes pains to read this discussion later, let him state whether I have accurately stated this.

APPENDIX².

Comparative Summary Provisions of English Statutes of 1875
Concerning Conspiracy and Protection of Property,
and 1906, Regulating Trades Unions and
Trades Disputes.

As Mr. Ralston has not quoted the Act of 1875 and the Act of 1906, I quote so much of both of those acts in parallel columns as relates to substantive offenses and civil liability—the Act of 1906, with one exception, relating to civil liability only:

ENGLISH STATUTES, VOL. 10, 1875,
CHAP. 86 (38 AND 39 VICT.).

An Act for amending the Law relating to Conspiracy, and to the Protection of Property, and for other purposes. (13th August, 1875.)

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Conspiracy and Protection of Property Act, 1875.

2. This Act shall come into operation on the first day of September, one thousand eight hundred and seventy-five.

ENGLISH STATUTES, VOL. 44, 1906,
CHAP. 47 (6 EDW. VII).

An Act to provide for the regulation of Trades Unions and Trades Disputes. (21st Dec., 1906.)

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows:

1. The following paragraph shall be added as a new paragraph after the first paragraph of section three of the Conspiracy and Protection of Property Act, 1875:—

²The following appendix was prepared by Mr. Littlefield subsequent to his address.—[EDITOR.]

Conspiracy, and Protection of Property.

3. An agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute between employers and workmen shall not be indictable as a conspiracy if such act committed by one person would not be punishable as a crime.

Nothing in this section shall exempt from punishment any persons guilty of a conspiracy for which a punishment is awarded by any Act of Parliament.

Nothing in this section shall affect the law relating to riot, unlawful assembly, breach of the peace, or sedition, or any offense against the state or the sovereign.

A crime for the purposes of this section means an offense punishable on indictment, or an offense which is ~~punishable on indictment~~ and for the commission of which the offender is liable under the statute making the offense punishable to be imprisoned either absolutely or at the discretion of the court as an alternative for some other punishment.

Where a person is convicted of any such agreement or combination as aforesaid to do or procure to be done an act which is punishable only on summary conviction, and is sentenced to imprisonment, the imprisonment shall not exceed three months or such longer time, if any, as may have been prescribed by the statute for the punishment of the said act when committed by one person.

4. Where a person employed by a municipal authority or by any company or contractor upon whom is imposed by Act of Parliament the duty, or who have otherwise assumed the duty of supplying any city, borough, town or place, or any part thereof, with gas or water, wilfully and maliciously breaks a contract of service with that authority or company or contractor, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to deprive the inhabitants of that city, borough, town, place or part, wholly or to a great

"An act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act, if done without any such agreement or combination, would be actionable."

extent of their supply of gas or water, he shall on conviction thereof by a court of summary jurisdiction, or on indictment as hereinafter mentioned, be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months with or without hard labor.

Every such municipal authority, company, or contractor as is mentioned in this section shall cause to be posted up, at the gasworks or waterworks, as the case may be, belonging to such authority or company, or contractor, a printed copy of this section in some conspicuous place, where the same may be conveniently read by the persons employed, and as often as such copy becomes defaced, obliterated, or destroyed, shall cause it to be renewed with all reasonable despatch.

If any municipal authority or company or contractor make default in complying with the provisions of this section in relation to such notice as aforesaid, they or he shall incur on summary conviction a penalty not exceeding five pounds for every day during which such default continues, and every person who unlawfully injures, defaces or covers up any notice so posted up as aforesaid in pursuance of this Act, shall be liable on summary conviction to a penalty not exceeding forty shillings.

5. Where any person wilfully and maliciously breaks a contract of service or of hiring, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to endanger human life, or cause serious bodily injury, or to expose valuable property whether real or personal to destruction or serious injury, he shall on conviction thereof by a court of summary jurisdiction, or on indictment as hereinafter mentioned, be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labor.

Miscellaneous.

6. Where a master, being legally liable to provide for his servant or apprentice necessary food, clothing,

medical aid, or lodging, wilfully and without lawful excuse refuses or neglects to provide the same, whereby the health of the servant or apprentice is or is likely to be seriously or permanently injured, he shall on summary conviction be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding six months, with or without hard labor.

7. Every person who, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority,—

(1) Uses violence to or intimidates such other person or his wife or children, or injures his property; or,

(2) Persistently follows such other person about from place to place; or,

(3) Hides any tools, clothes, or other property owned or used by such other person, or deprives him of or hinders him in the use thereof; or,

(4) Watches or besets the house or other place where such other person resides or works, or carries on business, or happens to be, or the approach to such house or place; or,

(5) Follows such other person with two or more other persons in a disorderly manner in or through any street or road,

Shall, on conviction thereof by a court of summary jurisdiction, or on indictment as hereinafter mentioned, be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labor.

Attending at or near the house or place where a person resides, or works, or carries on business, or happens to be, or the approach to such house or place, in order merely to obtain or communicate information, shall not be deemed a watching or besetting within the meaning of this section.

8. Where on any Act relating to employers or workmen a pecuniary penalty is imposed in respect of any offense under such Act, and no power is given to reduce such penalty, the

2. (1) It shall be lawful for one or more persons, acting on their own behalf or on behalf of a trade union or of an individual employer or firm in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working.

(2) Section seven of the Conspiracy and Protection of Property Act, 1875, is hereby repealed from "attending at or near" to the end of the section.

justices or court having jurisdiction in respect of such offense may, if they think it just so to do, impose by way of penalty in respect of such offense, any sum not less than one-fourth of the penalty imposed by such Act.

3. An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment or that it is an interference with the trade, business, or employment of some other person, or with the right of some other person to dispose of his capital or his labor as he wills.

4. (1) An action against a trade union, whether of workmen or masters, or against any members or officials thereof on behalf of themselves and all other members of the trade union in respect of any tortious act alleged to have been committed by or on behalf of the trade union, shall not be entertained by any court.

(2) Nothing in this section shall affect the liability of the trustees of a trade union to be sued in the events provided for by the Trades Union Act, 1871, section nine, except in respect of any tortious act committed by or on behalf of the union in contemplation or in furtherance of a trade dispute.

I also quote an extract from the minority views filed by me as a member of the Judiciary Committee of the House of Representatives in 1902:

THE ENGLISH LAW.

An examination of the origin of the legislation which is relied upon as the precedent for this bill will, perhaps, be instructive. Jackson H. Ralston, Esq., an attorney-at-law and counsel for the Federation of Labor, drew this bill and appeared before the committee during the last Congress in advocacy thereof. As to the precise language of the bill and the precedents therefor he used this language at the hearing:

"I want to say that upon exam-

ination of the statute law of other jurisdictions I found that the Parliament of England had met the very condition that seemed to be confronting the labor organization here, and in the act known as the 'Trades Union Act of 1875,' Parliament had provided that where an act could be committed by an individual and not be criminal, the same act, if committed by a number of individuals in combination, could not be made the subject of the criminal-conspiracy law or could not be deemed a criminal act.

"The Chairman—What was the date of that act?

"Mr. Ralston—That act was passed in 1875.

"Mr. Parker—Does it apply to all acts, no matter what they are?

"Mr. Ralston—In relation to trades disputes.

"Mr. Parker—It would not, therefore, apply to a boycott?

"Mr. Ralston—Yes; it would apply there absolutely.

"The Chairman—Even if they starved the man to death?

"Mr. Ralston—Yes, sir; it would apply to an act of that kind, and for this reason: That any man has a legal right to purchase from any other man that he chooses, and there is a correlative right in every man to refuse to sell him his goods. That is right."

Very clearly giving to the committee the impression that the language which he quoted as being the substance of the English law was a correct statement of the scope of that legislation. And upon this same point, more effectively impressing the committee with the idea that he was simply asking in substance a re-enactment of the English statute, and leaving upon their minds the impression that its scope, operation and effect had been accurately stated by him, he said further:

"Continuing the argument I had in mind, I have stated, I think correctly, the law under this Act of 1875. Now the Trades Union Act was followed in Maryland in the Act of 1884. I have here the Maryland act as it was incorporated in the code of 1888. The language is as follows:

"An agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute between employers and workmen shall not be indictable as a conspiracy if such act committed by one person would not be punishable as an offense. Nothing in this section shall affect the law relating to riot, unlawful assembly, breach of the peace, or any offense against any person or against property."

"That is, as I say, the language of the Maryland Act of 1884.

"Mr. Parker—And that was the language of the English Act of 1875?

"Mr. Ralston—Almost identically the language of the English act and the language which has been followed in the bill now before the committee."

Thus, very clearly leaving upon the mind of the committee the impression that he had accurately stated the scope of the English statute. The quotation which Mr. Ralston made from the Maryland statute is accurate, and the effect of making the quotation is only to intensify the impression that he had also accurately stated the scope of the English statute. This presentation of the English statute, with the idea that Congress was to accept it as a legislative precedent in legislating upon this subject was a very serious misconception of the scope of the English law. The fact is, as the brief analysis of the English statute which is given below will show beyond all possible peradventure, that the English statute when accurately stated is very much narrower in its scope than the language used by Mr. Ralston in stating the English law, and is, in fact, by numerous limitations and restrictions upon its operation, not only practically innocuous, but extremely oppressive in its operation upon laboring men, as it creates offenses theretofore unknown in the English law and never yet made nor attempted to be made criminal in any American jurisdiction.

What Mr. Ralston did was to take one section of a chapter nearly word for word, disconnect it from at least eight distinct and specific provisions which narrowed and limited the scope of its operations. The section which he quoted as a legislative precedent for our action reads as follows, and is a part of the Conspiracy and Protection of Property Act of 1875:

"An agreement or combination by two or more persons to do, or procure to be done, any act in contemplation or furtherance of a trade dispute between employers and workmen shall not be indictable as a conspiracy if such act committed by one person would not be punishable as a crime."

The first exception reads as follows:

"Nothing in this section shall ex-

empt from punishment any persons guilty of a conspiracy for which a punishment is awarded by any act of Parliament."

Just what the scope of this exception is could not be stated in detail without an examination of the statutory law of England to ascertain as to what particular subjects the law of conspiracy applies.

The second exception is:

"Nothing in this section shall affect the law relating to riot, unlawful assembly, breach of the peace, or sedition, or any offense against the state or the sovereign."

The third exception provides:

"Where any person wilfully and maliciously breaks a contract of service or of hiring, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to endanger human life or cause serious bodily injury, or to expose valuable property, whether real or personal, to destruction or serious injury, he shall, on conviction thereof by a court of summary jurisdiction or indictment, as hereinafter mentioned, be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labor."

The scope of this exception will be appreciated when it is considered that it is not infrequently the "probable consequence" of a strike to expose valuable property—a man's business is certainly "valuable property"—to serious injury, and wherever there is reasonable cause to believe that such consequences are probable, it is very clear that a single individual, independent of conspiracy, who "wilfully and maliciously" violated his contract of service or hiring with that end in view, would be punishable under the English law by fine and imprisonment. Such an act, it is believed, is not made a crime in any jurisdiction in this country, and it is thought that the Federation of Labor, which desires this legislation, would protest with great vigor, and properly so, against the enactment of a statute which would make such an act on the part

of a single individual punishable by fine and imprisonment. We only call attention to the exceptions which would affect laboring men, as this legislation is requested and urged principally by the labor organizations for the purpose of ameliorating their condition.

The fourth exception limiting the scope of this provision of the English law provides that every person who uses violence to or intimidates any other person, or his wife or children, or injures his property with a view to compel such other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority, "shall, on conviction thereof by a court of summary jurisdiction, or on indictment as hereinafter mentioned, be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labor."

The fifth exception provides that whoever for the same purpose persistently follows such other person about from place to place should be punished in the same manner.

The sixth exception provides that whoever for the same purpose "hides any tools, clothes, or other property owned or used by such other person, or deprives him of or hinders him in the use thereof," shall be punished in the same manner.

The seventh exception provides that whoever for that purpose "watches or besets the house or other place where such other person resides or works or carries on business or happens to be, or the approach to such house or place" shall be punished in the same manner.

The eighth exception provides that whoever, for the same purpose, "follows such other person with two or more other persons in a disorderly manner in or through any street or road" shall be punished in the same manner.

All of these provisions, with the possible exception of some phases of that included in the fourth subdivision creating new and additional criminal offenses upon the

part of laboring men, and especially laboring men engaged in the familiar methods universally employed for the purpose of alleviating their condition by strikes. In no instance in any jurisdiction in this country are any of those acts, except possibly some included in the fourth subdivision made punishable as crimes. It may be safely said that legislation of that sort would not be tolerated for a moment by any of the organizations which are interested in the passage of this bill.

Instead of ameliorating the condition of the laboring man, who desires to avail himself of the right of the strike or the boycott provisions of the law, such as exist in the English statute, they narrow and restrict the scope of the operation of the general provision which was, presumably under a misapprehension, cited to us as a precedent for this bill. The enactment of such drastic and oppressive provisions would place every laboring man in a straitjacket and practically destroy the efficiency of every labor organization in the country. Yet when fairly stated the

provision relied upon as a precedent for this bill should have been stated, and should be stated with all of these qualifications and restrictions.

It is not credible that the Federation of Labor would advocate the adoption of the English statute from which this extract upon which they rely as a precedent was made, creating as it does so many new offenses aimed explicitly and expressly against laboring men and labor organizations. When considered in connection with Federal legislation the application of these suggestions is necessarily confined to their effect upon interstate trade and commerce. A bill similar to this was reported by the Judiciary Committee in the last Congress (H. R. 8917, Report No. 2007), but at the time of making the report the attention of the committee had not been called to the provisions above referred to in the English statute, but had, in fact, as the result of the partial statement of the counsel, been diverted therefrom. For that reason no allusion was made to it in that report.

USE AND ABUSE OF INJUNCTIONS IN TRADE DISPUTES

III. ADDRESS BY JAMES A. EMERY, ESQ.,

General Counsel, National Council for Industrial Defense, Washington, D. C.

Mr. Chairman, Ladies and Gentlemen:

I thank the chairman for his kind words, and I hope to be brief enough under the circumstances of the hour not to repeat the fault of that great Englishman of whom it was said, "That he went on refining while others thought of dining." The extent of the subject and the limitation of time permits no more than a fragmentary discussion, and I can hope to do no more than respond in outline to the leading criticisms of the gentlemen who have preceded me in the light of a few of the equitable principles which I shall call to your attention.

With all due respect to the distinguished gentleman who has just concluded, his discussion seems to me an excellent illustration of the confusion that is bound to arise through failure clearly to grasp the peculiar powers of equity and the function of the injunctive remedy. The gentleman defended vehemently that which he but half-apprehended, like the ancient Bardolph, whose valor was more certain than his understanding: "Accommodated, it is a Christian word and by my sword I will defend it. Accommodated—that is, when a man is—that which—whereby—he may be thought to be—accommodated. Which is an excellent thing."

The gentleman declares, but undertakes to prove by reiteration rather than demonstration that an injunction issues to protect only property rights, and that the rights usually involved in what are commonly termed labor disputes are not even property rights, and therefore a court of equity, through the injunctive remedy, has usurped a jurisdiction in violation of precedent and right. The injunction is no modern device. It is not the invention of a recent day—an outgrowth of modern ingenuity. The ancient writ has been for centuries the chief instrument of equity. The principles of its use are determined by the decisions and practice of centuries, its application to organizations of labor is but a modern phase of its continuing use through many decades to prohibit attacks by combination upon rights which it is its peculiar office to protect. These

rights, the gentleman to the contrary, are "*civil*" and property rights, rights characterized by the courts as "those of a pecuniary nature." The gentleman rests his appeal and his argument on moral no less than legal grounds, but I cannot find within his narrow definition that vast body of rights which the settled law of many centuries has held within the protection of the injunction. Indeed, I should be interested in knowing upon what theory of morals it could be contended that it was right to issue a restraint to protect a man's house or his business or his horse, and not himself.

The gentleman's theory of a property right is that of mere ownership in a house or lot, of lands and personalty. "The right of property in man," he says, "was destroyed by the emancipation of the slave." Nay, man's property in himself was recognized by the emancipation of the slave, for the first and most elemental of all property rights is that of man in his own labor. The foundation of all property right, it is the one treasury possessed by each individual, and from which he pays in the sweat of his face his way through the world. But he owns the labor of his head no less than that of his hands, of his pen no less than that of his pick, of his learning no less than its product, of his profession no less than his trade. Every exercise of mind or body possessing value is property as much as the coat on his back or the hat on his head, the house in which he lives, or the land whose fruits sustain his life. Nay, more, we dispose of that which we have and acquire the possessions of others only through agreement, and therefore the most commonplace and necessary, indeed, socially, the most indispensable, of property rights is the right of contract. These rights are universally recognized not merely by the technical rulings of generations of judges, but by the common sense of mankind. Every one who sits within sound of my voice has sold or bought labor, and must continue not only to do so, but to maintain the right to do so, "for so the whole world moves around." "No right of property or capital," said Lord Bramwell, "was so sacred or carefully guarded by the law of the land as that of personal liberty." The constitutional guarantee of "liberty and property," interpreted by the Supreme Court of the United States, embraces not merely the right of the citizen to the free use of his powers and faculties in all lawful ways to live and work at any trade, profession or business, but "for that purpose to enter into all contracts that may be proper, necessary and essential in his carrying out the purposes mentioned."

The Anthracite Coal Strike Commission epitomized the civil and moral law by saying:

The right and liberty to pursue a lawful calling and to lead a peaceable life, free from molestation or attack, concerns the comfort and happiness of all men, and the denial of them means the destruction of one of the greatest, if not the greatest, of the benefits which the social organization confers.

Thus we see as a matter of common sense and common law that not merely is the plant of the manufacturer, the store of the merchant, the farm and equipment of the farmer, the tools of the mechanic, the pick of the laborer, the property of each, but it is likewise the property right of each to use them in any lawful manner, and the skill with which they are used is no less the property of him who possesses it than the instrumentalities and properties through which it is exercised. So it must be obvious to you and me, evidenced by our daily experience, apparent in our customs, embedded in our law and confirmed by our courts that the civilization of which we are a part rests upon the fact that not only are our lands and chattels property, but the rights by which we acquire and dispose of them and use them to our own profit and our neighbors' benefit, as well as the peculiar qualities and powers of mind and body that may be turned to our pecuniary advantage, are rights of property and entitled to protection as such, however intangible they may be, as much as those tangible physical objects which the eye sees and the hands feel.

When we exercise these rights in commerce and industry, earning a reputation for skill in manufacture, honesty and enterprise in trading, and custom accrues to us; that reputation which we have in the minds of others because of the quality of our product, the character of our workmanship, the promptness with which we pay our debts, and all those circumstances and incidents that contribute to give us esteem in the judgment of the buying public, constitute a property right as valuable as store and factory and skill themselves, and we term it the goodwill of business. We frame our statutes and enforce our laws in recognition of that fact. The Sherman act was framed upon this very theory, giving triple damages for injury to a business. The Wilson, Dingley and Payne tariff acts each recognized this principle in some of their provisions, and it is a common transaction of the commercial world so widely

recognized as to come within the knowledge of all men that the goodwill of a business is not only a separate and distinct property from the physical instrumentalities used in the transaction of business, but that goodwill is frequently bought and sold without reference to the realty or chattels in the use of which it has come into being.

The rights I define and enumerate are not rare and recondite. The daily press familiarizes each of you with the progress of actions brought to vindicate injuries done to them. You hear of suits for libel, of actions in damages for the misuse of trademarks, business symbols, infringements upon patents, the printing of books or the singing of songs, the use of plays, without permission. It excites no comment, it produces no confusion of mind, if a suit at law is brought to compensate some injured individual for a loss sustained by a trespass upon any of the property rights I mention. How, then, shall you deny the right of a court of equity to interfere under proper circumstances to protect these rights from injuries of such a nature that no proceeding at law will secure compensation. For this is a world of conflicting rights, and our own freedom and privilege of conduct are measured by the equal privilege and freedom of every other citizen with whom we come in contact. You will remember the familiar but happy illustration of the limits of liberty of action suggested by the drunken man who shook his finger in the face of a stranger, and when the other protested, said: "This is a free country; I have a right to shake my finger in your face." The sober one answered: "Your right to shake your finger ends where my nose begins." So it is with a variety of rights which are the subject of daily litigation in our courts and regulation in our legislatures. But every injury which may be worked upon one or many, or which many may work upon one, is not of such a nature that it can be compensated for in damages. The punishment of crime repairs no loss wrought by the criminal. Injury is, as we all realize, sometimes of a character for which there could be no pecuniary relief, either because the wrong done was of a nature that money could not measure, or a successful proceeding would be barren of actual recovery because of the financial irresponsibility of the wrongdoers, or their number being so great as to require an impracticable multiplicity of actions or their identity would be unascertainable.

Under such circumstances, which are not of infrequent occurrence, lawsuits would be of no avail, and if the person injured or threatened with injury must abide the event and await the infliction of damage under circumstances which did not permit of recovery, the person injured or threatened with injury would be without any remedy. He would face the damage or destruction of property and the impairment of rights without legal defense or redress. A legal system so defective would be a disgrace to civilization. The condition fortunately does not exist, for here equity offers the remedy which is essential to complete and perfect our judicial scheme. Where damage threatens what would be of an irreparable nature, equity supplies the absence of an adequate remedy at law by preventing the infliction of the injury.

A few years ago the State of Missouri entered into the Supreme Court of the United States and complained that its sister State, Illinois, was constructing a drainage canal from the city of Chicago which would discharge along the shores of Missouri a vast amount of noxious sewage and drainage, which would not only injure the property of the citizens of Missouri, who could not sue the State of Illinois, but threatened their lives and health and that of their children, and the State of Missouri sought to restrain the proposed action of the State of Illinois, until at least defects in the construction of the drainage canal could be remedied and the conditions anticipated would not come into being.

The late Justice Brewer, in an address delivered in Brooklyn, N. Y., in November last, called attention to this remarkable case, and commented upon the pitiable condition that would have existed had the Supreme Court of the United States been compelled to leave the citizens of Missouri to wait in fear and anxiety the coming of a flood bearing pestilence and death, with no power in the nation to stay its approach.

"Government by injunction," said Justice Brewer, "has been an object of easy denunciation. So far from restricting this power, there never was a time when its restricted and vigorous exercise was worth more to the nation and for the best interests of all. . . . The best scientific thought of the day is along the lines of prevention rather than that of cure. We aim to stay the spread of epidemics rather than permit them to run their course, and attend solely to the work of curing the sick. And shall it be said of the law, which claims to be the perfection of reason and to express the highest thought of the day, that it no longer aims to prevent the wrong, but limits its action to the matter of punishment?"

The critics of the injunction are doubtless quite willing to admit the proprietary and necessity of its application to all but cases where their own ox is gored, but here is the rub: in labor disputes, the gentleman argued, strikers are enjoined from doing acts in combination which if done by individuals would be lawful; and, second, they are restrained from doing perfectly innocent acts; and, third, the rights of others they are enjoined from interfering with are not rights of a property nature.

It is a fundamental proposition in this government that there cannot be one set of rights for one class of citizens, and another set for another class under the same circumstances. The right to the protection of a court of equity cannot rest upon the character of the persons from whom the protection is sought. The office of equity is to prevent; that of law to compensate. The right to the preventive remedy is as great as the right to the compensatory remedy. Equitable protection is constitutionally guaranteed as fully as legal protection. The right to that protection is predicated upon the character of the wrong—not of the persons who threaten it. To deny an injunction under circumstances in which it should issue, whether in a labor dispute, a trespass, an infringement of a patent, a restraint of trade, the maintenance of a nuisance, or any other set of circumstances which presents grounds of equitable intervention is to deny to the citizen due process of law. Therefore a citizen is entitled to an injunction in a labor dispute as much as in any other controversy, if in the course of it the combination of laborers threaten his property with irreparable damage, just as under the same circumstances he would be entitled to an injunction against a combination of business men that undertook to injure his patent or his trade, or to maintain a nuisance damaging to his home or place of business.

The argument that a combination of men ought not to be enjoined from doing that which it is not unlawful for one man to do is not peculiar to labor disputes. It was argued by counsel for the defendant in the case of *Montague vs. Lowry*, 193 U. S., 38, and rejected by the Supreme Court, as the principle has likewise been rejected in a variety of criminal and civil proceedings in courts of final appeal, both in England and the United States. For not only does a combination of many possess a power beyond that of any individual, but when it is organized and acts to accomplish a par-

ticular purpose, it is itself a new entity in which the judgment and will of the individual components is subordinated to the purpose and motive of the combination. The power of one man to coerce or intimidate or threaten is obviously a very different matter from similar actions by numbers acting in concert, whose very presence becomes in itself a menace to the peace of mind and the right to the free flow of custom possessed by a person who, for instance, becomes the recipient of the attentions of a labor combination in a labor dispute.

But it is said injunctions are frequently issued in labor disputes which forbid the doing of acts in themselves innocent and lawful. So it is said men have been enjoined from using the streets and roads, from talking to others, from even using "persuasion" or visiting the homes of men who did not join in a strike. "No conduct," said Justice Holmes, in *Aikens vs. Wisconsin*, 195 U. S., "has such an absolute privilege as to justify all possible schemes of which it may be a part. The most innocent and constitutionally protected of acts or omissions may be made a step in a criminal plot, and if it is a step in a plot, neither its innocence nor the constitution is sufficient to prevent the punishment of the plot by law."

Suppose a man is arrested at night, walking up and down the sidewalk before a residence. At least let us suppose this is his explanation to a police judge before whom he is brought by the arresting officer: "Have I not a right," says the defendant, "to the free use of the public streets. Is it a crime to use a sidewalk where my presence does not obstruct its equal use by every other person?" But suppose the officer and other witnesses prove that the defendant used the sidewalk and was in front of the residence in question for the purpose of giving warning to a fellow-thief engaged in the looting of the residence, does the innocent act of using the public sidewalk relieve the accused person of punishment in view of the purpose for which he was there? Yet the distinguished lawyer who opened this discussion intimated that motive was worthy of small consideration in discussing the use of injunctions in labor disputes. Moreover, I need not say to this intelligent audience that a combination, maliciously to persuade or induce men to make a breach of contract was and is unlawful in all forms of human action outside of labor disputes.

The charge of enjoining alleged innocent acts is frequently

based upon a superficial or fragmentary reading of particular injunctions. Thus we find in some injunctions that have been sharply criticised that men were enjoined from marching on a public highway where their purpose was to prevent other workmen equally entitled to the use of the highway from going to or returning from their work, and men have been likewise enjoined from using the public streets for the purpose of threatening or annoying or maliciously persuading others equally entitled to the use of the streets from entering or departing from a boycotted place of business. Then, too, the word "persuasion," which has been and is so frequently made the subject of harsh criticism, has never been used in an injunction except in connection with other phrases forbidding conduct of an unlawful character. No rule of interpretation is better settled than that where a number of phrases are used the concluding word of many terms shall be given construction as of the same general class as the previous phrases. Thus the word "persuasion" is merely used as a general inhibition of "persuasion" of the same general kind as that previously prohibited in the writ.

Finally, I have said that it is frequently objected that the rights protected in labor disputes are not those of a pecuniary nature. If property rights were held to be merely those rights to the possession of realty and chattels to which the gentleman who preceded me endeavored to confine the term, the objection might be well founded, but we have seen that there is a universal recognition in custom and practice, as well as in the adjudicated law of our land, that the right of property includes the right to make contracts for the sale or purchase of labor, and the right to the goodwill of business as distinct from the physical instrumentalities of the business itself.

In the ordinary course of a labor dispute, the strikers organize for the purpose of preventing others from taking their places. To the point where the striker peaceably presents his claims, either to those who seek work or those who have remained at work, he is obviously within his rights, but when individually or in combination with others, he intimidates or threatens by words or actions or annoys and destroys the peace of employer, employee or customer, he has passed the limit of his own rights and intrudes upon the equal right of others to conduct their business in a lawful manner, to give their custom where they will, or to dispose of their labor and work under the conditions that seem to them best. The protection of that

fundamental right is the protection of that principle from which the striker's own freedom springs, and if he deny or combine to destroy it in others, he cannot long hope to keep it for himself.

Perhaps the charge most vehemently pressed by critics of alleged abuse by injunction is that the writ is issued against acts which are crimes, and through proceedings in contempt the persons committing those acts are deprived of trial by jury, although the offense for which they are punished is of a criminal nature. This charge pressed with much plausibility, fades before the simple distinction between the various qualities of any act within the prohibition of the court of equity. The simplest mind can perceive at a glance that any human act may have both moral and mental qualities. It might be good mentally and bad morally. So, too, any act of one human being which endangers another may, like a trespass, be at once the subject of criminal prosecution and subsequent civil action in damages. A man who assaults another may be punished by the state for his crime and sued by the individual for his tort. So, too, an act forbidden by an injunction may, through the spectacles of criminal law, also constitute a crime, but a court of equity in a contempt proceeding punishes only the violation of its order and not the criminal offense which may be committed at the same time. The distinction which I suggest, which must appeal to any intelligent layman, was very clearly put in the decision of Judge Woods in the proceedings in the Circuit Court against Eugene Debs, charged with contempt of an injunctive order:

The jurisdiction of the courts of equity, and by implication their right to punish for contempt, are established by the constitution, equally with the right of trial by jury; and so long as there is no attempt to extend jurisdiction over subjects not properly cognizable in equity, there can be no ground for the assertion that the right of jury trial has been taken away or impaired. The same act may constitute a contempt and a crime. But the contempt is one thing, the crime another; and the punishment for one is not a duplication of the punishment of the other. The contempt can be tried and punished only by the court, while the charge of crime can be tried only by a jury. *U. S. vs. Debs*, 64 Fed. Rep., 746.

The gentleman preceding me has asserted with great earnestness that each man is entitled to bestow his patronage where he pleases, and that he may give or take it, like his labor, from any whom he pleases, for a good reason or none at all, and that is true. Equity

intercepts his action only when he combines with others to injure third parties by preventing other workmen or the public from exercising the same liberty which he demands for himself. The purpose of joining in a boycott may be, by compelling an employer to grant the demands made upon him, to benefit ultimately the cause of labor, or immediately that of the striking employees, but the alleged purpose is remote in comparison with the proximate and immediate effort to injure or destroy the lawful business of another by frightening away workmen and customers in order to compel the person boycotted, by virtue of the injury inflicted, to accede to the demands of the boycotters. This is the mere effort of many to work their will upon one; the coercion of an individual by force of numbers, the individual possessing the same right to pursue his own way and to conduct his own business within lawful limits that each member of the combination has to conduct his.

In these collisions, equity must proceed to employ its time-honored remedies upon the same principle repeatedly invoked throughout the history of our jurisprudence. If that principle does not permit the use of the injunction to restrain damaging assaults upon individual rights and property by strikers seeking to enforce their will by destructive coercion and intimidation, and in ruthless disregard of the equal rights of others, then the striker himself can find no principle of equity which lends its strong arm to his service, or that of the government when it seeks to protect him against vast combinations in restraint of trade, whose powers and activities continually excite the attention of the popular mind. If the principles upon which the issuance of an injunction in a labor dispute is predicated cannot be sustained by the immemorial principles of that branch of jurisprudence and the continuous practice of chancery courts in England and America, then no exercise of that remedy in all the vast field of equity can be excused or defended.

USE AND ABUSE OF INJUNCTIONS IN TRADE DISPUTES

IV. ADDRESS BY ANDREW FURUSETH, ESQ., Washington, D. C.

Coming after such a gentleman as Mr. Littlefield, I must ask you to be patient with me in what I have to say. I have not his ready tongue nor his training as a special pleader. I shall try, in a few words, to convey to you what we, who suffer under the misuse of the equity power, think is the real cause of the wrong, and point to a cure.

I am sorry that Mr. Littlefield has gone, because I wanted to ask him to define more specifically what he means by some things that he has said here.

He speaks of "judicial power." It would be well, if he will, when correcting the notes, state if he means the power of the judiciary as understood and exercised in England at the time when our constitution was adopted, and with possibly slight modifications conferred upon our judiciary, or does he, in speaking of judicial power, have in mind the power exercised by the Roman emperors? It would be a great help to understand what he means.

He speaks of obedience to law. I want to say for the workmen of the United States that they do not come before you, nor before anybody, to ask exemption from any law. What we complain of, and what we believe we have a right to complain of, is that we are not getting law, but judicial discretion. He says that the equity power is to remedy and to prevent wrong. If that be so, of what use is law and law courts? I would like him to say, in his notes later on, what law is; if it is not an injunction issued by the whole people through their legislative department; whether it is not usually a simple "Thou shalt not." He says that equity power ought to protect personal rights. Where that will lead us I shall try to explain in a short statement which I shall read later. He speaks of the English law forbidding men to quit work: you have noticed, if you followed him closely, and I am sure you did, that every phase of that law deals with those who work in steam, water and gas plants, and where a man leaves his job in such a way as to endanger the life of others. The British Government has dealt with

that ; so has ours. We go to the legislative branch of the government for any alteration in laws which we feel to be urgent ; we do not come to the judges and ask them not to enforce, or to make, law. We realize, ladies and gentlemen, that there is a fundamental distinction between law and equity.

The modern use of the writ of injunction, especially in labor disputes, is revolutionary and destructive of popular government. Our government was designed to be a government by law, said law to be enacted by the legislative branch, construed by the judiciary and administered by the executive. An injunction is "an extraordinary writ issued out of equity, enjoining a threatened injury to property or property rights, where there is not a plain, adequate and complete remedy at law."

The definition of equity is: "The application of right and justice to the legal adjustment of differences where the law, by reason of its universality, is deficient," or "that system of jurisprudence which comprehends every matter of law for which the common law provides no remedy, . . . springing originally from the royal prerogative, moderating the harshness of the common law according to good conscience." In other words, it is the exercise of power according to the judgment and conscience of one man. It was for this reason that in Great Britain, whence the United States derives its system of equity, as well as of law, the equity power was limited to the protection of property or property rights, and to such cases only where there was no remedy at law ; the words "adequate and complete" have been added here.

When the courts of equity issue injunctions in labor disputes, they do so to protect *business*, which, under late rulings by several courts, is held to be *property*. These rulings are disputed and condemned by other courts, which hold that relations between employers and employees—between buyer and seller—are *personal* relations, and as such, if regulated at all, are regulated by statute or common law only. If the latter contention be right, and of this we believe there can be no question, the ruling that makes business *property*, or the right to carry on or continue in business a *property right*, is revolutionary, and must lead to a complete change not only in our industrial, but in our political life. If the court of equity be permitted to regulate *personal* relations, it will gradually draw to itself all legislative power. If it be permitted to set aside or to

enforce law, it will ultimately arrogate to itself jurisdiction now held by the law courts, and abolish trial by jury.

The constitution confers equity power upon the courts by stating that they shall have jurisdiction in law and in equity, in the same way that it makes it their duty to issue the writ of habeas corpus and in substantially the same way as it provides for trial by jury. Equity power came to us as it existed in England at the time of the adoption of our constitution, and it was so limited and defined by English authorities that our courts could not obtain jurisdiction in labor disputes except by the adoption of a ruling that *business is property*. If business be property in the case of a strike or a boycott, and can therefore be protected by the equity court against diminution of its usual income, caused by a strike or boycott conducted by the working people, then it necessarily must be property at other times and therefore entitled to be protected against loss of income caused by competition from other manufacturers or business men. Business and the income from business would become territorial, and would be in the same position as land and the income from land. The result would be to make all competition in trade unlawful; it would prevent any one from engaging in trade or manufacture unless he comply with the whims and fancies of those who have their trade or means of production already established. No one could enter into business except through inheritance, bequest or sale. In order to show the fallacy of this new definition of property, we here state the accepted legal definitions of *property*, *business* and *labor*. Property means the dominion or indefinite right of user and disposition which one lawfully exercises over particular things or subjects, and generally to the exclusion of all others. Property is ownership, the exclusive right of any person freely to use, enjoy and dispose of any determinate object, whether real or personal. (English and American Encyclopedia of Law.) Property is the exclusive right of possessing, enjoying and disposing of a thing. (Century Dictionary.) A right imparting to the owner a power of indefinite user, capable of being transmitted to universal successors by way of descent, and imparting to the owner the power of disposition, from himself and his successors. (Austin, Jurisprudence.) The sole and despotic dominion which one claims and exercises over the external things of the world in total exclusion of the right of any other individual in the world. (Blackstone.)

It will be seen that property means products of nature or of labor, and that the essential element is that it may be disposed of by sale, be given away, or in any other way transferred to another. There is no distinction in law between *property* and *property rights*.

From these definitions it is plain that labor power or patronage cannot be property, but aside from this we have the thirteenth amendment to the constitution, prohibiting slavery and involuntary servitude. Labor power cannot be property, because it cannot be separated from the laborer. It is personal. It grows with health, diminishes in sickness, and ceases at death. It is an attribute of life. The ruling of the courts makes of the laborer a serf of patronage, an evidence of servitude, by assuming that one may have a property right in the labor or patronage of another.

What is the definition of business? That which occupies the time, attention and labor of men for the purpose of livelihood or profit; that which occupies the time, attention and labor of men for the purpose of profit and improvement. (American and English Encyclopedia of Law.) That which busies, or that which occupies the time, attention or labor of one as his principal concern, whether for a longer or shorter time. (Webster's Dictionary.)

What is labor? Physical or mental effort, particularly for some useful or desired end. Exertion of the powers for some end other than recreation or sport. (Century Dictionary.)

It will be seen from the above definitions, that, while there is a fundamental difference between *property* and *business*, there is none at all between business and labor, so that, *if business be property, so is labor*, and, if the earning power of business can be protected by equity power through injunction, so can the earning power of labor; in other words, the laborer may obtain an injunction against a reduction of wages, or against a discharge which would stop the wages entirely. If this new definition of *property*, by including therein business and labor, be accepted, then the judge sitting in equity becomes the irresponsible master of all men who do business or who labor.

We contend that equity, power and jurisdiction—discretionary government by the judiciary—for well-defined purposes and within specific limitations, granted to the courts by the constitution, has been so extended that it is invading the field of government by law and endangering constitutional liberty; that is, the personal liberty

of the individual citizen. As government by equity—personal government—advances, republican government—government by law—recedes.

We have escaped from despotic government by the king. We realized that, after all, he was but a man. Are we going to permit the growing up of a despotic government by the judges? Are not they also men? The despotism of one can in this sense be no better than the despotism of another. If we are to preserve "government of the people, by the people and for the people," any usurpation by the judiciary must be as sternly resisted as usurpation by the executive.

What labor is now seeking is the assistance of all liberty-loving men in restoring the common-law definitions of *property*, and in restricting the jurisdiction of the equity courts in that connection to what it was at the time of the adoption of the constitution. A bill has been and now is before Congress for this purpose. We ask your careful consideration of the reasons for this bill and of the bill itself, and your assistance in inducing Congress to make it a law.

IV. The Administration of the Criminal
Law—Defects and Proposed
Remedies

EVILS AND REMEDIES IN THE ADMINISTRATION OF THE CRIMINAL LAW

BY SAMUEL UNTERMYER, ESQ.,
New York.

None of the many difficult problems that confront the present generation is more urgent or perplexing than the reform of the administration of the criminal law in our country. Our wealth and importance in the financial world have increased by such leaps and bounds that we have completely outgrown the laws which were enacted to meet the earlier conditions in our history.

It will be no easy task to secure the changes that are necessary to meet and curb the cupidity of the criminal rich, nor to enforce those laws when enacted.

Strange to say the chief obstruction to the administration of justice in criminal cases lies in the undue shelter afforded by our Constitution.

The prescribed remedies against crimes of violence are, on the whole, fairly administered, though there are still many abuses capable of correction. It is in the attempts to punish the crimes born of greed and cunning in the financial world that the machinery of justice has broken down and the law is administered in a spasmodic and hysterical way.

I think it will be admitted by all fair-minded critics of our institutions that our people have not that respect for the law which pervades foreign countries. Is it not because the enforcement of the law with us is not entitled to the same respect? It is either not made to reach the powerful or has been found incapable of enforcement against them. This discrimination is not due to the dishonesty of our people or public officials, nor to their unwillingness to punish rich offenders. It is owing largely to the character of the proof necessary to establish the commission of a crime involving complicated financial transactions and to the difficulty of securing such proof, because of the impassable barriers thrown around the offender by what are known as the constitutional rights and immunities of a person charged with crime.

Even at the risk of being considered guilty of heresy I question the wisdom of these provisions, which are embodied in the Fourth and Fifth Amendments to the Federal Constitution and of like provisions in the Constitutions of the various States as they have been construed by the courts. In the few States, like New Jersey, which have no provisions in their Constitutions to the effect that in a criminal case no person shall be bound to incriminate himself the courts have held that the right is one inherited from the common law and have accordingly read the provision into the organic law of the State.

The language of the Fourth Amendment so far as applicable to this discussion is:

"The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."

That of the Fifth Amendment is that

"No person shall . . . be compelled in any criminal case to be a witness against himself."

It is hardly necessary to remind you of the history of the oppression that led to the enactment of these amendments, as described by Justice Bradley, in *Boyd vs. United States*, 116 U. S., 624-626:

"In order to ascertain the nature of the proceedings intended by the Fourth Amendment to the Constitution under the terms 'unreasonable searches and seizures,' it is only necessary to recall the contemporary or then recent history of the controversies on the subject, both in this country and in England. The practice had obtained in the colonies of issuing writs of assistance to the revenue officers, empowering them, in their discretion, to search suspected places for smuggled goods, which James Otis pronounced 'the worst instrument of arbitrary power, the most destructive of English liberty and the fundamental principles of law, that ever was found in an English law book;' since they placed 'the liberty of every man in the hands of every petty officer.' This was in February, 1761, in Boston, and the famous debate in which it occurred was perhaps the most prominent event which inaugurated the resistance of the colonies to the oppressions of the mother country. 'Then and there,' said John Adams, 'then and there was the first scene of the first act of opposi-

tion to the arbitrary claims of Great Britain. Then and there the child Independence was born.'

"These things, and the events which took place in England immediately following the argument about writs of assistance in Boston, were fresh in the memories of those who achieved our independence and established our form of government. In the period from 1762, when the *North Briton* was started by John Wilkes, to April, 1766, when the House of Commons passed resolutions condemnatory of general warrants, whether for the seizure of persons or papers, occurred the bitter controversy between the English government and Wilkes, in which the latter appeared as the champion of popular rights, and was, indeed, the pioneer in the contest which resulted in the abolition of some grievous abuses which had gradually crept into the administration of public affairs. Prominent and principal among these was the practice of issuing general warrants by the Secretary of State, for searching private houses for the discovery and seizure of books and papers that might be used to convict their owner of the charge of libel. Certain numbers of the *North Briton*, particularly No. 45, had been very bold in denunciation of the government, and were esteemed heinously libellous. By authority of the secretary's warrant Wilkes's house was searched, and his papers were indiscriminately seized. For this outrage he sued the perpetrators and obtained a verdict of £1000 against Wood, one of the party who made the search, and £4000 against Lord Halifax, the Secretary of State, who issued the warrant.

"The case, however, which will always be celebrated as being the occasion of Lord Camden's memorable discussion of the subject, was that of *Entick vs. Carrington and Three Other King's Messengers*, reported at length in 19 Howell's State Trials, 1029. The action was trespass for entering the plaintiff's dwelling house in November, 1762, and breaking open his desks, boxes, etc., and searching and examining his papers. The jury rendered a special verdict, and the case was twice solemnly argued at the bar. Lord Camden pronounced the judgment of the court in Michaelmas Term, 1765, and the law as expounded by him has been regarded as settled from that time to this, and his great judgment on that occasion is considered as one of the landmarks of English liberty. It was welcomed and applauded by the lovers of liberty in the colonies as well as in the mother country. It is regarded as one of the per-

manent monuments of the British Constitution, and is quoted as such by the English authorities on that subject down to the present time."

Until the decision in 1885 in the Boyd case it was not generally supposed that the provision against unreasonable search and seizure applied to the enforced production of books and papers under subpœna for use in a criminal case, so as to permit a man who was able to secure possession of evidence of this character to thwart the ends of justice. It was, to say the least, a surprise to the legal profession to find that to require obedience to a lawful mandate for the production of such books, was a "search of seizure" and more surprising still to learn that it was an "unreasonable" seizure. But such is the law unless the recent decisions of the court can be said to have modified the rule in the Boyd case.

Yet it is not clear to me that the framers of our Constitution ever meant that the Fourth Amendment should be held to forbid the courts to use the written evidence of a criminal act against the person charged with the commission of the crime, where that evidence can be secured from him through the orderly process of subpœna.

In the last few years the Supreme Court has been face to face with the difficulty of proving crime where the defendant can be permitted to withhold his books and papers from the operation of a subpœna and has found it necessary to "distinguish" the Boyd case so as to mitigate, in so far as possible, the many difficulties to which it gave rise. That great court realizes the necessity, above all things, of certainty in the law and so it rarely overrules its own decisions. But it is a progressive court. Progress is more necessary than consistency, and so it has begun the process of "limiting" and "distinguishing" the Boyd case. The next stage will be to "forget" it. Let us hope so.

I need hardly say that I intend no disrespect to that greatest of the world's judicial tribunals. We should be forever thankful for its vast powers and especially for the power of judicial legislation which it has taken unto itself. The nation owes much of its greatness to the brave exercise of that power at critical times.

As evidence of the departure from the Boyd case permit me to call your attention to *Hale vs. Henkel*, 201 U. S., where the secretary of the American Tobacco Company was subpœnaed to pro-

duce the books of the company which was under investigation for violating the anti-trust law. A person testifying against himself is entitled to immunity under that statute. The Supreme Court held that the secretary could not plead the privilege of the corporation against incriminating itself. Some of the judges were in favor of holding that a corporation was not a person, within the protection of the Constitution so as to get rid of the prohibition once and for all so far as concerned corporations, although that court had previously repeatedly held that under the Fourteenth Amendment a corporation was a person, entitled to the equal protection of the laws with an individual, and some members of the court had said that a corporation was equally within the meaning of the Fourth and Fifth Amendments.

In the case of Al Adams, charged with owning and operating policy shops, the Supreme Court affirmed the action of the lower court in allowing his books to be used against him, although the particular evidence complained of had been forcibly and unlawfully seized, thus literally violating the protection that was clearly intended to be afforded by the Fourth Amendment. The Court held that the violation of the defendant's rights presented no federal question and that in any event it made no difference how the evidence had been secured, so long as it had been made available. So that whilst a man could not be compelled to produce his books in answer to a subpoena in a criminal case against him, they could be forcibly taken from him or stolen from him, and used as evidence.

In the Twining case the court decided that although a defendant on trial for larceny had been compelled to incriminate himself, no federal right had been violated and no federal question was involved, and that it was for the State Court to determine whether its law had been thus violated in that respect.

Within the past few days the U. S. Circuit Court in New York decided in the case of U. S. *vs.* American Sugar Company that the corporation could be forced to produce its books without granting immunity to any one.

These cases are cited as illustrating the lengths to which the court has been driven in order to preserve even a vestige of its machinery to detect and punish crime, with these constitutional provisions in its way.

I submit, but with hesitation—not because of doubt as to the wisdom of the suggestion, but because it will appear like sacrilege to the uncompromising worshippers of our Constitution—that the first and greatest existing evil in the administration of the criminal law, and one that should be corrected, is the undue protection still afforded to persons charged with crime by these provisions of the Constitution and like provisions in the State Constitutions.

We may somewhat mitigate the evil by bold judicial legislation. That is the process we are now undergoing with respect to corporations. But the prosecution of corporations, which can result only in a fine is a farce—we cannot strike at the root of the trouble without amending our Constitution.

But for the fear of being charged with treason against this fetich which all lawyers are expected to worship, I should be tempted to say that the difficulty put in the way of the punishment of crime is not the only disability under which that great Document of Compromises has placed us. When we consider how helpless we are under it to regulate divorce, or to tax wealth (through an income tax), instead of taxing poverty or to secure uniform corporation laws or to prevent the States from bidding against one another for “business” in the laxity of administering divorce and corporation laws, perhaps we may be pardoned for suggesting that great as was the wisdom of our fathers, they did not foresee all the possibilities of the future.

The occasion that gave rise to these clauses in the Fourth and Fifth Amendments can never again arise. These disabilities to punish crime do not pertain in other countries; they are no protection to the innocent, but they are the cause of miscarriage of justice and the escape of the guilty in nine cases out of ten. They lead to all sorts of dishonest expedients by the prosecuting officers and bring the administration of justice into contempt. No device, however unlawful, by which a man's papers can be seized or stolen from him will prevent their use against him, and yet, he himself cannot be forced to produce them. We have sacrificed the substance of the bill of rights and are clinging to the shadow.

It must not be forgotten that the rule that a defendant in a criminal case cannot be compelled to incriminate himself was enacted at a time when the defendant was not allowed to be a witness in his own behalf.

I would not only remove the existing restrictions, but would go further and permit the defendant to be called by the prosecutor for cross-examination, but only in open court and at a time when he is represented by counsel. Subject to the limitation that the presiding judge should not put questions or turn prosecutor, which is the vice of the continental system, I would adopt that system, with the further qualification that there should be no private or "star-chamber" interrogation of the defendant. Nine out of ten crimes go unpunished because of this tradition, which found its birth in the abuses of the Dark Ages.

We have the most striking illustration of the vice of this rule in the pending prosecutions for violation of the anti-trust law. The most flagrant of these violators are practically immune because they cannot be forced to disclose the "gentlemen's agreements" and other forms of unlawful combinations, as the result of which every human soul in the country is daily paying tribute to them. We have the sad spectacle of the courts of the country passing solemn judgments in civil suits enjoining and dissolving these monopolies as the enemies of commerce and decreeing that the leaders and owners of these vast industries are guilty of criminal violation of the law and yet we find the government powerless to enforce the criminal laws against the individuals who gave them birth, who conduct them and are the beneficiaries of their criminal existence. Such exhibitions, repeated day by day, are bound to educate the people to a contempt for the law and to a feeling that it discriminates between the weak and the powerful.

How long could these gigantic pools last, many of which are evidenced by the written admissions of the parties if the culprits could be put upon the witness stand and forced to testify and produce the written evidence of their crimes? If they are innocent, can anybody conceive how they could be harmed?

There are a half-dozen offices in the city of New York of men engaged in the business of acting as so-called "commissioners" of these criminal pools and as expert accountants under whose direction the profits are distributed, that could be made to yield up the written evidence of a hundred or more of these vast conspiracies involving thousands of influential business men who are supposed to be reputable, law-abiding citizens, but who do not scruple to commit this form of crime. The only thing that protects them from the en-

forcement of the law is the construction that has been placed upon these constitutional limitations.

If trusts and monopolies are good things for the country, and the laws that have been enacted to suppress them are mere demagogic class legislation born of the envy of the poor against the rich, as some of our plausible friends in and around Wall Street, living in a "Fool's Paradise," still seem to think, they should be wiped from the statute books. If, on the other hand, these trusts are an economic curse to the country, are destroying opportunity for the rising generation, paralyzing the economic laws of supply and demand, and levying tribute upon us by sheer brute force, more cruel and ruthless than the forced tribute exacted by the robber barons of old, we shall never be able to rid ourselves of this blight so long as there is such a thing as human greed, without the stern application of the criminal law to the men who guide and control them.

For that purpose the entire inquisitorial machinery of justice should be available. Every barrier that has been thrown in the way should be removed, unless it is seen to be necessary for the protection of the innocent against oppression.

The provisions quoted from the Fourth and Fifth Amendments of the Constitution (not the entire amendments), and like provisions in the State Constitutions, constitute to-day the great and only barrier between the people and the execution of their will against these violators of the law.

The second great evil in the administration of the criminal law, and, for that matter, of all laws in our country, is the prevalence of perjury due to the non-enforcement of the laws enacted for its punishment. I think it will be generally admitted that in no civilized country is wilful false swearing so prevalent as here—due largely to the fact that the penalty imposed under the laws of the various states is too severe, and that it is, therefore, a crime rarely punished.

In the State of New York, perjury and subornation of perjury in a criminal case are each punishable by a maximum term of twenty years' imprisonment, and in a civil case by a maximum term of ten years.

It has been said, and I think rightly that the crime of perjury is committed in at least three out of every five cases tried in the courts in which an issue of fact is involved. It has become so

general that the courts regard it almost as a part of the inevitable accompaniment of a trial.

Again, contrasting our conditions in this respect with those prevailing in foreign countries, no fair-minded observer of the administration of justice in those countries will deny that in neither England, Germany nor France is there committed a fraction of the perjury that is prevalent in our courts. In none of those countries is perjury punishable with the severity provided by our law, which renders conviction well-nigh impossible.

The German courts are exceptionally free from this pollution of the judicial system. Most cases in which there is a sharply defined issue of fact that cannot be explained as the result of mistake or honest difference of recollection, are followed by prosecution. The dread of the law is upon every man who goes upon the witness stand there.

Permit me to suggest at least a partial remedy for this ever-increasing danger.

It should be made *obligatory* upon the court on the trial of every issue of fact before a jury to require the jury, in addition to its general verdict, to answer the question as to whether any party or witness has been guilty of wilful false swearing, and if so, to name the party or parties or witnesses so guilty. Where the trial takes place before the court without a jury, the court should be required to answer such a question. If the court or jury (as the case may be) finds that there has been perjury, it should be incumbent upon the prosecuting officer to act upon such finding.

The knowledge of the parties and their witnesses that the jury will be required to answer such a question will in itself be a most powerful deterrent against reckless false-swearing. Unfortunately there are many in the community who have more regard for their reputations than for the sanctity of their oaths and a far greater regard for their liberty than for either.

If the submission of the question be left to the discretion of the court, or its answer be made discretionary with the jury, nothing will be accomplished. It should be mandatory, and a like mandate should apply to the prosecuting officer to place the evidence of perjury in every such case before the grand jury.

The third evil to which I desire to refer is the unbridled license of the press in commenting upon and often trying cases in the

public prints. This is a prolific source of the miscarriage of justice and is most prejudicial to the rights of defendants charged with crime. Its effect upon the administration of justice is baneful and far-reaching:

(a) It creates a sentiment in the community as to the guilt or innocence of the accused, which makes it well-nigh impossible to secure an impartial jury. It may be that jurors can dismiss their preconceived impressions from their minds and be guided solely by the evidence, but that is not the experience of most men. Even if that were true, why should we tolerate a practice that has in it such elements of danger? Strangers to us who do not realize the difficulties under which we labor from the prejudging of cases through the license of the press, have made this part of our judicial system the subject of ridicule, and not without reason. Imagine weeks of time being consumed in securing twelve men whose minds have not been so poisoned by newspaper stories concerning a case in the courts that they are unable impartially to weigh the evidence! It should be impossible to find anything in a newspaper except what transpires in the courtroom until after the conclusion of the trial. Consider also the expense to the state and the additional cost to the accused of these protracted trials brought about by this pernicious practice. In the face of public clamor, which means the goading of the press against the accused, frequently for sensational purposes, justice is rarely done.

If it be said that the courts frequently need that spur to prevent undue influence by powerful criminals, the answer is that it is an illegitimate and dangerous expedient as an aid to justice.

(b) The atmosphere and sentiment thus created around a case are bound to, and do affect not only the jury, but the court as well. A man does not lose his ambitions or human nature by climbing from the bar onto the bench. Most of our public men are known to us only as they are pictured by the newspapers, which make and unmake men. It is well-nigh impossible to exclude entirely the subconscious influence of press comments on the judge as reflecting the views of the community in which he lives, be he ever so upright. He would rather go with the tide than against it, and he, too, is not infrequently already impregnated with the atmosphere of the community gathered from the press.

(c) The prosecutor, who should be impartial, seeking only the

truth and not bent upon conviction unless the facts satisfy him beyond a reasonable doubt, is put to a test that few men in public office are able to resist.

Imagine such a prosecutor, in a case that has attracted general attention due to its sensational features and the efforts of the press to exploit and magnify them, rising in open court at the close of such a case and recommending to the court to acquit the defendant, as it is the duty of a prosecutor to do if he believes that a conviction would be unjust. It is done every day in the criminal courts in cases with which the newspapers do not concern themselves, but it would take a brave man to do so in what is known in the parlance of the criminal courts, as "star" cases.

The abuses that have arisen under this head have become well-nigh intolerable. Prosecuting officers, who are ambitious for further honors, maintain elaborate press bureaus for the distribution of news concerning their offices. The reporters who want to stand well with the prosecuting officer, and get all the news that is to be had, fall into the habit of taking the prosecutor's version. Of late years nothing is sacred. A witness is called before the grand jury, and the testimony given there in important cases manages "to leak out" day by day. The secrecy of the grand jury room is a thing of the past. The law against disclosing occurrences there is a dead letter. The prosecuting attorney is generally the chief offender and frequently the only one. The main concern of a modern prosecutor in one of the great cities of this country seems to have become to keep himself before the public, which he does by seeing to it that the public is informed of everything that happens in his office from his own point of view. I do not mean to assert that this shocking condition is universal, but it is not uncommon and is growing more frequent.

Three poor, helpless, old women are about to be tried in one of our sister states on a charge of murder. The issue for the jury is whether the deceased was murdered or committed suicide. From the day that case came into the office of the prosecutor, and for weeks thereafter, so long as public interest could be aroused or sustained, whilst these poor women were under lock and key, the prosecutor was day by day issuing or inspiring statements in the press in the community in which they are to be tried, tending to show or arguing that they were guilty, and presenting such proofs and innu-

does as he had at hand to support these *ex parte* arguments. All this was on the eve of the assembling of a grand jury to consider the case.

The grand jury, of course, promptly indicted these poor women and now they will have to be tried in a community in which public sentiment has been crystallized against them through the energies of the press, ably seconded by the prosecutor. These women are not being tried. They are being hounded. It is little better than mob law, and in some respects not quite so fair, for it is masquerading under the forms of law.

The following are suggested as remedies for this condition:

1. The enactment of laws, similar to those prevailing in England, prohibiting a newspaper from publishing anything concerning a case that is in the courts other than a *verbatim* report of the proceedings in open court.

2. Prohibiting any newspaper from commenting, either editorially or otherwise, upon the evidence in judicial proceedings until after final judgment.

3. Prohibiting any prosecuting officer, under penalty of removal and punishment for a misdemeanor, from expressing or suggesting for publication an opinion as to the guilt or innocence of a person accused, or from disclosing any of the proceedings of a grand jury, or from publishing or being privy to the publication of any evidence in his possession bearing on any case under his control. If an assistant or other person in his office is guilty of any of the acts charged it should be ground for the removal of the prosecutor and the punishment of the assistant, or any other person connected with the office, so offending.

When we consider the far-reaching effect of these press campaigns against persons under criminal charges, such regulations should be regarded as very mild compared with the evils that are sought to be remedied. The expense to which the state is put in securing impartial jurors is alone more than sufficient to justify these reasonable precautions.

The next evil, but to my mind not the greatest by far, but the one that has received most attention from the public and those in authority, relates to the law's delays.

Some of the remedies that have been suggested seem to me far worse than the disease. Chief among them, and the one that

appears most generally to be favored, is that of restricting the right of appeal in criminal cases. At a time when other nations are granting and enlarging this right we are considering abridging it.

There should be the most generous right of appeal in criminal cases—far more liberal than when we are dealing with mere questions of money. And yet the supporters of this change would be shocked at the suggestion that there be no appeals allowed in civil cases. How much greater the need where the liberty and reputation, not only of the man, but of all those about him, are involved?

Nor is there force in the plausible, but unsound, suggestion that no judgment in a criminal case shall be reversed except for errors that can be affirmatively shown to have materially prejudiced the defendant on the merits of the charge, and that all so-called "technical" errors are to be disregarded.

If a mistake of law committed during the trial is not too technical and trifling to be overlooked and is such that it is regarded by the law as error, it must be because the rule that has been violated in the commission of it is considered in the light of human experience as essential, or at least material to the protection of the rights of one of the parties. If such a rule has been violated the defendant has not been fairly tried and there should be no latitude about allowing such a judgment to stand.

One of the worst abuses of the present system is not the delay in executing the judgment, but the undue and indecent haste in requiring a defendant to undergo the sentence whilst his appeal is pending. We have constant object lessons in the brutality of the law in that respect in the cases of those who have undergone all or most of their terms of punishment, to find that the judgment under which they were disgraced and imprisoned was without lawful authority.

It sometimes happens, as in a comparatively recent case in New York, involving an official of a life insurance company that the appellate court decides as matter of law that no offense whatever was committed after the man has served nearly the entire term for which he was sentenced. The cases of this kind are not infrequent. Is not that paying too great a penalty for certainty of punishment?

Both these evils—that of delay and unjust punishment—can and should be prevented by

1. Allowing a stay of sentence as a matter of right and not of discretion, until the defendant has exhausted every remedy by appeal that the law permits.

2. Providing that unless the appeal is moved by the appellant for hearing within a given number of days after judgment has been pronounced the stay of sentence is automatically vacated.

3. The printing of the papers or record on the appeal should be under the control of the court through its clerk. It will then rest entirely with the court to regulate the time when the appeal is to be argued. The parties will no longer control that subject as they do now in many of our states. This change will do away with a most prolific cause of the existing delays. There is no reason why there should be a delay of more than from two to four months between the sentence and the determination of the appeal.

4. Where the defendant makes proof satisfactory to the court that he is unable to pay the expenses of the appeal the state should pay them. The right and opportunity of the fullest defense should not depend on the ability of a man to pay. It is not in the interest of the state to convict where there is doubt. It is in its interest to give to every man the fullest opportunity to establish his innocence.

This brings me to the next suggestion I have to offer which is that there should be an office established as part of the machinery of the criminal law, to be known as that of the public defender.

Unjust convictions among the poor and helpless, and especially among our ignorant foreign population, are far more frequent than we fortunates care to admit. This is especially true in the great cities where the courts are crowded with business, the pressure is great and justice is necessarily hurriedly administered in obscure cases.

The most prolific abuses occur in what are known as "assigned" causes, in which the defendants and their families and friends are too poor to furnish bail or employ counsel. In those cases the court assigns counsel, who serve without pay, except that in some states a moderate fee is allowed in capital cases only. The counsel assigned in these cases are with rare exceptions almost necessarily young and inexperienced men or lawyers without standing or ability.

Yet these are the cases above all others in which the defendants are already at the greatest disadvantage, being incarcerated, unable to go about to look up witnesses and too poor to employ any one

to do so for them. If they are first offenders of previous good reputation, as they generally are, for experience has shown that professional criminals are generally able to secure counsel, their prison experience has taken the courage out of them by the time they are placed on trial.

They come to the bar of justice crushed in spirit, and if innocent, in mortal terror of the law and resigned to any fate. Their assigned counsel, whose retained clients are his chief concern, easily convinces himself that he has done his duty to his pauper client if the prosecutor will accept a plea of guilty to a lesser form of crime or be content to recommend a moderate sentence. So before the poor fellow knows what has happened to him he has consented on less notice and in less time than it requires to tell the story, to take the advice hurriedly given him as he stands quivering at the bar and he finds himself on the way to prison. There is hardly a day in the year when this scene is not enacted in the courts of our great cities. That such a system results in innocent men being branded and punished as criminals admits of no doubt. That the number of such crimes against justice and humanity is very much underestimated is beyond question to any one who has observed the system in operation. The judges do what they can to minimize the evil, but from the nature of the case they must rely on counsel.

What, then, is the remedy?

The state has its public prosecutor. Why not its public defender to care for those who are unable to defend themselves? It is quite as much to the interest of the state to rescue the innocent as to punish the guilty. There is no danger of the privilege being abused. Every man who can afford to defend himself will exhaust every resource to select a champion of his own choice. The most helpless and unfortunate of all our citizens should not be forced to go virtually undefended.

Nowhere in our social fabric is the discrimination between the rich and poor so emphasized to the average citizen as at the bar of justice. Nowhere should it be less. In an ideal state of government the lines would be made to disappear here of all places. Money secures the ablest and most adroit counsel, whose characters and reputations are powerful factors in their client's cause. Evidence can be gathered from every source, and all the legitimate expedients of the law availed of. The poor must be content to forego all these

advantages, but surely the state should not take an unfair advantage of their helplessness.

With experienced counsel, and the entire organized machinery of the criminal law at its command, it should not seek to disarm him completely, thus accentuating the power of money in the struggle for liberty between the state and its citizens.

It is with sincere regret and reluctance that I assert that save in rare instances the modern prosecutor does not stand between the people and the accused. He and his assistants too often measure the success of their labors by the number of convictions they have secured. It is a false and brutal conception of duty that is responsible for grave injustice, but it is none the less true that it exists. Under its influence the prosecutor becomes a partisan advocate, blind to the strength of the defense, unwilling voluntarily to expose the weakness of the people's case.

The people are as deeply interested in proving the innocence of the accused where he is unable to defend himself as to prove his guilt. By all means let us have a public defender in the interest of fair play and common humanity.

Many more instances of evils that may be reformed could be cited if time permitted. I have not attempted to deal with the minor abuses that weigh so heavily upon the poor who come into contact with our magistrates' courts, nor with the ever-perplexing question of the relative merits of an elective or appointive judiciary, nor with a host of other problems that present themselves.

That there are such problems pressing for solution cannot be denied. In every other branch of human endeavor we are forging ahead. Why should we stand still, clinging to tradition in the field of usefulness most important of all in a progressive civilization?

TO WHAT EXTENT SHOULD INSANE PERSONS BE AMENABLE TO CRIMINAL LAW?

BY JOHN BROOKS LEAVITT, Esq.,

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Of all the theological concepts which, after misleading mankind for centuries, are in our day being relegated to the lumber-room of the obsolete, none has been more potent in influencing the thinkings and doings of men than the notion of a physical hell, ruled by a personified principle of evil.

I call this a theological concept, for that the devil is not once mentioned by name in the Old Testament, and there are in it no passages which can be tortured into an affirmation of his existence, except through those strained interpretations, in the art of which the theologians are such adepts. As we read history, whether sacred or profane, we wonder whether it is not they, the zealous friends of religion, who are, after all, its worst enemies? There is a pathetic passage in one of the minor prophets, which is usually taken as a prophecy of Christ, and if so, may fairly be construed as a forecast of the way in which He would be treated in His Church: "And one shall say, what are these wounds in thine hands? And He shall answer these are the wounds with which I was wounded in the house of my friends." The conceit of a personal devil luring men to his terrible domain for their eternal misery is the foundation of much of the theology which has been grafted upon His gospel. It is but natural that it should have been the basis of a system of penology, which was formed and developed under its influence. Starting thus, what could be more logical than the proposition that the insane man is an unfortunate being who is possessed of a demon acting under the command of the Prince of Darkness, and who is forced by this demon to say and do things from which he would shrink in horror if he were in his right mind? What more reasonable than the deduction that an insane man can not have any intent? But without intent to do evil, how can one be guilty of crime? Hence the sapient conclusion of the law, that if a person upon trial of an

indictment for crime is found to have been insane at the time of the commission of the act, he must be acquitted.

The state, having thus provided this avenue of escape, the lawyers and the doctors have been astute to devise a plan by which evildoers could travel over it. The theory of temporary insanity, its latest development being called *brainstorm*, was invented. All the odd things or foolish things which the accused has done in his lifetime—and who can truly say that he has always spoken or acted wisely?—are gathered together and framed into an hypothetical question by some shrewd mind skilled in the art of perversion. Then experts are sought, who, in consideration of so much cash, are willing to testify that, in their opinion, the person who said or did such things was insane. The amount of cash to the expert is in inverse ratio to the amount of insanity in the offender. It is a remarkable instance of Providence tempering the wind to the shorn lamb, that the poor do not seem to be subject to *brainstorms*. Their insanity is of a kind which costs little to prove. The *brainstorm* brand is only for the rich. It is so devilish in its cleverness that it goes far to upset the proposition that there is no such person as the devil. As legal fictions have been invented by lawyers, so the doctors have created a medical fiction to enable wealthy criminals to cheat the law. There is now living a certain rich man, who in early life committed a murder, escaped the penalty of his crime by aid of a medical fiction of insanity and afterward disproved the truth of his expert's opinion by a successful career in two distinct lines of professional endeavor.

There is now living another, who was guilty of a foul and cowardly murder in a public resort, who was acquitted on the ground of insanity, was sent to an insane asylum, and at this moment is planning for his release by reason of a regained sanity. It would indeed be a sad fate for an unfortunate prodigal son, who while possessed of the devil, had been so unlucky as to kill some hated person, to lose his life as a forfeit, or be incarcerated in an insane asylum. The *brainstorm* theory is equal to the necessities of the case. Evidence of past insanity frees the accused from jail, and evidence of present sanity frees him from the asylum.

It is an instance where in avoiding Scylla one need not fall on Charybdis. Another advantage for the *brainstorm* theory is, that the same experts can be used twice, making it a little cheaper than it

would be if a new set were required on the habeas corpus proceedings. I take it that it is thoroughly understood in every community how the plot is worked. Where there is an acquittal on the ground of insanity, the prisoner must be committed to an insane asylum. But he must have been sane enough to be tried, otherwise his trial would have had to be postponed. Now, if he were insane at the time of the offense and had become sane enough to be tried, it is evident that his insanity was temporary in its nature. Storms, whether of wind or brain, are usually temporary. An innocent man, who is sane, has a right to his freedom. The acquittal by the jury on whatever ground is conclusive evidence of his innocence. Where a man is detained in any place against his will, he has a right to a writ of habeas corpus, under which the person detaining him must produce him in court and show what authority there is for the detention. There are but three kinds of legal detention known to our law, one under a commitment for trial, a second by virtue of a sentence by a court of justice, the other through a committal as insane. A prisoner under sentence has no right to a writ of habeas corpus, except to inquire into the jurisdiction of the court to impose the sentence. Thus it follows that when an accused is acquitted on the plea of insanity and is committed to an asylum, he can get out of the latter, provided he can produce evidence that he has become sane. The brainstorm theory is the dodge that enables him to do it with the same set of experts. The astute counsel of a thrifty murderer would bargain with the experts for both jobs in advance. The conversation would run somewhat in this tenor, though perhaps not quite so bald in words: "Dr. Blank, here are all the odd and queer doings and sayings of this misguided man, with which I have been furnished by himself or sympathetic relatives. I am informed that they can be sustained by proof. Please whip them up into an hypothetical question and then inform me on the following points, (1) what would your answer on the witness stand be to that hypothetical question; (2) in case the prisoner should be acquitted on the ground of insanity, would your answer preclude you from testifying as to his regained sanity; (3) what will be your total charge for your three answers; namely, your answer to me now, your repetition of it at his trial, and your answer the other way on subsequent habeas corpus proceedings?" How many doctors

can resist such a temptation as that? A negative opinion means no cash, or very little, an affirmative, thousands of dollars.

Now suppose that by a simple enactment the law is changed so that the jury instead of finding a verdict of "not guilty by reason of insanity," return "guilty, but insane." Then suppose that it is further enacted that whenever upon the trial of a person accused of a crime the verdict is returned, "guilty, but insane," such person shall be sentenced to serve the same term in an insane asylum as he would have to serve in jail, but for the finding of insanity; and in cases where death is the penalty for an offense by a sane man, imprisonment for life to be the term for the insane criminal.

It is obvious that much scandal in the administration of criminal justice would be plucked up by the roots. The question therefore arises whether in the proper development of our system of penology, the defense of insanity should not be abolished.

It is in such a forum as this that such a question should be thoroughly discussed. It is no light thing to overturn the precedents of centuries. In doing away with the scandals which I have mentioned, we should proceed carefully, thoughtfully and with deliberation, should weigh every consideration for and against. In any attempt to bring criminals within the grasp of the law, we should be mindful not to do injustice to the innocent. Thus we are brought face to face with the question, is a man who has done a deed of violence innocent because he is insane? To answer that question rightly, we must answer many others. Some of them I shall attempt to do.

First, what is the basis for the right of the state to inflict the penalty of death for the infraction of a law of the state? In the times when the Church had an authority, which science has in our day so greatly shaken, it was sufficient to quote the words of Holy Writ, "Whoso sheddeth man's blood, by man shall his blood be shed." We are beginning to see that this was more by way of prophecy than command.

It is not supposed that argument is necessary in support of the proposition, that the only ground for the right of society to punish the individual for an evil deed is its own protection. Those of us, who still hold to a theology unchanged by modern science, need but to be reminded that the Divine Teacher laid down the principle, "Judge not that ye be not judged." It is only the Supreme Searcher

of Hearts who can impartially judge and justly sentence evil doing by reason of an inferred evil intent. Society cannot do it. The problems as to motives lie too far below the surface to be reached by any human plummet. On the other hand, those of us, who accept the teachings of modern science and have revised our theological dogmas in its light, or perhaps thrown them overboard altogether, will endorse the proposition as an axiom.

Now, if the right of society to punish is based on and measured by its right to protect itself, the solution of the problem in hand is not far to seek. The insane man is just as dangerous to the community as the sane. In fact, he is more so, for the sane man is to some extent open to the restraints of law, or at least of prudence. The insane man is believed to be under no such restraint, although it might be noted that experience at the insane asylums would seem to show that the insane man is restrained by fear of punishment, as well as the sane. We bind over to keep the peace and can imprison, if need be, the sane man who threatens violence, which he may never do. We acquit as innocent an insane man, who has actually done a deed of violence. Was ever a more horrible mockery? The man who has already demonstrated that he is a menace to society is, on the opinion of an expert that he is not likely to misbehave again, allowed to go free. Whereas, a man whose violent words have never actually ripened into deeds can be laid by the heels.

Second, What is insanity?

Is it true that the insane man is possessed of a demon, who controls him against his will? We need not spend time on this. We may content ourselves with quoting the latest definition of insanity as found in the Century Dictionary, "a seriously impaired condition of the mental functions, involving the intellect, emotions or will, or one or more of these faculties, exclusive of temporary states produced by and accompanying acute intoxications or acute febrile diseases."

To my mind that is a very unsatisfactory definition. I would define it as that state of a man's intellectual faculties, when he chooses the wrong major premise, as the reason for his conduct. Common sense is the ability to select on the instant the right major premise as the basis for action. Insanity is simply the absence of common

sense. The doctors are entirely right, in my humble judgment, when they say that all men are more or less insane.

In this discussion, we are concerned only with that form of insanity which results in acts, against which society must protect itself.

Third, What are the reasons which are urged against the abolition of the defense of insanity?

I can think of only two, (*a*) the suggestion that it would be unconstitutional, (*b*) pity for the unfortunate and his family. Let us examine each.

There is absolutely nothing in the objection that it would be unconstitutional to do away with the defense of insanity as an answer to an accusation for crime. The insane man has no constitutional right to kill. The insane man is not known to the constitution. He gets his defense by an enactment of the legislature, and the power which gives can take away. Take for example the law of New York. Its statute passed about ninety years ago—a re-enactment of the common law it must be admitted—provides, "No act done by a person in a state of insanity may be punished as an offense, and no insane person can be tried, sentenced to any punishment, or punished for any crime or offense, while he continues in that state." That is still the law, phrased in its penal code, more verbosely, but in effect the same (Section 20). It could be constitutionally replaced by a section equally short and pithy: "Insanity or other mental deficiency shall no longer be a defense against a charge of crime; nor shall it prevent a trial of the accused unless his mental condition is such as to satisfy the court upon its own inquiry that he is unable, by reason thereof, to make proper preparation for his defense." Provide, that if at the time the jury renders the verdict the court has reason to believe that at the time of the commission of the crime the prisoner was insane or afflicted with any mental deficiency, it may then defer sentence and cause an inquiry to be made, and if, as the result of that inquiry the prisoner is found to have been sane, the court shall then sentence him to be hanged, or electrocuted or imprisoned in a jail, as the case requires; and if insane, the court shall then sentence him to be confined in the proper state asylum during his life or for a term of years, as the case requires.

The objection of pity for the unfortunate and his family can-

not be so readily answered. Over the door of sentiment too often is found the superscription, "He who enters here must leave all reason behind." Pity for the family is indeed a negligible thing, for there is no difference in the quality of the stigma placed on a man's family between a verdict, "Not guilty by reason of insanity" and one, "Guilty, but insane."

The feeling of pity for the unfortunate himself, who, when not in his right mind has done a deed, from which in possession of his faculties, he would shrink with horror, ought not as a matter of cold reason, to prevent such a change of the law. The protection of society is much more important than pity for the individual. Sympathy for his misfortune can take the direction of alleviating his condition while in a place of confinement. If once it is generally understood that this is a question which should be decided by reason, and not by sentiment, the battle in favor of the change will be all but won.

Lastly, I am not advocating anything new. It has been the law of England for years, that in cases of insane persons juries may render the verdict "Guilty, but insane." As we inherited from England the defense of insanity, we will do well to follow her example by its abolishment.

As the English Act is short it may be interesting to give it in full. It is Chapter 38, of the laws of 1883.

"SECTION 1: This Act may be cited as the Trial of Lunatics Act, 1883.

"SEC. 2. (1) Where in any indictment or information any act or omission is charged against any person as an offence, and it is given in evidence on the trial of such person for that offence, that he was insane, so as not to be responsible according to law for his actions at the time when the act was done or omission made, then if it appears to the jury before whom such person is tried that he did the act or made the omission charged, but was insane as aforesaid, at the time when he did or made the same, the jury shall return a special verdict to the effect that the accused was guilty of the act or omission charged against him, but was insane, as aforesaid, at the time when he did the act or made the omission.

"(2) Where such special verdict is found, the Court shall order the accused to be kept in custody as a criminal lunatic in such place and in such manner as the Court shall direct until her Majesty's

pleasure shall be known; and it shall be lawful for her Majesty thereupon, and from time to time to give such order for the safe custody of the said person during pleasure in such place and in such manner as to her Majesty may seem fit." See also the Criminal Lunatics' Act, 1884 (chap. 64).

In order to follow this precedent in this country we should need in each state an act couched along the following lines:

First: Repealing the statute which provides that insanity shall be a defense to an indictment for crime; and, secondly, providing in its place the following:

If upon the trial of any person accused of any offence it appears to the jury upon evidence that such person did the act charged, but was at the time insane, so as not to be responsible for his actions, the jury shall return a special verdict, "guilty, but insane," and thereupon the court shall sentence such person to confinement in a state asylum for the criminal insane for such term as he would have had to serve in prison, but for the finding of insanity. And, if upon the expiration of such term it shall appear to the court that such person is still insane, his confinement in such asylum shall continue during his insanity. And further, when such a verdict of "guilty, but insane" is returned in a case where the penalty for the verdict of guilty against a sane person is death, such sentence for the insane person thus found guilty shall be for life.

It is supposed that the pardoning power vested in a Governor or Pardoning Board would apply to such an insane criminal, but if not, then in deference to sentimental considerations it might be well to provide that the Governor or Pardoning Board shall have special power to pardon an insane criminal thus confined.

ADMINISTRATION OF CRIMINAL LAW IN THE INFERIOR COURTS

BY HON. JULIUS M. MAYER,

Former Justice of the Court of Special Sessions of New York City, and
former Attorney-General of the State of New York.

My purpose is to endeavor to direct your attention to the well-known fact that more people are convicted in their relation with the criminal law, in the so-called inferior courts than in the superior courts, and therefore, that the state has a very large interest in the proper administration of these courts, not alone from the moral, but also from the economic aspect. This very week a commission, appointed in the State of New York to inquire into the conditions of these courts in what we call our cities of the first class, viz., New York, Buffalo and Rochester, has made its report. As I have been connected in an official capacity with that commission, much that I shall say will be based upon actual observation.

In the city of New York alone, the records show that in 1908, in that part known as the old city, or the Boroughs of Manhattan and Bronx, 175,000 persons were arraigned in what we call the magistrates' courts, and in the remaining three boroughs of the city, some 65,000 persons, thus making a total in round numbers of 240,000 people, not to speak of those who come into these courts through an informal method known as the summons, which is in the nature of an invitation from the judge who desires to inquire into some matter. Those who come in obedience to the summons are estimated to be somewhere in the neighborhood of 100,000 people. So that you have between 250,000 and 350,000 people brought into these so-called minor courts, and, doubtless, statistics of the courts of the country would rise to figures that would be at once interesting and appalling.

Now, of this large number that I have referred to, by far the great majority are charged with only comparatively petty offenses, and out of the 175,000 to whom I referred, 122,000 were charged only with offenses of one kind or another so comparatively minor in character that the police justices, or magistrates, as we call them

in New York, had complete and final jurisdiction over their cases, the remainder being held for trial in the higher courts for more serious offenses. So that the point I am calling to your attention at the outset is, that when you are dealing with thousands and thousands of people, it is perhaps more important that the administration of justice of those courts by those judges should be sound, and more advanced than even in the higher courts.

Now, the difficulty about the so-called inferior court is, that it usually receives the least attention at the hands of the state. You go to any great city abroad and you usually find a genuine temple of justice erected for the purpose of holding courts, but go into a police court in the great cities of this country and you are at once repelled by the bad arrangement of the court room, by the noise and confusion, and usually by the lack of dignity. The states (meaning thereby the government) seem to think, ordinarily, that the last place that should have serious attention is the court room where the great majority of the people must go, and the scene in many police courts is not that of a deliberate and careful investigation, but that of a jail delivery to get rid of everybody as soon as possible, either by discharge or commitment, and be done with. It is, however, in these courts that great numbers of our population gain their impressions of American justice. There ought to be not only the best physical surroundings, but the most careful deliberation on the part of those charged with the administration of justice.

That leads me to the first thing that I happen to think of, the haphazard disposition by many men in these positions and the lack of systematic study of the problems before them. Take the two great evils which I shall not attempt now to discuss scientifically, the evils—drunkenness and vagrancy, and within the classification of vagrancy, include not merely the drunkard or the man who does not support himself, but also those who live in vile ways. I venture to say that in the great number of inferior courts of the country, the ordinary disposition is to ask the police officer whether the man was drunk, and if so, fine him and have done with it; or, in case of a vagrant, ask whether the man has no friends nor family, and if so, send him to the local jail, workhouse or penitentiary. That is not going to benefit the people. The problem of the inferior courts must be aided by the establishment of something in the nature of

farm colonies for paupers and beggars, where each one shall be compelled to work for the benefit of the state, and not to return as they do to New York, in the winter time, and say to the magistrate "I would like to be committed for three months," and have the magistrate pleasantly commit the gentleman.

There is lack of thought upon that proposition, with the result that there is a great burden of taxation visited upon citizens of every great community, because these problems are not worked out either scientifically or in a common sense way.

Similarly, the problem of drunkenness must be handled along more advanced lines before we can obtain satisfactory results. Now, one of the methods of handling these cases where there is any effort at all to apply it, is that known as probation, which has no doubt been discussed at your meetings within the last day or two. The magistrates of New York have applied the probation system to cases of drunkenness and cases of husbands who have failed to support their wives. Instead of putting these men in jail, where they necessarily continue to be a burden, the effort has been to make them "work out their salvation" and gain their freedom from the court and its judge by conducting themselves properly; and the actual result of successful probation is to make a man support his family, and thereby to relieve the community of the support, both of his family and himself. Therefore, I would say that the system should be applied generally throughout the country.

The commission to which I have just referred has made a recommendation which I imagine is new, and it is along the line of separating, so far as may be, the innocent or the young from the more hardened and the adult, and, therefore, a departure has been recommended, and I believe will shortly be adopted by the legislature—a departure in the cases which, for want of a better name, we may call cases of domestic relations. The laws vary in the different states, but ordinarily a woman goes into a police court, and there she usually asks that an order be made that her husband shall support her. Often she brings her children with her because there is no one in whose care she can leave them. She should not be compelled to be at the police court at the same time with the criminals and the derelicts. Therefore, the commission already referred to, has recommended that for the hearing of such cases, and all cases where the law places an obligation to support an aged or infirm relative,

there shall be held a separate court or part of the court, entirely disassociated from the ordinary criminal routine.

Another point which is obvious should be emphasized all over the country by those interested in the subject. Long ago the principle was established that men and women waiting to be heard in criminal courts should be separated; that they should be kept in detention places, whatever they might be, jail, pens, etc., in different places, and yet it is remarkable how carelessly that is observed; and there should be in every state a statute sufficiently stringent to impose an affirmative duty upon every public officer whose duty it is to be in the position of a detainer, to see, first, that men and women should be absolutely separate; and, secondly, that when a young man or young woman is brought to the court, so far as practicable, and so far as the physical situation will permit, they should be kept completely away from the older and hardened offenders.

Now, there is another thing to which I want to call your attention. It has to do, perhaps, not so much with the court itself as to that which leads people to the court. In this country we arrest entirely too many people, and arrest them for too many petty and foolish things. I do not know how it is with you—I assume it is the same here in Philadelphia as it is in New York—but I have no doubt no one of these distinguished auditors on the platform can walk abroad unless he violates some ordinance prescribed by somebody. Now, the result of it is that throughout the country the police—no fault of theirs in performing their duties—are charged with the duty of making a great number of arrests for offenses in cases in which, on the Continent and in England, no arrests would be tolerated for a moment. In New York, according to the statistics of 1908, almost 52,000 people out of the total to which I called your attention, were arrested for the violation of what we call ordinances, that is to say, local regulations enacted by our board of aldermen, and proper regulations relating to health and safety of the community. Of the 52,000, not quite 5,000 people were arrested for the violation of our automobile law. So that, to be more nearly accurate, there were 47,000 people arrested. But why should that be? Why should a man charged with the violation of a regulative ordinance be taken through the streets if he can be satisfactorily identified. In line with what I have just stated, a recommendation has been made, which I hope will be followed and which I would like to see everywhere in this

country, charging the local police authorities with the duty of making appropriate rules and regulations, for a system of identification. These rules, it is hoped, will avoid the possibility of abuse or corruption, and are to provide that any person, by conforming to those rules,—whether in the nature of a card of identification or otherwise—may be summoned to court by the police officer, as is done on the Continent instead of being arrested forthwith; and the result of such a system will be that a very much less number of persons will be arrested than are now. There are many things I would say to you if I had the time, but there are perhaps just two more to which I shall call your attention.

One is that there should be an absolute prohibition by law, preventing any person who is acting in the capacity of a magistrate of one of these inferior courts from occupying an executive position in any political organization. Activity in political affairs may not necessarily indicate a failure on the part of the judge properly to perform his duty, but even if it does not, the people who come into his court, into this minor court, must under no circumstances believe that anything prevails in his court by way of purchase or influence, and that the only thing that does prevail is the application of the law the same to him as to the man who is next to be arraigned.

Now, the Governor tells me that there are twenty-eight or twenty-nine courts of magistrates here. In the City of New York, outside of one branch of our court, we have now thirty-two. We will shortly have two more. The more or less haphazard administration, is due, in a great measure, to the lack of system. No one will take from the judge the absolute right to adjudicate the case before him in accordance with his conscience and best judgment, and no one would deprive the judge of the exercise of his judgment in individual cases, but it is a mistake to have these courts less systematic and orderly than the higher courts are required to be.

It seems to me in those communities where there are many magistrates and many courts, there ought to be a central head or chief judge, who should be personally chargeable with the supervision of the administrative features of the courts, to investigate the manner in which the clerks and other employees of the court perform their duties, because the clerks and other employees are the ones who come in direct contact with the people.

There is very much more I would like to say to you, but I realize that it is getting late, and I can only say that I sincerely hope that there will develop in this country a growing interest in these courts, for, trite as the expression may be, these are the courts of last resort to most of our citizens, and certainly in great cosmopolitan communities like New York, at least, those who come here from other shores as well as those who have lived here for many years, know no other standard of American justice except what they find there, and for that reason no subject should command, on the part of all good people, a keener interest or more profound attention.

THE JURY SYSTEM—DEFECTS AND PROPOSED REMEDIES

BY ARTHUR C. TRAIN, ESQ.,

Former Assistant District Attorney of New York City.

Unlike Mark Antony, if we are to accept the official reports of his speech over the dead body of Cæsar, I come to praise and not to bury our most famous national institution. It has of recent years become popular to pronounce the jury system a failure—a farce—a gamble—a joke. The old negro's description of a court as "a place where they dispenses with justice" is generally accepted as accurate. We hear much more about lawless, conscienceless and foolish juries than about lawless, conscienceless and foolish fathers and brothers, uncles and cousins, bakers, butchers and plumbers—as if a collection of heterogeneous frail humanity should necessarily prove stronger and more intelligent than its component parts. Of recent years everybody has taken a turn at giving the dog a bad name. My remarks are by way of protest.

I was asked to speak upon the jury system and the various proposed remedies for its defects. But its chief defect can only be cured by its entire abolition—the defect of humanity. For of all earthly institutions the jury is the most human—twelve times as human as a single judge—and created for that very reason. If you consider the matter impartially the wonder is not that the jury system is not better, but that it is not worse. How can that extraordinary conglomerate of ignorance, sentiment, prejudice, insanity and anarchy known as the jury be productive of justice? How can the Irishman administer justice to the negro, the Christian to the Jew, the Republican to the Democrat? How can any good thing come out of that sort of a Nazareth? Frankly speaking, how many of you would really care to be judged by any twelve of your own immediate friends? You would be sure to remember that this one had too hot a temper, that one ineradicable bias, that another, was eccentric, that a fourth had an uncle in an insane asylum, and that the rest were a little queer anyway. Yet how vastly preferable they would seem to any jury of your peers which would be drawn

out of the wheel by a clerk of sessions! Still you would probably get justice. I once had a jury composed of four saloon keepers, three delicatessen men, a junk dealer, an impressionist artist, one cab driver, one grave digger and a lecturer on the Holy Land—and it was one of the best juries I ever had. It is stated on good authority that Recorder Smyth, of New York, once said that he had never known a jury over which he was presiding in a criminal case to return a wrong verdict. That is high praise for a system popularly described as a broken-down failure. Why should a jumble of unintelligent Americans of foreign birth, most of them of a rather low personal standard of business morality, render impartial and honest verdicts from a jury box? I answer, for the same reason that the common people of this country have never yet failed to respond to any appeal based on morality or justice. Because with all our failings this nation is essentially a moral nation with high ideals of honor and public duty—often, I regret to say, better exemplified in the humble service of the jurymen than in our legislatures and municipal office holders.

Now, inasmuch as the chief defects of the jury system are inherent in its very nature, it is well to have in mind the purposes for which it was devised. We should remember that the jury was instituted and designed to protect the English freeman from tyranny upon the part of the crown. Judges were, and sometimes still are, the creatures of a ruler or unduly subject to his influence. And that ruler neither was nor is always the head of the nation; but just as in the days of the Normans, he might have been a powerful earl whose influence could make or unmake a judge, so to-day he may be none the less a ruler, if he exists in the person of a political boss who has created the judge before whom his political enemy is to be tried. I have seen more than one judge openly striving to influence a jury to convict or acquit a prisoner at the dictation of such a boss, who, not content to issue his commands from behind the arras, came to the court room and ascended the bench to see that they were obeyed. Usually, the jury indignantly resented such interference and administered a well-merited rebuke by acting directly contrary to the clearly indicated wishes of the judge. Wealth and influence are no less powerful to-day than they were in the days of the barons, and our liberties no less precious. It is frequently said that there is no longer any danger that an innocent man will be convicted, but

that the difficulty now is to prevent the acquittal of the guilty. This is, broadly speaking, true. But a system which would permit the conviction of an innocent man in a civilized country would be intolerable. Yet, without a jury such might easily be the case in any city of the United States.

Imagine the shock to our sense of justice, if Joseph Pulitzer, the proprietor of the *New York World*, could have been extradited to Washington during the last administration and, before a criminal judge, appointed by the Executive, and in the shadow of the White House, tried for a libel upon the President's brother-in-law without a jury. It was to protect themselves against such possibilities that the barons forced King John to acknowledge the right to local courts and jury trial as set forth in Magna Charta. "Common pleas shall not follow the King's court, but be held in some certain places."

"This writ called Præcipe shall not in future be issued, so as to cause a freeman to lose his court."

"No freeman shall be taken, imprisoned or disseised or outlawed, or exiled, or anyways destroyed; nor will we go upon him, nor will we send upon him, unless by the lawful judgment of his peers, or by the law of the land."

It was precisely this to which the colonists objected in the Declaration of Independence,—“for transporting us beyond seas to be tried for pretended offenses.” And this right has finally been crystallized in our Constitution as follows: “The trial of all crimes except in cases of impeachment shall be by jury, and such trials shall be held in the state where the said crimes shall have been committed.”

The time has not yet come in the United States when our liberties would be safe without the jury.

It is inconceivable that an institution so interwoven with our ideas of popular government should be displaced. Even if there were substituted for it some more accurate method of administering the law in criminal cases, it might well be that what we gained in efficiency we should more than lose in the illustration of the principles of republican government.

The Question of Defects and Proposed Remedies

Just why there should be so much criticism of the jury I have never been able to understand. Assuming that the system is an

essential element in our form of government, is the jury any less successful than any other of its branches? You do not hear any tirades against the defects of presidents, governors, legislatures or police captains *as a class* or as a feature of our government. They are accepted as necessary evils. There are no societies for the improvement of mayors of cities or the training and discipline of United States senators. We take them as they are, simply because we know that they are human, like the rest of us. Is the justice administered by our juries less admirable than that of chief executives or of local judges or police magistrates? Probably not.

That brings us to the consideration of just what kind of justice is administered by the jury. My opinion, after trying several thousand criminal cases before between 8,000 and 10,000 jurymen, is that the system is in excellent working order. I do not know anything about Philadelphia juries; my experience is limited to New York County and what I have been told about Massachusetts and New Jersey. I dare say that in the country districts juries are more complacent than in the big cities. They are apt to be friends of the man at the bar and more anxious about not hurting his feelings than if he were a stranger. Taken on the average, as all our institutions should be judged, I believe that, whatever the individual faults of jurymen may be, once sworn and in the box, they become a highly conscientious body of men. I do not think that lawlessness is an attribute of American juries as a class any more than it is of judges, presidents or district attorneys.

If, four times out of five, a judge rendered decisions that met with general approval he would probably be accounted a highly satisfactory judge. One cannot be right every time. Now, out of every 100 indicted prisoners brought to the bar for trial, probably fifteen ought to be acquitted if prosecuted impartially and in accordance with the strict rules of evidence. In the year 1908, the last statistics available, the juries of New York County convicted in 68 per cent. of the cases before them. If we are to test fairly the efficiency of the system, we must deduct from the thirty-two acquittals remaining the fifteen acquittals which were justifiable. By so doing we shall find that in the year 1908 the New York County juries did the correct thing in about eighty-three cases out of every hundred. This is a high percentage of efficiency. Is it likely that any judge would have done much better? Is a judge,

devoting his time exclusively to the law, as well qualified to pass on the probabilities of a situation as twelve men of affairs? Or is a single judge less likely to yield to popular clamor than a jury whose identity is lost the moment the trial is over?

Of course, as murder is the most sensational of crimes, it is not surprising that the jury system is usually judged by its effectiveness in that particular class of cases, and it is true that the percentage of convictions is from 15 to 20 per cent. less than in other varieties of crime. The reasons for this, however, are clearly apparent.

First, It is much more inherently improbable that a man or a woman is bad enough to kill another than that he or she will accept a bribe or get married too many times.

Second, A jury always demands proof almost mathematically convincing before convicting a prisoner of a crime punishable by death, and practically discards the reasonable doubt proposition. There must be *no* doubt in a murder case, whereas they will convict a pickpocket almost on suspicion.

Third, The law of self-defense is exceedingly broad, not to say ambiguous, and it is the inevitable plea of the murderer.

Fourth, Murder cases attract a far higher degree of ability to their defense; and,

Fifth, But first in importance, the chief witness is always absent, having been conveniently removed by the very crime for which his assassin is on trial. Thus we should not expect to convict as often in murder cases as in others.

I believe that the ordinary New York County jury finds a correct general verdict four times out of five. But all juries go wrong occasionally, just as anybody else does. Wilfully, or by mistake, they sometimes render verdicts deeply shocking to our sense of justice. Such performances are widely heralded in the press, for a sentimental acquittal makes a great "copy." But there are many verdicts popularly regarded as examples of lawlessness, which, if examined calmly and solely from the point of view of the evidence, would be found to indicate nothing of the kind, but, on the contrary, to be the reasonable acts of honest and intelligent juries.

One side always gets licked in every lawsuit. There will always be some persons who think that every defendant should be convicted, and feel aggrieved if he is turned out by the jury. Yet they entirely forget in their displeasure at the acquittal of a man

whom they instinctively "*know*" to be guilty, that the jury probably had exactly the same impression, but were obliged, under their oaths to acquit him because of an insufficiency of evidence.

It may be unfortunate that the cases attracting the most attention are not always the strongest, but a sound opinion as to whether the juries in these or any other cases acted reasonably or not would necessitate a complete knowledge of the evidence and of the particular phases of the law applicable to it. About half the public are dissatisfied in any event, no matter whether the defendant be acquitted or convicted. These will always agree that justice has not been done, although 90 per cent. of the most emphatic have only a hazy knowledge that somebody has killed somebody else.

Occasionally, to be sure there occurs a fiasco of justice. But such verdicts are the exception and not the rule, and for every such lawless jury there are a dozen others who obey their oaths and do their duty, however unpleasant it may be. As a matter of record, however, juries usually convict in "star" or celebrated cases. Thus, in the last ten years in New York County, with but two or three exceptions, there has been a constant series of convictions in important trials in which at the time the public was deeply interested.

My own observation leads me to believe that in those parts of this country where the people want an efficient jury system, they get it. To demand a human institution that will always work perfectly would be tantamount to demanding perfect humanity. You will have good governors and all-wise presidents just so long as you want them, and the same is true of the jury. They are all part of what we regard as successful republican government. There is no constructive ingenuity capable of devising a form of government in which only perfect men can be chosen to office. Thus, whatever defects there are reside in the officeholders and not in the office itself.

Now, the jury is here to stay, and, it seems to me, works rather better than could be expected. Of course, it has defects, and some of them could be easily remedied. Many so-called defects are not defects at all. For example, you hear a great deal about the difficulty of compelling intelligent and capable men to serve, and how only the rabble are left upon our juries. Well, I for one, believe more in the honesty and ability of the rabble who are willing to do their

duty than in that of the so-called gentlemen who successfully evade it.

I have no use for the prosperous citizen who is too good for jury duty,—too clean and too comfortable to get down into the jury box with his grocer and his plumber and do some work. I can get along without him entirely. He is the same soft chap that hires another fellow to go to war for him, while he stays at home and makes money out of a government contract. We do not want as jurors the type of men who have so little interest in the community that they do not even vote. I had rather take an immigrant, five years off Ellis Island, who has some pride in being an American, and trust my liberty to him, than to a Fifth Avenue or Walnut Street swell who is bored to death with everything in general, and anything pertaining to politics and government in particular. We can get on without the gentlemen as jurors, if we can get the men. Some of the worst jurors I ever had belonged to my own clubs in New York. The fellows I like to get as jurors are master carpenters, masons, contractors, engineers, who have had experience of real life, are glad to be alive right here in the United States and are interested in the place. If we do not get enough of this type of men on our juries it is probably because we have not enough of them, anyway. There are no laws that will put public spirit into a moral dead beat.

Of course, we should encourage every citizen to do his duty. Service as jurymen should be regarded as an honor and a distinction, not as a curse. We should pay our jurors well for their loss of time. The two main practical objections to the present methods of conducting jury trials seem to me to be the unconscionable delay involved in the selection of talesmen and the fact that unanimity is required. In New York the prisoner can arbitrarily challenge the first twenty talesmen called against him if he is charged with a crime punishable by a term of more than ten years. This number is increased to thirty in murder cases. When the prisoner's lawyer demands an individual examination of talesman the selection of the jury usually takes as long or longer than the actual trial. I will guarantee to delay any serious criminal trial for two whole days selecting a jury,—provided I get a reasonable fee. It is all guesswork anyway. The number of arbitrary challenges should be summarily reduced to from three to six. With a little more care in the orig-

inal selection of our panels there would be slight risk involved to either side in accepting the first twelve men that filed into the box.

As to the number which should be necessary to a verdict, I do not, personally, see why we should demand an unanimous verdict. We do not require it anywhere else. There is to-day no particular sanctity in the number "12," whatever may have been the feeling in ancient times. The reason for having twelve jurymen is conclusively explained in Duncomb's *Trials per Pais*.

"And first as to their number twelve: and this number is no less esteemed by our law than by Holy Writ. If the twelve apostles on their twelve thrones must try us in our eternal state, good reason has the law to appoint the number of twelve to try our temporal. The tribes of Israel were twelve, the patriarchs were twelve and Solomon's officers were twelve. Therefore not only matters of fact were tried by twelve, but of ancient times twelve judges were to try matters in law, in the Exchequer chamber, and there are twelve counsellors of State for matters of state; and he that wagheth his law must have eleven others with him who believe he says true. And the law is so precise in this number of twelve, that if the trial be by more or less, it is a mis-trial."

Much of the seeming misguidedness of juries in criminal cases is due, just as it is due in civil cases, to the idiosyncrasy, or the avowed purpose to be "agin' the government," of a single talesman. In an ideal community, no matter how many persons constituted the jury, provided the evidence was clear one way or the other, the jury would always agree, since they would all be honest and reasonable men. But just as a certain portion of our population is mentally unbalanced, anarchistic and criminal, so will be a certain portion of our jurors. In addition to these elements, there will almost invariably be found some men upon every panel who are so obstinate, conceited and overbearing as to be totally unfit to serve, either from the point of view of the people or the defense. It is enough for one of these recalcitrant gentlemen that eleven other human beings desire something else. That settles it. They shall go his way, or not at all.

Some allowance should, therefore, be made for the single lunatic or anarchist that gets himself drawn on about every fifth jury, for if he once be empanelled a disagreement will inevitably follow. This could be accomplished by reducing the number necessary for a ver-

dict to eleven. Hundreds of juries have been "hung" by just one man. It would be an excellent thing to have an additional, or thirteenth, juror sworn to take the place of any one of the others who might fall sick or die during the trial. Such reforms as these easily suggest themselves.

But I believe that the way to elevate the jury system is to elevate the bench. With strong and capable men to guide them, juries would rarely go wrong. The chief obstacle to the administration of justice to-day is the interference of the sensational press, which arouses the sympathy and stimulates the imagination of the reader, not only by exaggerated and falsely accentuated accounts of the testimony, however filthy and revolting, but also by running column after column of matter not drawn from the evidence at all, and calculated to inflame the mind of the public and, through it, the jury. In view of this deliberate perversion of truth and morals the euphemisms of a hard-put defendant's counsel when he pictures as scullery maid as an angel, and a coarse bounder as a St. George, seem innocent indeed. They are, in fact, only rendered possible by the antecedent co-operation of the "sympathy brigade," the "special" writers, and the staff of instructed reporters, who, with one common purpose and in accordance with the policy of their editor or proprietor, blacken or canonize the dead and extol or defame the living.

It is not within the rail of the courtroom, but within the pages of these sensational journals, that justice is made a farce. The phrase, "contempt of court," has ceased practically to have any significance whatever. The front pages teem with caricatures of the judge upon the bench, of the individual jurors with exaggerated heads upon impossible bodies, of the lawyers ranting and bellowing, juxtaposed with sketches of the defendant praying beside his prison cot, or firing the fatal shot in obedience to a message borne by an angel from on high.

Imagine, if you can, a defendant in a murder case reporting his own trial for a daily paper, and giving his own impressions and explanations of the evidence, with the jury at liberty, if they see fit, to read every word! Small wonder that curious and morbid crowds struggle for access to such supposed scenes of mingled hilarity and pathos, or that jurymen are occasionally led to believe that their verdict should be but the echo of "public opinion" as expressed

in the columns of the press. How long would the "unwritten law" play any part in the administration of criminal justice if every paper in the land united in demanding not only in its editorials, but upon its front pages, that private vengeance must cease?

In conclusion, let me revert to my original proposition. The defects of the jury system are the defects of human nature. The stream cannot rise above its source. The jury system works the exact justice which public opinion demands,—no more and no less. As we grow to have a greater respect for human life and a higher regard for law and honesty, the verdicts of our jurors will keep pace with public sentiment. The day will come, in fact it seems to be breaking just about this time, when dishonesty in business and graft in politics will lead to the cropped head and the ball and chain as certainly as burglary and rape. As we grow in age and in grace, juries, like all public officers, will perform their duties conscientiously and accurately; they will uphold the laws, unmoved by prejudice or sympathy, they will be unaffected by popular sentiment or fear of newspaper disapproval; they will be perfect examples of a perfect system of government. But then there will be no need for juries,—for there will, of course, be no criminals.

REFORM IN CRIMINAL PROCEDURE

BY HON. EVERETT P. WHEELER,
New York City.

The fundamental principles of criminal procedure are these:

(1) The object society has in the administration of criminal justice is to protect innocent, industrious citizens from unlawful interference or injury threatened by criminals. The thought of vengeance should not enter into it.

(2) For this purpose, experience shows that promptness and certainty of administration are far more effective than severity. To use the language of the old Hebrew prophet, "Because sentence against an evil work is not executed speedily, therefore the heart of the sons of men is fully set in them to do evil."

The vices of our American criminal administration spring from servile adherence to tradition, without regard to existing conditions. The criminal code of England a century ago was cruel. The humanity of the judges led them to use every possible technicality to mitigate the severity of the penalties imposed by the statute law. The development of humanity and Christian principle has led to radical changes in penal legislation. The penalties imposed by the penal code cannot be said in any state to be unduly severe. The English courts have modified their old traditions in criminal administration to meet the change in penal legislation. In most of the states of the American Union the courts have not done this, but have adhered to the technical rules of administration which promote the release of the guilty and the consequent suffering of the innocent. The most flagrant instance of this is a recent decision in Missouri. That was an indictment for rape. The proof was clear and the man was convicted, but a writ of error was sued out and the lawyer discovered this defect in the indictment: the constitution of Missouri requires that the indictment should conclude, "against the peace and dignity of the state," but in engrossing the indictment the article "the" was omitted before the word "state." The Supreme Court of Missouri held, in *State vs. Campbell* (210 Mo., 202), that the omission was fatal, although they said (p. 234): "The testimony, as disclosed by the record in this case, was amply

sufficient to warrant the court in submitting the question to the jury." They reversed the judgment of conviction. The indictment being held void, of necessity the guilty man would go free unless a new indictment should be found and the case tried again.

It is impossible to conceive a greater perversion of justice than this. The guilty man is set free, emboldened by impunity to commit similar crimes in the future. Or, if the state again indicts him, his innocent victim is called upon to again go through her pitiful story in public before another judge and jury.

Perhaps there is no state which has made so much progress in the reform of criminal procedure as the State of New York. The penal code of that state provides that the judgment shall be given without regard to technical errors or defects or exceptions which do not affect the substantial rights of the parties (Code of Criminal Procedure, sec. 542). In a recent decision of the New York Court of Appeal (*People vs. Strollo*, 191 N. Y., 42), the court, in dealing with this section, said:

"Under the statute our powers and duties in capital cases are strictly correlative. While we have power to reverse in the interests of justice, even where no exceptions are taken, it is also our duty to disregard errors which, although excepted to, do not affect the substantial rights of a defendant. Guided by this rule, we feel constrained to hold that none of the general criticisms referred to under this head present sufficient grounds for reversal."

The American Bar Association has for several years been considering this subject, and at its last meeting adopted with substantial unanimity the report of its committee, which recommended that an act of Congress should be passed providing as follows:

"No judgment shall be set aside, or reversed, or new trial granted, by any court of the United States in any case, civil or criminal, on the ground of misdirection of the jury or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, unless, in the opinion of the court to which application is made, after an examination of the entire cause, it shall appear that the error complained of has resulted in a miscarriage of justice."

A bill embodying this recommendation is now pending before Congress. Hearings have been had upon it both in the Senate¹ and

¹ Senate bill No. 4568.

in the House of Representatives.² It is very much in the public interest that it should be adopted. If Congress should set the seal of its approval upon this recommendation, we not only effect a much needed reform in Federal administration, but it would serve as an example to those states which are still suffering from the thralldom of technical and obsolete rules on this subject.

Another gross perversion of justice that has, unfortunately, become too common in this country is the abuse of the writ of habeas corpus. This writ is one of great value. It is, perhaps, the most important safeguard of personal liberty. All the more should it be shielded from abuse, lest the time come when the abuses become so great that they lead to drastic legislation restricting the essential functions of the writ. In effect, the writ of habeas corpus requires the State which holds a person in custody in some one of its many departments to state to a judge the reason for his detention. The hearing upon this writ should not be subject to technical restrictions. Every opportunity should be afforded to the imprisoned person to produce evidence in support of the contention that he is entitled to his liberty. The United States Habeas Corpus Act (U. S. Revised Stat., §§ 751-765) is a model in this respect. But the courts, in administering the law on this subject have failed to follow the practice which prevails in most cases, and to hold that when a question has once been fairly tried, and the opportunity has been given to the parties to present their evidence fully, the decision should be final. On the contrary, it has frequently been the case that successive applications of the writ of habeas corpus to review the reasons for the detention of the same culprit have been made to different judges, and that these applications have resulted in successive trials of the same question, without much regard to the decision had upon any of the previous hearings. The law on this subject should be amended so as to make the decision of the court upon the first hearing final, subject, of course, to proper review on appeal, and subject to such application on the ground of newly discovered evidence as the law allows in all cases.

There is another gross abuse of this writ, and of the right of appeal connected with it, to which attention should also be called. Cases have frequently arisen during the last twenty years in which, after a decision of the court of a state adjudging that an accused

² House bill No. 14,562.

person is guilty and awarding the penalty for his offense, a writ of habeas corpus is obtained from a judge of a Federal court. This is done on the pretext that some Federal question—that is to say, a question arising under the constitution or the laws of the United States, is involved in the judgment of the state court. When the Federal judge decides that no such question is involved, an appeal is taken to the Supreme Court of the United States. Under existing legislation, until very recently, the appeal in such cases was a matter of right. In 1908 the law on this subject was so amended as to provide that in the case stated “no appeal to the Supreme Court should be allowed unless the United States court by which the final decision was rendered, or a justice of the Supreme Court, shall be of opinion that there exists probable cause for an appeal.”

This enactment was much needed. But it did not reach another method of the ingenious men who, to use the language of Trollope, are successful “in the manumission of murderers and the protection of the criminal classes.” This is, to apply to the Supreme Court of the United States for a writ of error to review a decision of the state court which has convicted a criminal and awarded his punishment. Under the present law this writ is a writ of right. Once granted, it suspends the execution of the sentence of the court below. Then hysterical appeals are made for commutation of punishment. The maxim that society has an interest in the punishment of the guilty is entirely overlooked. The whole system tends to make the punishment of crime as uncertain as human laws can make it. The old maxim is forgotten: “*Judex damnatur cum nocens absolvitur.*”

The same committee of the American Bar Association which recommended the reform before referred to has in this particular instance also sought to bring about improvement in judicial procedure by recommending an enactment that in the cases referred to no writ of error shall be allowed unless “a justice of the Supreme Court shall certify that there is probable cause to believe that the defendant was unjustly convicted.” This recommendation is embodied in the bills before mentioned. It gives to the person, if such there be, who is unjustly convicted a full opportunity to maintain this proposition before the Supreme Court. But it takes away the shield afforded by the present technical defenses, which appear solely for the protection of the guilty and the injury of the innocent.

Let me suggest one more inconsistency in the criminal pro-

cedure of this country, which would seem to merit the careful consideration of this association. The criminal codes of probably all the states of the Union provide in substance, as does the penal code of the State of New York (sec. 20), "An act done by a person who is an idiot, imbecile, lunatic or insane is not a crime."

When insanity is to be set up as a defense, the judge leaves it to the jury to say whether the accused was insane when the crime was committed. This opens the door to the sham defenses of emotional insanity, of temporary insanity and the like. Where the accused is wealthy he can protract the trial and introduce a cloud of witnesses who really obscure the truth. The public scandal is unspeakable. Why should this defense be permitted at all?

If it be said that a person who is really insane is not morally guilty, we reply: The question of moral guilt is irrelevant. The state has no right to punish moral guilt. Its duty, as before stated, is to protect the innocent, industrious citizen from unlawful interference.

If it be said that an insane person has no control over himself, we reply that, generally, this is not true. As a rule, insane persons are amenable to the discipline of rewards and punishments. And in the exceptional cases where they are not so amenable, the need of protection to the innocent is even more imperative.

If it be said that sometimes the provocation to a violent blow is great, and tends to diminish the guilt of the offender, we reply that, irrespective of insanity, evidence of provocation is now admissible, and would continue to be, though the defense of insanity were abolished.

If it be said that it would shock public sentiment to put an insane person to death, we reply: What better can you do with a person who has a homicidal mania? Will you protect and nourish him so as to enable him to slay his keepers? That is what the homicidal insane often do. It seems to me wicked to prolong their lives at the expense of the innocent victims of such madmen. The innocent and useful citizens are entitled to first consideration.

Moreover, the cause of humanity demands that a person who is hopelessly and violently insane should be painlessly put to death. Continued existence to him is wretchedness.

"He hates him
That would upon the rack of this tough world
Stretch him out longer."

V. Respect for Law in the United States

RESPECT FOR LAW IN THE UNITED STATES

I. ADDRESS BY HON. JAMES S. SHERMAN, Vice-President of the United States.

I feel as though I should first say, "How do you all do?" because you have all been presented to me, not the ordinary procedure,—I am usually presented to the audience. I congratulate Dr. Rowe upon the fact that he does not open this particular meeting of the week's functions with larceny, because the topic for consideration this evening is "Respect for the Law." It would seem to be out of place, under the circumstances, to commit either petty larceny or some crime more serious.

He has attempted, I do not know whether you would call it a crime or a misdemeanor this evening, by intimating to me that he, if not the audience, expects of me something in the nature of a speech. I came here solely with the intention of presiding over this meeting, and I always find a special pleasure in coming to this metropolis of the Keystone State, because I always expect to find, and always do find, audiences made up of cultivated and patriotic people, and I am delighted to find here to-night an exceptionally attractive audience, because so many of them are of the gentler sex.

The program which the president of the Academy sent me contained a very large list of notable speakers, who, it was expected, would participate in this evening's program. The list was made up of statesmen, lawyers, doctors of philosophy, doctors of divinity, doctors of letters, doctors of medicine, doctors of almost everything, except horse doctors,—there are none of those. The program was so expansive that I felt that, even as a presiding officer, I would this evening resemble an Egyptian mummy, in that I would be pressed for time.

But now that I come here, I find that the list has grown beautifully less, and that rather than being pressed for time, I am called upon to occupy more or less time. And I shift from the scene which I have just described to another.

They tell of a lawyer who stood before the court making an argument, in which he went from his firstly to his thirteenthly until

the court dozed, and awakened, and dozed again; and finally the lawyer seemed to awaken himself to a realizing sense that he was occupying quite a bit of time, and he said to the court, "I trust, your honor, I am not infringing upon the time of the court." "Oh, no," said the court, "you have passed that long ago. You are now encroaching upon eternity."

But there is one advantage of the change in program: it gives me the opportunity to have a little bit of a feast with you, and I am going to take advantage of the experience those people had who were present at the time of the Lisbon earthquake, which took place at noontime, and those who refused soup never got the roast. Now, I am not going to refuse the soup; I am going to take the good thing that is offered. Perhaps I ought to say that I am no orator. I do not think I look like one. You know, they once said of old Lord Brougham that no man lived who was as wise as he looked. I do not fill the bill.

Our topic for this evening's discussion is "Respect for Law in the United States." Respect for law implies compliance with the law. It implies orderly procedure. It implies virtue, morality, and isn't it just a trifle strange that they should have chosen the *Vice-President* to preside? I do not attempt to live up to that title. I do not appear as if I did. I have been told that I would appear to better advantage as an advertising agent for a patent medicine.

I went up, a week or two ago, upon the invitation of some New York statesmen, and a few citizens, to deliver some observations at the beautiful little city of Glens Falls, not having been told in advance what my topic was to be. Being just a little bit hurried, overworked, at that time—I am not often overworked—I had thought I would make a few observations on the general subject of the *Vice-Presidency*, a subject I knew a little something about, its limitations of powers and the impossibility of initiating anything. When I got up to Glens Falls, I found I was down on the program to respond to the toast, "The United States," not a contracted subject. So, I find this topic this evening, "Respect for Law in the United States," to be a very broad subject indeed. It is a subject that ought to attract any man, and it is a subject upon which any man, especially one in public life, ought to be able to deliver himself of a thought or two.

We do respect the law in the United States, in my judgment.

Perhaps we have more wholesome respect for it than the citizens of any other government under the sun. I believe that we, here in America, have the belief that our government is best for all, because the sentiment prevails that all should be for the best. Respect for law in this country has grown up through over a century of application of the law. Our government is a constitutional government, differing widely from any of the other governments on the face of the globe. Here there are distinct departments of the national government, each one dependent upon the others. No one department can, as in some of the European countries, proceed with disregard of every other department of the government.⁹ The legislative department says what the law shall be; the court then determines whether the legislative body has overstepped its constitutional right, and then comes in the executive. Now and then we hear rumors that one department of the government encroaches in some degree upon the rights of another, but these rumors are not often well-founded, and they do not often last long.

As a rule, in this government of ours, each department concedes and grants to the others the fullest possible degree of the powers which the constitution grants to it—a constitution which, surprising as the fact may be, framed by wise men for the future guidance of the government, at the time comprising only three millions of people and occupying but a limited area, measures up to-day fully to the requirements of ninety millions of people, occupying seven per cent of the area of the earth. It is a remarkable document; no greater document was ever written, and the fact that it lives to-day almost without modification after 125 years, still revered by the people, is the best evidence of the wisdom of the framers of that document.

Respect for the law in this country is founded upon the fact that our laws are based upon this Magna Charta of the people, drawn by wise men, whose ken was even greater than they dreamed, whose ideas of the needs of an increasing people were figured out with almost superhuman acumen.

It is a splendid picture to look back on the great men of the century and a quarter ago, to think of the lives of those men who gave us this American republic, who laid the foundation, the charter, for all our future legislative action; and then to look at those who interpreted that document. Think of John Jay, the first chief justice of the United States. I am particularly proud of the fact

that he was a product of the Empire State of New York. Think of John Jay, who served the country so well, and never better than he did in showing his absolute respect for law and order, as he did in 1794, when, by the manipulation of politicians, by political trickery, he lost the governorship of the Empire State. It will surprise many of you to have the suggestion made that men here, way back in the latter part of the eighteenth century, were politicians who resorted to tricks. The popular belief is that such men never lived until the present day. But they deprived John Jay of the election to the governorship of the State of New York by throwing out, upon technicalities, the return of various counties of the state which would have shown quite a large majority in his favor. Urged to resort to revolutionary measures to maintain his right, John Jay, ambitious politically, then wrote to his wife: "In a little time we will all be returned to the dust from which we came, and then it will be a matter of much more consequence that I had the ability in a trying time to govern myself than that I was permitted to govern the state."

It is that sentiment, predominating through the public men of greatest ability and finest character in this government, that has built up in the generations that have succeeded, one after another in rapid succession, respect for law in this country of ours.

Respect for the law has in large measure built up this country of ours, and we are a great country; we are proud of our country—aye, and we are not unconscious of the fact that we have a right, also, to be proud of the splendid representatives our sister republics send here to represent them at our court. It is a great country—ninety millions of people, three million square miles of area, and 120 thousand million dollars of wealth. And all these people of ours, in their various capacities, are adding daily to the riches of the country, adding to them so greatly that to-day, if we desire to compare our government with any other country in the world, we find that the comparison fails, because we can not make a comparison that we comprehend by talking of any other one country. To make a fitting comparison we must make it with a group of other countries, or else with all the world besides. And while we occupy but five per cent. of the area of the world, and are but seven per cent. of the population, commercially and financially we about equal one-half of all the rest of mankind. Here in this country

of ours each single individual about balances in production and in consumption, three men anywhere else in the world. We have reached these proportions, in my judgment, in no small degree because we have had a proper respect for government and for law in this country of ours.

We progress here with marvelous rapidity. Only ten years ago, or eleven years ago, we were second to Great Britain in the production of steel, and yet we progressed with such marvelous rapidity that to-day we produce more steel than all the rest of mankind put together. We have five times as much life insurance as all the rest of the world, and three times as much savings bank deposits. The savings of our people represented by deposits in the various banking institutions of the country, are more than three times the money in circulation in this country.

How is it possible for us to do business under these circumstances? Because our people have respect for the law, which respect brings confidence in each other, and inspires the confidence of the other peoples of the civilized world. This way: If those who had their deposits in the banking institutions of the country should at any one time demand the payment of these deposits, we could only pay about 28 per cent., about 28 cents on the dollar. We never have any flurries that amount to any serious matter for any great length of time. It is because our people have that confidence in their fellow-man, which has inspired all the respect for constitutional government, and it obtains sane and safe laws.

I believe I am overstepping even the bounds that Dr. Rowe intended. I am taking a little bit longer than he meant I should. I do not want to drive the audience out of the room. I recollect being out in a campaign in a western state some three or four years ago. A fellow-speaker was a distinguished statesman from Pennsylvania. He happened to be the last upon the program that evening, and while he was speaking quite a number of the audience left the room, in order, as he afterwards learned, to catch a late train to some adjoining city. He did not know it at the time. He said: "I notice some of you are leaving. I hope the rest of you won't stay just on my account. It doesn't embarrass me at all; I am quite accustomed to have audiences leave when I am speaking. In fact, where I spoke last night there was no one left in the hall when I finished, except one man, and when I inquired why he stayed he said he was paid to remain and turn out the lights."

I am not going to weary this audience to such an extent to-night, I hope. As I say, I was asked to come here simply to preside, not to speak; but I was very glad of an opportunity to give expression to the belief that is within me—that the greatness of this country is largely dependent upon the fact that our citizens, as a whole, born here, or born under other flags and brought here under the benign influence of those who have lived here for decades, have respect for law, for the rulers of the republic, and they have confidence in their fellow-men.

The further elucidation of this subject, the "Respect for Law in the United States," will first be taken up, considered and discussed by a gentleman with whom I had the honor to serve on a committee in Congress for more than a dozen years, and whose ability, whose integrity and whose faithfulness to every duty was an inspiration to all his fellows in Congress. He comes from a far-off, western, woolly state, as we are in the habit of calling them down here in the East. He does not belong in the effete East, but I am sure that the effete East will welcome him gladly as one of our own, and we will be truly sorry when we have ceased to hear the voice of Congressman Frederick C. Stevens, whom I now introduce.

RESPECT FOR LAW IN THE UNITED STATES

II. ADDRESS BY HON. FREDERICK C. STEVENS,
Member of the House of Representatives from Minnesota.

At the outset I wish to disclaim the imputation that is placed upon me of being a wild and woolly Westerner. I was born in Boston. I was reared in New England, and I go back every year to put my feet upon the old sod, to swear allegiance to the time-worn tenets of the faith of our fathers. We all do that from the West, and that is why we have grown into one of the most progressive, as well as one of the most representative, parts of this country. Now, I think we all ought to congratulate ourselves that the splendid address we have just listened to partakes of a dual nationality, somewhat Irish and somewhat American. We have had our laugh first, like the Irishman, and have swelled ourselves into a splendidly patriotic frame of mind, just as every loyal American ought to do. And we can all agree with the patriotic sentiments of our Vice-President, and we know how truthful and how necessarily accurate his statements were. Yet there is another side which comes to us in official life, which I wish to present to you for just a few moments this evening, and I assume such was the intent of the committee which arranged the program.

Your committee planned a broad subject, and a short time to discuss it and evidently desired us to present our own points of view and our own personal experiences in treating it. That I shall proceed to do. Now, theoretically, we Americans have, and ought to have, the greatest possible respect for law, because that is the concrete expression of the will of the people, through their own duly organized institutions. We all realize that. And yet, actually, we realize, also, that there probably is not one of the great civilized nations of the world where there is a greater disregard of public authority than in the United States. This is not confined to any one class; it is not confined to any one section, and we have not a monopoly of it in the wild and woolly West. Such a condition is prevalent all over our country, and there is a good reason for it. It is an expression of exactly the same quality which has made our

nation so great, so progressive, so prosperous and so powerful; and that is the aggressive, persistent individualism of every true American; his determination to succeed, his desire, at all hazards, to make his own will, his own opinions and his own desires effective. We see him quite often following the old notion, inherited from the old Italian statesmen, that the end justifies the means. I do not mean to say that such a sentiment is universal. We all know it is not, for the great host of American citizens all over our country have the utmost respect for the law. Yet there is a sufficient class, or I should rather say there are sufficient among our people, who have not the utmost respect—who have, in fact, a disregard for public law or authority that makes this quality characteristically American.

It has been the fashion of late years in discussing questions of this kind, to call the attention of the public to the class designated as "malefactors of great wealth." It has been rather a popular designation, and there is some truth in it—more than there ought to be. Too many of the managers of large concerns maintain distinguished and able legal staffs, not so much for the purpose of advising as to the intent and spirit of the law, as they do to be informed concerning the technical parts of it, how its penalties may be avoided; or, worse than that, to weigh the cost of the penalties on the one hand, and the profits of the violation of law on the other. The organizations of labor have followed, too often, similar lines. In too many cases it has been found that personal and legal and contractual relations weigh too lightly upon them.

In public positions we are painfully aware of many instances where trusted leaders have prostituted their places of honor for their own advantage and gain, which is justly execrated by every honest man and woman in the country. And another class is always before us—the public press. They have taken advantage of their great power in too many cases. They have hewed too closely to the line. They have not sought to carry out their great function always in a fair and just spirit. The desire to sell papers—I will not quote the rest of the expression—the desire to extend their circulation, has led them to do many things in their discussions as to men and measures of public interest, which amount, indeed, to skimming too closely to the edge of the law, to flagrantly abusing the great privileges conferred upon the press, by misleading or inflaming instead of really informing, educating or leading the people.

We had a rather striking illustration of that a year ago in Washington. A letter came from a manager of one of the most reputable monthly magazines in the United States, to one of the most distinguished and able representatives in Congress, stating that in a case which controverted a position taken by the magazines it was not good editorial policy for that magazine to publish the truth about matters of great public interest as contained in the official records of our government, and that letter is embalmed in the "Congressional Record," and speaks for itself of the shame of such management. That illustrates what is too often the situation of many of the most reputable newspapers and magazines of our country.

I think we all realize that these classes I have described are not increasing; that there has been a considerable decrease of them, a great improvement in the conditions in this respect all over our country in the last few years. There has been a general uplift in public and private life. There has been a great improvement in the methods of men of business, of public work, everywhere, and it is a great encouragement to every man who believes in and loves his country to note the wonderful improvement that has been made in these particulars.

There are other classes of cases which come to us in public life, such as you people might not realize as we do, and where there has not been an improvement. It very often happens that good men and good women come to us and urge that public measures be passed for the benefit of the people, as they esteem it, and they urge these with the broadest and best of arguments for the public welfare. But when we show to them that the measures they seek are not warranted or authorized by our constitutional powers, or are forbidden by our constitutional limitations, they esteem it too often no argument why such laws should not be enacted. And too many of them ask us, and even urge us, to violate our solemn oaths of office which we took to support the Constitution of the United States, and seek to have us place such acts upon the statute books, and to have the responsibility of finally determining the validity of those laws passed up to the courts of the United States, instead of insisting upon the performance of duty by those who have the responsibility for considering them at the beginning. I say that has happened too often, and is happening to-day not only in Washington, but in every state legislature in this country; and the classes of our people who appear

to ignore our fundamental laws and duties are of the most respected in our communities.

There is too little respect for our fundamental laws and obligations among the good men and women of the land. Too often they have come to some of us, and after we have urged such objections to their measures, they seem to look upon us as enemies of our kind.

A spectacle occurred only a few weeks ago in the House of Representatives in Washington, to which I desire to call your attention in this connection. A majority of the House of Representatives, composed of members of both political parties, deliberately violated and trampled upon the rules of that House, which were made under the authority of the Constitution of the United States, for the government of the members and the proper and orderly conduct of the business of that House. They so violated the rules for their government for the purpose of passing an amending rule for the conduct of business, which may have been salutary and may not, that remains to be seen in the future. But the point is, that they did deliberately trample under foot and violate the rules of the House of Representatives, and that action was applauded all over this country. Nearly every newspaper and magazine and, I imagine, the great mass of you here, sympathized with that deliberate violation of the rules of the House.

But let me show you what the effect of that is. If that precedent be followed in the future, one-fifth of the membership of the House can prevent any public business being done in the House of Representatives, can completely choke the operations of our government; and in order to carry on its affairs, there must be again a deliberate violation of the rules of the House, or a still more flagrant violation of the Constitution of the United States, which requires that the yeas and nays be called if one-fifth of the members present demand it. If that violation be followed in the future, it means that there must be continued violations in order that the business of this country shall be properly performed. I submit to you, is it good public policy that the business of this country be carried on by violations of their laws by our great legislative bodies?

Friends, just think of it for a moment. Now, I spoke as a "regular" this time. I have not always been as particular, and that is why I can testify with the utmost freedom? I have voted on both sides of the fence. It was not so many years ago that I was one of

the insurgents, and deliberately violated the rulings made by the honored chairman of this meeting when he was right and I was wrong, and confession is good for the soul, ladies and gentlemen. But after all, such examples and such exhibitions are not the proper way to do public business and do not tend to instill the just respect which public officials ought to have throughout the country.

Now, there is another suggestion which is not official, yet I think it of great importance. There is a growing tendency among the young of to-day, in the coming generation, to have a lack of respect for law and public authority. We see it everywhere, in the streets, in public places, in public conveyances, and even in the homes. There is a lack of wholesome respect for authority, and lack of proper respect for persons, for the rights of property. What will be the results in the years that are to follow, when the responsibilities of active life shall be upon these young men and women, and the temptations come that always attend responsibility? Will they yield, or will they control themselves as our forefathers did, which control led to the foundation of our wonderful institutions and of our prosperity and progress and happiness under them. Too often nowadays comes the old maxim which I stated in the beginning, the end justifies the means. Now, it is easy for us to criticise the malefactors of great wealth. It is easy to criticise those who lead the mob, to anathematize those who violate their great trust in official station, and those who violate their duty in the dissemination of news. It has not been easy on the other hand to criticise those who demand that the Constitution of the United States be violated, or who demand that the rules and order of business in a great legislative body should be trampled under foot. There does not seem to me to be the proper balance in the different kinds of criticism. As a reason for this difference it is contended, on the one hand, some classes are interested for profit, and violate the laws for such purposes, while on the other hand the other classes are interested for the public welfare. Do not you realize that the man who urges a violation of the constitution or the laws for the purpose of something that he openly states is for his own selfish interest, is not more culpable than the man who urges a violation of the constitution or the rules of the House or Senate, or any other great body ostensibly for the public welfare; and yet it may be for purposes just as mean, just as base, just as low, just as much for personal advantage as those who

violate the other classes of laws? It is not for us to weigh motives. It is not for us to scrutinize purposes. One may be just as mean and low and base as the other; and if that be true, what right has any of us, who have violated any of the authority or laws of our land to criticise the actions of any other class of violators? We in glass houses have no right to throw stones.

Friends, one thing we have no business to do in this country, and that is to fool ourselves. We have no business as patriotic Americans to act as Pharisees or hypocrites. There is only one thing which honest men and women can do, and that is to have a sincere, consistent respect and obedience for law and public authority everywhere we find it.

There is another suggestion and it is rather an odd one. One great manifestation of lack of respect for our law by Americans is by reason of and shown by the great mass of law which we have to respect. In our various states, every two years, and in our national legislature, there probably are turned out or placed upon the statute books more than ten thousand separate acts, and there are a host more in the great cities and towns and villages of our country, untold thousands of them. It is one of the distinctive evils of our legislative bodies, that too often the public ills are not properly considered and diagnosed, so that the proper remedies can be applied. Too often statutes are passed in state legislatures and in the national legislature without proper consideration, and too often they are passed through some personal ambition or some promise made in the exigency of a political campaign, or to gratify some personal friendship or vanity or a personal fad, or grudge, or grouch even. Too many statutes are passed of that kind, with the result that a great mass of law is placed upon our statute books, too much to be known and appreciated by the great mass of our people; and as some of it is injudicious, so that we do not care much about it, there has grown up a national and natural disrespect for that sort and all sorts of legislation. We cannot help it. It exists, and there ought to be a remedy somewhere.

For two or three centuries, in the early history of this continent, we did have a class of leaders of responsibility, men who stood for something, and whose position and influence and learning and patriotism were regarded. Perhaps no city in the land has produced more of that class of leaders than this great and patriotic city of

Philadelphia. They were members of the clergy, the bench and the bar, the medical men, the great scholars and teachers, the great literary men, the men who conducted the great newspapers. But during the last generation, that influence has largely diminished, and as it diminished, unfortunately the complexities of our public and private life have greatly increased. There has been a tremendous increase in the functions of government, state, national and municipal, and with this there necessarily must come a great increase of duty and responsibility upon the individual citizen, demanding the very highest qualities of personal honor and judgment and leadership, which seem, in the last few years, to have been unfortunately diminished. The result is that in many instances, the great masses of our people are being led by merely irresponsible magazines and newspapers, put forth for the purpose of selling, through sensations and headlines and cartoons, and not for the purpose of responsibly telling the people the truth. Thus the people do not have accurate information, they do not have the responsible leadership which has been at once the basis of our great power and progress and the glory of our institutions.

All this may sound like a wail of pessimism—what does not seem naturally to come from the prairies of the hopeful and breezy West, but I want to assure you, confidentially, that I do not mean all of it. We all agree, as the Vice-President stated, that at the basis of all our wonderful power and progress is the great true heart of the American people. We are all optimists, and we have every reason to be optimists, and we are going to be optimists. The heart of the American people is all right. They demand safe and sane and honest laws, they demand that they shall be enforced fully and fairly, except always that they shall not be enforced too strenuously as to themselves and their own interests. It is that exception which we are trying to eliminate, and whenever the attention of the people has been called to that exception anywhere in our land, whether in the great State of New York, under the leadership of that splendid governor there, or whether in the great nation of ours, under the leadership of that great President, now perhaps the hero of the world; or whether in my own state in the West, under the leadership of my friend and political opponent, Governor Johnson, wherever it may have been, the people have never failed to respond; so that, after all, this ailment of ours is only skin deep, a sort of national eczema, as it were, which will be eliminated if we have our attention properly

called to it. It should be the mission of every true American citizen to see that the right thing is done, to see that we appreciate our own personal responsibility in these matters, a personal responsibility which must be constantly applied in public and in private life. There is no mystery about this cure. It is as old as civilization. It is the foundation of the glory and greatness of this blessed republic. It was thundered down to the faithful from Mt. Sinai, and has been coming down the ages ever since. "The ways of the Lord are true and righteous altogether," and it is righteousness that exalteth a nation.

RESPECT FOR LAW IN THE UNITED STATES

III. ADDRESS BY ARTHUR VON BRIESEN, Esq., President, Legal Aid Society, New York.

I am handicapped this evening because of the eminence of the gentlemen who spoke before me. The Vice-President of the United States, and one of our most distinguished senators have spoken, and here comes a poor private citizen to contradict them. Naturally, it is a difficult position.

I was asked to speak on the respect which the people of the United States have for law. In my connection with the Legal Aid Society of New York, thousands and tens of thousands of cases of the poor and helpless are brought to my attention, so that I have had unusual opportunities of judging of the respect for law which the people around me seem to have shown. But, of course, if we talk about respect for law, we must first ascertain, What is the law which we are to respect? What is that thing called "law?" Justinian had this to say some 1400 years ago upon that subject: He defined justice as the constant and impelling wish to render every man his due, and stated the maxims of law to be these: to live honestly, to hurt no one and to give every one his due. If that is the conception of law, it, of course, means principally that institution which makes us respect the rights of others.

In this country, as has already been stated, we are making a great many so-called laws. The legislatures of forty-six states and congress, influenced by its verbose members and others pass laws every year which, added to the ordinances enacted in cities and counties would make in printed form a column longer than the height of this room. Most of these laws have at the tail end the main sting, "*this act shall take effect immediately.*" Now, the citizens are supposed to know what that law is, still they do not know it. They have had no opportunity of learning of its existence. Apart from the fact that there are such a multitude of sometimes perfectly ridiculous enactments, there is this lack of preparation, the failure to give the citizen due warning. This shall be a crime and another thing shall be a misdemeanor from this day on, from this hour on,

and so every day of the year. Every hour of each day nearly, a new law is made which may make us all criminals without our knowing it. An illustration of the situation created by this sort of thing, "an act to take effect immediately," came to my notice, when in the State of New York an act was finally signed by the governor, a very good act and a very good governor, prohibiting betting at race courses. The act was signed by the governor at about two o'clock one afternoon and within three minutes the district attorney in Brooklyn received orders to enforce that law immediately and to arrest those who broke it. So the poor district attorney who had never read the law arrested a lot of people who had never read the law, and brought them before a judge, who at that time had not read the law, and who, when he did read it, held they had not broken it. Therefore, some remedy should be devised by which citizens should know in time, as is the case in some places, what the laws are, so that they should have an opportunity of discussing them as to their full text, before they go into effect.

Laws should be skillfully framed. They are not always skillfully framed. They are sometimes ridiculously framed, and the judges who have to deal with them are frequently of opposite opinions as to what a law intended. Of course, if that be the fact, and it is a fact known to me, then the lawmakers are guilty of carelessness, to say the least, in framing them.

We had an illustration of that last year. They gave us four constitutional amendments to vote on in New York last November, and I managed to get hold of them before the election, and studied them. Each of these constitutional amendments was about as long as a column in an ordinary newspaper. I painfully read each, three or four times, and when I got through I decided that I was utterly unable to understand the meaning of them. But to my great surprise, a few days before election the leading newspapers of New York came out with the statement that the second amendment was the one to vote for. Every one should vote for the second amendment they said, because that was calculated to increase the salaries of the Supreme Court Judges of New York who sat in *country* districts, and not to increase those of the justices who sat in the large *cities*. I was surprised to read this, because I had not succeeded in spelling that out of this particular amendment, but that is what the papers said. After election day it was announced that this particular amend-

ment amongst others, had been affirmatively voted upon and was now a part of the constitution of the state. A few days later one of the most eminent Judges of New York City stated to the Board of Estimate and Apportionment, Gentlemen, I am one of the Judges of the City of New York, and this amendment means that only city judges get an increased salary, and the country judges do not get it, so please pay me the increase.

That is the kind of stuff we get from our legislature, and that is the kind of stuff people get from most of their legislatures. Then look at the many paternal and maternal enactments. They have a law in Oklahoma providing that the bed sheets in hotels and boarding houses must be seven feet long. Every one goes to jail who has a shorter one. Chicago has passed an ordinance about the size of hat-pins. Such are the kind of laws passed, which no one esteems and no one can esteem. Therefore, if we accept the proper definition of the term "law," see to it that proper laws, properly shaped, are brought to our knowledge, and that undue attempts to stimulate a picayune interference with our happiness and our individual freedom will not continue to be placed upon the statute books.

I was in Portland, Maine, three years ago, and found that the State of Maine was what they called a Prohibition State, that is, a state which prohibited any one from drinking a glass of wine or ale, which might be wholesome, but the law was so arranged that every one might drink whisky and that of the worst and most harmful kind. A friend of mine, in the city government of Portland, told me that each and every year during his administration as mayor of that city, over twenty-five per cent. of the inhabitants of Portland were put in jail for drunkenness. Here was, therefore, a whole city of law breakers, resulting in the moral destruction almost, of a large number of men who without such stupid laws would have been able to exercise their self-control and to conduct themselves just as we do, without restraint. Though all sorts of liquid and solid nourishment and of temptations face us, yet we know how to resist them. The law should make for decent self-control in order to produce a good crop of citizens. By the prohibitory law we take the opportunity away from people to exercise their manly qualities, and to improve their moral status.

There is another aspect: that while the majority says, you shall not drink, think what would happen if the majority should ever

change, and should order: "you must drink." Such things could happen.

You see disrespect for law, therefore, in all the cases I have given you. You see it in these prohibitive measures; you see it in lynch law excesses, in strikers' excesses, in smuggling tendencies, all evidences of the greed of man to rush to his advantage, law or no law, court or no court.

All this is largely due to a lack of healthy public opinion. It is public opinion that really makes the law, and not so much the lawmaker. On the statute books of Connecticut are still some of those "blue laws," which if enforced would have some of us enjoying the burning of witches and the like. They are not enforced. Why should they remain on the statute books? Would it not be an honest thing to take them off, and not encumber our lives with statutes requiring citizens to adapt themselves to laws that are no longer enforceable, because public opinion forbids?

In this matter of public opinion, I would like to give you a few illustrations, if my time permits. Whenever in New York a boy steals an apple from a pushcart man, the crowd laughs at the antics of the owner in his effort to protect his own and sides invariably with the little thief. In the dormitories of colleges I frequently see the rooms of students covered with so-called "trophies," things stolen from shop-windows, signs taken from the tailor or laundryman, spoons from hotels and restaurants. All that is looked upon by our public opinion as only one of those little excesses of youth, at which one may laugh; but the youth becomes a man, and how can he be expected to respect the rights of others as a man if he has not done so in his youth?

You invite the best friends of the family to weddings, and then hire detectives for the purpose of seeing that these best friends do not steal the silver. Do you suspect your best friends? What are we coming to? Is this a healthy public opinion?

We impoverish the community by allowing this kind of grafting. I have seen in one little foreign country a large revenue derived from fruit trees planted on the public highway, each tree being rented by the year as far as fruit is concerned; and no one thinks of stealing that fruit, nor would children steal it. Now, I say that when we get to the point that we can reduce our taxes, our tariff, our cost of living, by deriving a substantial revenue from public property

which is submitted to public protection, then we may see the beginning of true respect for law, with all resulting benefits.

I find the difficulty lies with the education of the children. I do not mean school instruction, but the home education of the child. That is where I look for improvement. That is where to place the responsibility. If there is disrespect for law, if there is lack of respect for the rights of others, if there is a corresponding impoverishment of the public, it is due to the fact that parents, as a whole, do not allow their children to be brought up considerate, respectful and upright in all things. I call for that kind of improvement. The Church alone cannot do it, else it would have done it. Men who seek to advance their own individual and supposed interests at the expense of their neighbors and who, therefore, are the men who do not respect the rights of others, may be looked upon as public enemies. Their kind must be eradicated and supplanted by the application of high moral principles to the development of the child. Every child embodies the germs for a noble and likewise the germs for an ignoble development. It is the duty of parents to foster the one and suppress the other. By neglecting this duty the brutal instincts are permitted to overshadow the longing for higher moral attainments as weeds keep down the most precious flowers. I hope that the importance of this great truth may sink deep into the hearts of the best among us, so that gradually processes may be developed by and through which every individual in the country will become a respecter of law, and therefore a respecter of the rights of his neighbors. In spite of the fact that we are a great nation and have accomplished great things, we can still advance and do greater things; and the greatest we can do is to bring up our boys so that every one, with healthy body, can be an Abraham Lincoln in point of morality and desire to be just in his doings to others.

RESPECT FOR LAW IN THE UNITED STATES

IV. ADDRESS BY PROFESSOR GEORGE W. KIRCHWEY,
Dean of the School of Law, Columbia University, New York.

Mr. Chairman, Ladies and Gentlemen:

Had I the tongues of men and of angels, I could hardly hope to rise to the high pinnacle of expectation which the eloquent language of the Vice-President in introducing me must have raised in your minds and hearts. Like most of those who preceded me, I, too, am a sophisticated rhetorician apt to be intoxicated by the exuberance of my own verbosity. But not holding any official station, I am cabined, cribbed and confined within the limits of time, and may not encroach upon the purlieu of eternity in speaking to-night. It is a purely parenthetical observation, but I could not help wondering, as I sat here, what limits of time would have been required if the distinguished Vice-President of the United States had come here to make a speech, instead of coming merely to introduce the speakers. However, as we are in the habit of saying in that somewhat flippant city from which I have come to these more serious precincts, the hour of ten-fifteen is only "the shank of the evening," and therefore I shall not be discouraged by the apparent limitation put upon my eloquence by the presence of the Vice-President's watch upon the table. As he has intimated to you, he trusts the public men who stand upon the platform not to steal his time. He laid no such restriction upon those who come from private life.

I have found it very easy, indeed, being a person of easy temper, to agree with everything that has been said here this evening. I am as patriotic and as optimistic as the Vice-President of the United States. Perhaps I may be permitted to add that my optimism was somewhat reinforced by learning that the Constitution of the United States is held in high regard under the present administration at Washington. I am not only as optimistic as the Vice-President, I am at the same time as pessimistic as my friend, Mr. von Briesen. Nay, I am as optimistic as the distinguished Congressman from Minnesota was in the first half of his speech

and as pessimistic as he was in the latter half. I have oscillated from one extreme to the other. My favorite definition of the optimist is, "the man who has just been talking with a pessimist"; and so hereafter when I wish to pass from grave to gay, from lively to severe, I shall only have to engage in conversation with myself.

We have heard a great deal of talk of late about the lack of respect for law in our blessed, steel-producing country. There is not so much of that to-day as there was just prior to the last election, when there were various movements abroad to tie the courts hand and foot. If I remember rightly, these movements were more active before it was known who would be the nominee of the Republican party for the Presidency, than they were at a subsequent period; but, however that may be, the net result is that there has been a considerable falling off of late in the popular outcry against the law and the administration of the law.

We are pointed back from time to time—by our pessimists—to a golden age, when all men except those who felt the halter draw, had good opinion of the law. I cannot help wondering whether that is not an illusion—whether, as a matter of fact, the free and independent American, with his insistence on having his own way, his irritation at legal as well as illegal restraint, has not always maintained very much the same attitude of free and independent criticism of the law which he exercises at the present time. He believes that the law should be rigorously enforced—against everybody, but himself. He demands for himself only justice—the justice that he thinks he is entitled to. I doubt very much if there has been any very considerable change in our attitude in the hundred years and upwards during which the present framework of government, as a means of creating respect for law, has continued. I doubt very much if the law is not quite as much entitled to respect to-day as it ever was before. Having thus made my profession of faith I will not follow my distinguished predecessors in lamenting the lack of reverence for the law among our people, nor will I seek to devise methods of education whereby our children shall have a reverence for the law of the land and those who administer it, inculcated in their youthful minds and hearts. Rather would I occupy a few minutes of your time in

pointing out how, in my opinion, the law may be made respected by being made worthy of respect.

It seems to me that the attitude of our lawyers and judges leaves something to be desired, when they animadvert upon those who criticise the law and its administration. As has been pointed out by one of the speakers of the evening, the law is the expression of the popular will, and the law courts are the instruments created by the people for giving effect to the popular will; and, this being so, will someone, whether it be judge or lawyer, tell me why the people should be precluded from criticising their own officers, appointed by them for the purpose of putting their will into effect. Why should we be estopped from criticising the law which we have ourselves created? It was said very wisely by the distinguished representative from Minnesota—and I wish to record my hearty assent to the proposition—that respect for law in this country is due to the fact that the law is the expression of the public will; the corollary to that proposition, to my mind, is that lack of respect for law is due to the fact that the law as actually administered by the courts fails to be an adequate and accurate expression of the public will? Now, why does it fail to be an adequate expression of the public will? Mainly, I believe, because of the way in which our judiciary, which is under our legal system our principal apparatus for producing law, has unnecessarily and unwisely restricted itself in the administration of justice.

We speak of the administration of justice in a vague and popular way; almost any judge or lawyer will tell you that what you really mean is the administration of law; and somehow or other, in a hazy, confused sort of way, he assumes law and justice to be identical. Now, as a lawyer and a teacher of law, it would not become me to say that there is not, somewhere, a connection between these two. There is no doubt whatsoever that in the law you will find some more or less rudimentary notions of justice; nor is there any doubt that justice is upon the whole better administered through law than it could be in any other way, and so it will be, until the perfect judge, for whom the ages have waited, appears in the seat of justice.

I hope it will not surprise you unduly if I tell you that, in deciding the cases submitted to them, our judges—it is true of

some of our judges in New York, and it is certainly true of your judges in Pennsylvania—really aim to do justice. They are not aware of that fact, and the lawyers who appear before them, have too much respect for the judicial ermine ever to suggest that that is the function of the court—really to administer justice between man and man in the case pending. The function of the judge is esteemed to be, is declared by him to be, automatically to declare the law applicable in any case; and if you ask him where he gets the law, he will point to a long array of judicial decisions, reaching back, as he believes, to the beginning of time. As a matter of fact the habit of citing and relying on precedents is a much more recent one than it is generally assumed to be, dating back only to the time of Lord Coke in the seventeenth century.

Now, I firmly believe that justice can be administered only through a regular legal procedure, and only by the application of the principles of law; and on the other hand, I believe quite as firmly that the real function of the judge is to administer justice, and not merely to ascertain from the books of the law what the law is, and then technically to apply it. There is an inevitable tendency in every legal system toward ossification. That is due to an inveterate tendency of the human mind to play the game known as "Follow the Leader." We operate intellectually, as we do in other ways, along the line of least resistance. We are an economical race, economical of effort, so we prefer to follow someone else's lead rather than to strike out for ourselves. The result is that if a judicial decision is once rendered in a case in which there is no law before that decision is rendered—and this is true of practically all cases, if I may express my opinion incidentally on that point—the judicial decision once rendered becomes stored in the judicial mind, and is copied more or less automatically in every case more or less resembling the one in which the decision was rendered. And so case after case follows that original one, and finally we find the rules of law hardening, crystallizing, solidifying, until they have lost the flexibility absolutely requisite in order to make them available as instrumentalities of justice, in the multifarious and complex affairs of life.

We have devised various methods of obviating that difficulty. Away back in the dim and distant period of the Norman rule in

England, a statute was passed directing the clerks of chancery to issue new writs in cases similar to those in which they had previously been issuing writs, but not identical therewith. From that simple fact there sprung a whole range of new remedies of which we still see the virtue and the fruit to-day. It was a self-conscious effort to relax the inflexibility of our common law system; and you will note that that tendency dates back to a very early period in our legal history.

At a later date, when our legal system had again, under the operation of this principle of *stare decisis*, as the lawyers call it, become fixed and inflexible, the system of equity was evolved in the courts of chancery; and for several centuries the principles of equity have operated to mitigate the rigors of the common law. And yet a few years ago, it was possible for the Court of Appeals of the State of New York in a case of considerable public notoriety, to declare that a young woman whose beauty had been made an article of merchandise, through the stealing and publication of her portrait for advertising purposes, had no remedy in the courts of equity in the State of New York, there being no precedent for relief in such a case; and the court held that if there was to be any change in the law established by the precedents in equity, it was for the legislature to make that change. Equity also has lost its flexibility; the common law has lost its flexibility; where shall we turn next? To the legislature, says the New York Court of Appeals, and so say many of you. We have heard to-night that something like ten thousand statutes are enacted in this country every two years. Of this number, eight thousand are perhaps, from our present point of view, negligible, being special or local in character. About two thousand are general in character and have the force of law. Of these, how large a proportion do you suppose really affect the law under which we live and by which we are governed in our private relations? About seven and one-half per cent., we are told, and about one-third of that number will either be nullified by the courts or will have to be hammered into shape by the courts before they can be put to any use in the community. May we not say, then, that legislation is as much a failure as equity has been, as the statute to which I have referred, proved to be, as a device for modifying permanently the rigors and inflexibility of our legal system?

What remains? There is no other artificial device that I know of to bring about the condition of affairs that must be effected in order that our law shall escape the criticism which we aim to avert by becoming the real handmaid of society in its onward and upward march. The only remedy that I can see is for our courts to realize once for all that the power to do justice, greater than the power to administer law, is the power that is really committed to them; that a precedent is only a signpost pointing out the direction in which the feet of justice must go, not a rule binding upon the mind and conscience of the judge; that our courts are set in their high places as interpreters of the popular sense of morality and right and the popular sense of justice not as interpreters of obscure oracles handed down from a remote antiquity. They will receive and they will deserve respect so long as the law which they lay down is the expression of the public will and no longer.

They have it in their power to make that law, day by day, week by week, year by year, a more and more prompt and a more and more accurate expression of the popular will; and, in my opinion, just in proportion as they realize the duty that is laid upon them, just in proportion as they exercise the power really confided to them, just in proportion as they succeed in a conscious effort to administer justice rather than law, will they make the law, what it will then deserve to be, respected throughout the length and breadth of the land.

REPORT OF THE ANNUAL MEETING COMMITTEE

FOURTEENTH ANNUAL MEETING

OF THE

American Academy of Political and Social
Science

Philadelphia, April 8 and 9, 1910.

The essentially national character of the Academy's organization and activities has never been as clearly emphasized as during the recent annual meeting. The subject selected for discussion, "The Administration of Justice in the United States," attracted widespread attention, and it is safe to say that the discussions had a real influence on the public opinion of the country.

The meeting was considered of sufficient importance to justify the appointment of official delegates by the governors of nine states, and the presidents of twenty-two bar associations. The names of those composing these delegations are appended to this report.

All the sessions were largely attended, including the morning session of Saturday, April 9th, which attracted widespread attention.

The thanks of the Academy are due the members of the local Reception Committee, of which Samuel F. Houston was president, and to the Ladies' Reception Committee, of which Mrs. Charles Custis Harrison was chairman.

We also wish to express our obligation to Otto C. Mallery for his entertainment of the speakers on Friday evening, April 8th.

The Academy is also under deep obligation to those who so generously contributed to the special annual meeting fund.

During the period of the annual meeting the courtesies of the Manufacturers' Club, the Union League, the City Club, the University Club and the Acorn Club were extended to the out-of-town members and guests of the Academy, and for these courtesies we desire to make due acknowledgment.

The Academy is under obligations to the City Club for special privileges enjoyed during the sessions, and to the Manufacturers' Club for the reception tendered the Vice-President of the United States on the evening of April 9th.

In addition to the formal papers contained in the proceedings, we give herewith the briefer remarks made by the presiding officers at the various sessions.

SESSION, FRIDAY AFTERNOON, APRIL 8TH.

REMARKS OF HON. JOHN P. ELKIN, JUSTICE OF THE SUPREME COURT OF PENNSYLVANIA.

"Fellow-Members and Others: I was informed when I accepted the invitation to preside at your first session that the presiding officer was not expected to make any formal address.

"A few days ago, your good Dr. Rowe, to whom this society owes so much, wrote me that if I would reduce my informal introductory remarks to writing, he would be much obliged, and so I have reduced them."¹

SESSION, FRIDAY EVENING, APRIL 8TH.

INTRODUCTORY REMARKS OF THE PRESIDENT OF THE ACADEMY, DR. L. S. ROWE, INTRODUCING HON. JAMES B. DILL AS PRESIDING OFFICER OF THE SESSION.

"It is a notable fact that in the movement for the conservation of natural resources increasing attention is being paid to the care of children as the greatest of national resources.

"Much has been done toward the elimination of the preventable diseases; much has been done toward the reduction of infant mortality, but we are only beginning to realize how much can be done toward the preservation of adolescent character.

"In the national awakening that has taken place the judiciary has played an important part, and in the constructive work which now confronts the country the importance of the influence of the judiciary will in no way be diminished. It is, therefore, most fitting that at this session the presiding officer should have been selected from the highest court of one of our adjacent states. I have the honor of presenting to you, as presiding officer of the evening, the Hon. James B. Dill, Justice of the Court of Errors and Appeals of New Jersey."

REMARKS OF HON. JAMES B. DILL, JUSTICE OF THE COURT OF ERRORS AND APPEALS OF NEW JERSEY.

"I have, ladies and gentlemen, on several occasions had the pleasure of speaking in this hall, but never with so much pleasure as to-night, for I have nothing to do, having only to introduce the speakers of the evening.

"The topic under discussion to-night goes with force to every one. Many years ago one of the great writers said in a metaphorical way that it was easier to crush the eggs of all the serpents in the sand than to pursue one with a club when it comes into its full force and energy, so when the

¹The more extended remarks of Justice Elkin appear in the proceedings.

American people, through the courts of last resort, determine whether this man is right, or this man should be sent into the next world, we are crossing back and forth along a very delicate line, which makes the state, you and me, my friend, responsible for the crime that is permitted, and the career of crime in the individual, so to-day this topic becomes of interest to us because we are attempting in advance to set aside and prevent the tribe which fills our state prisons and penal institutions. The career of the juvenile, to paraphrase my own expression, is the fault of the community, the crime is that of the individual himself.

"It is with a great deal of pleasure that I introduce to you a gentleman who has since 1870 been a classmate of mine, Dr. Hart, who is experienced and able to talk to you, because he has not only read and observed, but acted. In his capacity as director of the department of child-helping, of the Russell Sage Foundation, in New York, he is brought in contact with all these things, and he is able to talk to you about what he knows, not what he guesses."

SESSION OF SATURDAY MORNING, APRIL 9TH.

The introductory remarks of the presiding officer of this session, Hon. Charles P. Neill, United States Commissioner of Labor, are printed in the proceedings.

SESSION OF SATURDAY AFTERNOON, APRIL 9TH.

PRESIDING OFFICER, HON. EDWIN S. STUART, GOVERNOR OF PENNSYLVANIA.

Governor Stuart confined his remarks to introducing the speakers of the afternoon.

SESSION OF SATURDAY EVENING, APRIL 9TH.

REMARKS OF THE PRESIDENT OF THE ACADEMY, DR. L. S. ROWE, IN INTRODUCING HON. JAMES S. SHERMAN, VICE-PRESIDENT OF THE UNITED STATES, AS PRESIDING OFFICER OF THE SESSION.

"I would be guilty of larceny in its highest degree if I were to take valuable time from this meeting in unnecessary words of introduction. With so distinguished a presiding officer as the Vice-President of the United States, any words of introduction are not only superfluous, but distinctly out of place. I have the honor, therefore, of presenting this audience to the Hon. James S. Sherman, who has done us the honor to accept the presidency of this session."

The remarks of Vice-President Sherman, in introducing Hon. Frederick C. Stevens, are incorporated in the printed proceedings.

REMARKS OF THE VICE-PRESIDENT OF THE UNITED STATES IN INTRODUCING
ARTHUR VON BRIESEN, PRESIDENT OF THE LEGAL AID SOCIETY, NEW YORK.

"Not being a musical program, I suppose encores cannot be given, so Brother Stevens is not to be called upon to respond to your kind applause.

"The managers of the meeting have requested me to suggest to those that follow, though I do not know why they should have neglected it until now, that the speakers limit their remarks to fifteen minutes. Having a full confidence in the honesty of the public men of the present day, some of whom are to be seen on the stage, I am going to put my watch here upon the table. It may call to the mind of the speakers a feeling akin to that expressed by the eminent Methodist divine, when he placed his watch upon the pulpit at the beginning of his discourse, saying that he did so lest in his contemplation of eternity he should lose all thought of time.

"Brother Stevens has spoken of the fact that every two years in state and nation they turn out laws, which brings to my mind a sad recollection that every two years they sometimes turn out lawmakers. I have a very distinct recollection of having to respond some years ago to a very earnest invitation on the part of my constituents to tarry at home with them for a couple of years. In such cases one is not permitted to send regrets. It reminds me of the experience of one of my colleagues, who was prominent in the South, and who spent his boyhood on a large plantation in the slave days. His father was a slave owner. All the slaves had a small amount of work parceled out to them on the Sabbath Day, save one old brother. He never had to work because he had been called to speak to the flock in the little church. One Sunday morning my colleague found the old man sitting upon the woodpile, with downcast face and expression. When the boy asked why he was not in church he said: 'I never goin' to preach to those niggers no mo'. 'What is the matter, Uncle Marsh?' asked the boy, but the nigger would for a long time give no reply. 'The niggers don't appreciate good preaching,' he said. 'There is some other reason than that,' said the lad, 'and I will find it out, so you had better tell me now.' 'Well, master,' was the reply, 'that there congregation done send me my resignation.'

"I do not quite agree with my good friend Stevens in the intimation that we are getting gradually worse. Now, I have not lived as long as Methuselah, and the black hair and cheerful expression of my school companion whom I see sitting in your midst is proof that I have been here but a short time. Yet during these decades it seems to me that I can say that the general moral tone of the world in which I have lived is not retrograding, but is improving. I suggested a while ago that we must compare ourselves with the rest of the world. If we do not have quite the same respect for the law in all its little minor details, it possibly is owing to the fact that the lawmakers do make punishments fit the crime, rather than make it after the perpetuation of the crime, as they do in some governments under the sun. For instance, we would not think here that it is the proper thing to sever the thread of a man's life simply for stealing a spool of thread, as would be done in some quarters of the world.

"But I must not forget that I am here to introduce the next speaker of the evening, and I am not going to introduce him as Mark Twain once introduced himself, saying to his audience, 'Mark Twain will address you upon such-and-such a subject, for the reason that he knows very little about anything else, and does not know much about anything.' This gentleman whom I shall next introduce is a man who has shown not simply by his check that he has an interest in public affairs, but he has contributed of his brain and his brawn toward the good of mankind. He has occupied positions of trust, positions in which all of his knowledge and all of his intellect have been exhibited to advantage; and I have pleasure in introducing the gentleman who has been for years the president of the Legal Aid Society of New York, Arthur von Briesen."

REMARKS OF HON. JAMES S. SHERMAN, VICE-PRESIDENT OF THE UNITED STATES, IN INTRODUCING HIS EXCELLENCY, THE MEXICAN AMBASSADOR, SEÑOR FRANCISCO LEÓN DE LA BARRA.

"I call attention to the fact that my confidence in mankind has not been tested in vain—the watch is still here.

"Of the delights of a public service of well-nigh a quarter of a century in Washington, none was greater than intimate association with that very extraordinary character who for substantially a generation represented a portion of this goodly city of Philadelphia in the halls of Congress—Pig Iron Kelly—and with that other man, close association with whom inspired not only admiration, but warm friendship, and friendship intensified by the fact that he was born a political ally of my father (I myself not being a political ally of either of them); I refer to former speaker and great Pennsylvanian and statesman, Samuel J. Randall; or that other Pennsylvanian and representative from this city—unique, kind, cordial—dear little Charlie O'Neill.

"With all the delights of this service, none is greater than that which has come in later years in close association with the representatives of great powers of the world, sent here to our court, and I want to testify to the fact that to-day, whatever it may have been in some former generation, when we were not quite as great as we are now, the diplomatic corps is made up of men of ability, genius and high-minded character.

"It is our good fortune to have a representative of the diplomatic corps here to-night, and I have much pleasure in presenting the ambassador from our sister republic, Mexico, Señor Francisco León de la Barra."

REMARKS BY THE MEXICAN AMBASSADOR TO THE UNITED STATES, SEÑOR FRANCISCO LEÓN DE LA BARRA.

"Your country not only commands the admiration of the world by its magnificent industrial development and commercial and agricultural power, but by its prodigious, moral force acquired through conquests in the realms of spiritual life.

"Man cannot longer display his energy as of old in crusades and in conquering a new world. To-day man gives to the useful his most strenuous energy; he develops the natural treasures of the earth, transforming them by industry and diffusing them by commerce. But man's activity manifests itself also in the domain of art and science, and principally in the subject matter of the Academy's studies.

"In my country this activity appears in a practical and useful way by the care with which laws are elaborated without forgetting the teachings of modern science and the ethnological and social conditions of Mexico, and also by the pertinent and vigorous application of legal precepts. Although it would be an easy task to prove it, I must, through lack of time, content myself with the bare affirmation that in my country the respect for law is complete, and that this fact explains the long period of peace which Mexico has enjoyed.

"I consider it to be a true saying that the people have the government that they deserve. In my esteem, the mere fact that the Mexican Government has always complied with the obligations of treaties and international law, shows plainly that in the Mexican people prevails the tendency to respect the law.

"Here allow me to recall the public and eloquent testimony of Gen. Powell Clayton, former able American Ambassador to Mexico, expressing on a solemn occasion his unbounded esteem of the judicial decisions of the Mexican Supreme Court of Law, which always bears the seal of the most profound knowledge of the law combined with the most honorable character.

"The spectacle which is presented to-day by this assemblage of men of science and statesmen bent upon the study of the forms in which respect for law appears in your country, is soothing to the mind and shows a most interesting aspect of American thought, already exposed by your great Franklin in his famous interrogatory before the House of Commons. This spectacle is both stimulating and exemplary. Ladies and gentlemen, under the impression of this sentiment of hope and consolation, I express my most heartfelt wishes for the extension of the influence of the Academy and similar institutions in the promotion of science and the prosperity of this great republic."

REMARKS OF HON. JAMES S. SHERMAN, VICE-PRESIDENT OF THE UNITED STATES, IN INTRODUCING PROF. GEORGE W. KIRCHWEY, OF COLUMBIA UNIVERSITY, NEW YORK.

"We have had the pleasure of listening to one of the great legislators of the country; then to a lawyer who is proud of the fact that he never held public office, and now we have listened with much delight to the representative of a foreign government. We are about to listen to one who has not held public office, but who has performed a public trust, and a great public trust, because I believe that he or she who molds the thought and character of the young man and young woman in our schools and in our colleges deserves at the hands and in the minds of his fellow-men the highest and the richest possible encomiums.

"I have pleasure in introducing, as the next speaker of the evening, Professor Kirchwey, of Columbia University."

CLOSING REMARKS OF HON. JAMES S. SHERMAN, VICE-PRESIDENT OF THE UNITED STATES.

"*Ladies and Gentlemen:* This completes the program, which has been very delightful to you and to me—save only the part which I have occupied therein, without any limitation, as the professor had intimated, and with nobody sufficiently unkind, had there been any limitation, to invoke the rule to close me out. I want to say just this single word in conclusion: That no community, as a whole, measures up to the lofty ideas of its best citizens, nor does any community sink to the degradation of its lowest scum. Wherever in Pennsylvania, or wherever throughout this country, or throughout the world laws are passed after judicious and careful thought, and interpreted and enforced by just and considerate men, such laws are more readily accepted and obeyed by the people.

"I am not of those, as I said before, who are pessimists. I believe the definition of a pessimist, made long ago, was the correct one—that the pessimist was he who, given his choice between two evils, took both. I am an optimist, and I still believe, after listening to all the speeches of the evening—and I think from those speeches that belief is intensified—that we are nearer the millenium to-day than we ever were before in our time. We have never lynched as good a man as they did 1900 years ago, and they will never lynch as good a man again, and nobody will dispute that proposition, I am sure. I am also sure that with the spread of education in this country—you know we are educating annually 20,000,000 students under twenty years of age, and spending one-third as much for education as all the rest of the world—we are spreading education and civilization not only throughout our own people, but throughout the world, and with this spirit in our midst, acting as a focus to extend it beyond our own borders, I believe, as time goes on, all laws will not cease to be judicious, and the people will bow to them with ever-increasing deference."

CLOSING REMARKS OF THE PRESIDENT OF THE ACADEMY IN DECLARING THE FOURTEENTH ANNUAL MEETING ADJOURNED.

"May I have your attention for one moment before we adjourn. In bringing our annual meeting to a close, I want to extend the thanks of the Academy to our Vice-President, not only for coming here this evening, but also for his great kindness in meeting an emergency situation. I wrote to him a number of times that we would not expect an address, and when I met him at the station this afternoon, I said to him: 'Mr. Vice-President, until this morning I had expected to have with us both Senators Borah and Smoot, and at four o'clock this afternoon I received word that they would not come, for reasons that were good and sufficient. Now, we must call upon you in this emergency to make an address,' and to this call he generously responded.

"Ladies and gentlemen, I feel, furthermore, that we owe a special debt of gratitude to all who have spoken at this annual meeting, but especially to those who were called upon at the last moment.

"It was at one o'clock this afternoon that I called His Excellency, the Mexican Ambassador, on long distance, and told him that I wanted to have his consent to call upon him and to this he generously responded.

"It was at five o'clock this afternoon that I finally arranged to have Professor Kirchwey speak to you, and at seven o'clock Dr. Talcott Williams, whom we have not been able to hear because of the advancing hour, also generously agreed to make his contribution. Much as we regret the absence of Senators Borah and Smoot, as large as their contribution would have been to the discussion of the evening, I think that we will go away feeling that we have had the full measure, not only of discussion, but of fruitful inspiration and instruction.

The fourteenth annual meeting of the Academy has now come to a close."

OFFICIAL DELEGATIONS AT THE FOURTEENTH ANNUAL MEETING.

DELEGATIONS APPOINTED BY THE GOVERNORS OF THE FOLLOWING STATES:

1. Colorado.
2. Florida.
3. Kentucky.
4. Minnesota.
5. Missouri.
6. Nebraska.
7. New York.
8. North Carolina.
9. Ohio.

DELEGATIONS APPOINTED BY BAR ASSOCIATIONS:

1. American Bar Association.
2. Pennsylvania—
 - Pennsylvania Bar Association.
 - Law Association of Philadelphia.
 - Lawyers' Club of Philadelphia.
 - Allegheny County Bar Association.
 - Bradford County Bar Association.
 - Elk County Bar Association.
 - Law Association of Indiana County.
 - Montgomery County Bar Association.
 - Northampton County Bar Association.

- Union County Bar Association.
- Warren County Bar Association.
- Washington County Bar Association.
- 3. New York—
 - Association of the Bar of the Borough of the Bronx.
 - State Bar Association.
- 4. New Jersey—
 - New Jersey State Bar Association.
 - Camden County Bar Association.
- 5. Connecticut—
 - Connecticut State Bar Association.
 - Hartford County Bar Association.
- 6. Delaware—
 - Bar Association of Kent County.
- 7. Illinois—
 - Patent Law Association of Chicago.
- 8. Indiana—
 - State Bar Association of Indiana.

BOOK DEPARTMENT.

NOTES

Bailey, L. H. *Manual of Gardening.* Pp. xvi, 539. Price, \$2.00. New York: Macmillan Company, 1910.

Professor Bailey, in charming style, here tells of the joy of making things grow. The formal garden may suffice for a residence, but not for a home. The home, though its grounds are small, may yet, with proper treatment, be a real landscape picture. Rare and choice plants, however, are no guarantee of pleasing grounds. The relation of plants and shrubs to each other and to buildings is of more import than the beauty and perfection of individual specimens themselves.

The book presents an enormous amount of detailed information regarding execution of landscape features. This includes elaborate and valuable lists of plants and shrubs adapted for various ornamental purposes; suggestions for their placing and instructions on particular sorts. The book is copiously illustrated and will be especially satisfying to those who love nature.

Banfield, E. J. *Confessions of a Beachcomber.* Pp. xii, 336. Price, \$4.00. New York: D. Appleton & Co., 1909.

Mr. Banfield varies the usual interpretation of the tropics which makes them undesirable. He assures us that while it "may be perhaps beyond proof, it might be safely assured that a larger proportion of men of the yeomen class represented by those who have succeeded in tropical agriculture in North Queensland are independent to-day than of the men in Victoria and New South Wales who devoted their energies to sheep farming, wheat growing and dairying." Mr. Banfield advances these statements in proof of the great productivity and ease of supporting life in tropic Queensland in the latitude of Guatemala, where the luscious banana is merely one of the many good things that man can produce in far greater quantities than he can consume. Mr. Banfield has not confronted the difficulty of family life in the tropics and is not called upon to explain why his garden of Eden, with all its richness has less than one person per square mile, while the arid and unproductive parts of temperate Australia have become an empire. Nevertheless it is good to read his appreciation and interpretation of the relatively wild tropic. Indeed, its unsettled characteristic gives him splendid opportunity to describe the aboriginal black with whom he established such friendly relations, and his scientific training and his powers of observation make his account of savage life, of plants, animals and fishes very interesting. His style is good; his appreciation of nature keen and catholic.

Bateson, W. *The Methods and Scope of Genetics.* Pp. 49. Price, 50 cents. New York: G. P. Putnam's Sons.

Professor Bateson has presented in a short space a remarkable analysis of

the applications which have recently been made of the Mendelian Laws of Heredity, and of their scientific value to the discussions of eugenics. The book affords a general insight into the aims and accomplishments of the scientists who are investigating the laws governing the transmission of qualities from parent to offspring.

Blakelee, G. H. (Editor.) *China and the Far East*. Pp. xxii, 455. Price, \$2.00. New York: Thomas Y. Crowell & Co., 1910.

Discussions of the more important phases of the "Far Eastern Question" by men who have made a special study of the field are presented here. The papers vary greatly in value. Most of them add little not available in the current volumes on the subject. About three-fourths of the pages discuss China from the American, Japanese and missionary viewpoints. There is no discussion of China's problems as China sees them. Japanese-American relations, Korea and Hawaii are briefly treated. A pro-Japanese tinge appears in many of the papers. Two by Japanese authors present views of Chinese-Japanese relations which are naïve to say the least. It is still insisted, for example, that the result of the Russo-Japanese war was clearly to "save Manchuria to China." The titles of some of the papers do not indicate their content. A thirty-page discussion on "The Chinese student in America" gives hardly two pages to that subject. The treatment of "The New Learning in China" is chiefly devoted to missionary schools.

There are several excellent chapters which present material new or not easily available. This is especially true of the discussions on the Foreign Trade of China, Monetary Conditions, America's Trade Relations, The Opium Problem, Christian Missions and the Japanese in Korea. These topics are well presented and will make the book valuable both for the general public and as collateral reading for college classes.

Carson, W. E. *Mexico*. Pp. xi, 439. Price, \$2.75. New York: Macmillan Company, 1909.

This book is an American journalist's account of his trip through Mexico from Vera Cruz to the capital, to the Isthmus Tehuantepec and to most of the cities of the Plateau, thence northward by rail to the United States. The work has a good, easy style, and the nature of its writing makes it easier for us to understand the wide range of topics treated, which ranges from ports to paintings, from the pre-historic to the prospective, and from governments to courtships. The chapters also, despite definite subjects, often contain a wide range of subject matter. The book contains a lot of interesting but scrappy information and has a number of pictures, although many photographs of streets are without significance.

Casson, H. N. *Cyrus Hall McCormick, His Life and Work*. Pp. xi, 264. Price, \$1.60. Chicago: A. C. McClurg & Co., 1909.

This wide-spaced, clearly-printed little book is a eulogistic biography of the indomitable inventor, who is described as a thoroughly typical American of the best sort, as shown by his work, his piety, his philanthropy and his

devotion to public service. Indeed, his biographer can see in him no fault. The introductory chapter on "the world's need of a reaper," descriptive of the national and world poverty which machinery has abolished for some of us, is related in a striking as well as thought-provoking manner. The later chapters on the "Reaper and the Nation," and the "Reaper and the World," are also interesting and suggestive. The book is well written.

Chance, William. *Poor Law Reform.* Pp. 95. Price, 1s. 6d. London: P. S. King & Son, 1910.

This little volume is a discussion of the administration of the English Poor Law by one who believes that the recent commission found certain defects which must be remedied, but he by no means accepts the decisions of either the minority or majority. The author has had wide observation of the present system and his opinion is correspondingly valuable. It should be noted that the author is the chairman of a National Committee for Poor Law Reform appointed in 1908 by the British Constitutional Association.

Colby, F. M. (Ed.). *The New International Year Book.* Pp. 792. New York: Dodd, Mead & Co., 1910.

This number of the annual volume to go with the useful International Encyclopedia seems to maintain the excellence of the series and bring into ready form the history of the world down to the end of last year. For example, the Ballinger-Pinchot controversy is carried down to the Congressional action of December 28, while Korea, Marquis Ito, Agricultural Education, Gas Engines, the Los Angeles Aqueduct, the Dover Breakwater, Aerial Navigation and Hudson-Fulton Centennial and many other topics are brought down to date in a very satisfactory form. There are a number of good illustrations throughout the book and ten maps, most of them colored, showing such regions as Alaska, Turkey in Asia, the railways of Manchuria, etc. Altogether it is a very useful book and merits a wide circulation.

Coleman, Nannie McC. *The Constitution and Its Framers.* Pp. x, 642. Price, \$3.00. Chicago: The Progress Company, 1910.

Readers especially in secondary schools will find the material in this book readable and characterized by "human interest." It is not a critical work; the author in fact states that it is "the product of home evenings." "The principal purpose is to collate in a single volume suitable for ready reference and frequent study the epoch-making state papers of this country, their history and development and especially the chief events in the careers of the men who framed them."

As an introduction to the discussion of the constitutional period a review of colonial and revolutionary experience is given. One hundred and fifty pages summarize the lives of the signers of the Declaration of Independence; two hundred and thirty pages do the same for those who framed the constitution. Seventy-five pages give a commentary on the text of the constitution. The language is often flowery and there are numerous mistakes in detail, but the material covering the lives of those who made the nation is nowhere else so easily available.

Commons, J. R. and Others. *Documentary History of American Industrial Society.* Vols. I-IV. Pp. 1453. Price, \$5.00 each. Cleveland: A. H. Clark Company, 1910.

Cory, G. E. *The Rise of South Africa.* Vol. I. Pp. xxi, 420. Price, \$5.00. New York: Longmans, Green & Co., 1910.

Cromer, Earl Of. *Ancient and Modern Imperialism.* Pp. 143. Price, 50 cents. New York: Longmans, Green & Co., 1910.

In this essay Lord Cromer, long Viceroy of Egypt, makes a comparison of Roman imperialism with that of France, Russia and especially England. He finds that many of the leading characteristics of ancient imperialism appear also in modern times. Great corruption, failure to assimilate the subject races, and until recently at least, the desire to exploit the people directly, are found in modern as well as in ancient times. On the other hand, modern imperialism is confronted by problems far greater than ever confronted Rome. The pantheistic religion of the Romans served as a means by which the people could be bound to the empire. But Christianity is exclusive. The Romans intermarried freely or at least more freely than occurs in modern times with the people they conquered. Race prejudice reduces intermarriage in modern times to a minimum. Rome had an advantage also in that her language easily displaced the tribal tongues. The modern imperialist finds it most difficult to displace the native literature and speech. Rome was alone in the field. Competing powers now make the task of the imperialist difficult. All the conditions of the modern industrial life have become so complex that the modern imperialist stands at a distinct disadvantage.

Of all modern powers England is in one respect the least fitted for an imperialistic program. The desire to grant self-government constantly conflicts with the struggle for good government. Lord Cromer believes that this problem is one in which England has made but little progress. It becomes most acute in India, which is really the center of England's imperialistic policy, but which, because of divergent races, languages and religions, cannot be made a unit, and so far at least has not, in the opinion of the author, developed the ability to govern itself.

Cullen, A. *Adventures in Socialism.* Pp. xv, 330. Price, \$2.00. New York: Macmillan Company, 1910.

Apparently authors will never tire of telling the interesting and instructive story of Robert Owen and New Lanark. The latest addition to the literature in this field is a volume by Alexander Cullen entitled "Adventures in Socialism." The first half of the book contains a very complete discussion of the New Lanark experiment, in concluding which the author states: "To that experiment we can trace the inception of Modern Socialism. We can point to New Lanark as the birthplace of co-operation and as the nursery of the infant school, and to Owen as the pioneer of free education and free libraries." The latter half of the volume presents the first thorough history which we have of the ill fated and unsuccessful co-operative community at Orbiston, Scotland. The work of the author has been excellently done, and

were it not for his tendency to dogmatize whenever the opportunity is presented no criticism could be made.

Davenport, E. *Principles of Breeding*. Pp. xiii, 727. Price, \$2.50. Boston: Ginn & Co.

In presenting this book the author introduces into common usage the term "Thrematology," which includes the methods of improving, as well as the principles of breeding farm animals. This word well expresses the scope of the volume. Mr. Davenport's method of treatment is somewhat novel in that variation, rather than heredity, is made the chief basis of the discussion. The various categories of variation, their causes and relative stability, are comprehensively discussed, with abundant example, illustration and citation from original experimental work.

The author purposely opens an "interminable question" when he considers transmission of acquired characters; but this is needful, for "no other question in all evolution is of such immediate and far-reaching consequence in thrematology." His personal statements in this matter are well guarded. They seem to lean slightly toward the views of Lamark.

Dole, C. F. *The Ethics of Progress*. Pp. vii, 398. Price, \$1.50. New York: T. Y. Crowell & Co., 1909.

While the work is ethical in its expression, it is fundamentally social in its concept, and the able discussions which fill its pages form an excellent basis for social activity. The keynote of the social doctrine is contained in the section of the book dealing with good will. Happiness is analyzed and the thought emphasized that the highest form of happiness is derived through social service. True happiness in life is derived, not from a satisfaction of selfish, individual wants, but from an attempt to supply social wants. The author thus presents a splendid ethical creed for those who desire to engage in social work.

Draper, A. S. *American Education*. Pp. viii, 383. Price, \$2.00. Boston: Houghton, Mifflin Company, 1909.

The author has attempted in this work the worthy object of analyzing the present public school situation, both from an historical and a modern standpoint. The four sections of the book treat of the organization and administration of education; of elementary and secondary schools; the college and university, and special aspects and problems of education.

The chapter dealing with Illiteracy and Compulsory Attendance is excellent, as is the chapter on The Crucial Test of the Public School. The latter chapter analyzes the elementary schools and indicates their chief defects. Judge Draper is unsparing in his criticism of the whole American educational system. Unfortunately, however, while the subject matter of the book will not *per se* appeal to the general public, and will not, therefore, be generally read, it is at the same time not scientific enough to appeal to the advanced student of educational problems. The purpose of the book is a worthy one, its outline is excellent, but the execution is defective. Had time

been devoted to the preparation of the work, its value would have been increased tenfold.¹

Gray, J. C. *The Nature and Sources of the Law.* Pp. xii, 332. Price, \$1.50. New York: Columbia University Press, 1909.

Gregory, H. E., Keller, A. G., and Bishop, A. L. *Physical and Commercial Geography.* Pp. viii, 469. Price, \$3.00. Boston: Ginn & Co., 1910.

Grenfell, W. T., and Others. *Labrador, the Country and the People.* Pp. vii, 497. Price, \$1.25. New York: Macmillan Company, 1909.

Labrador, a region larger than the original thirteen states, has peculiar combinations which have prevented it from advancing easily in the world's civilization, and it has been strangely neglected by the uplift forces of the western world which have sent so many missionaries to other and more sunny and attractive lands. It has remained for Dr. Wilfred T. Grenfell to become the Moses to lead this land and people of winter darkness out into the arena of world observation where they can receive our attention, interest and, let us hope, our support. Dr. Grenfell is a real viking, and the book portrays his love of the north and his delight in following the dog-team, but he is also evangelist, judge, physician and teacher to his people, and in this book, in which he attempts to tell the world about them, he also shows himself to be no mean economist in his keen appreciation of the factors of relationship between the people, their resources and their environment.

The heart of the book is the part by Dr. Grenfell describing the coast people, the missions, the dogs, the fisheries and the reindeer, which he looks forward to as a source of great possible increase to the prosperity of the country which has thus far depended upon dogs and the cattle of the sea. The first part of the book consists of chapters upon geography and geology written by suitable experts. The last part deals similarly with birds and flora; the insects and the marine animals receiving attention in appendices. It is altogether an excellent book, telling us what we need to know about Labrador, a region which, according to the words of Dr. Grenfell, has a future:

"To us here, away out of the world's hum and bustle, it seems only a question of time. Some day a railway will come to export our stores of mineral wealth, to tap our sources of more than Niagaran power, to bring visitors to scenery of Norwegian quality, yet made peculiarly attractive by the entrancing color plays of Arctic auroras over the fantastic architecture of mountains the like of which can seldom be matched on the earth. Surely it will come to pass that one day another Atlantic City will rise amidst these unexplored but invigorating wilds to lure men and women tired of heat and exhausted by the nerve stress of overcrowded centers."

Hall, G. S. *Youth, Its Education, Regimen, and Hygiene.* Pp. x, 379. Price, \$1.50. New York: D. Appleton & Co., 1909.

Owing to the great length and prohibitive cost of his "Adolescence," Presi-

¹Contributed by Scott Nearing.

dent Hall has written in a condensed form the principal ideas presented in that work. The present volume deals with the various stages in the development of youth, the pre-adolescent stage, the various kinds of applied education, the body, the mind, play, sport and games, faults and crimes, the development of social and intellectual ideas, and nature of moral and religious training. The author makes no change in his attitude toward the problem of adolescence, but the present volume suffers in that it is too condensed, many of the interesting illustrations and much of the statistical material which made "Adolescence" so attractive and valuable having been omitted. While the volume adds little or nothing to the scientific treatment of adolescence, and while it is if anything less valuable to the general student than was "Adolescence," its convenient size and reasonable cost bring within the reach of all material of incalculable value.

Hall, W. E. *A Treatise on International Law*. Sixth ed. Pp. xxiv, 768. Price, 21s. Oxford: Clarendon Press, 1909.

Students of international law owe a real obligation to Mr. Atlay for his evident determination to keep Hall's "Principles of International Law" in touch with every important change in international relations. The fifth edition of this work appeared in 1904, and we now have a sixth edition, in which due attention is given to the results accomplished at The Hague Conference of 1907, and the London Conference on the Laws of Maritime Warfare, held in 1908.

In spite of the many recent English treatises on international law, Hall's book still remains the most satisfactory. The admirable system which he pursued in the presentation of the subject, together with his remarkable power of succinct statement, gives to the work an unique position amongst the commentaries on this subject.

Hayes, C. H. *Sources Relating to the Germanic Invasions*. Pp. 229. Price, \$1.50. New York: Longmans, Green & Co., 1909.

This monograph consists of a description and valuation, with copious extracts in English, of the sources relating to the Germanic invasions from the earliest times to the latter half of the eighth century. The general tone of the treatment is iconoclastic. The German invasions and Germanic origins have been the theme of numberless books. Nevertheless, the author believes that there is still room for a treatment which will hold faithfully to the sources and thus rid us of much fanciful lore and the fetichism which clings to such dates as 378 and 476. To prepare the way for such a work, this little book describes the primary sources which are available and to some extent shows how they should be used.

Hilgard, E. W., and Osterhout, W. J. V. *Agriculture for Schools of the Pacific Slope*. Pp. xix, 428. Price, \$1.20. New York, Macmillan Company, 1910.

The number of agricultural texts already offered is large. Most of the books are of progressively increasing worth. This book is no exception. It treats of all phases of agriculture, each topic amplified by telling but simple experi-

ments. The book is planned for the Pacific slope and especial emphasis is therefore laid on fruit culture and control of insect pests, but excepting this feature, the book is equally applicable to any district where general agriculture is practiced.

The authors deserve particular credit for the chapter on "Bacteria." Their introduction of actual experimental bacteriology into secondary schools is to be commended.

Holt, Hamilton. *Commercialism and Journalism.* Pp. 105. Price, \$1.00. Boston: Houghton, Mifflin Company, 1909.

The author discusses frankly "the ultimate power in control of our journals." He asks, and seeks to answer, whether journalism is a profession or a business, whether editors are free, and how far advertisers dictate the policy of the paper. The conclusion is that "commercialism is at present the greatest menace to the freedom of the press."

Hopkins, C. G. *Soil Fertility and Permanent Agriculture.* Pp. xxiii, 653. Price, \$2.75. Boston: Ginn & Co., 1910.

Howe, F. C. *Privilege and Democracy in America.* Pp. xii, 315. Price, \$1.50. New York: Charles Scribner's Sons, 1910.

Like all books prepared by the school of thinkers to which Mr. Howe belongs, this work is based on the ideas of the monopoly of natural resources. The author begins with an analysis of the economic foundation of democracy, then discusses the extent to which the resources of the nation have been given away, the seriousness of the present "strangle hold of monopoly" and the probable outcome of the monopolistic control of natural resources in a new serfdom. The usual chapters appear on tenancy, the development of a land tenant class, the passing of the unearned increment from the tenants to the landlord and the depreciation in land fertility due to tenancy. After presenting several chapters on the cause of civilization and decay, with particular reference to morals, the author cites the remedy, the single tax, the application of which will overcome the existing maladjustments. The book presents a good discussion of the facts regarding the altered status of land holding in the United States, and a passable analysis of the single tax theory.

Hoyt, C. O. *Studies in the History of Modern Education.* Pp. 223. Price, \$1.50. New York: Silver, Burdett & Co.

The author has presented an excellent, brief study of the rise of modern educational doctrine, beginning with Comenius and following with Rousseau, Pestalozzi, Herbart, Froebel and Horace Mann. Each of these great leaders in the various fields of educational thought is analyzed and his particular contribution to education indicated.

There is, of course, nothing new in this order of study. The distinctive contribution of the author is in the machinery of the book. His methods of quoting, outlining, question-asking and grouping of material are unique and should make this book an excellent text for a course in the history of education.

Hughes, E. H. *The Teaching of Citizenship*. Pp. xv, 240. Price, \$1.25. Boston: W. A. Wilde Company, 1909.

Kauffman, R. W. *What is Socialism?* Pp. 264. Price, \$1.25. New York: Moffat, Yard & Co., 1910.

The title of this book might well have been "Socialism for the Lay Mind." It is the result of a conscious attempt to "popularize" the economic essentials of socialism. Only occasionally is the author forced to use technical terms. The style is conversational, if not, in places, verbose.

The attitude of the book is one of fairness. While there is little doubt that Mr. Kauffman is a socialist, he attempts to state impartially both sides of each disputed point. This constitutes one of the most valuable features of the book. For example, in the chapter on "The Point of Departure" the author shows with clearness how far orthodox political economists and socialists may join hands and just where they must inevitably part company. The reader is left to decide which way leads to truth.

The book contains the customary chapters on the economic theories underlying socialism, the Economic Interpretation of History, the Class Struggle, Carl Marx, Socialist Propaganda and the Co-operative Commonwealth. In two appendices are found the Communistic Manifesto and Socialist Platform, Preamble and Declaration of Principles for 1908.

Keeling, F. *The Labour Exchange in Relation to Boy and Girl Labour*. Pp. vi, 76. Price, 6d. London: P. S. King & Son, 1910.

American social workers are under obligations to the writer of this brief account of the English and German attempts to make children's early working years worth something to them. In the blind alley character of the work which most boys and girls now enter as soon as the law allows Mr. Keeling finds an explanation of the adult "unemployment, underemployment, and incapacity for employment," which the Poor Law Commission's Reports reveal.

Some steps have been taken in America toward controlling a boy's work for his future's sake—the late Professor Parsons' vocational bureau in Boston, the children's employment agencies recently started by the Cleveland and Philadelphia Consumers' Leagues, and the semi-public movement to a similar end now shaping itself in connection with the New York City public schools—but it will be a surprise to most readers to learn from Mr. Keeling's concise and admirably written little book of the large number of such enterprises in Great Britain and of the success which some of them seem to have attained. They have recognized, more clearly than we so far, that the problem is three-fold. First, the private organization or the school board, as the case may be, "must assist boys and girls to *choose a career*." Secondly, it must assist them to *find work* of a suitable kind. Thirdly, it must assist in the *supervision* of the boy or girl, when placed, with a view to his or her further education, both technical and humanistic." Private committees have taken the lead in this work and for the guidance of their salaried workers and others a series of hand-books has been published on the trades which boys or girls may enter. The London County Council and the Glasgow School Board,

co-operating with such organizations, have purchased several thousand of these books for the use of their head teachers.

King, H. C. *The Ethics of Jesus*. Pp. xii, 293. Price, \$1.00. New York: Macmillan Company, 1910.

King, I. *The Development of Religion*. Pp. xxiii, 371. Price, \$1.75. New York: Macmillan Company, 1910.

La Monte, R. R., and Mencken, H. L. *Men vs. the Man*. Pp. 252. Price, \$1.35. New York: Henry Holt & Co., 1910.

In this volume we have the publication of an interesting series of letters which passed between R. R. La Monte, editor of the New York "Daily Call" (Socialist), and H. L. Mencken, editor of the Baltimore "Sun," dealing with the general subject of Socialism. Mencken, the individualist and ardent follower of Nietzsche, most skillfully attacks the arguments of La Monte, the Socialist, and shows a surprisingly thorough grasp not only of his own, but also of his opponent's philosophy. Mr. La Monte's portion of the correspondence is marred by too frequent and too lengthy quotations from various socialist and sociological works. There is nothing new either as regards fact or theory in the volume, but it is nevertheless an interesting contribution as it shows how variously the accepted facts and theories appeal to these two men of radically different philosophies.

Lane, C. B. *Business of Dairying*. Pp. viii, 234. Price, \$1.25. New York: Doubleday, Page & Co., 1910.

This volume is a manual of daily practice for the dairyman. Every phase of the subject, from the treatment of the soil on which the feed is grown, to the advertisement and sale of the dairy product is treated. Much space is given to the practice of "soiling" cattle, that is, cutting and hauling green forage rather than allowing the cattle the free range of a pasture. In accord with most experiment station men the author uncompromisingly urges the adoption of this system. This is emphatically a business volume, the financial estimates of profit and cost are conservative. It is, withal a safe guide for an adventure in commercial dairying. He points out again the ease with which germinal variations can be induced and warns breeders against being lulled into carelessness by the dictum of non-transmissibility of post embryonic modifications.

Laprade, W. T. *England and the French Revolution*. Pp. 232. Baltimore: Johns Hopkins Press, 1909.

Lindsey, Ben B., and O'Higgins, H. J. *The Beast*. Pp. xiv, 340. Price, \$1.50. New York: Doubleday, Page & Co., 1910.

Fragmentary news items have suggested to the public the struggle which was progressing in Colorado between the judge of the juvenile court and the agents of corporate power. These stray news items are now authenticated by this publication of the full history of the war between a small group of men and women, aiming to improve civic affairs, and the financial powers

which dominate Colorado's industrial and political machinery. The story is a stirring and vital one, but, at the same time, it is remarkable for its absence of hysteria or sentimentalism. There are neither high sounding phrases, nor over-wrought passages. Judge Lindsey has told in plain, unvarnished phrases the truth about his fight for good government and "a decent city for decent kids." Court records occupy a leading place in the story and the statements through the book are founded upon the most unimpeachable evidence.

In magazine articles and speeches, and now in book form, Judge Lindsey has striven to convince the American people that a life and death struggle between the "Beast" and public welfare is being waged. He has stated the history of the corporation-dominated politics of Colorado and Denver in a way that deserves the admiration of every American, and he has designated the methods of attack upon anti-social monopoly which may be followed with infinite advantage by every American state and municipality.

Marriott, C. *How Americans Are Governed in Nation, State and City.* Pp. vii, 373. New York: Harper Bros., 1910.

Government as a live subject is a thing in sharp contrast to government as an organization of powers. The author leads us far indeed from the "Civil Government" with which most of us were familiar in our school days. We are not told only that "the Senate represents the states" and "the President is chosen by the college of electors," but an attempt is made to show how the intent of the fathers in these and many other ways has been modified by our present day conditions. The treatment is elementary—as is to be expected in a book which covers nation, state and city in three hundred pages, but the viewpoint is excellent. The style is suited to secondary schools.

Mill, J. S. *Principles of Political Economy.* Pp. liii, 1013. Price, \$1.50. New York: Longmans, Green & Co., 1909.

This edition makes Mill's Political Economy accessible to every student in a single volume. The text is that of the seventh edition. In cases where Mill himself publicly abandoned an important doctrine, an excerpt from his later writings is given in the appendix, i. e., Wages Fund and Socialism. We are indebted to Professor Ashley for giving references in the appendix to writers who have discussed controversial topics in Mill's treatise since his time. The edition is especially useful because it indicates in the notes all significant changes or additions made by Mill in the successive editions. Much light is thus thrown upon the development of Mill's own thought, and the text in its final form becomes more valuable to those who are seriously interested in understanding the great economist of the classical school.

Moore, J. H. *The New Ethics.* Pp. 216. Price, \$1.00. Chicago: Samuel A. Bloch, 1909.

"The New Ethics" is a plea for vegetarianism founded on humanitarian and utilitarian arguments. If ethics is to be logical, it must include all sentient life. Present ethics is deficient in that it fails to regard feeling animals as having any place in the ethical realm. Millions of animals every year are

slaughtered and millions more are badly treated by man in his intended pursuit of happiness and welfare. In reality the author contends meat is not a desirable element in human diet, first, because the human digestive system is intended for vegetables rather than for meat; second, because the nutritive value of many vegetables is as high or higher than the nutritive value of the meat; and third, because of the relative cheapness of a vegetarian diet. Animal well-being can be assured, human happiness can be increased and health and longevity guaranteed through use of Nature's diet. The author's plea is strong, and while a little hysterical at times, is on the whole, well presented.

O'Shea, M. V. *Social Development and Education*. Pp. xiv, 561. Price, \$2.00. Boston: Houghton, Mifflin Company, 1909.

Palmer, F. *Central America and Its Problems*. Pp. xiv, 347. Price, \$2.50. New York: Moffat, Yard & Co., 1910.

Phillips, J. B. *Freight Rates and Manufactures in Colorado*. Pp. 62. Price, 75 cents. Boulder: University of Colorado, 1909.

Post, Louis F. *Social Service*. Pp. vii, 361. Price, \$1.00. New York: A. Wessels Company, 1909.

A splendid, theoretical basis for social activity is presented in "Social Service." Mr. Post begins with an analysis of the mechanism of Social Service, money, exchange, demand and supply, competition, trading, circles of trade, credits, accounting, and other like elements of social mechanism. These discussions are followed by an analysis of the derangements of the mechanism of Social Service due to monopoly in various forms. A faulty system of taxation is viewed as a big factor in causing this derangement. The remainder of the book is devoted to an analysis of feudalism, capitalism, capitalistic production and a contrast between the work of Karl Marx and Henry George. As a remedy for the derangements of the Social Service mechanism, the author proposes the single tax, differentiating individualized or artificial capital and socialized or natural capital.

The book is clearly written and the thinking is fundamental; the analyses are illuminating and the style interesting and attractive. Few more successful attempts have been made to express in popular form the doctrines of single tax, and whatever the views of the partisans of other social theories, they have seldom been more clearly expressed.

Quick, H. *Inland Waterways*. Pp. xx, 241. Price, \$3.50. New York: G. P. Putnam's Sons, 1909.

Ritchie, J. W. *Primer of Sanitation*. Pp. vi, 200. Price, 50 cents. Yonkers, N. Y.: World Book Company, 1910.

The object of education is complete living, and there is no more vital influence in complete living than that provided by sanitation. Professor Ritchie has supplied a long-felt want by writing in simple language the facts discovered and applied by modern sanitarians. The material contained in this book should find a place in every school curriculum.

Silburn, P. A. *The Colonies and Imperial Defence.* Pp. vii, 360. Price, 6s. London: Longmans, Green & Co., 1909.

Sea power is the secret of English greatness. A conscious policy must be adopted by which the navy shall be kept pre-eminent, and secondarily the army strengthened if England is to maintain her present position among the world powers. This is Mr. Silburn's thesis. He devotes the first portion of the book to a detailed review of the British possessions and the present means of their defence. The later chapters outline his plan for an imperial council of defence. The navy it is asserted should continue under direct control in England. The army does not need such centralization. Some interesting details are given concerning England's food supply in time of war. The yellow peril appears occasionally. To guard against national dangers a plan of progressive political federation should be adopted. This will give the colonies the training necessary for harmonious imperial co-operation. A cogent argument in favor of the federation of South Africa—the district from which the author writes—shows an ambition now realized. Impartiality can hardly be claimed for the volume. Moreover, many historical and geographical statements, especially those referring to America, are often inaccurate. Burgoyne, for example, assembled his forces "on the west side of Lake Champlain with the object of marching south by way of the lakes, thence along the banks of the Hudson River." A detailed description of the campaign follows, but no mention is made of St. Leger's forces. The leader of the expedition which was to move up the Hudson is given as Clinton instead of Howe. Howe is said to have been on the ocean at the time of the Battle of Germantown.

Spears, J. R. *The Story of the American Merchant Marine.* Pp. vii, 340. Price, \$1.50. New York: Macmillan Company, 1910.

This book had better been called "Stories of the American Merchant Marine." There seems to be some influence in marine information which demands men to tell stories rather than to develop the systematic ideas and principles which produce orderly chapters and well-arranged books. The performance of captains and ships, details of engines, and hulls have absorbed numerous writers including Mr. Spears. Nevertheless he has read much good material, and has in his book many interesting and useful facts and possibly some original ideas which are of value to those who have occasion to make use of better knowledge concerning maritime affairs. It is, however, not a study of either transportation or traffic.

Sullivan, J. J. *American Business Law.* Pp. xxi, 433. Price, \$1.50. New York: D. Appleton & Co., 1909.

This is a handbook of the business law of the country at large; condensed yet comprehensive, terse yet illuminating, readable and interesting, instructive and helpful. To one acquainted with Mr. Sullivan's "Pennsylvania Business Law" this new volume comes as a decided acquisition, covering as it does the field of the United States and not a single commonwealth, as does its predecessor. The volume is divided into several books, the first of which

deals with contracts in general; the second with agency, partnerships and corporations; the third with property, both real and personal; the fourth suretyship, guaranty and insurance; and the fifth with the estates of decedents.

With increasing force it is borne upon the layman of to-day that he should be thoroughly informed on the legal principles which underlie ordinary business transactions and are involved in the more complex business relationships of modern life. To such a one "American Business Law" fills a long-felt want, with its clear, full, comprehensive treatment of those legal questions, for the answers to which dependence was formerly placed on the lawyer, whose assistance would not have been required if a more intelligent knowledge of legal rights and obligations had been current in the business community.

In addition to a clear elucidation of the legal principles treated, the author has illustrated the text with numerous legal forms, applicable to the subject under discussion. The text is further supplemented by lists of questions which are appended to each chapter.

Talbert, E. L. *The Dualism of Fact and Idea in Its Social Implications.*

Pp. 52. Price, 53 cents. Chicago: University of Chicago Press, 1910.

This monograph endeavors to apply the canons of modern constructive logic to the consideration of social problems. The point is made that no purely deductive social theory, nor none based primarily on the contrasts in a single group, however large, can long be valid without correction by appeal to the evolving facts. The professional and occupational ideals are compared. The former, as in Hegel, is taken as embodying an over emphasis on the "Idea," the latter, as in Karl Marx, as embodying an over emphasis on the "Facts" in social evolution. Attempt is made to show the effect of the interaction of "Fact" and "Idea" on the Marxian Theory by citing the successive positions taken by leaders in the socialistic propaganda. The Trade Agreement, the Consumer's Label, and finally the Social Settlement are considered as symptoms, and the latter also as a vehicle for the interaction of "Fact" and "Idea" in modern social relations.

Underwood, H. G. *The Religions of Eastern Asia.* Pp. ix, 267. Price, \$1.50. New York: Macmillan Company, 1910.

Veiller, L. *Housing Reform.* Pp. xii, 213. Price, \$1.25. New York: Charities Publication Committee, 1910.

The author has outlined a working basis for those seeking to secure housing legislation. The opening pages set forth the hopelessness of adequate tenement house reform, while the latter part of the book contains a model housing law. Aside from this fundamental contradiction, the book is essentially weak because of the absence of a fact basis for its arguments, and because of the numerous faulty arguments which it contains. Nowhere, except in the opening chapter, are facts presented to bear out the statements made, and some of the arguments are contradictory. For example, on pages eighty-one

and eighty-two, after showing that the municipality would be hopelessly inefficient in the construction of tenements, the author states that if private enterprise were forced to compete with this inefficient municipality, private enterprise would shortly be driven from the field and the municipality would be forced to bear the entire burden of tenement building, which proves that municipal tenements would be undesirable. Again, on page twenty, the author says "that insanitary houses should be destroyed is another mistaken belief," whereas on page thirty-two he states that the only way that the evils of congestion can be remedied is by "tearing down large areas and rebuilding, following the precedents established in European cities." Underlying the whole book is a hopeless doctrine of resignation to present housing conditions. The pleas for the landlord are virile and strong, while his assertions of the rights of tenants and community are hesitating and weak.³

Warren, G. F. *Elements of Agriculture*. Pp. xxii, 434. Price, \$1.10. New York: Macmillan Company, 1909.

This book is the forerunner of many others that will be written in the great development of education for farm life which now seems imminent. It is worth buying merely to read the preface, and it should be examined by all persons interested in the teaching of science in secondary schools which prepare the students for life rather than the artificiality of a college examination.

The purpose of the book is "to make the teaching of agriculture in the existing high schools comparable in extent and thoroughness with the teaching of physics, mathematics, history and literature. The primary purpose of teaching agriculture is not to make farmers—it is a human interest subject. The underlying reason why such teaching is desirable is because it brings the schools in touch with the home life—the daily life of the community. A large part of our teaching has had no relation whatever to our daily lives. . . . It is not desirable to make farmers of farmers' sons, or lawyers of lawyers' sons. . . . While it is not desirable to make farmers, it does seem desirable to stop unmaking them."

At the end of the chapters are many interesting and suggestive exercises which can be followed with little expense in any community, and the book probably affords the best available opportunity at present to teach the average child useful, mentally stimulating, and broadening science.

Welsford, J. W. *The Strength of England*. Pp. xviii, 362. Price, \$1.75. New York: Longmans, Green & Co., 1910.

Wicksteed, P. H. *The Common Sense of Political Economy*. Pp. xi, 702. Price, \$4.50. New York: Macmillan Company, 1910.

Williams, S. C. *The Economics of Railway Transport*. Pp. x, 308. Price, \$1.25. New York: Macmillan Company, 1909.

Willis, J. C. *Agriculture in the Tropics*. Pp. xviii, 222. Price, \$2.00. New York: G. P. Putnam's Sons, 1909.

The book is divided into four parts, each of which deals with a definite

³Contributed by Scott Nearing.

aspect of agriculture in the tropics. In the first part the conditions of land, soil, climate, labor, transportation and other so-called preliminaries to agriculture are discussed briefly. The more important second part, comprising about half the volume, considers in order the chief crops of the tropics, especially with respect to the factors determining the distribution of the crops. The third part presents a very instructive discussion of agricultural systems and practices, as village agriculture, plantation systems, the question of financing crops and like topics. The last part of the book outlines briefly definite agricultural policies for the promotion of agriculture in the tropics.

The book is not a manual of technical value, but it is a book, presenting in small compass and plain terms, a great fund of valuable information concerning a most vital subject. It may be claimed in criticism that the author, as director of the Royal Botanic Gardens in Ceylon, has been led to give undue prominence to the agriculture of Ceylon and of India, representing but a small part of the tropics. At the same time, however, it is only just to recognize the fact that the value of the general principles presented is not lessened thereby. As a readable and suggestive treatise for general use the book has no equal.

REVIEWS.

Boyce, Sir Robert. *Mosquito or Man.* Pp. xvi, 267. Price, \$3.50. New York: E. P. Dutton & Co., 1909.

This book is a summary of the movement to free the tropical world from its endemic diseases through the application of sanitary and medical science. The position of the author as Dean of the Liverpool School of Tropical Medicine, the leading institution of its kind in the world, is sufficient guarantee of the thoroughness and reliability of the work.

In the first part of the book the author begins with the origin of the tropical medicine movement and the stages of progress leading up to the present attitude in regard to practical sanitation in the tropics. Following these introductory chapters about one-third of the volume is devoted to the mosquito problem and its relation to the two scourges of the tropics, malaria and yellow fever. Both of these subjects are discussed from the pathological standpoint, with notice of the research by various investigators, and summaries of the methods employed and results obtained in the campaigns against the diseases in various tropical countries. Thus a good deal of attention is given the very important advances made by American medical men and sanitary engineers in Cuba and the Canal Zone. A large number of striking pictures illustrate the conditions which have to be met, and the way it is done.

The second part of the book is devoted to a briefer survey of various diseases more or less typical of tropical regions, as sleeping sickness, anæmia, Malta fever, plague and the like. An appendix includes a mass of valuable information concerning ordinances, laws, etc., relating to stagnant

water, mosquitoes, fever, rats and other important matters in the campaign of prevention.

The book is a most valuable contribution to the literature dealing with tropical problems, and so simply and clearly presented that even the most technical parts lie within the comprehension of any average reader.

WALTER S. TOWER.

University of Pennsylvania.

Chadwick, F. E. *The Relations of the United States with Spain.* Pp. 610. Price, \$4.00. New York: Charles Scribner's Sons, 1910.

Admiral Chadwick's book brings together in a form attractive to the general reader the relations of the United States to a country which during the course of the narrative has sunk from the rank of a first to that of a third class power. Especially in the first part of the book great freedom is used in choosing material. Events are discussed in detail which have only a secondary bearing on the relations of the United States and Spain. The discussion of this early period, however, is the most interesting part of the work. The unfriendly attitude of Spain during the American Revolution and the questionable policy of the United States, especially during the administrations of Jefferson and Monroe, are interestingly and accurately reviewed. The relations leading up to the cession of Florida, especially the West Florida dispute, are discussed clearly and well.

A brief review of the less important period from 1821 to 1850 is then followed by a detailed study of Cuban affairs, which forms the greater part of the work. The materials used in these chapters are to a greater extent the sources than in the first part of the book. The discussions are at times tedious, but this can hardly help but be the case when a review of the dreary length of the Cuban insurrections is attempted. There are numerous long quotations from the official documents. One cannot help feeling that the work would have been improved if it had not been so largely written with the shears.

The author finds little to criticize in the attitude of the United States government throughout both the first and second Cuban wars for independence. He maintains also that the Spanish military operations in the island were severely misjudged and that General Weyler especially was too harshly criticized. Many acts of the insurgents, on the other hand, are held to have been unjustifiable even on the plea of military necessity. The work closes with a discussion of the circumstances of the declaration of war.

CHESTER LLOYD JONES.

University of Pennsylvania.

Curtin, J. *A Journey to Southern Siberia.* Pp. 319. Price, \$3.00. Boston: Little, Brown & Co., 1909.

This posthumous volume, dealing with the customs, religion, folk-lore and myths of the Buriats, stands as a companion volume to the earlier works,

"The Mongols: A History," and "The Mongols in Russia," and is an important contribution to the literature dealing with the Mongol peoples.

The Buriats, the most important group of Mongols surviving to-day, inhabit the region about Lake Baikal. It was through this region that the author traveled in the summer of 1900, learning the native language, in order more easily to understand the people and their life. The first part of the volume is devoted to a brief description of the general features of Siberia, and a more detailed account of the long overland journey in Southern Siberia. The aspect of the country, the people and their modes of life is set forth in a most interesting manner. This journey was not without its difficulties, hardships and dangers, but the results here recorded are worth the price.

About half the book deals with the customs and life of the Buriats, particular attention being given to their ceremonials in connection with the usual four important events, birth, marriage, sickness and death. The most striking single item in this discussion of ceremonies is the prominent part played by the animals of the flocks and herds, from which the people gain their subsistence; another instance of interesting relationship between environment and ceremonial customs. The latter part of the book is devoted to a collection of the folk-lore of the people, which, like all such collections, makes intensely interesting reading, especially as it is possible to trace ideas common to the folk tales of various other primitive peoples.

Numerous illustrations, notes and a map add to the value of a volume which called for extraordinary ability on the part of the author in the collection of the necessary material.

WALTER S. TOWER.

University of Pennsylvania.

ELLiott, E. G. *The Biographical Story of the Constitution.* Pp. xi, 400. New York: G. P. Putnam's Sons, 1910.

This book undertakes to show the interpretation and development of the Constitution of the United States through the lives, opinions and actions of a number of the most conspicuous leaders in American public life. It includes a general chapter on the "fathers," discussing the work of the Constitutional Convention of 1787, and successive chapters on Alexander Hamilton, James Wilson, Thomas Jefferson, James Madison, John Marshall, Andrew Jackson, Daniel Webster, John C. Calhoun, Abraham Lincoln, Thaddeus Stevens and Theodore Roosevelt. An appendix reprints a number of important documents bearing on constitutional questions.

As indicated in the preface, the work does not attempt a detailed discussion of judicial decisions, and the author recognizes the difficulties of his method, in tending to overemphasize the part of certain men and of slighting economic and social forces. But, on the whole, the book gives a satisfactory account of the main features of our constitutional history, from a decidedly nationalistic point of view, especially in regard to the period of reconstruction;

and a special word of commendation is due for emphasizing the influence of James Wilson. One important omission is the absence of any account of Henry Clay and his work. More serious is the failure to discuss the developments from the time of Stevens to that of Roosevelt. Nothing is said as to the influence of the fourteenth amendment and its judicial interpretation, the increased activities of the national government, or the decline of the spoils system. No doubt it is more difficult to associate these developments with particular individuals; but the most salient features could have been brought out in connection with such men as Judge Harlan, John Sherman, W. B. Allison and Grover Cleveland.

JOHN A. FAIRLIE.

University of Illinois.

FITE, E. D. *Social and Industrial Conditions in the North During the Civil War.* Pp. vi, 318. Price, \$2.00. New York: Macmillan Company, 1910.

It used to be the fashion for historians of the Civil War to devote practically all their space to military events, with occasional references to politics. With every passing year more and more attention is now being given to economic and social conditions and less to military activity. Dr. Fite's book will help the future historian in making this readjustment, for he has not only shown that the whole energy of the North was not devoted to military affairs, but also that industrial activity was hardly checked and that industrial changes were taking place which were almost revolutionary in character. In agriculture improvements were being made and the production of the staple crops was increasing. The Confederacy had counted on intervention from England because of her interest in cotton. Dr. Fite thinks that Northern wheat prevented this intervention. The railroads enjoyed great profits from an extraordinarily heavy traffic and were beginning the system of consolidation and absorption which plays such an important part in modern life. War time manufacturing was enormously active in consequence of the raising of the customs duties and the increasing demand occasioned by wasteful war. The cutting off of Southern trade changed some of the currents of commerce, but hardly altered their volume. One is surprised to learn that the states were then virtually taxing interstate trade by tonnage and transit duties levied on the railroads. When it was proposed for Congress to exercise its power to regulate interstate commerce in a particular instance New Jersey protested in the name of her state sovereignty.

Dr. Fite has made a large use of source material and for the most part appears to have used it well. However, had he investigated a little further, using the census of 1860, he might not have accepted the popular view that the South was far behind the North in the matter of all kinds of education. Senator Blair long ago pointed out that the South in 1860 had a greater proportion of college students than the North. Unfortunately, she was not doing so well for primary education.

DAVID Y. THOMAS.

University of Arkansas.

Godoy, Jose F. *Porfirio Diaz, President of Mexico.* Pp. xii, 253. Price, \$2.00. New York: G. P. Putnam's Sons, 1910.

At a time when so many misstatements are being circulated with reference to Mexico it is a relief to read a book which is written with a due sense of proportion. Everyone who has had an opportunity to study economic and social conditions in Mexico has been impressed with the enormous difficulties confronting the country owing to the fact that at least ninety per cent of the population is Indian, and that the present government has fallen heir to the results of the long period of neglect and oppression which characterized the Spanish colonial system. Anyone who has given serious study to the administration of public affairs in Mexico during the last twenty-five years cannot help but be impressed not only with the economic advance of the country, but with the great effort that has been made with limited resources to raise the level of the mass of the population. In a country covering so large an area, sparsely settled, and with a population in which the desire for education must be inculcated, it is a matter of surprise to everyone how much has been done.

The value of Mr. Godoy's book is in the dispassionate presentation of the record of accomplishment. It is a matter of special importance that we in the United States should realize clearly that the conditions so sensationally set forth in newspapers and magazines are not characteristic of Mexico as a whole; just as the existence of peonage in the southern states is no true indication of social conditions in the United States. This work will contribute in no small measure toward overcoming the unfavorable comments on Mexican conditions which have recently been so numerous and widespread.

L. S. ROWE.

University of Pennsylvania.

Hall, T. C. *Social Solutions in the Light of Christian Ethics.* Pp. 390. Price, \$1.50. New York: Eaton & Mains, 1910.

Without regard to confessional interests no student of society can afford to be ignorant of the social teachings of Jesus and Paul. It is therefore a matter of congratulation that Professor Hall voluntarily becomes the teacher of a wider group than those fortunate enough to sit under his personal instruction. As the author points out, "the various chapters divide themselves readily into three groups: those dealing with a transformation of society with the emphasis on the individual; those dealing with an equally radical transformation of society with the emphasis on the group; then follow chapters upon schemes for social amelioration without radical departure from the present social order."

In the whole discussion the effort is made accurately to present the "ethical outlook of Jesus and Paul" and then to interpret in the midst of twentieth century conditions and problems the logical attitude of "the Chris-

tian socially thinking man." The large variety of topics treated in the thirty-two chapters, the last of which is a Selected Bibliography of great value to the student, reveals not only the breadth of scope to which the author applies his principles, but as well the poise and balance of a trained and disciplined mind. The fact that the book is frankly propagandist in purpose detracts little from its fairness and scientific accuracy. The book will give information to the student, sanity to the reformer, and inspiration to the Church. It is a valuable contribution to Christian social literature.

J. P. LICHTENBERGER.

University of Pennsylvania.

Seligman, E. R. A. *The Shifting and Incidence of Taxation*. (3 ed.) Pp. xii, 427. Price, \$3.00. New York: Columbia University Press, 1910.

The third edition of Professor Seligman's very scholarly work on Incidence of Taxation makes mention in its historical part of some writers omitted in previous editions, includes a fuller discussion of taxes on agricultural land, also of urban real estate, brings in new material on mortgage taxation, and introduces a discussion of stock and produce exchange taxes.

The results of the New York investigation of 1906 into the reflection of mortgage taxes in interest rates are clearly and concisely given; also the results of the effect of local financial and economic conditions on the question of the shifting of the mortgage tax, as indicated in the investigation made by Professor T. S. Adams in Wisconsin and neighboring states (pp. 335-36). The author shows clearly the tendency of produce and stock exchange taxes to reflect themselves in the values of produce and of stocks (pp. 384-85).

It might be suggested that practical convenience had something to do with influencing the parlor car companies to pay the one-cent tax on parlor car tickets instead of shifting it to the passenger, and that the same factor of convenience played some part in inducing the telephone companies in the face of a one-cent tax to reduce fifteen-cent messages to ten cents (pp. 380-81).

Mention should be made of the clearness with which the author shows the place of economic friction in taxation, and also both the value of the doctrine of incidence and its limitations, as an aid to, but not as a substitute for the necessary study of economic justice.

RAYMOND V. PHELAN.

University of Minnesota.

Shackleton, E. H. *The Heart of the Antarctic*. 2 vols. Pp. lxx, 817. Price, \$10.00. Philadelphia: J. B. Lippincott Company, 1909.

These volumes are the record of the British expedition in the years 1907 to 1909, during which the British flag was planted within about one hundred geographical miles of the South Pole. That the pole itself was not reached was due to the lack of provisions necessary for the further advance, as when

the party turned back it was a question of return or starve to death. In fact even as it was, this fate was averted only by devouring the flesh of ponies which had died during the advance and lay along the return track. Under the circumstances, therefore, there are good reasons for confident expectations that the work of Shackleton's expedition paved the way for the attainment of the South Pole.

The first of the two volumes is devoted to the narrative account of the expedition from the inception of the idea to the return of the party from the point "Farthest South." In many respects the incidents recorded are not unlike those associated with other polar expeditions, with outfitting, winter quarters, storms, hardships and narrow escapes, varied only by the personal items and lesser detail. Yet despite the similarities, the author has written his narrative with such charm of simplicity and vividness of impression as to make every sentence interesting. The whole-souled generosity evident in the unstinted praise of the work of different members of the party shows that it was truly an exploring expedition, and not a group of assistants gathered for the single purpose of furthering the glory of the leader. As an organizer, leader and explorer the author has set a high standard.

The second volume is devoted mainly to the work incidental to the discovery of the south magnetic pole by Professor David and his party, and to the summaries of the scientific results of the expedition. Different chapters deal with geological investigations, biology, meteorology and the like, each section representing the work of one part of the expedition, in which as a whole the question of reaching the pole seems to have been an entirely secondary consideration, rather than the sole object sought. As indicative of the value and interest of the scientific result might be cited the facts that the lowest temperature was less than 60 degrees below zero, and that the average annual snowfall does not equal ten inches of rain. These scientific summaries are necessarily more technical than is the narrative in the first volume, but as a whole they are simple enough for the lay reader.

The many illustrations, particularly the sketches in color, are superb and reflect rare credit both on the artist of the expedition and on the publishers who have reproduced them so excellently.

WALTER S. TOWER.

University of Pennsylvania.

Smith, S. G. *Religion in the Making.* Pp. vii, 253. Price, \$1.25. New York: Macmillan Company, 1910.

Foster, George B. *The Function of Religion in Man's Struggle for Existence.* Pp. xi, 293. Price, \$1.10. Chicago: University of Chicago Press, 1909.

All wise friends of religion and its institutions know that from time to time man has been compelled in the interests of new truth, or new realization of truth as one prefers, to restate his conceptions. It is increasingly evident that the developments of the last century are making restatements necessary today. It is a strange and strained condition when on all sides one finds

evidences of the growth of the religious spirit, evidenced by the many forms of social work, yet at the same time sharp and severe criticism of the church and open rejection of its creeds.

This unhappy situation is recognized by the two authors whose books are here considered. Both of them admit that something needs to be modified, both agree that all documents and institutions must submit to the most searching criticism, that tradition is not final, that human welfare is the aim. Intellectually in general accord, in method they entirely differ.

Dr. Smith has long been pastor of the People's Church in St. Paul and a leader in the philanthropies of the state as well as a teacher at the University of Minnesota. There he has conducted a class in "Biblical Sociology" and from this course comes the material in the book.

Its method is historical. Dr. Smith, using all the results of modern criticism, endeavors to reconstruct the religious development of the Israelites in order that we may understand our own indebtedness to them. The subject matter is grouped under The Development of the Idea of God; Sacred Persons, Places, Services, Objects, Days. Only biblical references are given so the text is unbroken. Then comes a chapter on the "Hebrew Conception of Sanctity," which shows the "change from what is essentially a ritual of life to that which becomes an experience of righteousness." In the last chapter "Some Resultant Conclusions," Dr. Smith makes plain his belief that the idea of one God is the most important in history; that his own interest is with the prophet rather than the priest. Essentially conservative but fair, this volume should be of help in promoting a study of the Bible that is more than the usual effort to prove established faiths. No better book can be found for a students' Bible class. A real service has thus been rendered by the author. The greatest defect is probably a great lack of sense of proportion in attention given the various subjects.

The second volume comes from the pen of the professor of philosophy of religion in the University of Chicago. The full title is "The Function of Religion in Man's Struggle for Existence" and the text is an enlargement of an address given in August, 1908, at the University of California.

This volume is for those who in doubt are hungering and thirsting for truth. To one whose ideas are fixed it can only be revolutionary, to those whose doubt has settled in firm scepticism it will be too reactionary. The conservative will therefore view the book as extremely dangerous—and so it will be to his own peace of mind. To the reviewer it is one of the important studies of recent years. At times altogether too excursive as regards exploration of details, the author ranges over a vast field of human experience and discusses this experience in an illuminating way. The casual student will hardly keep up with the leader for the current of thought flows steadily; there are no chapter headings, and no table of contents or index. The volume is verbose and could be greatly condensed to advantage.

The book begins with a description of the older philosophy with its basic conception of substance and manifestation, and religion as really "supernatural materialism." "Humanism prepared the way for . . . Humanity."

The idea of evolution now involves the concept of change and development. What has been the sphere of religion—is it a revelation of God to man—or an achievement of man? How is religion to be proven? We are coming to recognize that all knowledge is experimental—"a man creates whatever concepts and principles he may need" . . . "to the same ends were gods created." "The traditional foundations are sapped," but man is such that religion and God are essential. Hence no need to fear that he will abandon God.

Religion has passed these many stages; has been used to maintain various regimes. Doubt has caused trouble but made possible progress. To-day as well as at any time in the past we must trust the spirit of God to lead us to all truth. "Authority is made for freedom and not freedom for authority." "Religion is the conviction of the achievability of universally valid satisfaction of the human personality."

The church no longer holds its old monopoly. Her weakness to-day is not the result of hostile attacks. "Her critics are her friends." The difficulty is that "the spiritual values of the people are conserved and nurtured by other agencies than the church." The self-preservation attitude of the ecclesiastic is fatal. The church must be revitalized not by the so-called institutional method of practical activity. The church has a natural, specific activity—the bringing of men into association so that, as Paul puts it, "you and I may find encouragement in each other's faith." In this field the church should be in sole possession. This function is hers. Through faith in the present, through study of the faith of the past we shall learn "the great eternal book of life for the living."

Those who hesitate for this faith or fear for religion will do well to avoid this book. Yet it is essentially constructive, not destructive. We need more such books, for the questions of to-day cannot be answered in the words of the older philosophy.

CARL KELSEY.

University of Pennsylvania.

Van Dyke, Henry. *The Spirit of America.* Pp. xv, 276. Price, \$1.50. New York: Macmillan Company, 1910.

The seven lectures contained in this volume were delivered at the University of Paris, on the Hyde Foundation. The material was prepared with special reference to a French audience, and the purpose "was to promote an intelligent sympathy between France and the United States." Its chief interest for American readers will be found in its clear and interesting presentation of familiar facts and ideas "that seem vital, significant and creative in the life and character of the American people."

In the first lecture the author warns his audience against false impressions received from Americans travelling abroad. In the traveller, away from the environment which has made him what he is, and which he has helped to mould, one may observe characteristics but not character. Amid

all the concourses of world travel we watch in vain for the national personality of England or France or America. It is never exported. The soul of a people lives at home. These lectures seek to define the spirit of America "as the creative force, the controlling power, the characteristic element of the United States."

The author proceeds to describe four or five of what he regards "as the essential qualities or ideas which enter into the Spirit of America—self-reliance, the spirit of fair play, will power, the vital energy of nature which makes an ideal of activity and efficiency,—common order, and social co-operation." Finally Dr. Van Dyke shows how the soul of the people has expressed itself in education and in social effort and in literature.

After describing the spirit of individualism, fostered in America from the earliest days, in chapter V the author strikes the significant note of change in modern American life—the growing tendency toward co-operation which modifies but does not destroy the old spirit of individualism and which makes possible the realization of the old ideal of opportunity and fair play in the midst of the complex life of to-day.

ROBERT E. CHADDOCK.

University of Pennsylvania.

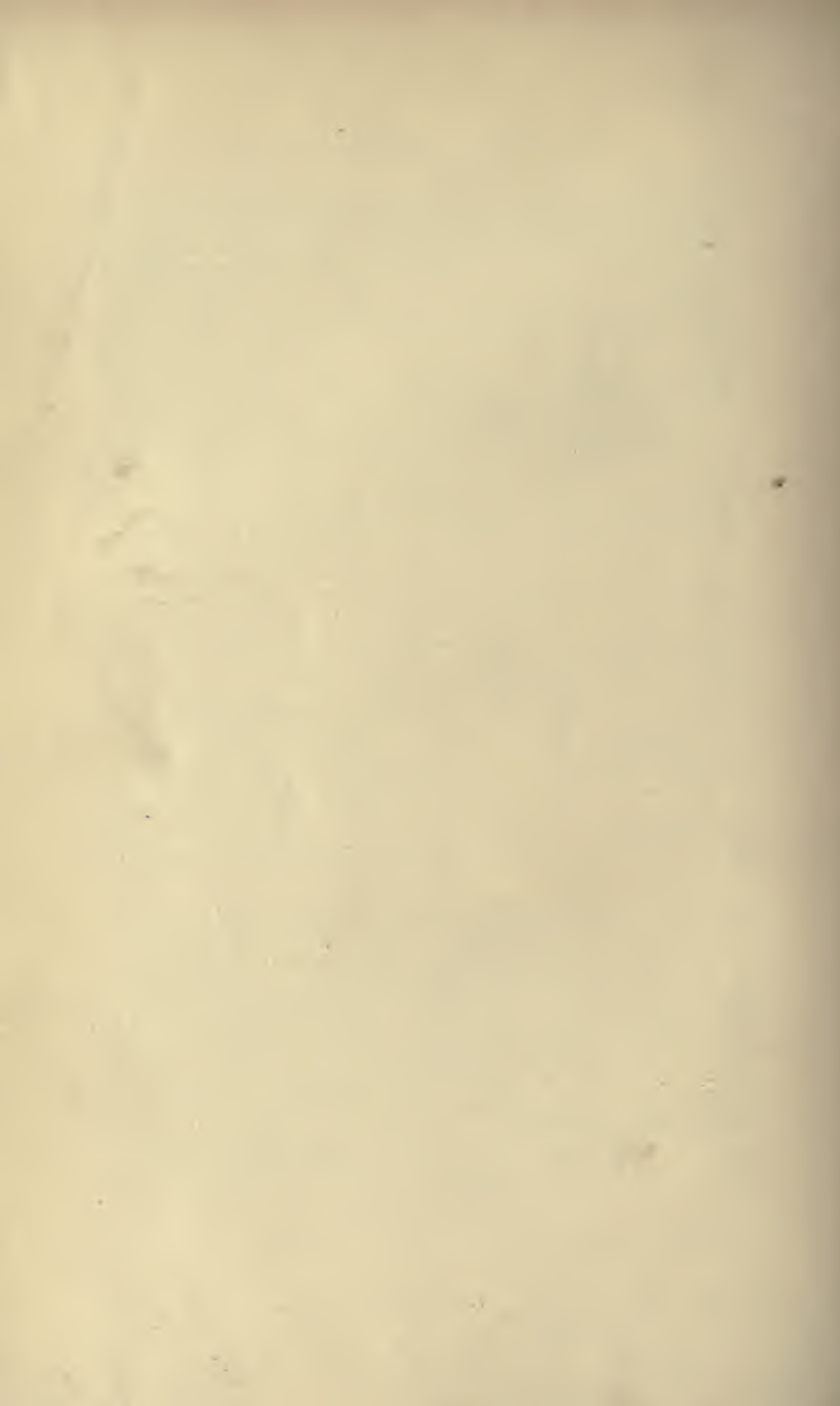
Wines, F. H. *Punishment and Reformation*. Pp. xv, 387. Price, \$1.75. New York: T. Y. Crowell & Co., 1910.

It is sufficient comment upon the popular appreciation of this volume to state that the "New," Enlarged Edition (not "Revised" as advertised in a circular by the company) is the ninth edition. Few works of so technical a character have been so widely read. The "New" and "Enlarged" portions of this edition consist of a second preface and an appendix containing two addresses, the first, a paper read before the National Conference of Charities and Corrections in Portland, Me., June, 1904, on "The Treatment of the Criminal," the second, an essay prepared for the International Congress of Science and Arts at St. Louis, Mo., September, 1904, subject, "The New Criminology."

The book treats in a masterly manner the development and history of modern penal methods. The chamber of horrors presented in the chapter on Intimidation and Torture is set in wide contrast with the Elmira system and other methods of reclaiming the criminal by wise and humane treatment. Both in the beginning and closing chapters of the book, the author discusses modern criminological science and has done much to popularize the point of view of the positive school of criminologists. Perhaps no higher tribute to the sanity of the author's views could be paid than to call attention to the fact that the book has gone through its nine editions without the need of a thorough revision. In the midst of a rapidly developing science, it still remains a recognized authority.

J. P. LICHTENBERGER.

University of Pennsylvania.



FREE SPEECH AND THE INJUNCTION ORDER

BY SAMUEL GOMPERS,

President, American Federation of Labor, Washington, D. C.

It is upon the labor movement that the toilers and the lovers of human freedom have set their hearts and hopes. They realize that the trade union movement of America is the historically developed potential force which bears the brunt and scars of battle and which makes sacrifices for right and justice for all, for all time. There is not a wrong against which we fail to protest or seek to remedy; there is not a right to which any of our fellows are entitled which it is not our duty, mission, and work and struggle to attain. So long as there shall remain a wrong unrighted or a right denied, there will be ample work for the labor movement to do. The struggle through the ages has always been attended with brutal tyranny and cruel injustice. Some have always had to suffer that the people might obtain some modicum of freedom. The times in which we now live are no exception to that rule. They who are true to their fellows, true to themselves, cannot and dare not evade the duties and responsibilities which may come from their advocacy of the cause of the people.

Tyranny, exercised by no matter whom or from what source, must be resisted at all hazards. The labor movement which is the defender, protector, and promoter of the rights and interests of the people, must be carried forward, its rapacious, ignorant opponents to the contrary notwithstanding. We should not, and we must not, surrender the rights which we have achieved for the toilers; we dare not permit the workers to become the victims of the tender mercies of their exploiters.

The higher manhood, womanhood, and childhood, a better standard of life which we have achieved for America's toilers, the better concept of human rights and liberties which have been secured at such great sacrifices are too precious heritages even to permit them to become debatable topics. They are the result of conquests in the struggle; they are ours to maintain and perpetuate for unborn generations.

It is a great struggle, it is the struggle of the ages, a struggle

of the men of labor to throw off some of the burdens which have been heaped upon them, to abolish some of the wrongs which they have too long borne and to secure some of the rights too long denied. If men must suffer because they dare speak for the masses of our country, if men must suffer because they have raised their voices to meet the bitter antagonism of sordid greed, which would even grind the children into the dust to coin dollars, and meeting with the same bitter antagonism that we do in every effort we make before the courts, before the legislatures of our states, or before the Congress of our country, if men must urge this gradual rational development then they must bear the consequences.

In all the history of the American Federation of Labor no greater struggle has taken place than that for the preservation and the maintenance of the right of free press and free speech. This arose under the injunction proceedings in the case of the Buck's Stove and Range Company against the American Federation of Labor in December, 1907. The technicalities of the case were soon lost sight of in the battle to preserve the great principles of human liberty which were involved.

The injunction proceedings of the Buck's Stove and Range Company, of St. Louis, Mo., of which James W. Van Cleave was president, against the American Federation of Labor, resolved themselves into two separate cases; one, the original injunction issued by Justice Gould, of the Supreme Court of the District of Columbia; the other, the proceedings for contempt brought against Vice-President John Mitchell, Secretary Frank Morrison, and myself. An appeal was taken by the American Federation of Labor on both cases. For convenience and an intelligent understanding, a brief summary of the case is here given.

Owing to the refusal of the Buck's Stove and Range Company, of St. Louis, to continue the nine-hour workday to the metal polishers in its employ and its discrimination against and discharge of employees because of their membership in the union, and despite efforts to harmonize and adjust the differences existing, the labor organizations in interest of St. Louis placed the product of the Buck's Stove and Range Company upon their "We Don't Patronize" list. Application was made to the American Federation of Labor at our Minneapolis convention, 1906, to endorse the action of the workers particularly interested and place the name of the company

upon the "We Don't Patronize" list of the American Federation of Labor.

The matter was referred by the convention to the executive council for the purpose of investigation and, if possible, adjustment. The executive council entrusted the matter to Vice-President Valentine to use his best efforts in the direction indicated. At a subsequent meeting of the executive council Vice-President Valentine reported that he had gone to the limit of his opportunities, and definitely ascertained that any effort on his part or on the part of anyone else to confer with Mr. Van Cleave upon the subject would be utterly fruitless, and though some of the then employees of the Buck's Stove and Range Company, who might be affected, were members of the Iron Molders' Union of North America, of which Mr. Valentine is president, he could not conscientiously interpose any objection to the attitude of the workers and organizations aggrieved or to the full endorsement of the application of our fellow-workers to place the Buck's Stove and Range Company upon the "We Don't Patronize" list of the American Federation of Labor. Thereupon, the executive council unanimously voted to approve the application.

On December 18, 1907, Mr. Van Cleave, president of the Buck's Stove and Range Company, of St. Louis, obtained from Justice Gould, of the District of Columbia, an injunction against the American Federation of Labor, the members of the executive council, both officially and individually, the officers and members of local and international unions affiliated to the American Federation of Labor, its agents, friends, sympathizers, or counsel, forbidding them in any way to publish, print, write, verbally or orally communicate the fact that the Buck's Stove and Range Company was unfair to or had any dispute with organized labor, or that it was "boycotted" by organized labor. The injunction prohibited the publication of the company's name upon the "We Don't Patronize" list of the American Federation of Labor, directly or indirectly, and all were forbidden to state, declare, or say that there existed or had been any dispute or difference of any kind between the company, the American Federation of Labor or any of its affiliated organizations in any manner whatsoever.

Hearing was had before the temporary injunction was issued by Justice Gould. He declined later to modify it or to explain its

terms. On December 18th the court issued the temporary injunction, it becoming effective December 23d, when the Buck's Stove and Range Company filed its bond, approved by the court. The temporary injunction was made permanent March 26, 1908, by Justice Clabaugh, of the same court. It read as follows:

ORDER GRANTING INJUNCTION PENDENTE LITE

This cause coming on to be heard upon the petition of the complainant for an injunction pendente lite as prayed in the bill, and the defendants' return to the rule to show cause issued upon the said petition, having been argued by the solicitors for the respective parties, and duly considered, it is thereupon by the court, this 18th day of December, A. D. 1907, ordered that the defendants, The American Federation of Labor, Samuel Gompers, Frank Morrison, John B. Lennon, James Duncan, John Mitchell, James O'Connell, Max Morris, Denis A. Hayes, Daniel J. Keefe, William D. Huber, Joseph F. Valentine, Rodney L. Thixton, Clinton O. Buckingham, Herman C. Poppe, Arthur J. Williams, Samuel R. Cooper and Edward L. Hickman, their and each of their agents, servants, attorneys, confederates, and any and all persons acting in aid of or in conjunction with them or any of them be, and they hereby are, restrained and enjoined until the final decree in said cause from conspiring, agreeing or combining in any manner to restrain, obstruct or destroy the business of the complainant, or to prevent the complainant from carrying on the same without interference from them or any of them, and from interfering in any manner with the sale of the product of the complainant's factory or business by defendants, or by any other person, firm or corporation, and from declaring or threatening any boycott against the complainant, or its business, or the product of its factory, or against any person, firm or corporation engaged in handling or selling the said product, and from abetting, aiding or assisting in any such boycott, and from printing, issuing, publishing, or distributing through the mails, or in any other manner any copies of the "American Federationist," or any other printed or written newspaper, magazine, circular, letter or other document or instrument whatsoever, which shall contain or in any manner refer to the name of the complainant, its business or its product in the "We Don't Patronize," or the "Unfair" list of the defendants, or any of them, their agents, servants, attorneys, confederates, or other person or persons acting in aid of or in conjunction with them or which contains any reference to the complainant, its business or product in connection with the term "Unfair" or with the "We Don't Patronize" list, or with any other phrase, word or words of similar import, and from publishing or otherwise circulating, whether in writing or orally, any statement, or notice, of any kind or character whatsoever, calling attention of the complainant's customers, or of dealers or tradesmen, or the public, to any boycott against the complainant, its business or its product, or that the same are, or were, or have been declared to be "Unfair" or that it should not be purchased or dealt in or handled by any dealer, tradesman, or other person whomsoever, or by the public, or any repre-

pending, Justice Wright, on December 23, 1908, adjudged us guilty of contempt of court and imposed a sentence of six months, nine months, and one year's imprisonment respectively upon "Morrison, Mitchell, and Gompers."

What are the offenses for which Mitchell, Morrison and I are sentenced to long terms of imprisonment, and the ignominy of being classified as criminals? We have dared to defend our constitutional rights as men and as citizens, despite the injunction of a court which sought to invade the rights of free speech and free press secured to the Anglo-Saxon people centuries ago by Magna Charta and clinched by the adoption of the first amendment to the Constitution of the United States. What, after all, are the grounds upon which Justice Wright held the defendants guilty of violation of the terms of the injunction? When the injunction was issued and went into effect, both temporary and permanent, we proposed to test the principles involved before the established legal tribunals. By instruction of and with authority from the executive council the name of the Buck's Stove and Range Company was removed from the "We Don't Patronize" list in the "American Federationist."

Vice-President Mitchell, it was alleged, violated the injunction by allowing certain acts to be performed by the officers of the American Federation of Labor, and also, that while presiding at a convention of the United Mine Workers of America, a resolution, regularly introduced by a delegate, calling upon the members of that organization not to bestow their patronage upon the product of the Buck's Stove and Range Company was submitted by Mr. Mitchell to the delegates for a vote. Secretary Morrison was charged substantially with having violated the terms of the injunction in so far as that he sent, or caused to be sent out copies of the printed official proceedings of the previous convention of the American Federation of Labor containing officers' and committee reports and resolutions of the convention relative to the Buck's Stove and Range Company's injunction and copies of the "American Federationist" containing similar references, circulars, appeals for funds, and editorials written by me on the injunction abuse.

The allegations charging me with violating the terms of the injunction were that I did, or authorized, or directed to be done, these things; because, by authority of the convention and of the executive council I sent to our fellow-workers and friends an

appeal for funds in order that we might be in a position to defend ourselves before the courts in the very injunction case involved; because in lectures and on the public platform, during the Presidential campaign I made addresses to the people giving reasons for the vote as a citizen I was to cast at the then pending Presidential election, and because I dared editorially to discuss the fundamental principles involved, not only in the injunction pending but the entire abuse of the injunction writ. Aye, because I published in the "American Federationist" the order of the court to show cause why we should not be punished, for contempt of the injunction was made part of the testimony upon which Justice Wright deemed it important to hold me guilty.

Immediately after Justice Wright declared us guilty of contempt of the injunction and imposed the sentences, notice of appeal was given and bonds furnished.

On March 11, 1909—that is, nearly four months after Justice Wright imposed these sentences for alleged contempt of the injunction—the Court of Appeals of the District of Columbia handed down its decision upon our appeal in the original injunction. That court greatly modified the terms of the injunction, holding that no publication could be forbidden except in furtherance of a "conspiracy" to boycott. The injunction as modified and affirmed by the court is as follows:

It is adjudged, ordered and decreed that the defendants, Samuel Gompers, Frank Morrison, John B. Lennon, James Duncan, John Mitchell, James O'Connell, Max Morris, Denis A. Hayes, Daniel J. Keefe, William D. Huber, Joseph F. Valentine, Rodney L. Thixton, Clinton O. Buckingham, Herman C. Poppe, Arthur J. Williams, Samuel R. Cooper and Edward L. Hickman, individually and as representatives of the American Federation of Labor, their and each of their agents, servants and confederates, be, and they hereby are, perpetually restrained and enjoined from conspiring or combining to boycott the business or product of complainant, and from threatening or declaring any boycott against said business or product, and from abetting, aiding or assisting in any such boycott, and from directly or indirectly threatening, coercing or intimidating any person or persons whomsoever from buying, selling or otherwise dealing in complainant's product, and from printing the complainant, its business or product in the "We Don't Patronize" or "Unfair" list of defendants in furtherance of any boycott against complainant's business or product, and from referring, either in print or otherwise, to complainant, its business or product, as in said "We Don't Patronize" or "Unfair" list in furtherance of any such boycott.

The costs of this appeal are equally divided between appellant and appellee. Modified and affirmed.

The court which handed down this "modified and affirmed" decision is composed of three judges, each of whom delivered an opinion. One justice who concurred in the conclusion gave different reasons. It is difficult to read Justice Van Orsdel's concurring opinion and reconcile it with his conclusion to affirm the injunction even in modified form. Chief Justice Shepard dissented from the conclusion of the court.

The Court of Appeals did not take any original testimony in the case, and I am justified in saying that the judges were somewhat in error in their estimate of the actual facts in relation to the boycott of the Buck's Stove and Range Company. This is understandable from the fact that the American Federation of Labor at no time entered a detailed defense to the allegations of the Buck's Stove and Range Company, although the charges were untrue in many important particulars. On account of the fundamental issues of free press and free speech, which were involved in the original injunction, we preferred to stand upon the *unconstitutionality of the injunction* rather than obscure this great issue by going into the details of the original trouble with the Buck's Stove and Range Company.

It was generally expected that the Court of Appeals of the District of Columbia would hand down its decision early in October, 1909. Indeed, it was to meet the issue, whatever it might be, that I was careful to be within the jurisdiction of the court when the decision would be handed down. The decision was rendered Tuesday, November 2d—that is, on Election Day throughout the country. The court stood two to one in affirming Justice Wright's decision and sentences of one year, nine months, and six months' imprisonment for "Gompers, Mitchell, and Morrison," respectively, on the ground that they had violated the terms of Justice Gould's injunction. Chief Justice Shepard dissented from the decision and opinion of the court, and declared that Justice Wright's decision and sentences should be reversed, on the ground that he issued an order entirely beyond the power vested in him, and that the order was therefore void.

Concretely stated, the decision of the court declares that no matter whether the injunction of Justice Gould was right or wrong,

valid or void, we were compelled to obey. Against that concept, at least for myself, I enter a most emphatic protest. When a judge so far transcends his authority, and assumes functions entirely beyond his power and jurisdiction, when a judge will set himself up as the highest authority in the land, invading constitutionally guaranteed rights of citizens, when a judge will go so far in opinion, decision, and action, that even judges of the Court of Appeals have felt called upon to characterize his action "unwarranted" and "foolish," under such circumstances it is the duty of the citizen to refuse obedience and to take whatever consequences may ensue.

It is common knowledge that a judge has issued an injunction against municipal officers enjoining them from performing their duties in the enactment of laws. Assume that a judge will so far forget himself as to issue an injunction prohibiting a legislature, or Congress itself, from enacting laws. Will it be contended that obedience must follow? Let a judge issue an injunction enjoining the President of the United States from performing the duties of his office. Does it follow that the Chief Executive of our nation must yield obedience, and perhaps thereby fail to perform the duties of his great office, to the injury of the people of the country? Were the matter involved merely material, or of such a character that time would not destroy, the situation would be vastly different. All realize that for the orderly continuance and development of civilized society, obedience to the orders of the court is necessary, and to that there would be no dissenting voice.

I say advisedly that the whole people of our country are aroused to the seriousness of the situation. They realize that this attack upon free press and free speech among the workers is only the insidious beginning of the entire withdrawal of those rights from the whole people whenever it might suit the plans of those who desire to profit by injustice and tyranny. The response of the masses of the people to the campaign of the American Federation of Labor for the preservation of constitutional rights shows how thoroughly our labor movement is in harmony with the spirit of liberty and the love of justice and right which makes a nation great. The struggle is far from ended. Eternal vigilance ever was and always will be the price of the liberties of the people. Let no one doubt my great respect for the judiciary of our country; I have confidence in their integrity, no matter what their decision, still they are human beings and as such liable to err. I say this with

respect not only to the three justices of the District Court of Appeals, but with reference to the judiciary generally.

I repeat and emphasize this fact, that the doctrine that the citizen must yield obedience to every order of the court, notwithstanding that order transcends inherent, natural, human rights guaranteed by the constitution of our country, is vicious and repugnant to liberty and human freedom, and that it is the duty, the imperative duty, to protest. The history of the human race has been full of tyranny and the denial to the people of the right of expressing freely by speech or in the press their opinions. After our people established a government they recalled that they had omitted to safeguard this vital right in framing our constitution. Therefore, the first amendment to that instrument was that guaranteeing the right of freedom of speech and press. That means something. We do not need this right to please those entrusted with the authority of government. Free press and free speech were guaranteed that men might feel free to say things that *displeased*. Demand for reform coming from the people is generally distasteful to those entrenched in power and privilege.

We must have the right to freely speak and print for the wrongs that need resistance and cause that needs assistance. There is no persecution, no injustice, to a great movement but if met in the right spirit bears its harvest of good. In this case the tremendous popular indignation at the attempt to abolish the right of free press and free speech brings our union members into closer relations and more in sympathy with each other throughout the country, and, more than that, it brings to the attention of the people as a whole the noble aspirations and the splendid achievements of the labor movement in behalf of right, justice, and humanity. Out of this attempt to seal the lips of the men of labor I believe will come good. We have come too far in the march of human progress for any set of influences to drive us back into slavery.

I see a silver lining to the clouds and a bright star of hope in the heavens, and I see ultimately the spirit of humanity, justice, and the brotherhood of man obtaining in the minds and hearts of the people of the country. Like Jefferson, I am willing to trust the people, and I have a certainty of their final triumph.

THE LAW OF THE DANBURY HATTERS' CASE

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If called upon to select the three greatest cases in Anglo-Saxon jurisprudence affecting the so-called "labor question," employer and employed would undoubtedly agree upon the Taff-Vale decision, in England, the Buck's Stove and Range Company case, now pending in our federal courts, and the Loewe case, in which judgment was entered after trial by jury for over \$232,000. The importance of any one of these cases is not diminished by any other, because of the fact that the fundamental and paramount principles involved in each are separate and independent from the main principles involved in the other two.

The Taff-Vale decision deserves distinction because it was there held that any labor union, registered under the laws of England, could be sued after the manner of a corporation. As a result of the application of this principle of law to the facts in that case, the union was mulcted in damages to the amount of £135,000 for unlawfully interfering with employees.

The Buck's Stove and Range Company case, which is still in the courts awaiting a hearing and final determination from the United States Supreme Court some time in the coming fall or winter, involves fundamental principles relating to the application of equitable remedies to protect an employer against a combination of working people; the question of the illegality of the boycott, and the right of a court of equity to summarily punish a violator of one of its decrees without a trial by jury.

It is difficult to understand how any attorney can confidently dispute the established law upon most of these questions involved in the Buck's Stove and Range Company case, because of the numerous decisions that have been rendered by courts of high standing throughout the country, condemning the secondary boycott, restraining it by injunction and punishing the violators thereof for contempt without trial by jury. It is true, nevertheless, that the United

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States Supreme Court has never before had presented to it a case involving the application of all of these principles to a set of facts of substantially the same character as is presented in this case. So, aside from the fact that the decision of the United States Supreme Court on many of these questions can be predicted with considerable assurance, the case, nevertheless, is one of far-reaching importance, as promising a final determination by the highest court in this land of these questions of undoubted importance. The most serious contention of the defendants is that an injunction, which restrains such communications, oral or written, as are necessary to the conduct of a boycott, violates the constitutional privilege of free press and free speech. The claim is that you cannot muzzle free speech by enjoining injurious or libelous statements uttered for the purpose of destroying property, even though an action for damages will thereafter lie on their account.

The Loewe case in contrast with the Buck's case was original in its conception and therefore more of a pioneer case. The suit was the first of its kind brought under the Federal Anti-Trust Law which declares every contract or combination in restraint of interstate trade to be unlawful and gives the party injured thereby the remedy of treble damages. The allegations and proof of the case exposed a combination of two million working men called the American Federation of Labor, which had affiliated with it over thirty thousand local unions, over five hundred city trade councils, representing the different trade unions in particular cities, about thirty state federations representing all the unions in the particular states and over 100 national trade unions such as the United Hatters of North America, representing all of the unions in a particular trade. This national federation had over 1,000 organizers active in different parts of the country in pushing the sale of union label materials and boycotting and preventing the sale of non-union materials. Among these organizers were listed the traveling agents of the United Hatters of North America who were particularly engaged in preventing the sale of non-union hats and directing the attention of the other organizers, trade organizations, city councils and state federations against such non-union hats and those who dealt in them. Since 1896, the United Hatters of North America had been an integral part of this machine and had from time to time sought the aid and co-operation of all these facilities to help

it in its systematic efforts to compel all hat manufacturers to unionize their factories. The practice of the United Hatters in dealing with hat manufacturers who did not voluntarily accept its rule was uniform and notorious by reason of a few historic fights in which individual manufacturers had successively been beaten after a year or so of resistance. The first step in the plot was the strike, and if we are to judge by the Loewe case, the employees actually involved were not consulted in advance on the theory that it concerned interests broader than theirs that their employer's factory should be union. The second step was to employ spies to watch the manufacturers' shipments, ascertain the names and locations of his customers, and then despatch special agents to each point in order to intercede with each customer. If the customer was recalcitrant, the agent enlisted all the unions in that locality to aid him in compelling that customer by loss of business and fear thereof to discontinue all relations with the manufacturer.

These activities were boastfully reported by the officers of both the American Federation of Labor and the United Hatters in their conventions and local meetings as well as by a monthly official magazine and printed convention reports which were placed at the elbow of every union hat maker to read if he so desired.

Under such circumstances and conditions nearly every defendant had been continuously a member of the United Hatters of North America and the American Federation of Labor since 1896, and during the six years which elapsed between the commencement of the Loewe suit and the actual date of trial. During this same period none of the defendants had ever made any protest against the continuance of such warfare, but had continued to pay dues and without objection had suffered or aided the re-election of the same officers.

This was the setting of the drama when the Loewe trouble started, but before any steps were taken the national officers of the United Hatters called upon Mr. Loewe and informed him in no uncertain language that if he was unwilling to be unionized by *peaceful* methods they would employ the *usual* methods. Following a firm declination on Mr. Loewe's part to accede to their demands, the usual steps of calling a strike and subsequently pursuing the boycott by the use of spies to discover points of shipment and of traveling delegates to intimidate dealers were ultimately taken. Upon the

evidence submitted the presiding judge instructed the jury that the plaintiffs were entitled to recover and left it to determine the amount.

The legal questions underlying the suit brought under the Federal Anti-Trust Law upon such a statement of facts resolved themselves primarily into two important principles: 1. The application of the Sherman Anti-Trust Law to a combination of working people restraining the interstate trade of an employer. 2. The liability of a member for acts of this character performed by the officers and agents of the union.

The question of the applicability of the Sherman Anti-Trust Law to this case was determined by the United States Supreme Court in 1907, when it unanimously overruled the demurrer to the complaint. The court in passing upon this complaint held that a combination of working people who combined together to restrain a man's interstate trade through the instrumentality of a strike which prevented production at home, and the instrumentality of a boycott which prevented distribution abroad, came under the prohibition of this anti-trust law. In this connection it should be noted that more than ninety-seven per cent of the plaintiff's sales were made for and shipped to customers outside of the state where manufactured so that for all substantial purposes he was engaged exclusively in interstate commerce, and the combination, in seeking to break up his business, must necessarily have had the intention to terminate that commerce.

This decision does not mean that every strike is an offense under the Sherman Anti-Trust Law, because it prevents the employer filling his interstate contracts, any more than it means that every boycott is an offense under that law. It simply means that where a strike and boycott are employed as means to prevent the transaction of interstate commerce, they become part of an illegal scheme in violation of that statute. It has been held that a combination obtaining control of a company through stock ownership and voting to prevent that company embarking in business in order that it may not become a competitor of the people who control the stock, may constitute a combination in violation of the Sherman Anti-Trust Law, but it does not follow that the ownership and control of stock, and the exercise of voting rights thereon necessarily constitutes a violation of the Sherman Anti-Trust Law any more than a

strike, which may in some instances be lawful, necessarily constitutes a violation of that law. All of these decisions are based upon the established theory that an act, otherwise lawful and innocent, may become unlawful when it is a part of an illegal scheme to accomplish an illegal purpose.

The complaint in this action was so framed that it appeared clearly therefrom that the strike and boycott were employed as a means to carry out an illegal scheme. It was alleged that the parties entered into a combination to restrain the plaintiff's interstate commerce, and, in order to carry out that illegal purpose, adopted certain enumerated means, among which were the strike and boycott. The difficult question arose, however, as to whether proof could be submitted to sustain such an allegation, for it is undoubtedly true in most instances that a strike is entered into without the information of any intention to restrain interstate commerce and with no preconceived plans to take any further steps to injure the employer's business by an interstate boycott. In such cases it would be impracticable to prove that the strike and boycott subsequently agreed upon were part of a pre-conceived plan to restrain interstate commerce. This matter of proof is the difficulty which will confront attorneys in attempting to base future suits of this kind upon the same theory.

The proof of this allegation in the Loewe case lay in the fact that before taking any of these steps, the officers of the United Hatters negotiated with Mr. Loewe and told him they had already made up their minds to follow the usual course unless Mr. Loewe was prepared to come in peacefully. It is well to read the exact conversation which took place in a little hotel bedroom on this occasion. Mr. Moffitt, the president of the union, being somewhat impatient of Mr. Loewe's reluctance finally brought the matter to a crisis and said:

"We have talked this matter over. We have endeavored to show you that it would be to your advantage to unionize your factory, and we might just as well be frank with you—we have made up our minds that this factory is to be unionized, and we hope to accomplish this in a *peaceful* way. If you don't come in that way, we shall use our *usual* methods to bring it about."

Mr. Loewe replied: "Mr. Moffitt, do you mean to say that if I am not willing to unionize the factory that you will use force?"

And Mr. Moffitt, answering, said: "Yes, Mr. Loewe, to be frank with you, we shall use force." Then, after hesitating, added: "That is, we shall create such a demand for the union label that you will be forced to adopt it."

Later, in another interview, Mr. Moffitt reminded Mr. Loewe that they had spent \$23,000 to force their last victim to go union, and that he should remember the unions had never lost a case. None of these facts were controverted so that the undisputed evidence of the case showed that when Mr. Moffitt and the other officers of the union gathered together to talk to Mr. Loewe, they had in their minds at that time an agreement or plan to pursue the same methods with Mr. Loewe as they had pursued with other manufacturers, and that these methods were to first cut off all production at home by a strike, so that no goods could be furnished to fill his orders, and then to interfere with the taking of further orders through the employment of the boycott. It would be unusual more clearly to prove a case of men conspiring together to interfere with a man's interstate trade and employing the weapon of a strike and a boycott to accomplish that end. These statements by Mr. Moffitt in the presence of his associates and in advance of all steps to the effect that they had in mind the intention of pursuing these various steps to accomplish their ruinous end with a man whose business was ninety-seven per cent interstate show that both of these steps were part of a general scheme to effect the purpose prohibited by our Federal Anti-Trust Law. If the proof had shown an ordinary strike for higher wages, the situation would have been different, but this interview with Mr. Moffitt and others showed that this operation of the union was but a part of the general scheme of the American Federation of Labor and United Hatters to unionize all factories and prevent the transaction of commerce in goods not made by union factories.

The second fundamental principle involved in this case was the liability of the individual members of the union for the acts of their officers and agents. The question of the application of the Sherman Anti-Trust Law was secondary in importance to this for the repeal or amendment of that law may at any time undermine the value of this precedent on that point, while the question of the liability of a member of a union for the acts of the organization is one of as enduring importance as labor organizations themselves. While this

case surpasses all other cases of its kind in importance because of its solution of this question, it must, nevertheless, be remembered that the determination of this question depended upon the application of an ancient salutary and simple rule of law. No one questions the justice and desirability of that principle of law which says that a man must be liable for what his agents do when acting in his behalf. If you are to receive the benefit of a man's activities you must also bear the liabilities incident thereto. You cannot send a man out into the world to act for you and escape responsibility for the harm he does when so acting. The principle is applied in manifold ways to the daily occupations and relations of our people, and there is no cry, such as has been raised in this case, that it works injustice.

If I own a newspaper and employ a man to report for it, I am liable for any libel which he publishes even though he may have done it contrary to my warning and express instructions. It is true that all the warnings and cautions which an employer may give his chauffeur against reckless driving will not protect that employer against an action for injury to a child caused by his chauffeur's negligent driving. So also, if I employ a man to buy and sell merchandise for me and carefully instruct him to the effect that I wish to succeed by honorable means only, I am nevertheless responsible for any fraud he may commit while engaged in this work. These are a few illustrations of the just and unquestionable character of the rule applied in the Loewe case to the effect that every man is liable for all acts done by his agents while in pursuit of his principal's business.

Let us assume that in this Loewe case the liability of some of the defendants at least rested solely on this principle. At least some of the defendants knew nothing of the plaintiffs or their business and had never taken direct and active participation in any boycott or strike against the plaintiffs. They were selected from among that group of working people who have been thrifty and conservative enough to amass property, and it is to the shame of organized labor that these men seldom, if ever, take any active or leading part in the operations of the union. Therefore, for the purpose of discussing this question, I consider only those defendants whose connection with this conspiracy was the most remote.

It would seem at the very outset that in the absence of any

further evidence than the fact that these men belonged to a labor union whose officers are doing this work, the question of liability is clear. Are not all the acts of which we complain of the very essence of trade unionism and does not the performance of any one of them, for the benefit of the members, constitute an act within the scope of the employment of the union's officers. By its very nature, the union is a combination in restraint of trade which seeks to obtain concessions for its members through the employment of concerted action. This concerted action is ordinarily applied in the two ways that were complained of in this case. It is either through the concerted withdrawal of men from employment, or the concerted withdrawal of patronage that it seeks to accomplish its ends.

This does not mean that necessarily every union is organized for unlawful purposes, but it does mean that the general nature of their operations are of such a character that any unlawful strike or boycott carried on by its officers, in behalf of its members, even though not expressly authorized, is within the scope of the employment of the officers. If this theory is correct, it is true that any provision in the constitution of a union forbidding its officers from conducting any *unlawful* boycotting, or instituting any *unlawful* strike will be no more protection to the members in an action for damages due to such unlawful strikes or boycotts than would be the instructions of an owner to his chauffeur not to be reckless. Thus, if we assume, as has been held in some states, that peaceful picketing is lawful, the union and its members would nevertheless be liable for any unlawful act on the part of its pickets while pursuing the business of picketing, even though that picket had been expressly instructed to keep within the law.

There was much additional evidence in the Loewe case growing out of certain clauses in the union's constitutions on which the liability of individual members might be based, but it is important to dwell upon this general principle which would become applicable to all labor unions and all labor union suits rather than upon certain clauses in the constitution which may be peculiar to this particular case and which might be altered and corrected as a safeguard against a successful repetition of a similar suit. If the principle herein presented is sound, it must necessarily follow that every member of every labor union is responsible for all acts in the nature of strikes or boycotting lawful or unlawful which are carried on

by its officers and agents for the benefit of members. A walking delegate who calls a strike on a building in order to induce the employer to pay him a bribe, does an act for which the membership is not responsible because he is seeking his own personal ends and not acting in furtherance of the interests of his principals. If, however, he does the same act for the benefit of his membership, it seems to me beyond question that they are all responsible.

In the Loewe case the constitution of the United Hatters of North America of which every one of the defendants was a member, dissipated all doubts as to the liability of members for acts done to unionize factories as it expressly authorizes the officers to use all means within their power to turn all hat factories fair. It would have been immaterial if that constitution had so read that the officers were authorized to use only lawful means to turn factories "fair," for the true test is not whether they were expressly authorized to do anything unlawful, but whether the unlawful acts were done in furtherance of the purposes which they were employed to carry out and were possibly adapted to the attainment of those purposes. So when the constitution authorized these officers to use all means within their power to turn a factory "fair," they were responsible for both lawful and unlawful means employed for this purpose even as the owner of the newspaper was responsible for the unlawful libel published by this reporter. Under the constitution of the United Hatters every one of the 9,000 members of that organization was liable for all acts of the officers and agents done for the purpose of turning hat factories fair.

The constitution of the American Federation of Labor of which every defendant, in common with 2,000,000 other employees in this country, was a member, presented an equally clear case, for, according to the statement of Mr. Gompers in a petition filed in this case in the United States Supreme Court, it was admitted that the constitution of the American Federation of Labor made special provision for the prosecution of boycotts, and it was further stated that the prosecution of such a conspiracy as was set forth in this case was necessary in order that the American Federation of Labor might attain its purposes. Under this constitution providing for treatment of trade disputes and the appointment of boycott committees, every one of the 2,000,000 members of that organization was responsible for all acts of boycotting that

were carried on by Mr. Gompers and his associates and for all unfair lists and boycotting statements published in the "American Federationist." If the general principle first suggested that any act in the nature of boycotting and striking is within the scope of any labor union and is not applicable, the question was clearly settled in these two particular unions by the constitutions which bound each and every one of the members.

Another aspect of the case which still further clinches the liability of every member of these unions is the fact that the American Federation of Labor and the United Hatters of North America each held periodical conventions to which delegates were sent after a regular election in which each member was permitted to participate. The delegates to these conventions had full power and authority to bind the members as to all matters connected with their organization and the laws passed at those conventions were supreme and of the same force and effect as the constitution themselves. At each of these conventions the delegates heard and approved full reports from their officers concerning the many boycotts that had been levied throughout the country including boycotts upon different hat manufacturers, and elected the same officers. At the conventions of the United Hatters, the strike and boycotting of the Loewe concern were also considered, and all acts, strikes or boycotts were unanimously approved. Inasmuch as every delegate who attended any one of those conventions was a proxy of the individual members, any knowledge which he obtained concerning boycotting was their knowledge, and any act or vote which he exercised approving or authorizing certain boycotts was their act.

To fully understand the force of the ruling of Judge Platt when he instructed the jury that all the defendants were liable, it should also be remembered that all reasonable efforts were made by the officers of the United Hatters to fully inform the members from time to time of the various strikes and boycotts which they had instituted. Convention reports were printed and a monthly journal published for this purpose and both were made available, without charge, for all who cared to read. It was even suggested by the testimony of some of the defendants that those startling reports of the officers and agents, rather exaggerated the ruinous efficiency of their work in order to win approval for re-election

and re-appointment. The essential point, however, is that no fraud or concealment was practised by the officers behind which the membership might find justification for their claimed ignorance. The officers never doubted but that they were acting in accord with the wishes of all members.

There is to be added to all of these grounds of responsibility of the individual members a final ground which in my mind is of more moral importance than all the other grounds combined. Every defendant constantly paid dues to support the officers of the United Hatters and of the American Federation of Labor in the conduct of these boycotts and after this suit was started and all of these defendants were served with papers which informed them of the work that was being carried on by their organizations, they did not withdraw from the organization like innocent men who had suddenly learned that their organization was doing wrong, but they continued to pay dues and re-elect the same officers without a warning or protest and in these two ways continued the wrong doing of which the plaintiffs complained.

This summary omits essential facts which connected many defendants with the wrong-doing and only too briefly touches the essential points of liability applicable to every defendant. Judge Platt believed the situation presented was largely one of law and that under the law the facts conclusively sustained the liability of all. For this reason he instructed the jury that the plaintiffs were entitled to recover and left it to determine the amount. The fact that the jury brought in a verdict for nearly the full amount indicates the trend of their sympathy and supports the contention that the issue would not have been otherwise had all the questions been left to them.

The fundamental principle reaffirmed in this case is the individual responsibility of every member of a union for all acts done by its officers and agents in furtherance of its object and purposes. It says to every union man "you cannot safely continue a member of an organization of wrong doing; you must reform it or leave it." It places a responsibility upon the conservative, property-owning class to be vigilant as to the conduct of union officials. So when, directly or indirectly, a union man becomes a member of the American Federation of Labor with a constitution providing for boycotting and his dues are used to support the machinery of

boycotting, he cannot repudiate his liability for all damages caused thereby.

This principle of responsibility says to the employer who is being boycotted or otherwise wrongfully injured by the union that when the power and resources of an army of men are arrayed against him and cause him damage, commensurate with the strength of the attack, he is not limited in redress to the inadequate resources of two or three union officials who have actively conducted the wrong doing.

Any other rule of liability for union members would be hopelessly inadequate. It would penalize vigilance and reward irresponsibility. If liability for association acts can be confined to its officers by mere ignorance of their conduct on the part of the general membership, judgment-proof officers will be elected and all opportunity for the members to be acquainted with the activities of the association's officers will be withheld for corrupt and ulterior motives.

EFFECT OF THE RECENT BOYCOTT DECISIONS

BY MARGARET A. SCHAFFNER,
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The immediate result of the recent boycott decisions has been a deluge of protests. Judges, unionists, and publicists have joined in a chorus of criticism as though some new doctrine had been expounded. But while the courts are undoubtedly safe in the assumption that they are following an antique line of decisions, certain vigorous dissenting opinions indicate the doubts which are beginning to afflict the judicial mind respecting the infallibility of ancient precedents. The further disapproval of the decisions by conservative men of affairs challenges consideration of the points involved in controversy and justifies the interest of the public in taking an inventory of the questions at issue.

The severest criticisms of the decisions have been offered by judges on the bench. In the case of *Gompers et al. v. The Buck's Store and Range Company*, Chief Justice Shepard, of the Court of Appeals of the District of Columbia, dissented most vigorously from the majority decision of the court which affirmed the jail sentences imposed on Gompers, Morrison and Mitchell for the violation of the injunction issued by Justice Gould.² This sweeping injunction restrained the defendants "from printing, issuing, publishing or distributing through the mails, or in any other manner, any copies or copy of the 'American Federationist,' or any other printed or written newspaper, magazine, circular, letter or other document or instrument whatsoever, which shall contain or in any manner refer to the name of the complainant, its business or its product in the 'We Don't Patronize,' or the 'Unfair' list of the defendants, . . . or which contains any reference to the complainant, its business or product in connection with the term 'Unfair' or with the 'We Don't Patronize' list, or with any other phrase, word or words of similar import, and from publishing or otherwise circulating, whether in writing or orally, any statement or notice of any kind or character

¹*Gompers et al. v. Buck's Store and Range Co.*, 1000, 23 App. D. C. 516.

²This injunction was issued Dec. 18, 1907, for text see: *Buck's Store and Range Co. v. American Federation of Labor*, 1000, 23 Wash. L. R. 822, 823-824.

whatsoever, calling attention of the complainant's customers, or of dealers or tradesmen, or the public, to any boycott against the complainant, its business or its product, or that the same are, or were, or have been declared to be 'Unfair,' . . . or inducing any dealer, person, firm, or corporation, or the public, not to purchase, use, buy, trade in, deal in, or have in possession stoves, ranges, heating apparatus, or other product of the complainant."

Though recognizing that the defendants had obeyed the order of the court to the extent of removing the name of the complainant from the "Unfair" or "We Don't Patronize" list, the court of appeals affirmed the decree imposing jail sentence because the labor leaders had given further publicity to the boycott. In fact the very announcement of the decree of the court imposing sentence upon Gompers, Morrison and Mitchell augmented the boycott. Here was, indeed, an anomalous situation—the defendants placing themselves in further contempt of court because they gave publicity to the decree of the court against themselves. On this point the court of appeals said, "Gompers and Morrison published and circulated through the 'American Federationist' articles calling the attention of the members of the American Federation of Labor and their friends throughout the country to the injunction issued by the court below in such a manner as to cause their followers to disregard and disobey the same, the intended effect of which was to injure and interfere with complainant's business and the sale of its product, and to restrain the membership of the American Federation of Labor and the public generally from patronizing the complainant and to continue and maintain the boycott against the business of complainant."

With respect to these charges of contempt the defendants insisted that they were within their constitutional prerogatives; that freedom of speech and of the press could not be restrained by any writ of injunction; that since the writ restrained them from exercising their constitutional rights, it was wholly erroneous and void and beyond the power of any court to issue; and therefore the complaint against them should be dismissed.

In dissenting from the decision of the court of appeals which affirmed the jail sentences, Chief Justice Shepard sustained the material contentions of the defendants in vigorous and somewhat stinging language. After pointing out that the conviction was

largely based upon acts and "language used by the respondents in public meetings long antedating the commencement of the original suit, some occurring in the year 1897 and long before any controversy had arisen," the chief justice continued, "When we consider the severity of the sentence of Mitchell, I think it impossible to say that it was not founded in part upon declarations which long antedated the controversy with the complainant." In dissenting further the chief justice said, "There is another and stronger reason for my dissent so far as the respondents, Gompers and Morrison, are involved. The specific acts charged against them relate wholly to declarations and publications which violated the preliminary injunction as issued. I have heretofore expressed the opinion that so much of the injunction order was null and void, because opposed to the constitutional prohibition of any abridgment of the freedom of speech or of the press. (33 App. D. C., p. 129.)³ Subsequent reflection has confirmed the views then expressed. I concede that the court had jurisdiction of the subject-matter of the controversy and of the parties, but I cannot agree that a decree rendered in excess of the power of the court—a power limited by express provision of the constitution—is merely erroneous and not absolutely void."⁴

The effect of this judicial criticism can scarcely be other than clarifying in the controversies still at issue between advocates of the peaceful boycott and the adherents of the injunction process in the settlement of labor disputes. Chief Justice Shepard seems to point the way for a line of decisions which may in the future distinguish clearly between lawful acts due to the incentive of self interest on the part of organized labor in conducting a peaceful boycott, and any unlawful acts which may be committed from a malicious or any other motive. Unionists insist that they are merely contending for rights ordinarily enjoyed by other men and that their right to strike and their right to dispose of their patronage as they wish are rights of which no court can lawfully deprive them. The labor leaders persistently quote the generalization in "Cooley's Torts" that "It is a part of every man's civil rights that he be left at liberty to

³*American Federation of Labor v. Buck's Store and Range Co.*, 1900, 33 App. D. C. 83, 120.

⁴*Ex parte Lange*, 1873, 18 Wall. 163; *Ex parte Fisk*, 1885, 113 U. S. 713. *In re Snow*, 1887, 120 U. S. 274; *In re Ayres*, 1887, 123 U. S. 443-485; *Re Neilsen*, 1889, 131 U. S. 176-183.

refuse business relations with any person whomsoever, whether the refusal rests upon reason, or is the result of whim, caprice, prejudice or malice. With his reasons neither the public nor third persons have any legal concern."⁵

To those who insist that there can be no such thing as a peaceful boycott, recent court decisions do not give uniform assent. There has been a tremendous evolution not only in public opinion but in judicial thought since the days when the boycott was defined by Judge Taft as, "A combination of many to cause a loss to one person by coercing others against their will to withdraw from him their beneficial business intercourse through threats that unless those others do so, the many will cause similar loss to them."⁶ In *Mills v. United States Printing Company*, the Supreme Court of New York said, "It is not in the breast of the court to stamp as illegal a combination for the betterment of the interests of the members thereof, or some of them, and which without incidental violence or intimidation, severs all business dealings with an outsider until it may secure it. If this be illegal where can we draw the line so as to countenance association to insure united, and therefore effective, action to right what seems wrong or to correct what seems an abuse, or to mark disapproval of some policy in the everyday affairs of our social life? The protest of one under threat of abstention may be unheeded, in view of the slightness of the penalty, when a like protest of many, with similar threat, is effective and only because the penalty is too great to pay. Lawful and concerted protest can regulate many things within the law without invoking paternal government. . . . It may be that the result of the boycott is a loss to him proscribed. Else the combination would fail of its purpose. But when the result sought by a boycott is to protect the members of the combination or to enhance their welfare, that loss is but the incident of the act—the means whereby the ultimate end is gained. . . . And as such a combination may be formed and held together by argument, persuasion, entreaty, or by the 'touch of nature' and may accomplish its purpose without violence or other unlawful means (*i. e.*, simply by abstention) I think it cannot be said that 'to boycott' is to offend the law."⁷

⁵*Cooley, Torts*, 3d Ed., 1906, Vol. 2, p. 587.

⁶*Toledo, Ann Arbor & North Mich. Ry. Co. et al. v. Penna. Co.*, 1893, 54 Fed. 730.

⁷*Mills v. United States Printing Co.*, 1904, 91 N. Y. Supp. 185.

This statement of the court fairly maintains the contention of the unionists that when they invoke either the strike or the boycott they are seeking to advance their own interests. They insist that modern industrial conditions not only authorize them but compel them to invoke associated effort to meet the organized strength of the employer. From the standpoint of the unionists it seems absurd that they should be enjoined from acting together in securing desirable conditions of employment in industries in which the associated owners acting through their manager—their walking delegate—determine conditions which affect thousands of workingmen.

However, the unionist does not complain of the logic of the courts, he attacks the premise upon which the argument of the court is generally made to rest, namely, that the strikers or boycotters are actuated by malicious intent. From the psychological standpoint it seems strange that the courts have so generally held that the workingmen were actuated by malice in seeking to better their conditions through associated action in a strike or boycott. To the average man, familiar with industrial conditions, it might seem as though the unionist were seeking primarily to advance his own interest in attempting to secure shorter hours, higher wages or better conditions of employment. It is generally conceded that the manager of an organized industry is seeking to promote the best interests of the stockholders or associated owners when he attempts to secure laborers at the lowest possible market price for the longest hours customary in the industries which he manages. The contention of the unionist is that the courts should likewise recognize that the laborer is seeking to better his own condition and is pursuing his own legitimate self-interest in associating with fellow laborers likewise seeking to better their industrial condition by means of a strike or a boycott. His quarrel with the court is that they have so insistently refused to recognize this motive of self-interest on the part of laborers.

That this contention of the unionists is gradually being conceded is more and more evident in recent decisions. Whether based on common or statutory law the opinions of courts are beginning to recognize that "malicious intent" may be entirely wanting in either a strike or a boycott, and that the expectation of improving their own condition may be the dominant motive which actuates the laborers in associated action.

In a decision rendered by Judge Tuley of Chicago, the right to boycott was upheld in the circuit court of Cook County as early as 1901. A certain contractor entered suit against the members of the Mosaic Workers' Union for conspiring to injure his business. The facts alleged by the plaintiff were admitted, but the construction put upon them in the complaint was denied by the defendants. They admitted sending circulars to architects, builders and contractors, setting forth that the plaintiff was the only mosaic manufacturer in Chicago who had refused to sign the agreement with the union, and that in consequence no union man would work for him. The circular further said, "we therefore request you not to let any contract to him until he has acceded to our demands. Sympathetic strikes will result on any building where he gets a contract." The question at issue was,—“Was there in these statements a wrongful attempt to injure the non-union contractor?” After summing up the evidence, Judge Tuley instructed the jury to bring in a verdict of not guilty. He declared the law bearing upon the facts to be as follows:—“The law holds that any person in competition with another may state the truth regarding the business of the other however injurious to the business of the other that truth may be. That is true of combinations and corporations as well as of individuals. The motive of making such truthful though injurious statements may be to take from the other some of his business and to add to the business of the person making those statements. The motive is a legal one. The act and the motive in this case are both legal. In other words competition is industrial welfare and injury is not the test of wrong. A man has the right to attract all the patronage he can, not only by praising his own goods, but by telling unfavorable things, provided they are true, about the goods of his rivals. He may injure them, but his method is not wrongful. The Mosaic Workers' Union simply told the truth about its relation to Davis and the consequences that would follow the letting of contracts to him. An injury may have resulted, but such an injury as the union had a legal right to inflict.” Since this decision was rendered by Judge Tuley, an increasing number of decisions has from time to time upheld the legality of the boycott. In the well-known case of *Marx, etc., v. Watson*,⁸ the court held the boycott

⁸*Marx & Hass Jeans Clothing Co. v. Watson et al.* (United Garment Workers of America), 1902, 108 Mo. 133.

legal on the ground of the constitutional right of free speech. The court declared: "The fact that in exercising that freedom they thereby do plaintiff an actionable injury does not go a hair toward a diminution of their right of free speech, for the exercise of which, if resulting in such injury, the Constitution makes them expressly responsible. But such responsibility is utterly incompatible with authority in a court of equity to prevent such responsibility from occurring."

Though the tendency to admit the legality of the boycott in the United States has been more pronounced in decisions dealing with employers' associations,⁹ and though the tremendous import of the Hatters' case,¹⁰ and the Buck's Stove and Range case,¹¹ may for a while obscure the final issue, yet many lines of evidence indicate that this country will not be many years in following the lead of England and Germany in maintaining the legality of peaceable organized effort on the part of laborers to better their own condition. In the case of *Gray v. Buildings Trades Council*,¹² the supreme court of Minnesota modified an injunction by striking out the part which restrained the giving of "unfair" notices. In a recent Montana case,¹³ the supreme court of that state held that a labor union would not be enjoined from boycotting a firm, since individuals have the right to withdraw patronage and advise others to do so when no unlawful means were employed. The Montana court adopted the language of the supreme court of New York,¹⁴ in which that court said: "The verb 'to boycott' does not necessarily signify that the doers employed violence, intimidation or other unlawful coercive means, but it may be correctly used in the sense of the act of a combination in refusing to have business dealings with another until he removes or ameliorates conditions which are deemed inimical to the welfare of the members of the combination or some of them, or grants concessions which are deemed to make for that purpose." In California the legality of the boycott has been upheld

⁹*Bohn Mfg. Co. v. Hollis et al.*, 1893, 54 Minn. 223; *Cole v. Murphy et al.*, 1894, 150 Pa. St. 420; *Buchanan v. Barnes*, 1894, 28 Atl. 195; *Buchanan v. Kerr*, 1894, 150 Pa. St. 433; *Macauley v. Tierney*, 1895, 19 R. I. 255.

¹⁰*Loewe v. Lawlor*, 1908, 208 U. S. 274.

¹¹*Gompers et al. v. Buck's Stove and Range Co.*, 1909, 33 App. D. C. 516.

¹²*Gray v. Buildings Trades Council*, 1903, 91 Minn. 171.

¹³*Lindsay v. Mont. Federation of Labor*, 1908, 37 Mont. 264.

¹⁴*Mills v. U. S. Printing Co.*, 1904, 90 App. Div. (N. Y.) 605.

in a number of recent cases.¹⁵ In *Pierce v. Stablemen's Union*, the supreme court of that state declared: "This court recognizes no substantial distinction between the so-called primary and secondary boycott. Each rests upon the right of the union to withdraw its patronage from its employer and to induce by fair means any and all other persons to do the same, and in exercise of those means, as the unions would have the unquestioned right to withhold their patronage from a third person who continued to deal with their employer, so they have the unquestioned right to notify such third person that they will withdraw their patronage if he continues so to deal." However much the recent decisions of the supreme courts in New York, Montana and California may be opposed to the weight of federal authority, they seem to point toward the future.

A comparison of federal decisions seems to indicate that the old doctrine of conspiracy—once an infallible resource in case of labor disputes—is gradually giving way to the theory of "interference with property rights" or "interference with business." This theory seems to be flourishing both under common and under statutory law. In the Danbury Hatters' case¹⁶ the complaint alleged that the United Hatters had effectively combined to interfere with the business of the hat manufacturers and that the interstate trade of the manufacturers was being destroyed by the boycott carried on against dealers in their products in other states. The Supreme Court of the United States held that a cause of action was stated under the Sherman Anti-Trust act and remanded the case for trial on the complaint. On February 4, 1910, after a trial lasting more than seventeen weeks, the federal circuit court rendered a verdict for \$220,000 against 200 members of the United Hatters of North America, in favor of the Loewe Hat Manufacturers of Danbury, Connecticut.

The decisions in the Hatters' case and in the Buck's Stove and Range cases have stirred labor leaders to renewed protests. They point to federal court decisions authorizing the use of the blacklist on the part of employers, while in the same jurisdictions the use of the boycott is denied to the unions. Commenting on this point the "American Federationist"¹⁷ recently said: "Mark the inconsis-

¹⁵*Parkinson v. Building Trades Council of Santa Clara*, 98 Pac. (Cal.) 1040; *Pierce v. Stablemen's Union*, 1909, 103 Pac. (Cal.) 324.

¹⁶*Loewe v. Lawlor*, 1908, 208 U. S. 274.

¹⁷"American Federationist," March, 1908, Vol. 15, No. 3.

tency of the supreme court. In the *Hatters' case*¹⁸ it declares that the boycott used by the workers is a conspiracy and punishable by heavy penalties. In the *Adair*¹⁹ case, brought under the Erdman act, it gives a decision which will permit employers to use the blacklist as freely as they please and the wage-workers will have no redress." In the *Boyer case*²⁰ the federal circuit court for the eastern district of Missouri, said: "An employer having discharged employees for belonging to a labor union has the right to keep a book containing their names and showing the reason for their discharge and to invite inspection thereof by other employers, even though the latter, therefore, refuse to hire the discharged employees. . . . There can be no such thing as an unlawful conspiracy to destroy a labor union by discharging its members by refusing to employ them." In the *Goldfield Consolidated Mines Company Case*,²¹ the federal circuit court for the district of Nevada similarly declared "An agreement between mine operators that they will not employ any person who belongs to a certain labor organization or to any organization affiliating therewith does not constitute an unlawful conspiracy against such organization or its members."

Unionists point out that within a period of five years after the English decisions in *Quinn v. Leatham*,²² and in the *Taff Vale Railway case*,²³ the British Parliament acceded to the request of British trade unions by enacting the Trades Disputes act of 1906. Under this law no action can be brought against a union for conducting either a primary or a secondary boycott. Labor leaders in America are urging congressional action which will give organized labor in this country a status as favorable as that secured in Great Britain. They moreover urge that our courts shall take the advanced ground on which the German Imperial Court in 1906 recognized the legality of the boycott in Germany.²⁴ They constantly assert that they are not actuated by any other motive than that shown by

¹⁸*Loewe v. Lawlor*, 1908, 208 U. S. 274.

¹⁹*Adair v. U. S.*, 1908, 208 U. S. 161.

²⁰*Boyer et al. v. Western Union Telegraph Co.*, 1903, 124 Fed. 246.

²¹*Goldfield Consolidated Mines Co. v. Goldfield Miners' Union No. 220 et al.* 1908, 159 Fed. 500.

²²*Quinn v. Leatham*, 85 L. T. Rep. 289 (1901), A. C. 495.

²³*Taff Vale Ry. Co. v. Amalgamated Society of Railway Servants*, 85 L. T. Rep. 147 (1901), A. C. 426.

²⁴"*Deutsche Juristenzeitung*," September 15, 1906. (Translation by Ernst Freund in the *Journal of Political Economy*, Nov., 1906.)

the Consumers' League and similar organizations which advertise freely that they will bestow their patronage so as "to give moral and commercial support to merchants and manufacturers who afford humane conditions of employment."²⁵

Leading jurists throughout our country have recently criticized the conflicting decisions²⁶ relating to labor disputes and have expressed the opinion that many of our labor decisions will need to be restated in order to bring them into conformity with our fundamental law.

Since the indignation apparent in the first protests has somewhat spent itself and a calmer survey of recent decisions has become possible, several lines of results are coming clearly into view. The immediate effect upon the trade unions appeared in the call to political action. When, outgeneraled by superior forces in the forties and later in the sixties and seventies, the labor movement in America turned toward political activities, certain important gains were made in legislation. It is hardly probable that the recent tendency toward political action will be allayed before amendments

²⁵"Charities and Commons," Feb. 1, 1908, advertisement of Consumers' League.

²⁶For leading decisions relating to boycotting, see: *State v. Glidden*, 1887, 55 Conn. 76; *Old Dom. S. Co. v. McKenna*, 1887, 30 Fed. 48; *State v. Stewart*, 1887, 59 Vt. 273; *Crump v. Commonwealth*, 1888, 84 Va. 927; *Moore & Co. v. Bricklayers*, 1890, 23 Weekly L. B. (Ohio), 48; *Casey v. Cin. T. U. No. 3*, 1891, 45 Fed. 135; *Bohn Mfg. Co. v. Hollis*, 1893, 54 Minn. 223; *Toledo, Ann Arbor & N. Mich. R. Co. et al. v. Penna. Co.*, 1893, 54 Fed. 730; *Barr v. Essex Trades Council*, 1894, 53 N. J. Eq. 101; *Buchanan v. Barnes*, 1894, 28 Atl. 195; *Cote v. Murphy et al.*, 1894, 159 Pa. St. 420; *Buchanan v. Kerr*, 1894, 159 Pa. St. 433; *Thomas v. Cin. N. O. & T. P. Ry. Co.*, 1894, 62 Fed. 803; *Macaulay v. Tierney*, 1895, 33 Atl. 1; *Vegelahn v. Guntner*, 1896, 167 Mass. 92; *Oxley Stave Co. v. Coopers Int. U.*, 1896, 72 Fed. 695; *Hopkins et al. v. Oxley Stave Co.*, 1897, 83 Fed. 912; *Beck v. Ry. Teamsters' Protective Union*, 1898, 115 Mich. 497; *Packer v. Bricklayers' U. No. 1*, 1899, 21 Weekly L. B. (Ohio), 223; *Boutwell et al. v. Marr et al.*, 1899, 42 Atl. 607; *Nat. Pro. Ass'n v. Cumming*, 1900, 65 N. Y. Supp. 946; *Walsh v. A. of M. Plumbers*, 1902, 71 S. W. 455; *Marx & Hass Jeans Clothing Co. v. Watson et al.*, 1902, 67 S. W. 391; *Mills v. U. S. Printing Co.*, 1904, 91 N. Y. Supp. 185; *Gray v. Blg. T. Council*, 1905, 91 Minn. 171; *Loewe v. Lawlor*, 1906, 148 Fed. 924; *Loewe v. Lawlor*, 1908, 208 U. S. 274; *Lindsay v. Montana Fed. of Labor*, 1908, 37 Mont. 264; *J. F. Parkinson Co. v. Santa Clara Co. Bldg. Trades Council*, 1908, 154, Cal. 581; *Pierce v. Stablemen's Union*, 1909, 103 Pac. 324; *Buck's Stove and Range Co. v. Am. Fed. of Labor et al.*, 1908, 36 Wash. L. R. 822; *American Fed. of Labor v. Buck's Stove and Range Co.*, 1909, 33 App. D. C. 83; *Gompers et al v. Buck's Stove and Range Co.*, 1909, 33 App. D. C. 516.

For leading blacklisting decisions, see: *Bacon v. Mich. C. R. Co.*, 1887, 66 Mich. 176; *Mo. Pac. R. Co. v. Richmond*, 1889, 73 Tex. 586; *Worthington v. Waring*, 1892, 157 Mass. 421; *Mo. Pac. R. Co. v. Behee*, 1893, 2 Tex. Civ. App. 107; *Boyer et al. v. Western U. Tel. Co.*, 1903, 124 Fed. 246; *Joyce v. G. N. Ry. Co.*, 1907, 110 N. W. (Minn.) 975; *Goldfield Consolidated Mines Co. v. Goldfield Miners' Union No. 220 et al.*, 1908, 159 Fed. 500.

to the Sherman Anti-Trust law are enacted and a more definite status with respect to injunctions and "conspiracy" is secured. The contention of labor leaders that freedom of speech and of the press should not be enjoined will scarcely require legislative consideration, since these rights cannot be denied in courts which hold themselves within their constitutional prerogatives. The effect of the decisions upon public opinion has been enlightening. The appeal of the American unions for rights enjoyed by organized labor in England and Germany is awakening us out of our complacent toleration of situations which have been remedied in other countries. Finally the criticism offered by members of the judiciary is calling the public mind to the incongruity of fining or imprisoning laborers for peacefully combining to advance their own interests in an industrial society in which increasing organization has been the most dominant characteristic of the age. The logic of events seems to indicate that our recapitulation of England's industrio-legal experience will not be stayed before the rights guaranteed under the British Trades Disputes act, shall have been acquired by American workingmen.

PROPER BOUNDS OF THE USE OF THE INJUNCTION IN LABOR DISPUTES

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The jurisdiction of equity to interfere by injunction to *some* extent in labor disputes cannot be seriously questioned at the present day. In issuing its restraining process in proper cases, the court exerts its authority, which is as old as the chancery itself, to prohibit those wrongful acts which will work irreparable injury to property rights for which the courts administering the common law can afford no adequate remedy. To the exercise of this power every member of the community is subject; and there is no reason why persons engaged in labor disputes should be granted immunity from it. In so far, therefore, as the courts restrain the performance by employer and workman alike of those acts only which plainly infringe upon the property rights of another person, to his immediate and irremediable damage, their action is clearly beyond the reach of legitimate criticism.

American labor leaders, however, protest with great energy against the use of the injunction to forbid acts that render the doer liable to criminal prosecution, upon the ground that since a violation of the injunction subjects the offender to punishment by fine and imprisonment for contempt of court, after a summary trial conducted by the equity judge alone, the effect is to deny him his constitutional right to be tried by a jury before he can be made to suffer criminal penalties.

This argument, in so far as it is grounded upon existing law, was finally and conclusively refuted by the Supreme Court of the United States in the celebrated Debs case (158 U. S. 564, 594), decided May 27, 1893. It was there pointed out that the power of equity to restrain the commission of acts destructive of property had never been regarded as in any degree curtailed by the fact that these same acts might also amount to offenses against the criminal law. The injunction is solely in aid of the civil liability of the wrongdoer

in favor of the person directly injured; and this is not affected by the existence of a concurrent criminal liability; wherefore it follows that the power of the court to issue the injunction being thus established, the power of the same court to punish violations of it in its own peculiar fashion is the same in nature and extent as in the case of any other lawful order of the court. Since, then, the punishment for contempt is not for a violation of the criminal law, but for disobedience to a lawful mandate of the court protecting certain civil rights, there is no violation of the offender's right to a jury trial in criminal prosecutions.

The labor unions charge that this distinction is purely verbal. Its substantial effect, they say, is to subject persons to penalties identical with those imposed by the criminal courts, without the protection of a jury trial, and with a very limited right of appeal. And if the law is as stated, it ought to be changed, either by forbidding the issue of injunctions at all against criminal acts, or else—what amounts to the same thing—by allowing a jury trial to persons accused of violating such an injunction, thus rendering a proceeding for contempt practically indistinguishable from an ordinary criminal prosecution.

Assuming such a statutory change in the established law to be constitutional, we may fairly impose upon those who advocate it the burden of proving its expediency. The justice of doing this becomes all the more apparent when it is borne in mind that, whatever may be urged against the injunction, its superior efficiency in suppressing strike disorders, as compared with the less summary methods of the criminal courts, has never been denied.

An examination of the reasons commonly urged against present practice in this particular would indicate that they are based largely upon abstract grounds. The gist of the complaint is that the arbitrary and uncontrolled power of punishment at present lodged in the hands of the equity judge is oppressive and tyrannical in tendency, and consequently un-American in character. But it may be pointed out in answer, that since equity practice in contempt cases, although well known to the framers of the constitution, was permitted by them to continue unchanged, and has been in existence without objection until the present agitation was begun, it can scarcely be branded as essentially contrary to the spirit of our institutions. Moreover there is nothing in our past experience during all that period

tending to show that this power has been tyrannically exercised, nor is there any reason to believe that the courts in the future will wield it in any other than a moderate, conservative manner. Unless, therefore, it is made to appear as a fact that the power is so employed as to cause the punishment of innocent men, either for offenses which they have not committed, or else for acts for which they ought not to be punished, those who advocate the proposed change in the law can expect little support from public opinion. But they have produced no convincing proof that proceedings for contempt thus tend to increase miscarriage of justice. So far as now appears, these trials have been fairly conducted. The accused has been given every opportunity to establish his innocence; and when he has been convicted, there has been little doubt that he had done the acts charged. Since, by our very hypothesis, the acts enjoined were criminal, it cannot be said that the accused ought not in good conscience to have been punished for them, or that in being forbidden to perform them he was unduly restrained of his liberty. It fairly appears, therefore, that up to the present time the labor leaders have not succeeded in making out their case against the use of the injunction against acts of this character.

A much more serious problem is presented by the action of the courts in forbidding, under certain circumstances, the doing of acts that are not ordinarily regarded as unlawful. Modern authority in this country does not sanction an injunction against the act of striking, singly or in combination, for a good or a bad reason. It is reasonably certain, moreover, that if the strike is begun for the purpose of directly advancing the substantial economic interests of the strikers, the courts will permit them to utilize a number of peaceful measures, in addition to quitting work, to force their employer to terms. Quiet and reasonable requests, persuasion and arguments, that do not partake in any degree of intimidation, may be addressed to workmen hired in the strikers' places to induce them to join the strike. They may also establish an orderly picket system about the employer's premises for the purpose of gathering information relative to the progress of the strike and of facilitating efforts to persuade and induce the new men to quit work. In some jurisdictions, the pickets may even address similar argument and persuasion to prospective customers of the employer to induce them to cease dealing with him during the continuance of the strike. And

the union officers may not be interfered with in the performance of their duties in relation to the strike, so long as they confine themselves to measures not unlawful per se. There is considerable authority, however, for the proposition that these same acts, if not inspired by "justifiable cause," give rise to legal responsibility to the party injured thereby, and may be enjoined regardless of their intrinsic nature, upon the theory that the malicious intent to harm another may render unlawful acts otherwise innocent.

The crucial issue in the labor law of to-day centers upon the "boycott," in the widest meaning of the term. Our discussion of the subject must be understood to relate only to the procurement of business isolation by means not unlawful per se, *i. e.*, peaceable persuasion of customers, not under contract, to sever their relations with the employer, or at most the compulsion resulting from a simple refusal on the part of union men to work for or deal with such customers unless they cease to do business with the person attacked.

The tendency in the earlier cases was to apply the "justification" test to these war measures as well as to others not intrinsically illegal. But the latest judicial utterances upon the subject exhibit a growing inclination on the part of the courts to prohibit unconditionally any attempt by the labor unions to exert pressure upon their enemies through the medium of disinterested third parties. This principle that "secondary boycotts" are unlawful has been copiously discussed in the latest decisions, notably in the now famous case, "*Buck's Stove and Range Co. vs. American Federation of Labor et al.*," through which, by reason of the drastic character of the injunction issued by the Supreme Court of the District of Columbia and the prominence of certain labor leaders who are now under a jail sentence for violating its terms, the subject has been forcibly brought to the attention of the public.

In examining the hotly-disputed question whether or not the American courts in holding secondary boycotts illegal and enjoined have stepped beyond the proper limits within which the use of injunctions should be confined, we find that the arguments upon which it is attempted to establish the illegality of such boycotts are reducible to two basic propositions: (1) Every man engaged in business has a legal right to a free market in which to purchase his labor and sell his product; (2) the acts of a combination of persons who, by the characteristic method of the boycott, render it difficult

or impossible for him to buy or sell in these markets violate his legal rights therein.

It may be conceded that every man has the right to a free access to the markets of purchase and sale, in the sense that he may not be wrongfully prevented from trafficking with such persons as are willing to negotiate with him, or from reaping such results as he may be able to gain from the negotiation. But it can hardly be contended that he has a right that persons with whom he desires to deal shall be wholly shielded from the influence apt to be exerted upon their judgments by considerations of their economic interests. If his legal rights are violated by the action of other persons in making it appear to prospective customers that their economic interests will be on the whole advanced by their dealing with some person other than the complainant, the very existence of a competitive market is rendered impossible. The right to a free market manifestly cannot extend as far as this. Something else than the damage suffered by reason of an inability to secure beneficial trade must be present in order that the law may say that the right to a free market has been infringed. A wrong is not complete unless the element of *injuria* is superadded to the *damnum*.

This element is attempted to be supplied by the second basic principle above set out. The *methods* employed in a boycott are held not only to damage the person attacked, but to infringe upon his legal rights as well. But the question immediately suggests itself as to wherein lies the infringement; and although it has exercised the courts ever since boycotts began to find their way into litigation, they have never been able to supply an answer which will stand the test of established law.

It is manifest, first of all, that there is nothing in the quality of the damage inflicted by a boycott to give it the character of a legal wrong. A stoppage of the labor supply of an establishment may lead as straight to bankruptcy as does a stoppage of the sale of finished goods, yet it is perfectly legal to strike and to persuade other persons to strike. Again, it is generally held that the conduct of a competitor in interfering with his rival's market of sale by underselling him, or by offering certain trade advantages to such customers as deal exclusively with himself, gives the rival no right of action, although it results, and is intended to result, in driving him out of the market. Neither the quantity nor the quality of the dam-

age so inflicted supplies the necessary element of *injuria*. As was said by Justice Van Orsdel, of the District of Columbia Court of Appeals, in his concurring opinion upholding the injunction issued by the court below: "It is not the injury of the complainant that measures the right of the courts to intervene, for a peaceable, lawful strike may inflict great injury, but it is the unlawful actions of the defendants directed against the rights of the complainant." (37 Wash. L. Rep. 154.)

Many courts profess to find the necessary leaven of illegality in the "coercion" or "intimidation" practiced upon the complainant's customers to "compel" them to interrupt their trade relations with him. But a careful analysis of what the unions engaged in a peaceable boycott really do must reveal that their acts cannot be brought within the legal meaning of these terms. The unions simply impose conditions upon the continued bestowal of their business patronage, which they have an undoubted right to give or withhold as they will. They inform the person who has business relations with themselves and also with the person attacked, that in the future he may not deal with both parties to the dispute. He is required to choose between them. But his choice is untrammelled by any consideration other than that which influences the decision of everyone engaged in competitive business, *i. e.*, regard for his own economic welfare. He settles the question according to his determination as to whose patronage is the more valuable to him. This is "coercion" in only a figurative sense of the word. Indeed, the act of the union in placing the alternative before the customer may be equally well regarded as a promise to reward him for his severance of relations with the enemy by a *continuance* of their beneficial business intercourse which the unions may give to some one else if they will. It is extremely difficult, therefore, to see wherein these measures are illegal. How can civil liability spring from the act of one party in making it known to another that he will exercise his legal right not to do business with the other unless the other shall see fit to exercise his legal right to cease dealing with some third party? The unions are fairly entitled to all the benefits, direct or indirect, derivable by them from a bestowal of their patronage where they will—to deal with those whom they consider their friends rather than with those whom they regard as allied with their enemy.

The person who asks for an injunction to restrain a peaceable boycott is able to show to the court only that the defendants have put his customer into a position wherein he was obliged to decide whether he preferred their patronage to the complainant's, and that the customer, governed by economic considerations, had decided to retain the patronage of defendants, to the complainant's loss. Here is *damnum*, but where is the *injuria*? The complainant has no vested right in the mental state of another person. He cannot denounce as "intimidation" the natural regret which his customer may feel at being required to give up one line of patronage in order that he may keep another that is more valuable to him, and utilize it as a ground of action against those who made the choice necessary. Coercion by unlawful acts does give him just cause of complaint, upon the theory that illegal acts productive of damage to him are none the less wrongful as to him because they operate through the medium of third persons. But it is difficult to conceive of any theory upon which acts not unlawful as to the third party become wrongful as to the complainant merely because their operation is transmitted to him through the third person rather than directed immediately against himself.

The force of these considerations has caused the courts in some jurisdictions to seek further for the necessary taint of illegality in a boycott. Not infrequently they find it in the fact that the damage complained of has resulted from the action of a number of persons acting in concert. As a consequence there is developing a noticeable tendency upon the part of the American courts to hold that a combination of persons may not perform certain acts which each member of the combination would have a perfect right to do if acting singly, by reason of the vastly greater harm which can be inflicted by the combination.

From our present standpoint, a sufficient answer to this new principle is found in the firmly established principle of the common law, frequently reaffirmed in cases other than those arising out of labor disputes, that an act lawful in itself is not rendered unlawful by being done by a combination of persons. In other words, whatever a man has a right to do individually, he may legally do in concert with other men who possess similar rights. The contrary view would render unlawful every hostile act done by a labor union and productive of damage. Hence, in allowing concerted strikes, picket-

ing, etc., the courts in a manner estop themselves from attributing to the fact of combination any legal significance in boycott cases unless they can base a distinction upon the nature of the injury inflicted therein; and this, as has already been shown, cannot be done.

It should be noted also that this founding of liability upon the number of persons who join in the act takes no account of the damage of similar character that a single person, under present industrial conditions, might be in a position to inflict. The refusal of a single wealthy manufacturer or powerful corporation to deal with a person as long as he continues to deal with another might have an infinitely more "coercive" effect than would similar action by a local trade union. Yet, according to the principle under discussion, the damage caused by the action of the former would be *damnum absque injuria*, while that caused by the action of the latter would constitute a legal wrong.

A much more logical course is pursued by those judges who lay down broadly that no person or combination of persons may intentionally inflict damage upon another, even by methods not intrinsically unlawful, except for the purpose of securing some direct economic advantage to themselves commensurate with the injury done to the person attacked. The adoption of this principle should remove interference with peaceable boycotts inaugurated for "justifiable cause," while leaving in full operation the power to enjoin unjustifiable boycotts. There is some reason to believe, however, that even the adoption of this test would not legalize "secondary boycotts," upon the theory that the benefit expected by those engaged in it is not sufficiently direct or proportionate to the damage inflicted to constitute "justifiable cause."

The general adoption of the justification test would operate to bring the law more nearly into harmony with the moral sense of the community, and it may well be that future development will take this direction. Still, the new principle is undoubtedly at variance with the established rule of the common law, often cited and applied at the present time in other cases, that an act otherwise legal is not rendered unlawful by the existence of a bad motive in the mind of the doer.

The endeavor is sometimes made to disguise this conflict by saying that the unions have only a *qualified* right to do the inju-

rious acts complained of, and liken the case to that of slander or malicious prosecution, wherein the defendants must prove legal justification to escape liability. But there is no real analogy between the two cases. The law gives redress to every person who is injured by the utterance or publication of certain false statements about him. It affords him no redress if the statements are true. Consequently in cases of slander and libel the inquiry as to the truth of the charges is made solely for the purpose of determining which of these principles is applicable to the situation. If once it is shown that the statements were true, the defendant escapes liability although his motive in revealing the truth was in the highest degree malicious. Consequently, there is no "qualification" of rights at all. The defendant, in the absence of statutory or constitutional limitations, has the absolute right to utter or publish damaging truths, and no right at all to speak or publish damaging falsehoods.

The case of malicious prosecution is similar. The plea of justification grounded upon "probable cause" raises the issue in effect as to whether the false accusation preferred by the defendant was fraudulent or innocent. There is really no issue as to the motive inspiring the charge if the accuser had reasonable grounds for believing it to be true. The law is settled that a declaration in an action of malicious prosecution alleging merely that the defendant "wilfully, maliciously, and with intent to injure, preferred a false charge against the plaintiff," etc., but omitting an averment of want of "probable cause," will be held bad on demurrer as stating no cause of action. On the other hand, the right to bestow one's business patronage upon whomsoever he will is a right of such an absolute character that the common law supplies no warrant for an inquiry by any person into the reasons leading to its exercise.

A brief reference to a few of the difficulties in which the courts involve themselves in their endeavors to harmonize their decisions in labor cases with each other and with the established principles which they recognize in other fields, and which they insist are not departed from in labor cases, may be interesting and instructive.

In *Iron Molders' Union vs. Allis-Chalmers Company*, decided October 9, 1908, by the Federal Circuit Court of Appeals for the Seventh Circuit (166 Fed. 45), it was held that although a peace-

able "boycott" is illegal, the action of members of the defendant union employed in foundries other than the plaintiff's in notifying their employers that they would strike if the employers continued to accept patterns from the plaintiff's foundry to be made up into castings did not amount to a boycott. The only distinction sought to be drawn between this case and those in which laborers have been enjoined from refusing to work with or handle "boycotted" materials is based upon the fact that the present defendants had made no attempt "to touch appellee's dealings or relations with customers and users of its goods," but were only endeavoring to "control the supply and the conditions of the labor that is necessary to the doing of the work." This distinction, however, is of no real significance. The result of the defendants' action was to exert pressure upon third parties not interested in the dispute to "coerce" them to discontinue mutually profitable business relations with the plaintiff, so that the purpose intended, the methods employed, and the effect produced by the action of the union were subject to every objection usually urged against an ordinary boycott.

A similar instance of attenuated reasoning is presented by the Supreme Judicial Court of Massachusetts in the case of *Willcutt & Sons vs. Driscoll, et al.* (decided October 24, 1908, 200 Mass., 110), upholding an injunction to prevent a union from imposing a fine upon one of its members in accordance with its rules to induce him to join other members of the union in a lawful strike against their common employer. The court found the illegality of the union's action to consist in the "coercion" produced by the threat of fine, and in fact the entire course of reasoning is practically identical with that usually adduced to support injunctions in boycott cases. It distinguished the present case from *Mogul Steamship Co. vs. MacGregor* (1892), A. C. 25, in which the House of Lords upheld the action of the defendant company in charging higher transportation rates to persons who dealt with competing companies and thereby greatly injured the trade of the latter, by saying: "In that case there was simply a withdrawal of trade advantages under certain conditions." But this is all that is done in a peaceable boycott, so it would seem that this distinction, if consistently applied, would destroy the entire case against the boycott.

The state and federal courts hold legal with substantial uniformity the action of various combinations among merchants and

other employers in imposing fines upon their members, and in collectively ceasing to deal with non-members, for the purpose of maintaining certain beneficial conditions in the trade in which they are engaged. Many of these cases are irreconcilable with their decisions in boycott cases. The nature and incidents of the two classes of transactions are identical in principle, and the reasons relied on to support the holdings in each of the respective lines of cases are equally applicable to the other. A typical case is *Montgomery, Ward & Co. vs. South Dakota Retail Merchants and Hardware Dealers' Association*, decided by the Federal Circuit Court for the District of South Dakota, on February 1, 1907 (150 Fed. 413). An injunction had been asked against the action of a combination of retail merchants in refusing to deal with any jobber or wholesaler who should sell goods to a catalogue or mail-order house. The court, recognizing that "it is impossible to reconcile all the decisions bearing upon the power and authority of a court of equity to restrain by injunction combinations of persons having for their object an interference with the business of another," laid down generally that before an injunction should issue in such cases, "the court must find that the acts are unlawful. For damage arising from the commission of lawful acts, the law affords no remedy." And since the acts under review here were not unlawful, though injurious, the injunction was refused.

Finally, we cannot overlook the complaint of the labor unions that the courts with all their legal ingenuity have never been able to discover any principle whereby they can effectually protect the laborer from "blacklisting," although he may suffer greater proportionate damage therefrom than is inflicted upon an employer by even the most widespread boycott. The conclusion seems to follow, therefore, that the common law furnishes no sufficient authority to the courts for their action in issuing injunctions against secondary boycotts.

In its final analysis, however, the common law is what the courts of last resort declare it to be. It has no foundation other than that supplied by the doctrine of "stare decisis." Consequently it cannot be denied that in many states and federal circuits in this country secondary boycotts and other measures not illegal *per se*, are at the present time unlawful and enjoined by virtue of court decisions therein. But the latter will be adopted and followed else-

where only to the extent that they are regarded as consisting with the general spirit of the law or as representing wise applications of those broad principles of justice and expediency that pervade our entire legal system. And even in the jurisdiction of its origin, a decision must ultimately measure up to the same standard, else it is likely to be so explained, distinguished and limited as to be robbed of its vitality, if not openly overruled. Consequently, we are not precluded by these "anti-boycott" cases from discussing what should be the attitude of the courts toward boycotts in the future in view of the conclusion above expressed that the decisions holding them illegal and enjoined are not sustained by the pre-existing law.

In individualistic societies, industrial warfare seems at the present time to be inevitable, with its accompanying damage to the combatants and inconvenience to the public. Nevertheless, such conflicts should be begun only for a just and substantial *casus belli*, and the parties thereto should observe the rights of the innocent public and keep within the limits of ordinary humanity in their treatment of adversaries. In this particular the principles underlying the laws of war between nations may be profitably regarded. Now a certain amount of public sympathy is apt to be found enlisted upon the side of the person whose business is threatened with ruin by the inauguration of a boycott against him by a group of powerful labor unions. There is also in the minds of many people a belief, induced in considerable measure by past experience, that some of the men in control of these bodies cannot always be trusted to wield their authority with forbearance and wisdom. But no other than a conservative use of the vast powers of modern industrial combinations can be tolerated. Habitual abuse of such powers, to the unnecessary or inordinate damage of the public as a whole or of individual members, ought to be and will be restrained by law, without regard to the legality *per se* of the oppressive methods employed; and if existing law is inadequate, new laws should be made that will suffice.

In endeavoring to protect parties to labor disputes against injuries of whatever nature that are disproportionate to the needs of the situation, the courts voice a wise principle of public policy. It is the same policy which has received statutory expression in Wisconsin Statutes of 1898, sec. 4466-a, imposing imprisonment or

fine on "any two or more persons who shall combine . . . for the purpose of wilfully or maliciously injuring another in his reputation, trade, business or profession, by any means whatever," etc., and which has been held constitutional by the Supreme Court of the United States in the case of *Aikens vs. Wisconsin* (195 U. S. 194—decided November 7, 1904).

We may concede that some restriction, worked out along the line suggested by this statute, should be placed upon the aggressions of parties to the dispute. But the question as to the limits of such restrictions presents a complex problem of economics and sociology, the solution of which must be gathered from a competent and exhaustive investigation of the facts of modern industrial life and organization, and not from a process of *a priori* reasoning professedly based upon common law principles developed under conditions far different from the present. An investigation of this character cannot be made by the courts in passing upon specific cases. It is a task for legislative commissions of qualified experts who can proceed unhampered by many of the obstacles that retard the course of judicial proceedings. The reports of these commissions should serve as the basis of carefully drawn statutes, such as may be reasonably expected to settle the matter upon some definite foundation. In the meantime, the judges should content themselves with applying the existing law, or at most extending it to cover only cases about which there can be no reasonable difference of opinion.

The present attitude of the American courts toward labor disputes tends to breed evils as serious as those which they are endeavoring to remedy. They announce that labor cases, like all others, must be decided according to law, not expediency, and the argument of counsel is largely confined to the discussion of legal, not economic, principles. Yet when the decisions are rendered it is too often apparent that the courts have in reality disregarded established legal principles in order to register pre-determined economic views based upon only a rudimentary knowledge of the situation. This fact cannot be disguised by the elaborate but palpably unconvincing reasoning upon which the decisions are professedly grounded. It is revealed very clearly by the conflicting decisions and especially the vigorous dissenting opinions that so abound in the field of labor law. The result is to engender in the minds of the laboring classes

a deep sense of injustice; a growing conviction that even the law of the land cannot overcome the bias of the courts in favor of the employing class. The consequent impairment of the workman's respect for and confidence in the courts is not to be lightly regarded. Its fruits are seen in the appearance of the anti-injunction bills, and demands that all judges shall be chosen by popular election and for short terms; upon the not unreasonable ground that if, instead of applying the law, the judges are also to make sweeping changes of questionable value in its content, the people should be in a position to exert due influence upon the process.

In the future, therefore, the courts will act the wise part if they interfere by injunction in labor disputes to restrain the doing of acts only that are plainly wrongful according to existing law. Requests for action that would involve unauthorized extensions of their power to prohibit should be refused, with the answer that the law does not warrant judicial interference with the acts complained of, and that changes of such radical character must be made by the legislative branch of the government.

COMPULSORY ARBITRATION IN THE UNITED STATES

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In this age of organization, with gigantic combinations of capital on one hand and powerful associations of labor on the other, the attainment of industrial peace is an ideal deserving and commanding the best thought of the time. The study of industrial problems is being forced more and more on statesmen and educators, leaders of public thought and molders of public opinion. At the outset let me say, that in my opinion, there is no royal road to industrial peace, unless we discover a method to change human nature. In spite of any laws which we may enact, or any machinery we may devise to aid in the settlement of industrial disputes, we still shall have some strikes. That perhaps is well, for while we may deplore strikes and bitter conflicts between employer and employees, the absolute prohibition of such conflicts would, in my judgment, create a condition of serfdom and oppression more dangerous to society than our present industrial disturbances.

Efforts to deal with these industrial conflicts by legislation began upwards of a century ago. The original attempts were primitive in character, suited to conditions existing at the time, but they embodied some of the ideas in effect to-day and aimed to protect the worker from economic injustice. As labor organizations grew in strength and influence, multiplying the number of strikes and lockouts, so did the machinery for dealing with them develop, until to-day we have arbitration and conciliation laws in almost every country and in almost every state in the United States. These laws differ in scope and vary in degree of effectiveness, but all aim at the same goal, the harmonizing of the interests of employers and employees, so that the third party, known as the public, may be injured or inconvenienced as little as possible.

The particular law with which I have chiefly to deal here is the law of "Compulsory Arbitration." I shall endeavor to point out some of the advantages and disadvantages of compulsory arbitra-

tion and, so far as I am able, show whether it would be effective in preventing strikes and lockouts in the United States.

The first compulsory arbitration law was enacted in New Zealand in 1891, following a disastrous series of strikes which paralyzed the industries of that country. It was enacted on the theory that where the public interests are affected, neither an employer nor an employee is absolutely a free agent and that personal liberty ceases to be liberty when it interferes with the general well-being of society. In other words, the Parliament of New Zealand decided that the rights of the masses were paramount to the rights of any particular classes. When the law was passed it was hailed by idealists as the acme of industrial legislation. The "country without strikes" became almost a household word and the eyes of other countries turned toward the antipodes to watch the results of its experiment in dealing with its industrial problem. Other countries of Australasia took up the consideration of the problem and later compulsory arbitration laws patterned after the New Zealand law were enacted in New South Wales and in West Australia.

The success of the experiment of Australasia with its compulsory arbitration laws is open to conflicting opinions. Advocates of the law assert that the country has greatly prospered, which undoubtedly is true. The fact should not be overlooked, however, that since the passage of the laws in the countries affected, there has been a steady upward tendency in prices, and wages and strikes are uncommon on a rising market in any country, for the reason that employers are more ready to accede to demands. The real test of arbitration laws comes on a falling market when the employer wants to reduce wages, and I have rarely known a case where organized workmen will accept a reduction in wages without a fight, no matter what laws may be on the statute books.

If we look at compulsory arbitration laws as a means of preventing strikes and lockouts by absolutely declaring them illegal, we are bound to admit that the Australasian laws have been failures. They have not prevented strikes or lockouts absolutely, though they may have reduced them in number and extent. Numerous strikes have taken place in those countries since the adoption of the laws, some of which have been quite serious in effect, while the enforcement of the penalties provided in the laws has been found difficult if not impossible.

Recent newspaper dispatches from Sydney, New South Wales, state that business is so demoralized by reason of a strike of coal miners that a bill has been passed rendering labor leaders or employers who instigate or aid a strike or lockout, liable to a year's imprisonment. Reduced to its final analysis that must be the ultimate end of any compulsory arbitration law—work on the conditions prescribed or go to jail. It is doubtful if even the drastic threat of a jail sentence will compel a workman to continue at work under conditions which he regards as intolerable and it is equally doubtful if any threatened punishment will compel an employer to operate his business unless he can see a reasonable profit in so doing. An award which increases the labor cost beyond what the industry can successfully carry is confiscatory and an employer can not accept it and remain in business. This was shown in Australasia in the case of the shoe manufacturers, who closed down their establishments and declared they would import shoes from Europe and America, rather than attempt to operate their factories and pay the wages set by the Arbitration Court.

In spite of its experiences, however, Australasia does not want to repeal its arbitration laws. The New South Wales law was passed in 1901 for a period of seven years and in 1908 it was re-enacted at the end of the experimental period. New Zealand endeavored to strengthen its original law by providing machinery for the better enforcement of awards, so it would appear that the idea of compulsory arbitration has met with favor in the eyes of a majority of the people in the land of its origin.

There is one point in consideration with the Australasian laws which I regard as rather significant. The last report for Western Australia for the year ending June 30, 1909, shows that joint trade agreements are taking the place of awards of arbitration courts. These contracts are termed "Industrial Agreements" and are enforceable by the Court of Arbitration. They are entered into voluntarily by employers and employees as are joint trade agreements in this country. Mr. Edgar T. Owen, Registrar of Friendly Societies, in his report dated August 14, 1909, says: "It will be observed that the unions which have made industrial agreements in lieu of awards of the court for settlement of their disputes contain 7,524 out of a total membership of all unions of 15,596."

The point I desire to emphasize is that in West Australia, as

shown by the report referred to, workingmen and employers are making their own agreements instead of having the Arbitration Court make them. The same report shows that while there were 168 disputes referred to the Arbitration Court from 1901 to 1904, there were three disputes referred to it in 1907 and twelve disputes in 1908. That certainly does not seem to argue for the popularity of the Arbitration Court, and taken in conjunction with the increase in the number of industrial agreements, indicates clearly to my mind that employers and workingmen in West Australia are turning to the joint trade agreement as the better method of adjusting differences.

As has been stated, the New Zealand law was enacted at a time when the public was exasperated as the result of a series of prolonged strikes. It was not favored by either employers or employees. For a time neither side took advantage of the law, until a union which was worsted in a strike, decided to register so that it might have an additional weapon in the event of another dispute. When the next dispute did arise, the employers ignored the court and an award was returned against them. The award was enforced by fines and eventually employers began to realize that the new law was not to be trifled with or ignored.

In New Zealand trade unions are made the basis for compulsory arbitration. The workmen must belong to a duly registered union before they can appeal to the court. That presents rather an anomaly, compelling workmen to organize and then depriving them of the right to exercise the function of organization by quitting work collectively if they are dissatisfied with their conditions. I have dealt at some length with the Australasian laws because a study of compulsory arbitration laws in operation is of infinitely more value than mere theorizing on how such laws might operate if tried in some other country. Let us see how such laws would apply in the United States.

In the first place, the successful operation of a law depends on the state of mind of the people in the country or locality where it operates. If there is a popular demand for a law it is easily enforceable and probably will accomplish the ends aimed at. If there is no such popular demand, or if popular sentiment is against a law, it is very apt to become a dead letter and its enforcement an impossibility. Aside from the question of whether compulsory arbitration

laws would not be in violation of the Constitution of the United States, in that their enforcement would entail involuntary servitude, there is no demand for such laws in our own country. The conditions in the United States and Australasia are as different as the countries are widely separated. In Australasia the tendency is toward state control in everything. Individual rights are regarded as being entirely subservient to the rights of the people as a whole. In the United States the opposite is true. Here we are extremely jealous of individual rights and liberties and we resent governmental interference with what we regard as our private affairs. It is not the question whether we are right in the position or not, it is the fact that we must reckon with.

The experience of Australasia with its compulsory arbitration laws has tended to strengthen the opposition to such laws, not only in the United States, but in Great Britain and other countries. In Great Britain the question of compulsory arbitration is placed on the agenda of the Trades Union Congress as regularly as the so-called "Socialist Resolutions" in the convention of our own American Federation of Labor, and the majority by which compulsory arbitration is voted down each year shows that the idea is losing rather than gaining ground. In Great Britain it has been advocated by a radical wing of Socialists, but in the United States even the Socialists are opposed to it.

To the average American the idea of compulsory arbitration, which under certain conditions means involuntary servitude, is decidedly repugnant to his concept of liberty. Our form of government, which vests in the separate states the right to legislate in all matters within their respective borders, would make the working of compulsory arbitration laws difficult if not impossible. The federal government might pass a law applying to a few public utility corporations, such as railroads and telegraph companies, which are engaged in interstate commerce, but could not legislate for the great mass of employers and employees. Experience shows that comparatively few of our strikes are directed against public utility corporations, therefore such laws, should they be constitutional and enforceable, would not prevent strikes except in a limited degree.

I have already referred to the importance of having public sentiment on the side of any law to make it effective, and nowhere

is the truth of this more observable than in the arbitration and conciliation laws on the statute books of a large number of our states. We have in Illinois a very good law dealing with industrial disputes. To the extent that the arbitration board can compel the attendance of witnesses and the production of books in a strike which inconveniences the public, it is compulsory and probably goes as far in that direction as it is advisable to go at the present time.

While the Illinois law has been the means of averting many strikes and of adjusting others, our activities under the law have been limited by reason of the fact that many times neither party to a dispute likes the idea of outside interference. The machinery is there, but in a majority of cases neither side will invoke its aid, and it is doubtful to my mind whether they could be forced to do so. They must be educated and led rather than driven.

The compulsory feature of the Illinois law is contained in the following clause:

Whenever there shall exist a strike or lockout wherein, in the opinion of a majority of said board, the general public shall appear likely to suffer injury or inconvenience with respect to food, fuel or light, or the means of communication or transportation, or in any other respect, and neither party to such strike or lockout shall consent to submit the matter or matters in controversy to the State Board of Arbitration in conformity with this act, then the said board after having made due effort to effect a settlement thereof by conciliatory means and such effort having failed, may proceed of its own motion to make an investigation of all facts bearing upon such strike or lockout, and make public its findings, with such recommendations to the parties involved as in its judgment will contribute to a fair and equitable settlement of the differences which constitute the cause of the strike or lockout; and in the prosecution of such inquiry the board shall have the power to issue subpoenas and compel attendance and testimony of witnesses as in other cases.

The section of the law quoted has been in effect since 1901, but has not been put to a test. It is based on the theory that public opinion is the final arbiter in disputes of a public or quasi-public character, and I believe that the theory is correct. Few strikes of a character that would inconvenience the public in the meaning of the law have occurred in Illinois since 1901. In 1903 we had a strike of street car employees in Chicago that doubtless came under the provisions of the law and the members of the board made efforts to

settle the strike, but without success, as the company refused to cooperate. The board took the question of an investigation under consideration, but as the city council and other agencies were at work trying to bring about a settlement, which was the question of first importance, the investigation was not started because it might have tended to hinder a settlement and certainly could not have been completed in time to be of much use. The strike lasted about two weeks. In a coal strike in 1906 the board offered its services in a mediatory capacity, but the dispute was of such a nature that no agency would have been effective, as both sides simply agreed to fight it out and get together when they had enough of it. The strike had been anticipated for months and there was a sufficient supply of coal on hand to insure against any inconvenience to the public. In fact, neither the coal operators nor the miners regarded the dispute as a strike or a lockout, but preferred to term it a "suspension."

While I have said that the Illinois law goes as far in the direction of compulsory investigation as may appear advisable, I believe it could be improved upon in one particular. Instead of providing for an investigation after a strike or lockout has occurred and after the public has been injured, the investigation should be after such strike or lockout has been threatened and there appears no possibility of its being averted without some outside intervention.

The aim of all state boards of conciliation and arbitration is to prevent rather than to settle strikes, and though I am convinced that compulsory arbitration is neither practicable nor advisable in the United States under existing conditions, I believe that compulsory investigation would be desirable in all disputes between public utility corporations and their employees.

It is the hasty, ill-advised strike that causes most of our troubles and at least half of them could be averted if both sides were required to submit to an impartial investigation and give full publicity as to the merits of the controversy. After such investigation, the public which is discriminating in such matters where the facts are known would soon end a strike were one to take place. It is doubtful if any corporation or labor union would have the hardihood to fly in the face of an educated, enlightened public opinion and for that reason I believe publicity is the strongest weapon that can be used for the maintenance of industrial peace.

The experience of Canada with its "Industrial Disputes Investigation Act," of 1907, has been most gratifying. Industrial conditions in Canada do not differ materially from those in the United States. The organized workers in both countries belong to the same international unions. The Canadian act has not prevented strikes in every instance. It was not expected that it would, but in the first year of its operation thirty-two disputes out of thirty-five referred under the law, were satisfactorily adjusted. The number of men involved in the controversies referred to was between 25,000 and 30,000. The actual number of boards constituted under the law during the first year of its operation was twenty. That record proves that the Canadian law is well adapted to present-day conditions. The Canadian law was enacted on the recommendation of the deputy minister of labor following a prolonged strike of coal miners which caused a coal famine throughout Saskatchewan. Briefly it prohibits any strike or lockout in any industry affecting a public utility until an investigation has been made, and allows a period of thirty days in which to make such investigation.

After the investigation has been completed by an official board created for that particular case and the result of its findings made public, the employer or the union is free to engage in a strike or lockout if desired. Of course the board does everything possible to effect an amicable settlement as well as conduct an investigation and its official report is in the nature of recommendations to one or the other of the parties, or to both. Generally speaking, those recommendations have been accepted without recourse to a strike. Where they have not been and a strike has been called, the same recommendations have sometimes been accepted later to settle the strike. Though the Canadian law does not in every case prevent strikes, it furnishes an easy and sensible method for adjusting industrial disputes if either one side or the other has an honest desire to settle. If they have not there is no law, compulsory or otherwise, that will prevent strikes.

It has been my experience, however, that in a large majority of cases both sides are anxious to avert strikes, if a middle ground can be found and neither one required to forego any principle. In matters pertaining to hours and wages, usually some compromise is possible; in cases where a principle is at stake it is more difficult. Even then, though it is impossible to arbitrate or compromise on a

question regarded by either side as a fundamental principle, it frequently is possible by means of intelligent discussion and argument to present a situation in a very different light from that in which it may have been viewed by one side or the other. For that reason the Canadian law of compulsory investigation previous to a declaration of war in industries affecting public utilities, seems to me an admirable one which possesses advantages not possessed by the compulsory arbitration laws of Australasia. No edict of a court will convince either a workingman or an employer that he is wrong and the court is right. If he is open to reason and conviction an intelligent argument may convince him that his position is untenable and he will acquiesce cheerfully, where in the other case he might submit rather than go to jail, but would still be dissatisfied.

Another point that I have observed in my experience is that arbitration awards seldom are satisfactory to either side in an industrial dispute. If both sides agree to accept such award, they usually do so, but it leaves a bad taste in the mouth of one or the other. On the other hand, agreements entered into voluntarily by both sides usually prove satisfactory. Each side has had a hand in making the contract and accepts it as the best bargain obtainable under the circumstances.

If it is true that awards of voluntary arbitration boards are not usually satisfactory, it would be even more so with compulsory arbitration. If the aim be to establish the greatest amount of harmony between employer and employee, so that the number of strikes and lockouts may be reduced to a minimum, I am convinced that to make compulsory arbitration successful each disputant must have perfect confidence in the arbitration court and an abiding faith that the award will be rendered in a spirit of justice and perfect fairness. That confidence, in my opinion, cannot be inspired where there is compulsion. As we understand arbitration it is the antithesis of compulsion.

In conclusion let me say that, though we realize that in many strikes the innocent third party is made to suffer, I am convinced from a study of the facts that it is better to "bear the ills we have than fly to others we know not of" in the shape of compulsory arbitration.

NECESSITY OF INDUSTRIAL ARBITRATION

BY RABBI JOSEPH KRAUSKOFF, D.D.,
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We must leave it to demagogues or to pre-election politicians to deliver themselves of fulsome panegyrics on the dignity of labor, and on the blessings conferred upon society by the laboring man. It would be wasting time to dwell upon what is one of the best known and best appreciated truths of human knowledge. More than waste of time it would be to show how capital and labor are but as the two blades of a pair of scissors, each useless without the other—facts so well known and so profoundly appreciated by people of intelligence, that, to speak of them were to insult the reader's intelligence.

An equal waste of time it would be to enter upon a discussion on the benefits of capital to civilized society, and on the necessity of its protection, for every railroad that traverses our continent, every ship that plows the deep, every factory and mill, every forge and furnace, every university and library, every school and art gallery, every invention that lessens the hardship of labor, and every comfort that heightens the joy of life, speak of the blessings of capital with a wisdom and an eloquence, such as even the most learned writer on economics or the most eloquent orator cannot reach. Starting, therefore, with these axiomatic truths of economics as our basis, it is to be hoped that, if anything be said in the development of this article which may seem harsh to either capital or labor, it is not to be charged to prejudice or ignorance.

That something is to be said must be evident even to the superficial observer. There exists a state of war between capital and labor. There is bitter conflict in some quarters; there is menacing hostility in others. Employer and employee stand arrayed against each other with gauntleted hands. Strong leagues are compacted; open and secret alliances are formed. Campaigns are being carried on in trade-papers and on platforms; bitter incriminations and recriminations are published in lurid type. Pictorial art is resorted to to inflame the mind. Capital is represented as a Moloch, grow-

ing fat on the heart's blood of the poor; and labor is shown as an anarchist whose sole aim is the crushing of the labor-giver. The two, who in the economic household are as closely bound together as are husband and wife in domestic life, and who should live peacefully side by side, promoting each others good and furchering the highest ends of society, are engaged in a bitter struggle.

The cause of the contention between the two is largely *Trade-Unionism*. Each believes that it has right on its side, and, listening to the story of each, the uninformed is at a loss to tell why there should be the slightest contention between the two. Turn to Mr. John Mitchell's book entitled "Organized Labor," and you read: "Labor unions are for the workman, but against no one. They are not hostile to employers, not inimical to the interests of the great public. . . . There is no necessary hostility between labor and capital. Neither can do without the other. . . . The interest of the one is the interest of the other, and the prosperity of the one is the prosperity of the other. . . . Trades-unionism has justified its existence by good works and high purposes. At one time viewed with suspicion by workman and employer alike, it has gained the affections of the one and the enlightened esteem of the other. . . . It has improved the relations between the employer and employed. . . . The labor union is a great, beneficent, democratic institution, not all-good, not all-wise, not all-powerful, but with the generous virtues and enthusiastic faults of youth. . . . The trade agreement makes for peace in the industrial world."

Turn to the book entitled "Some Ethical Phases of the Labor Question," by Carroll D. Wright, late United States Commissioner of Labor, and after reading of the miseries and hardships of labor, prior to the introduction of the modern factory system, made possible by capital, you hear his verdict: "Better morals, better sanitary conditions, better health, better wages—these are the practical results of the factory system as compared with that which preceded it." You inquire of the heads of large industrial establishments, and they tell you of the well-equipped sanitary shops and factories and mills, of the many provisions that have been made to lessen the drudgery of toil by means of labor-saving machinery, of the comforts that have been introduced, such as lunch-rooms, wash-rooms, reading-rooms, and the like; of the improved dwellings that are furnished

to employees, and of the opportunity that is afforded them for mental, moral and spiritual culture. You question some recently arrived laborers, and they tell you of the starvation wages they received in the old world, of the starvation food on which they subsisted, of the long hours of labor that were required of them, of the miserable homes in which they lived, of the hard labor that was exacted of their wives, even of their children, to enable their families to eke out an existence.

After listening to such highly-colored accounts of the attitude of the employer and employee toward each other, what could be more natural than to conclude that the most harmonious relationship exists between the two? But we have heard also the other story. We know that employers deny the professions of peacefulness made by the trade-unions, and employees declare that they see no sign of the good-will pretended by the employers, that they pay in toil twice and thrice for whatever little they get. The one side claims that trade-unionism has but the enslavement and ruination of capital for its goal, or, at best, that its object is, as President Eliot, of Harvard University, expressed it, "to work as few hours as possible, to produce as little as possible during that time, and to receive as much as possible for the service given."

A Damoclean sword, says the labor-giver, hangs suspended over him on the slenderest kind of thread, ready to drop upon him at the merest word or beck of labor-leaders. He can never tell when his industry may be brought to a standstill or crippled. His laborers' contract with him may be never so binding, his treatment of them may be never so considerate, let the labor leader command his men to strike out of sympathy with strikers in some other establishment or industry, and out they step, utterly unmindful of the binding nature of their contract, and of the considerate treatment they have received.

Scarcely is one fight over when another is begun. Mr. Brooks, author of "The Social Unrest," relates that after the recent strikes in the hard coal regions, an employer said to him, "I have been in this business more than twenty-five years, and it seems to me that I have been in the strike business rather than in the coal business." Within the past twenty-five years there have been more than three thousand strikes in the coal industry alone. Mr. Brooks also tells that after the miners had won their strike of 1900, some of the

companies began to put stockades about their breakers. Upon his asking why they did this, seeing that it was a time of peace, one of them replied, "Oh, we shall soon enough have another fight, and we propose to be ready for it. To make concessions to a trade-union means a fight at the end."

This seems to be the opinion of employers in general. There is no living in peace, says an employer, with labor agitators. There is no tyranny like unto theirs. A non-union man, has, in their eyes, no more right to life and liberty and protection than if he were the worst of criminals. It is widely claimed that these labor agitators look far more to their own interests than to those of the laboring man. To hold on to their lucrative positions, they feel, it is claimed, that they must make a show at doing things, and their only way of doing things is to create trouble between employer and employee. Now the hours are too long, now the wages are too small. Now the number of men employed is too little, now the machinery in use is too much. Now the efficient non-union man employed must be dismissed, now the inefficient union man must be retained. They little care whether or not they kill the goose that lays the golden egg. They little consider the poor laboring man upon whom a long-enduring strike bears the hardest. They little care whether by closing to the laborer the doors of industry, they open wide to him the doors of want and misery.

It is bad enough, employers say, that labor leaders should know of no other way for reconciling difficulties between employers and their men than by a strike. But to call out from other shops the men who have no grievances, who are under contract, who are satisfied with wages and hours and treatment, to call these out for no other reason than to use them as a sort of a thumb-screw on the employer in whose place the strike has occurred, is an outrage beyond endurance. It places the reins of industrial authority entirely in the hands of the labor leader. It places the owner of the establishment in the attitude of a dependent on the good will of a dictator. Employers ask themselves: what if they were to do as they are done by, by their employees? What, if notwithstanding contracts, they were to shut out their men because of sympathy with that fellow employer in whose establishment a strike has occurred? What an outcry the laboring people would raise!

The injustice against which they would cry out, and justly, would be precisely the same which they themselves constantly commit.

Little wonder that employers should be disheartened or bitterly incensed, or that they should refuse to confer with people who behave like highwaymen. Little wonder that they should refuse to enter into contracts with people to whom a contract is of no more value than the paper it is written on. Little wonder that employers should become indifferent to the lot of their employees, when for all the pains they have taken, and all the means they have expended to provide them with comforts so as to make labor agreeable, and environment pleasant, they have but base ingratitude for their reward. Little wonder that in the gigantic shops which Carnegie built up, and in which he at one time welcomed the Union as "beneficial both to labor and capital," there should be a feeling to-day against the Union so pronounced, as to lead one of the strongest men of the company to declare, that they would use every resource within their reach rather than have a trace of unionism in their shop.

Sad as are the complaints of the employers those of the employees are sadder still. They admit that their measures are frequently harsh, but, they claim, there are no others at their command to enforce their rights. When weakness fights against strength, poverty against wealth, the ends sought must be considered, they say, and not the means employed. It is a fight for existence and not for sport. It is a fight for their wives and children, for food to still their hunger, for clothes with which to cover their nakedness, for the ordinary comforts with which to make existence tolerable. That they themselves may not be crushed, they must crush the power arrayed against them. They must meet force with force, they say, tyranny with tyranny. Labor, being their only commodity, and capital desiring to amass by means of it yet greater wealth, they must place the highest possible value upon it. Capital, they claim, is the enemy of society. It corrupts the law and uses it for the oppression of the poor. But for the laboring man's combination with his fellow laboring man, his lot, they claim, would still be that of the slave or serf, his wages would still be a mere pittance, his hours of labor twice as long as now, his home a hovel, his clothes rags, his degradation as base as in the days now happily past. It is only by uniting all the laboring men, by making the interest of one the interest of

all, that they hope to cope successfully with the mighty power of capital, and obtain the rights and the rewards that belong to labor. Having these noble ends in view, they claim they have a perfect right, in mere self-protection, to coerce the non-union man into the union, and to brand as a "scab" him who is so blind or base as not to see that his own best good lies in strengthening the hand of his fellow sufferers.

Being part creators of wealth, they are tired, they say, of seeing all the good things of life going to the rich and all the undesirable things to them. It is galling to them to know that one per cent of the population of the United States owns more wealth than the remaining ninety-nine per cent, and that the laboring people, who constitute eighty-eight per cent of the population, own but thirteen per cent of its wealth. It is galling for them to read and hear of the extravagances going on in society, and to feel that it is their labor which is paying for it all, while they themselves are often lacking the necessities of life.

They admit that their wages are higher than they ever were before, and their hours shorter and their homes better, but, they claim, their demands are higher, and that the means of existence are far more expensive than they were. With all their higher wages, they ask, what is the lot of most of the laboring men but misery? The slums and crowded tenement districts are the homes of most of the laboring people. If wages are fair the number of working days in the year are short. On an average, about half of the year, they claim, is spent by the working people in enforced idleness. Life for most of them is a hand-to-mouth existence. Only few of them can lay by anything for old age. The casualties they meet with are many; the death rate is large; disease is frequent. If sick for any length of time, the charities must help them out. If old and feeble they must seek refuge in the almshouse. Money trusts and operators' combines, they say, exist solely for the purpose of crushing every labor union and of stamping out every right and liberty of the laboring man.

If the latter claim be the aim of employers, they will never succeed. The progress of evolution is forward and upward. The slave rose into the serf, the serf into the free man, and no trust and no combine, nor all of the trusts combined will ever suc-

ceed in degrading the American laboring man back again into slavery, or even into serfdom. The recognition of his rights has been purchased at too dear a price to be surrendered without a bitter struggle.

There is certainly no gainsaying that laboring men have a legal and moral right to organize unions for self-protection and self-improvement. There was a time when master and man worked side by side at the loom, or at the shoemaker's bench, or in the wagon shop, and when the employee had no difficulty to reach the ear of the employer, for the righting of wrongs, for the lessening of hours or for the increase of wages. But, modern expansion of industries has created new conditions and presents new problems. The individual is lost in the corporation; the owner is replaced by foremen, bosses, managers, superintendents, directors.

Capital deals in representative capacity, and labor is obliged to do the same. It must have its representatives to protect its rights. It is with the same end in view that we organize government. Individuals combine and select a councilman to represent them in municipal government; a legislator in state government, a congressman in national government. Union and representation are American principles; they are the very foundation of our liberties, and must have sacred recognition by every freedom-loving American.

Next to the right of representative union, laboring men are entitled to an adequate share of the profits of labor. It is certainly unjust that the lion's share should fall to capital, while labor, the equal producer of it, should be obliged to content itself with the pickings; that the one, from the profits of capital, should be enabled to riot in luxury and to revel in extravagance, while the other, from the product of labor, should be barely able to keep body and soul together. Next to the right to adequate wages, the laborer has a right to reasonable hours of work. It is wrong to place human flesh in competition with steam and machinery. If modern industrial life cannot leave to the laborer the privilege of breaking off his day's task whenever he chooses, the laborer, in return, must be guaranteed no longer hours of toil than is consistent with the needs of health, with the obligations toward his family, with the duties he owes to his self-government.

Moreover, the laborer has rights to be protected against being "blacklisted," when exercising his inalienable privilege of selling

his labor to whomsoever he chooses. When seeking employment, he has the right not to be discriminated against for being a member of a trades-union. He has the right of uniting with his fellow laborers in peacefully quitting work, if his demand for higher wages or lesser hours, or his request for righting certain real or imaginary wrongs be not complied with.

All these rights the laborer has, and all these rights every loyal American and lover of humanity sacredly honors. But when the trades-union passes beyond these rights, and invades the territory of the employer, when it arrogates to itself the right to run the employer's business, the right to dictate to the employer, how much wages he may and may not pay, from whom he may and may not buy, and to whom he may and may not sell, how many hours he may and may not work, how many machines he may run, and at what speed, how many apprentices he may and may not employ, when it undertakes to cripple the employer's industry by calling out his men, because of sympathy with other strikers, or because of his employing non-union men, by boycotting his wares, by sending out its pickets to waylay non-union men, and to force them by intimidation or violence either to leave work or to join the union, it is then that the trades-union becomes an organized tyranny, and the union man a despot. It is then that a state of war exists between employer and employee, and that, in retaliation, capital resorts to drastic measures that are no less reprehensible.

I will grant that it is irritating to see men ready to take the place vacated because of insufficient pay, or because of too many hours of work, or because of some other grievance, and I can see every reason why such people should be peaceably reasoned with, and, if possible, made to join the union. But to set upon such men, when argument fails, to assail them, to endanger their lives, to persecute their families and those that have relations with them, yea, even to burn or dynamite their homes, or to club or shoot them to death—and not only them but officers of the law, delegated by the city or the state to protect them, in the lawful discharge of their rights—such procedure is a degree of lawlessness nothing short of anarchy, and demands the most condign penalty of the law.

It is lawlessness when a trade-union regards itself above the authority of the law of the land, and makes rules and regulations in contravention thereof. It is lawlessness, when a trades-union

constitutes itself a governing agency, and claims authority to control those who have refused to join its ranks and to consent to its government, and to deny to them the personal liberties, which are guaranteed to every citizen by the constitution and the laws of the land. It was Abraham Lincoln who said "No man is good enough to govern another man without that other's consent." It is lawlessness to bring privations and suffering upon an unoffending community because of a want of commodity which non-union men are ready to furnish, but which union men will not permit under the threat of violence.

It is lawlessness to boycott the produce of a manufacturer, who has incurred the ill-will of a trades-union, and to extend the *anathema* to every trader who handles such boycotted goods, even to consumers who purchase them. It is not an inapt comparison to liken the boycott to the ecclesiastical ban. As there was no more cruel weapon during the Dark and Middle Ages than the ban to bring refractory individuals to the feet of the church, so does the modern industrial world, know of no more cruel weapon than the boycott, used by the trades-union, to bring under its yoke employers who persist in the belief that they have a right to manage their own affairs.

The cry of the people who are not direct participants in the controversy is as loud as is that of employer and employee. Though in no way responsible for the bitter feelings existing between the contending parties, they are made to suffer a large part of the consequences. If the strike ties up or cripples a public utility, the people are put to no end of inconvenience and alarm and loss. Lives of innocents are slaughtered. Properties are dynamited. The peace of the community is demoralized. The usual routine of life is broken up. The public places of instruction and amusement are closed. People in poor health collapse under the nervous tension of constant fear and fright.

Recognizing right in the contentions of employers and employees, the people believe that a way out of the difficulty ought to be found, must be found, for the sake of the general peace and good will. As government has provided courts for settling other quarrels between man and man, so must it provide courts for arbitrating differences that are arising in increasing numbers, and that

are bound to arise in larger numbers, owing to the growing discontent among laboring people, and owing to the constant inflow of immigrants, who, being in need of employment, are bound to compete in the open market for the labor to be had. More and more the people feel that, as they have the right to call in the police when disturbances of the peace are annoying or endangering the neighborhood, or when they wish to have a nuisance abated in their immediate environment, so have they the right, in self-protection, and for the sake of the public peace, to demand that special courts be permanently established for the arbitration of industrial quarrels.

In that call for arbitrating our industrial conditions lies our hope for the future. It is a new cry and a far different one from that which follows reports of bullets and explosions of dynamite. It is this far-spreading demand for arbitration that gives a silver lining to the dark cloud that now lowers over us. That cry has already been answered in Germany, in Canada, in Australia, in New Zealand. Wherever answered, it has tempered much bitterness. The establishment of more than four hundred permanent courts of arbitration for trade disputes in Germany has lessened the number of strikes in that country to an astounding degree. Seventy per cent of the disputes in Germany between employer and employees have been brought before these tribunals, and although there is no obligation to accept the decisions rendered, with scarcely any exception, they are cheerfully accepted by the contending parties, and faithfully followed.

May we, too, soon learn this needed lesson. May we, too, soon learn that there are nobler and surer ways of settling trade disputes than by wars against classes by strikes and lockouts, by bullets and by bombs, by intimidation of employers and by starvation of employees. May we, too, soon see established in our midst the arbitration courts which Germany, across the Atlantic, Australia and New Zealand, in the Pacific, and Canada, our neighbor, have found a blessing to employer and employee and people. Arbitration courts are our only hope for industrial peace. Ours is the solemn duty to turn that hope into reality.

TRADE AGREEMENTS

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The trade agreement seeks to preserve and maintain industrial peace. It does not settle strikes, though it frequently embodies the terms of such settlements. Its proper function is to prevent their occurrence and the bitterness out of which they grow. It provides the machinery for redress of grievances, real or imaginary, and adjusts wages to profits or commercial conditions either automatically, as in the sliding scale, or through conferences, instead of conflicts. It is the embodiment of the exhortation "Come, and let us reason together."

Primarily, of course, trade-agreements are wage agreements, and in many of them wages and hours of labor with arbitration clauses to cover misunderstandings concerning these specific points are the only questions considered. The more important agreements, however, cover all contingencies that could ordinarily arise in the occupation or industry, and provide peaceable means for the adjustment of unforeseen difficulties.

The earliest trade agreement of which there is record is one of the year 1795 between the employers and workmen of the printers' trade. This was a simple wage agreement of a very primitive type. The expansion of the agreement principle so as to cover more than mere wages and hours of labor began in the 30's, when an effort was made to control the employment of apprentices and "two-thirders."¹

Since that time there has been a steady broadening of the field of subjects covered by the trade agreement. There has also been an extension of the geographical territory of the trade agreement. At first it was purely local in its extent, affecting usually a single establishment and at most a single city or district of small area. At present trade agreements may be national and even international in their scope. On this basis three kinds of agreements may now

¹See "A Documentary History of the Early Organizations of Printers," by Ethelbert Stewart, Bulletin of the Bureau of Labor, No. 61, also "The Printers," by Dr. George E. Barnett, published by American Economic Association.

be distinguished. These are (1) the agreements which are purely local; (2) those which are co-extensive with the industry, and (3) those which cover large industrial areas or districts. Into the first class fall the establishment agreements and those covering a single city, such as the agreements of the carpenters, painters, etc. The general agreements are made between national organizations on both sides and are thus either co-extensive with the industry; or without being co-extensive with the industry nevertheless cover large districts and embody a number of local scales. As examples of uniform scales co-extensive with the industry may be cited those of the stove founders, the glass bottle blowers, flint glass workers, window glass blowers, brotherhood of potters, iron and steel workers, tin plate and sheet steel workers, tin house workers, etc. As illustrative of the district agreements may be cited those of the coal miners, and the American Newspaper Publishers' Association, the longshoremen's agreements, etc.

Again, there has been a tendency toward the gradual extension of the life of trade agreements. Originally they were for one year, now they frequently are for five years. Even in the building trades the life period of agreements has radically changed. Over twenty per cent of all the local unions of carpenters, for instance, have agreements, many of which are for three years even when a different wage scale is named for each year. The iron molders are likewise extending the time covered by agreements.

The iron molders union and the stove founders have had agreements since 1890. At present the agreement covers every important stove manufactory in the United States, and provides for almost every conceivable emergency. By virtually guaranteeing piece rates, it has abolished restricted production. This organization has a large number of trade agreements with job and machine foundries, and the tendency is to increase the life of these agreements, so that whereas formerly all were for one year, many are now for three years. The Foundrymen's Association, which a few years ago became inoculated with the "no trade-agreement" craze which struck the country, has checked somewhat the progress of agreements in this industry.

The sliding scale has frequently been made the subject of a trade agreement. In 1848, during the strike of iron puddlers in the Pittsburgh and Wheeling district, Horace Greeley suggested to

the disputants that they get together and agree on a fair rate of wages based on the selling price of iron, the agreement to be self-perpetuating and automatic, the wage rate going up and down with the selling price.² Though this suggestion was much discussed,

²*Strikes and Their Remedy*—The recent strikes for wages in different parts of the country, but especially those of the iron puddlers of Pittsburgh, suggest grave and yet hopeful thoughts. In reading the proceedings of the strikers, an observer's attention will be arrested by their emphatic though unconscious condemnation of our entire social framework as defective and unjust. Probably half of these men never harbored the idea of a social reconstruction—never even heard of it. Ask them one by one if such an idea could be made to work, and they would shake their heads and say, "It is all well in theory, but it will never do in practice." But when they come to differ with their employers, they at once assume the defectiveness of our present social polity, and argue from it as a point by nobody disputed: "We ought to be paid so much (thus runs their logic) because we need and they can afford it." "Ought," do you say, friends? Don't you realize that the whole world around is based upon *must* instead of *ought*? Which one of you, though earning fifteen dollars a week, ever paid five cents more than the market price for a bushel of potatoes, or a basket of eggs, or a quarter of mutton, because the seller *ought* to be fairly paid for his labor, and couldn't really *afford* to sell at the market rate? Nay, which of you well-paid puddlers ever gave a poor widow a dollar apiece for making your shirts when you could get them made as well for half a dollar, even though at the dollar you would be getting three days' work for one? Step forward from the ranks, you gentlemen that have conducted your own buying and hiring through life on the principle of "ought," and let me make my obeisance to each of you! I shall do it right heartily, and with no fear of being rendered neck-weary by the operation.

Yet that "ought" is a glorious word when applied to the relations of business and of labor—we must not let it be forgotten. There are in it the seeds of a revolution more gigantic and pervasive than any Vergnaud or Komuth ever devised. Heaven speed the day when, not only in iron but in all branches of industry, the reward of labor shall be regulated not by "must," but by "ought." . . .

The most melancholy feature of these strikes is the apparent indisposition on either side to discover any law whereby these collisions may be terminated for the present and precluded in future. It seems so natural for the workman to say, "You tell us that you can pay but three-fourths of our former wages because of the low price of iron; now suppose we accept your terms, will you agree that our wages shall advance whenever and so fast as the price of iron shall improve?" "Yes," would be the natural and proper answer of the masters, "if you will agree that they shall be reduced whenever and so fast as iron shall decline still further." This being accepted the entire relation of capital to labor in this particular department is readjusted on the basis of proportion or common interest instead of that of arbitrary wages, evolving contrariety of interests. Now the puddler gets so much, although the iron should not sell for enough to pay him, and cares very little whether the business is prosperous or depressed, save as its suspension may turn him out of work. But with the establishment of proportion as a law of the trade, every worker's interests would be on the side of prosperity, and his wages every week depend on the price which iron should bear at the end of it.

But from neither party to this controversy do I hear one fruitful or reconciling word. From the journeymen's side, we have all manner of Jacobinic clamor against the oppressions of capital, wealth, monopoly, etc., but no practical suggestion for their removal. No one says, "Let us hire iron works (of which there are abundance shut up) and go to making iron as our own masters." Even in Wheel-

it was not until some seventeen years afterward, on February 13, 1865, that the Sons of Vulcan and the five representative iron manufacturers of Pittsburgh signed a wage agreement recognizing as its basic principle the sliding scale.³ This organization merged with the Amalgamated Association of Iron and Steel Workers in 1876, the sliding scale being a recognized principle in all agreements made by it from that date to the present.

The sliding scale was made the basis of the agreement of 1902 between the American Flint Glass Workers Union, and Manufacturers Association, so far as the items of jelly glasses and common pressed tumblers were concerned and, as a result, the restrictions on production were taken off these, and the piece-rate guaranteed. The principle of the sliding scale was adopted by the Anthracite Coal Commission in its award and now regulates the wages of coal miners in the anthracite field. Friends of industrial peace and good wages

ing, where there has been a great meeting of iron workers to sympathize with and encourage the Pittsburgh puddlers, no voice uttered the creative words, "Stop depending on masters, and go to making iron for yourselves!" How is it that a course so obvious, so decisive, and now rescued from the fatal taint of novelty by a signal success, should remain unadopted and even unconsidered?

Since the above was written and published, the organization of the various branches of iron-making and manufacture on the basis of proportion or association has been earnestly considered by the workers of Pittsburgh, and several attempts at practical association are now in progress or in contemplation by them.—From "Hints Toward Reform," by Horace Greeley. Harper Bros., New York, 1850.

³Below will be found in tabular form the agreed scale of 1865 and the scale of 1910, side by side. In 1865 bar iron sold in Pittsburgh district for \$123.20 a ton during practically the whole year, *i. e.*, 6.16 cents per pound. In March, 1910, the Pittsburgh price of bar iron was 1.65 cents per pound. A glance at the table will show that puddlers earned \$6.50 per ton in 1865, and \$6.12½ per ton in 1910. A puddler and helper will puddle one and a quarter tons in a day, of which the helper gets one-third and the puddler two-thirds.

1865.				1910.			
Selling Price per Pound	Puddlers' Wages per Ton of 2,240 Lbs.	Selling Price per Pound	Puddlers' Wages per Ton of 2,240 Lbs.	Selling Price per Pound	Puddlers' Wages per Ton of 2,240 Lbs.	Selling Price per Pound	Puddlers' Wages per Ton of 2,240 Lbs.
\$0.0250	\$4.00	\$0.0575	\$6.50	\$0.0100	\$5.00	\$0.0155	\$5.87½
.0275	4.50	.0600	6.50	.0105	5.00	.0160	6.00
.0300	4.50	.0625	7.00	.0110	5.00	.0165	6.12½
.0325	4.75	.0650	7.00	.0115	5.00	.0170	6.25
.0350	4.75	.0675	7.50	.0120	5.00	.0175	6.37½
.0375	5.00	.0700	7.50	.0125	5.12½	.0180	6.50
.0400	5.00	.0725	8.00	.0130	5.25	.0185	6.62½
.0425	5.50	.0750	8.00	.0135	5.37½	.0190	6.75
.0450	5.50	.0775	8.25	.0140	5.50	.0195	6.87½
.0475	5.75	.0800	8.50	.0145	5.62½	.0200	7.00
.0500	5.75	.0825	8.75	.0150	5.75		
.0525	6.00	.0850	9.00				
.0550	6.00						

wish for the extension of this principle to the many industries to which it is applicable.

While, of course, wages and hours occupy the principal place in trade agreements, all points of possible controversy can be and usually are covered in the terms of carefully thought-out agreements. Thus the vexatious problems presented by "jurisdictional conflicts" were solved by the master plumbers of Chicago, by means of a joint agreement between themselves and all unions having membership in their employ, the agreement stating minutely and in specific terms the distribution of the work. Where building trades councils exist, joint agreements could eliminate all jurisdictional disputes by incorporating a specific allotment of all classes of work in the terms of the agreement. In this way local employers could solve, at least for themselves, these otherwise hopeless annoyances, whether or not the American Federation of Labor shall finally prove able to settle its "jurisdictional fights."

In similar fashion restrictions on output have been entirely eliminated in many industries by trade agreements with the unions. In others, such as the sanitary potteries, some branches of the glass industry, the gold-beaters, and many others, output restrictions are made subject to agreements, and are not left to the arbitrary fixing by union rules. In fact no devices, not even bonus systems and premium plans, have done so much to remedy the evils of restriction on output as has the open discussion of it in conferences called to effect trade agreements. The practices complained of, such as pace-setting, speeding up, piece-rate cutting, setting young against old and then discharging the old, practices which restriction of output was inaugurated to offset, are subject to review and elimination by agreement. A reasonable standard of efficiency is set up beside a reasonable day's wage, and both are defined; hence the object of restriction of output is gained without resort to it.

The glass bottle blowers have carried the principle of the trades agreement to the extent of making apprenticeship regulation directly subject thereto. This union had wage scale agreements with their employers as far back as 1846; trade agreements in the broader sense began in 1879 and still continue. At present the "scale committees" of both organizations, that is the employers and the workmen, meet yearly and agree upon an elaborate piece-rate list in addition to complicated working rules. Apprenticeship regu-

lations have been taken out of the constitution of the union entirely and made subject to the annual trade agreement. Owing to the encroachment of the blowing machine, the employers agreed to take on no apprentices during the present year, while the union agreed to a twenty per cent reduction on piece-rates in hand shops on all bottles which are also made by the machine, and further agreed to a regulation of hours which permits continuous operation in three eight-hour shifts, of such plants as must compete with machine-blown ware. To give up taking on more apprentices is not so much of a concession on the part of the manufacturers as might appear. The machine had thrown approximately a thousand blowers out of work, in a total of nine or ten thousand. To go on turning out more blowers would be to so glut the market with idle skilled blowers, that others would be tempted to erect factories, and non-union factories at that, thus increasing the volume of non-union product which the association members must buy up as jobbers to prevent its being retailed at cut rates.

On the other hand, many of the concessions made by both sides have been genuine. Thus the use of intoxicants, or even the bringing of such upon the premises of the factory, is prohibited and made a cause for discharge in the agreements of each of the three divisions of the glass industry. The longshoremen's agreements also prohibit the employer's foremen from selling liquor to the workmen and the men from having liquor on the premises.

Sympathetic strikes are regulated or controlled by the terms of many of the agreements. One growing objection on the part of the weaker unions, to the trade agreements of the stronger unions is that they prevent sympathetic support. There is a danger that in this, as in the control of union constitutional provisions by trade agreements, some employers' associations seek to go too far. Sympathy is deeper than collective bargaining or than trade unionism itself, and cannot be suppressed by parchments. To attempt to go too far in this direction endangers the parchment rather than the sympathy.

While the trade agreement is usually entered into between employers and unionized labor it is not at all incompatible with "open shop" conditions, except in cases where "open shop" is used as a subterfuge for non-union shops. Of course, where no organization is permitted and men are dealt with only as "individuals" there can

be no trade agreements. The employers may promulgate wage scales and working rules, but these are edicts, not agreements. Nevertheless, trade agreements need not necessarily involve "recognition of the union" for such as are oversensitive on this point.

The objections to open shop trade agreements on the part of trade unionists have to do principally with the disciplining of its members by the union. Open shop agreements, especially long time agreements, are disorganizing. The printing pressmen, for instance, find that when they make a three- or five-year agreement on an open shop basis, their members in that shop cease to pay dues. Rates and hours are fixed for three years. Union membership is not necessary to retention of employment and the workmen stop paying dues or attending the union meetings until just before the agreement expires. That was true of the coal miners in the anthracite field when the commission fixed conditions for a period of years, and it will always be found true in case of long time open shop agreements. Another objection to the open shop trade agreement is that the unions cannot guarantee to enforce the terms of their part of an agreement in shops where the violation may be by a workman who is not a member of the organization or whose position in the shop cannot be jeopardized by any attempts the union may make to discipline him. Open shop agreements can, therefore, cover little more than wages and hours; can at best only detail what the employer guarantees in the way of conditions.

Where the employer is a great corporation engaged in an enterprise toward which the labor involved in the agreement is only indirectly contributory, trade unions usually do not insist on closed shops. The machinist union, for instance, which, in case of small machine shops and with employers who are simply producers of machinery, are most insistent on card shop agreements, has a separate branch to deal with railroads, and this branch is entirely satisfied usually with open shops. The railroad company is in the transportation business and its machine shops are entirely subsidiary to its main purpose. If a railroad company agrees to pay a certain rate and work certain hours, it is not going to try to use non-union men to undermine that rate or those hours. There is not enough in it to be worth while; hence, in such a case, open shop agreements are safe enough for wage protective purposes.

In the case of a large association of employers, composed of

members operating union factories, "open shop," and in some instances non-union plants, the trade agreement is made to furnish a court of appeal for members of the union working in any plant covered by the association, whether that plant is union or not. This furnishes a redress for grievances for straggling members of the union working in an "open shop," which non-union employees in the same shop do not possess. This advantage operates in every instance to bring those employees into the union, thus unionizing all the open shops in the association.⁴

The first agreements in an industry are usually crude, and yet this is the critical period of experiment. New unions, and employers new to the trade agreement experiment, would benefit by the advice of experienced advisors. Thus the superintendent of one of the large Chicago packing houses complained that the "recognition of the union" with him had meant that he had 217 "shop committees" in the various departments of the plant, and that all his time was taken up meeting committees. The trouble here was that the trade agreement did not provide for the sifting of "grievances" through a central control inside the union. "Shop committees" should report their fancied grievances to the union as a whole or to its executive officers, who are usually able to tell real from imaginary wrongs. The employers should have but one committee to meet, and its personnel, while it cannot be named, can be controlled by the terms of the agreement to the extent that unreasonable hotheads and personally disagreeable persons can be excluded from it. The union above referred to was "smashed" because it was new, oblivious of the fact that unions cannot be born old. On the other hand, a general manager of a tin plate plant said he had conducted a union plant for eight years and had never been called upon by a committee. "If they have any troubles they fix them up," he said. Employers who profess to be in favor of the older conservative unionism, but intolerant of new unions which they proceed to "smash" are either not entirely ingenuous and frank, or are rather inconsistent. If half the money, time, and intelligence that is employed to smash new unions were devoted to sympathetic direction of their councils and education of their membership, they could be "aged" much faster.

Trade agreements have done more to humanize the conditions

⁴See Commons and Frey, Bureau of Labor Bulletin, No. 62.

of labor and minimize strikes than any other single instrumentality. They are entered into on the part of the employers by the employer himself or, in case of corporations or associations, by men higher up in the control, and representative of real interests. It is in the discussion of the terms of trade agreements that these men "higher up" often get their first inlook into those working conditions so fruitful of unrest. Entirely apart from wages and hours, conditions of labor which irritate or are considered by the workmen as intolerable are sometimes created by the overzeal or whim of a foreman, a "speed boss," or a gang boss. The real employer hears of these for the first time when he is called upon to discuss the terms of a trade agreement. Since, as a general rule, the higher up in the councils of the employers the more willingness to remove petty sources of irritation, the trade agreements and the discussions preceding them have done much to eliminate these.

The trade agreement enables the employer to have a voice in the affairs of the trade union, to control it in fact within the limits of the terms of the agreement, and, on the other hand, enables the workmen to control the acts of the employer and his subordinate foreman and gang boss, not only as to hours and wages, but as to treatment of men, sanitation, and general working conditions, where these are covered in its terms. It is the mutual working basis, the magna charta of each.

The extent of control possible to be exercised over strictly union affairs by employers, through the medium of the trade agreement, is evidenced by the Illinois Coal Operators' Association in forcing the reduction of the union's initiation fee from \$100 to \$10. It is true that some organizations, notably the International Typographical Union, declare that their constitutional provisions and established trade regulations are not subject to bargaining, trade agreements or arbitration. Nevertheless, since only the regulations and constitutional provisions in force when a trade agreement is made can affect its provisions, the increase in long-time agreements has tended to decrease the number of constitutional amendments and new working rules, since these cannot affect a very large number of establishments for a considerable term of years. As late as 1902 the New York Typographical Union No. 6 agreed with the United Typothetæ to submit to arbitration "such points as conflict with the present International Typographical laws."

The international, however, refused to sanction the arbitration. The attempt to control unions through trade agreements had in this case been carried too far.⁵

On the whole, however, there is not much opposition to this principle of mutual control by the leaders on either side. The Building Trade Contractors' Associations of Chicago and elsewhere, the stove manufacturers' associations and many other groups of organized employers found it impossible to control their own membership in the matter of wages paid and working hours, and were more than willing to have the assistance of the unions in making these conditions uniform, to eliminate this element of uncertainty from competitive bidding or prices. Uniformity of wages is as important to manufacturers in competitive industries as fair earning opportunity is to the workers. Associations of manufacturers have never been able to maintain a uniform wage scale. This can only be assured when, as in the case of the Stove Founders' National Defense Association, a national employers' organization enters into a trade agreement with a national labor organization like the iron moulders. By the terms of this agreement, each manufacturer must keep an agreed-upon printed book of piece rates posted in the shop. The workmen will see to it that the rates are paid. This association made its first agreement with the national union in 1890 and has had no serious trouble since. The history of these agreements is eloquent with argument for the abolition of unnecessary strife.⁶

Labor leaders, on the other hand, are frequently glad to get clauses into trade agreements which will enable them to hold extremists and discordant elements within the union ranks in check. It is not uncommon for trade agreements to contain a clause to the effect that during the life of that agreement its terms are inviolable, anything in the constitution of the union, or any vote taken by it to the contrary notwithstanding. That the rank and file of organized labor are conservative and impelled to radical action only by agitating leaders has not been the experience of those who have been brought in contact with them. Trade agreements, therefore, make

⁵The discussion of the "sacredness of treaty obligations" and the power of treaties to set aside laws and even constitutional provisions growing out of the California-Japanese incident reads very much like that between the International and the Typothetae over trade agreements.

⁶See "Conciliation in the Stove Industry," by Prof. John R. Commons and John P. Frey, Bulletin of U. S. Bureau of Labor, No. 62.

for conservatism, and are generally opposed by radical organizations such as the Industrial Workers of the World.

When the American intellect sincerely and squarely expends as much effort to solve the problems of labor as it has to sell the products and reduce the wages of labor, those problems will be solved. As yet, American intellect has left the problems of labor to labor and interested itself only in preventing labor from solving them. The solution of the seniority problems presented by the dual organization membership contentions between the Brotherhood of Locomotive Engineers and the firemen's organization on railroads west of Chicago this spring shows that there are no irreconcilable conflicts, no unsolvable problems. An unsolvable problem in the labor world can only grow out of a situation which, if it presents unsolvable problems, must be abandoned.

Edicts by employers, however liberal on the money side, will never quite fill the place of mutual trade agreements. They lack the machinery for humanizing industry. We have seen lately at McKees Rocks, and at Bethlehem, the result of carrying working conditions to the point where unorganized, non-union men revolt. The most widespread labor revolt that ever occurred in this country, that of 1877, was a revolt of unorganized men and the immediate cause was not directly a question of wages.

There is always danger of strife where there is no one in authority whose business it is to see that the discipline so necessary for the economic conduct of any plant does not become dehumanized; no machinery for disciplining discipline when it overdoes itself and becomes a hatred generator, and no check on small men with large authority, that is, no check upon the use of authority by men who had been given power over other men solely because of their technical knowledge or ability to do things, to direct others in the doing of things, and to "get out the goods," without regard to their ability to get along peacefully with men. There are "production engineers," "speed bosses," superintendents of everything except the humanities of work. But there is always danger where there is no escape-valve for moral explosives. The "grievance committees" of trade unions may be an intolerable nuisance to some employers of labor who feel justified thereby in denying their employees the privilege of organizing. It would, however, seem to be the part of wisdom for such employers to fill this place in

some manner, either by the appointment of some one who, in constant touch with the highest officials, and who, with authority direct from them, shall act as a superintendent of the humanities of discipline and of work, minimizing the occasion of "grievances," or in some other manner prevent the Leyden jar of human hate from becoming overcharged.

THE SETTLEMENT OF DISPUTES AMONG THE MINE WORKERS

BY T. L. LEWIS,

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The settlement of labor disputes is a question of such great importance that it should receive the serious consideration of every man who has any regard for his country or a proper respect for its institutions. The individual who can devise a method that will settle labor disputes on a basis of equity to all concerned, and prevent industrial strife and strikes, will perform a great service to his country and deserve the gratitude of the Nation. It is well known that differences of opinion between employer and employee lead to disputes that cause industrial strife and strikes. Such disputes usually take place over the proper division of the results of labor performed. To settle labor disputes intelligently we must understand something of the contributory cause of disagreements between the employer and employee.

The rapid development and evolution of our industrial system is the direct result of laws favorable to such development, mineral resources easily accessible, inventive genius, and the high standard of efficiency of the men employed in our various industries. Our laws are extremely favorable to the development of industry for the reason that corporations may be formed with little or no capital. What is mostly necessary to convince financiers is that the industry to be developed will be able to pay interest on and refund borrowed capital without great risk. If the men who organize a corporation are known to have been successful as promoters of industrial enterprise, or if they are recognized as men of sound business judgment, it is not difficult for them to secure the necessary capital to develop an industry.

The mineral resources of this country are the basis of our industrial greatness. The low cost of producing coal and other minerals has given us the most complete and diversified industrial system of any country in the world. It is a matter of common knowledge that the mineral resources of this country, whether owned by indi-

viduals or by the government, have been acquired or purchased entirely too cheap by the "Captains of Industry." The high standard of efficiency of the industrial wage earners of this country is fully recognized. This high standard of efficiency is due largely to the competition between the men who labor and the desire of each individual to excel his fellow man in the amount of labor done, as well as in the quality of the product produced. The incentive that urges men on is the amount of wages they must receive in order to provide for those depending upon them.

The inventive genius of man has contributed much to the development of our industrial greatness. Invention has brought into existence the labor-saving machine. The labor-saving machine has been brought into direct competition with the individual wage earner. The natural result is that the individual worker is rapidly being displaced by the labor-saving machine. This competition between the machine and the man has created an industrial system in which the man is made subordinate to the machine.

If not restricted or controlled by the government or some other power, the corporation and the labor-saving machine under its control are the two elements in our industrial affairs that would ultimately enslave the wage earners of our country.

The laboring men have long since realized that by individual effort they can never hope to secure a fair share of the results of their labor. Necessity compelled the laboring men to associate with one another in order that they could, by and through the power of organization, sell their labor to better advantage than they could hope to do as individuals. In the forming of labor unions, the laboring men simply followed an example set by the employers when industrial corporations were formed.

Human selfishness is an important element to deal with in the adjustment of labor disputes. Human selfishness is greatly intensified under the name of a corporation. Men as individuals would not think or care to do as individuals what they are doing as representatives of a corporation. The attempt of a corporation or employer to increase profits by the purchase of labor at the lowest possible standard, and the resistance of the wage earner against selling his labor at such a price as would not provide him with an American standard of living, has created labor disputes, or the Labor Problem.

The mining industry is the most important factor in connec-

tion with our industrial development. The mining communities of our country have been the scene of some terrible industrial conflicts. Human selfishness has prompted the employer to disregard the rights or the welfare of the mine workers. Wages were reduced to such an extent that starvation for the mine workers and bankruptcy for the mine owners was the natural result of this deplorable condition. The mine owners in order to earn profit on their investment imposed conditions of employment that were unbearable. Disputes and strikes were a common occurrence with apparently no way of preventing them.

It finally dawned upon the more intelligent and conservative of the mine owners, as well as the leaders of the mine workers, that there must be some community of interest between employer and employee. Acting on this theory, a conference of operators and miners' representatives was called together over twenty years ago. At that conference was inaugurated what is now known as the joint conference method of negotiating and agreeing upon the terms of a wage contract to govern the mining industry in various states.

The movement inaugurated at that time was confined to Western Pennsylvania, Ohio, Indiana and Illinois, and met with varying success and failure until it passed out of existence in the year 1895. The joint movement as it affected Western Pennsylvania, Ohio, Indiana and Illinois was re-established in the year 1898, when a wage contract was secured for the states named and an eight-hour work-day was established. The joint conference method of arranging wage agreements has grown to include the States of Pennsylvania, Ohio, Indiana, Illinois, Michigan, Iowa, Kansas, Arkansas, Oklahoma, Missouri, Texas, Colorado, Montana, Wyoming, Washington, West Virginia, Kentucky and Tennessee. In a number of the states named, wage contracts are negotiated and agreed upon to include every coal mine within the state and every employee working in and around the mines.

The method adopted by the mine owners and the mine workers is to call what is known as a joint convention of representatives of operators and miners within a state or a group of states producing coal. When the joint convention is held, it is organized usually by the selection of an operator as a presiding officer. A miner and an operator are selected as secretaries of the convention. A creden-

tial committee of operators and miners is appointed to report on those who are entitled to representation in the convention.

After the preliminary work of organizing is concluded, a committee on rules and order of business is selected, and the rules adopted by the convention are different from the ordinary parliamentary rules governing deliberate bodies. It requires a unanimous vote of operators and miners to adopt any proposition affecting the proposed wage agreement, whether it is wages, hours of labor or conditions of employment. The reason for adopting a rule requiring a unanimous vote on the questions of wage agreement is to give the employer and the employee equal voting power. By this arrangement there must be a mutual agreement in order to reach final conclusions. The presiding officer in our joint conventions has no authority to cast a deciding vote on any questions affecting the wage contract.

When the joint convention is organized and the rules are adopted, it is usual for the miners' representatives to present a proposition which includes their demands affecting wages, hours of labor and conditions of employment. It is also customary for operators or mine owners to submit a counter proposition, each side having prepared its respective propositions in its own meetings or conventions.

The submitting of the propositions in open convention by the miners' and the operators' representatives is then followed by a general public discussion of the merits of the propositions submitted by the mine owners and the miners. This general discussion takes place in order that both operators and miners who attend the convention may understand the proposition submitted by either or both sides and also acquire a knowledge of the merits of the claims of the operators' and the miners' representatives.

Following the general discussion of the propositions in the joint convention of operators and miners, it is usual to submit the questions at issue to a committee of operators and miners. This committee is known as the joint scale committee and is composed of an equal number of representatives of operators and miners, together with the officers of the respective organizations who act in an advisory capacity.

This joint scale committee, composed of the representatives of the operators and miners, adopt rules to govern their delibera-

tions similar to the rules adopted by the joint convention. The operators and the miners each having equal voting power, and questions that are considered must have the support and unanimous vote of the operators and miners before such questions can be adopted as a part of any proposed wage contract.

The joint conference method of settling disputes and arranging wage contracts to govern the mining industry has prevented many an industrial conflict between the mine owners and their employees. It has done much to give stability to the mining industry of the country and to improve the conditions of employment surrounding the mine workers. The joint convention method is one in which the employer and employee are brought in contact with each other for the purpose of understanding their respective positions and to arrive at conclusions that are equitable to all concerned. This method of settling disputes, when adopted and practiced, in its broadest application, establishes as its basis the following essential features:

(1) Both employer and employee must recognize that there is a community of interest between them and that each is just as essential as the other in the development of the industry affected.

(2) This method brings the employer and employee into closer relationship and requires each to respect the rights of the other.

(3) It requires that the mine owner must have a knowledge of the conditions surrounding the mine worker, and it compels the mine worker to understand the business affairs of the men who own and operate the mines.

(4) It fixes intelligence and a general knowledge of the mining industry as a basis for an intelligent discussion of the questions at issue. It requires the exercise of good judgment and a respect for the rights of the general public as well as the rights of the mine owner and mine worker.

The final conclusions of the joint convention method depend upon the ability of the operators' or miners' representatives to present their respective claims in such a manner as will pass the judgment of the American people. The weakness of the final success of the joint movement in permanently settling disputes is due to the following conditions:

(1) The inability of the operators and miners to agree upon what should be a fair profit on investments in the mining industry

and a fair standard of wages for the men who labor in and around the coal mines.

(2) The disposition of the operator to conceal the facts from the miners in regard to his business and the desire of the miners to refuse to acknowledge conditions that they know to exist.

(3) The desire of both operators and miners to depart from a discussion of the facts and to appeal to the sentiment or prejudice rather than the intelligence and reason of those who are representatives in joint convention.

(4) The disposition to substitute might for right, when facts have failed to convince either party to the conference that there is some middle ground upon which a settlement should be reached.

(5) The antagonism of the operators in a number of mining communities and the declared intention of those operators that they will not, as long as it lies within their power, permit their employees to organize.

(6) The inequalities that exist from a competitive standpoint, which give the mine owners in the organized mining districts an opportunity to complain of the competition from the unorganized sections of the country.

I have endeavored to point out those features in the joint movement of arranging wage contracts and settling disputes that should appeal to every intelligent man. In addition to this, I have endeavored also to explain those features which may be regarded as an obstacle in the way of the permanent success of the movement. Industrial disputes should be settled without interfering with the operation of the mines or any other industry. In order to settle disputes and establish industrial peace in this country the employer and employee must have a greater respect for each other's rights. The right of the wage earner to form labor unions must be recognized and respected. The right of the employer to manage his business in his own way must also be recognized. When the employer understands that he is unable to develop any industry without the assistance of the wage earner, then there is a community of interest established, and this fact must be recognized by all concerned.

When the community of interest is established, then the employer and employee should endeavor to agree upon what is a fair profit on invested capital and a fair wage for the labor done in

the development of the industry and the production of coal. The best method of arriving at such conclusions is for the employer to be perfectly frank in explaining to the representatives of his employees the extent of his business, the amount actually invested and the earning power of the industry of which he has charge.

The employees or their representatives should be conversant with every detail of the business and be able to explain the demands of the employees and why they are entitled to the wages and conditions of employment that they are attempting to secure.

The struggle of the employer and employee for the division and possession of what a dollar represents is the basis of every dispute that arises in connection with the adjustment of wages, the conditions of employment or the hours of labor. The same principle applies in the commercial affairs of the country and has caused nations to declare war, squander millions of dollars and sacrifice hundreds of thousands of lives. In our industrial system, a solution of the labor problem will depend entirely upon two things—our ability to curb human selfishness and our power to eliminate fictitious values as the basis upon which profits shall be earned in any industrial enterprise. Publicity is one of the necessary things in order to arrive at intelligent conclusions and settle disputes in any industry of the country.

THE TRADE AGREEMENT IN THE COAL INDUSTRY

BY FRANK JULIAN WARNE, PH.D., New York,
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Much greater progress could be made in the settlement of our so-called labor problems, and in the better organization of our industrial state, if the employers and the public became acquainted with and would recognize the differences between trade unionism, socialism, anarchism, and the efforts of the social worker. I have the past year more than ever become convinced of the necessity of this distinction being emphasized as a result of testing audiences before whom lectures were given on "The Labor Movement: Its Social Significance." In nearly every instance I found that the public and the employers, as represented in the audiences, jumbled the trade unionist, the socialist, the anarchist, and the social worker all together and either denounced or praised them all in one breath.

There are fundamental differences between all these which prevent their being included in the same classification. It is true that the anarchist, the socialist, the trade unionist, and the social worker are all protesting against and fighting the evils of capitalism. At the same time not only are the theories of anarchism and socialism opposed fundamentally, the former meaning practically no government and the latter all government, but socialism and trade unionism are also by no means the same thing. The socialist, in brief, wants the government to own the means or instruments of the production and distribution of wealth—he would have the railroads, the coal mines, the steel plants operated by the government for the general welfare, and not by private capital for profit. The trade unionist, on the other hand, will have none of this—he accepts the present capitalistic system of production which allows to capital its interest and dividends and to the management its salaries, but would change or modify somewhat the system as it affects wages. In substance, trade unionism declares that the welfare of the wage-earner does not necessarily involve the overthrow but merely the modification of our present capitalistic system of the production and distribution of wealth. This he would bring about

through collective bargaining,—by means of joint conferences between representatives of employers and employees for determining wages and conditions of employment. Out of these conferences comes the trade agreement. This trade agreement is the labor movement's reply to socialism.

The trade agreement is already an actual fact and is working fairly successfully in many of the important industries of the country. It is to be found on all our leading railroads, the engineers, firemen, conductors, and trainmen, through their respective brotherhoods, entering into yearly agreements with the transportation companies. We also find it in the hat industry, between the iron moulders' union and their employers, among boot and shoe makers, among metal polishers, in the building trades, between compositors and publishers, in some branches of the iron and steel trades, in the glass industry, between garment manufacturers and their workers, in the pottery industry, between the bridge and structural iron workers and their employers, in the shipping industry on the Great Lakes between the longshoremen and the vessel owners, and in the coal mining industry.

The fundamental principles underlying the trade agreement are the same in all these industries, their form of expression differing, however, in details. An idea of these principles can be gained from a study of those formulated by the Interstate Joint Conference of the coal operators and mine workers of what is known as the central competitive soft coal territory, which includes western Pennsylvania, Ohio, Indiana, and Illinois. These principles are as follows:

First. That this joint movement is founded, and that it is to rest, upon correct business ideas, competitive equality, and upon well-recognized principles of justice.

Second. That, recognizing the contract relations existing between employer and employee, we believe strikes and lockouts, disputes and friction, can be generally avoided by meeting in joint convention and by entering into trade agreements for specified periods of time.

Third. That we recognize the sacredness and binding nature of contracts and agreements thus entered into, and are pledged in honor to keep inviolate such contracts and agreements, made by and between a voluntary organization, having no standing in court, on the one hand, and a merely collective body of business men doing business individually or in corporate capacity on the other, each of the latter class having visible and tangible assets subject to execution.

Fourth. That we deprecate, discourage, and condemn any departure

whatever from the letter or spirit of such trade agreements or contracts, unless such departure be deemed by all parties in interest for the welfare of the coal mining industry and for the public good as well, and that such departure is first definitely, specifically and mutually agreed upon by all parties in interest.

Fifth. Such contracts or agreements having been entered into, we consider ourselves severally and collectively bound in honor to carry them out in good faith in letter and spirit, and are so pledged to use our influence and authority to enforce these contracts and agreements, the more so since they rest in the main upon mutual confidence as their basis.

The machinery for the practical accomplishment of these objects is the joint convention. This usually meets once a year, and after discussions of the points at issue, sometimes extending over several weeks, a contract as to wages and conditions of employment for the scale year from April 1st to March 31st, is signed by representatives of each side. While this agreement settles a number of very important questions, it should not be inferred that both sides are perfectly satisfied.¹ This would be expecting the millennium in the industrial world.

But certain fundamental principles have been established by this joint movement. The "right" of the mine workers to organize for their own protection and for the improvement of their condition of employment is recognized by the operators; the "right" of the men to be represented in settling disputes and agreeing upon the prices for which their labor is to be sold is conceded by the operators treating directly with the officers of the United Mine Workers of America. These two principles are now firmly established in the central competitive coal fields; in the territory comprising Missouri, Kansas, Arkansas, Indian Territory, and Texas, and also in about a dozen other coal-producing states. Not only do the operators of those states who are parties to the agreement depend largely upon the United Mine Workers to enforce upon non-union employees as well as upon its own members the agreement entered into, but they also look to the union rather than to themselves to see that the operator who might attempt to violate the contract is compelled to live up to its terms. In many cases the operators have gone so far as to recognize all their employees, with but few exceptions,

¹As to the questions of agreement and disagreement, as well as for a more detailed account of the operation of the joint conference machinery in the coal industry, the reader is referred to the author's "The Coal Mine Workers," Longmans, Green & Co., New York City.

as members of the United Mine Workers. This joint movement in the bituminous coal fields has thus established well-defined rights on both sides.

The central competitive soft coal territory, so called because the states comprised in it have a common market for their product at the Great Lake ports, includes also West Virginia. But West Virginia is not a party to the joint conference scheme, which has for its object the control of the competitive conditions affecting the production and marketing of coal from these five states. It was against just such conditions as are presented to-day by the uncontrolled competition of West Virginia that the movement was inaugurated among the operators and mine workers in 1885. The first convention was held at Columbus, Ohio, in February, 1886, West Virginia then being represented by both operators and mine workers.

Those at the head of the movement realized at the beginning that the problem was a control of competitive conditions in the fields having a common market. Such control, to be effective, meant that the operators and mine workers in one district should have no unnatural advantages over those in any other district. Failure to control these varying conditions meant that the coal of one field or state would enter the market bearing a lower price than the product of the other district, and naturally, the lower priced commodity, other things being equal, would undersell that bearing a higher price. The tendency under such conditions would be that eventually the price of coal from all the districts would reach the level of the cheapest, resulting in forcing out of business those operators having a higher cost of producing their coal. Thus the interstate movement could recognize no favored district, but all the innumerable elements which enter into determining the price of coal, such as natural advantages, nearness to market, cost of transportation, the quality of the coal, the price of mine labor, etc., had to be taken into consideration and if possible so regulated that the product from all the districts should bear very nearly the same price when it reached a common market.

The first attempt in this direction met with failure and very largely under circumstances somewhat similar to those presented in the present situation. Then the operators of one district, very soon after the movement was launched, complained that operators in another district possessed advantages which enabled the latter

to put their coal on the market at a lower price and by thus underselling the former to threaten their business success. Attempts were made then, as now, by those believing themselves to be at a disadvantage to remedy the particular conditions of which they complained. Friction naturally resulted, and failure after failure to keep the basis agreed upon was apparent in the different districts. So many unforeseen factors continually entered in to disturb temporary adjustments that the agreement could not keep the central competitive districts together, West Virginia, Illinois, and Indiana being the first states to withdraw. Within two years from its inauguration, the movement had practically gone to pieces, with the exception of state agreements in some of the districts.

In 1898, however, following the strike in the central competitive territory the preceding year, the Interstate Joint Conference machinery was restored to the four districts of western Pennsylvania, Ohio, Indiana, and Illinois and has been in operation most of the time since then. West Virginia has not been a party to its deliberations and agreements, however, and herein lies the weakness of the entire movement for the future. As long as the West Virginia operators and mine workers are outside the conference, the very foundation of the movement in the central fields is threatened. And until that state is brought within the jurisdiction of the interstate agreement, it cannot be said with certainty that the permanency of the joint conference method of preventing industrial wars between employers and employees in the coal industry of the country is assured.

The trade agreement in the anthracite industry has taken a somewhat different form, although its fundamental principles are the same. In the soft coal territory referred to, the joint conference was the outgrowth of the efforts of operators and miners themselves to settle their own differences. In the hard coal industry, the trade agreement principle was forced upon the operators by the intervention of President Roosevelt in bringing to a close the memorable strike of 1902. The establishment of this principle was among the demands of the United Mine Workers which brought on that great struggle. Out of the throes of that five months' strike and through the decision of the Anthracite Coal Strike Commission has come one of the most remarkable and, all in all, one of the most successful experiments in industrial conciliation that this country has so far witnessed.

The commission, in its awards, established a board of conciliation whose object was to settle the disputes between the contending parties. The constitution of this board was decreed as follows by the commission's award:

That any difficulty or disagreement arising under this award, either as to its interpretation or application, or in any way growing out of the relations of the employers and employed, which cannot be settled or adjusted by consultation between the superintendent or manager of the mine or mines, and the miner or miners directly interested, or is of a scope too large to be so settled and adjusted, shall be referred to a permanent joint committee, to be called a board of conciliation, to consist of six persons, appointed as hereinafter provided. That is to say, if there shall be a division of the whole region into three districts, in each of which there shall exist an organization representing a majority of the mine workers of such district, one of said board of conciliation shall be appointed by each of said organizations, and three other persons shall be appointed by the operators, the operators in each of said districts appointing one person.

The board of conciliation thus constituted shall take up and consider any question referred to it as aforesaid, hearing both parties to the controversy, and such evidence as may be laid before it by either party; and any award made by a majority of such board of conciliation shall be final and binding on all parties. If, however, the said board is unable to decide any question submitted, or point related thereto, that question or point shall be referred to an umpire, to be appointed, at the request of said board, by one of the circuit judges of the third judicial circuit of the United States, whose decision shall be final and binding in the premises.

The membership of said board shall at all times be kept complete, either the operators' or miners' organizations having the right, at any time when a controversy is not pending, to change their representation thereon.

At all hearings before said board the parties may be represented by such person or persons as they may respectively select.

No suspension of work shall take place, by lockout or strike, pending the adjudication of any matter so taken up for adjustment.

This board of conciliation has been kept in existence, down to the present time, by mutual agreement between representatives of the operators and miners.

The board was not designed to pass upon all the questions growing out of the relation of employees and employers in the anthracite industry. It is in a sense a final court of appeal, and before any disputed point can come before it for settlement efforts must first be made by the interested parties to settle it among themselves. To this end the rules of procedure adopted by the board at its organization meeting provide that:

If any employee or body of employees have any grievance or complaint growing out of the interpretation of the awards of the Anthracite Coal Strike Commission, or out of the application of said awards or in any way growing out of the relations of employees or employer, said employee or employees directly interested shall present such grievances to the foreman directly in charge of the mine. If there shall be a disagreement with the foreman or a failure on the part of the foreman to satisfactorily adjust such grievances, the employee or employees directly interested or a committee of same shall request an interview with the superintendent or manager of the mine or mines for the purpose of adjusting said grievances. In case of failure to arrive at a satisfactory adjustment of grievances the employees shall present in writing such grievances to the members of the board of conciliation representing the district in which the mine or mines are located, stating fully the grievance which they desire to have adjusted and offering satisfactory proof that efforts have been made to arrive at an adjustment with the superintendent or manager. In case of a failure on the part of the superintendent or manager of the mine or mines to grant an interview to the employee or employees within ten days, the said employees may present in writing to the members of the conciliation board representing their district proof that they have made reasonable efforts to secure such interview. In such case the board of conciliation or the members of the board representing the said district will endeavor to secure for them an interview with the superintendent or manager of the mine or mines in question.

Only after the above action has been taken and the grievance still remains unsettled does the case come formally before the board. It then notifies the company or operator with whom such difficulty or disagreement has arisen, and requests from it or him a statement setting forth the reasons for not adjusting the matter. Upon the receipt of such a statement the board uses its discretion in requesting the presence of both parties to the disagreement for a full and complete hearing of the case. Provision is also made for the employers to present their complaints to the members of the board representing the district in which the mine or mines are located, the board receiving such complaints and calling for a statement from the employees directly concerned relative to the reasons for such complaint or disagreement, and if the board deems it necessary it will request both parties to the issue to be present before it for a hearing of the case.

Inasmuch as the award of the strike commission provides that no suspension of work shall take place pending the adjudication of any matter brought before the board for settlement, the latter has ruled, with the view of preventing strikes and lockouts, that it

will not take up and consider any question referred to it unless the employees shall remain at work, with the understanding that if the board finds the grievances justifiable, its adjustment shall be retroactive.

Thus in both the soft and hard coal industries of the United States has been established the trade agreement principle of preventing strikes and lockouts and industrial disturbances generally. No one who is familiar with the conditions in these great industries both before and since this principle was established can do other than record his emphatic conviction that it has been of inestimable value to the peaceable conduct of those industries. Its successful operation proves the existence of a practical method of doing away with industrial wars.

One point in particular needs to be emphasized, as it takes away much of the strength of the criticism aimed at the trade agreement method for settling disputes between capital and labor. This point is the fact that under its operation in the soft coal industry there has been effected a reduction in wages as well as increase in wages, and this reduction has been brought about peaceably and without recourse to a strike on the part of the mine workers or a lockout by the operators. This was in 1904, when the proposal of the operators for a reduction of wages was submitted to a vote of the mine workers of the districts comprised in the central competitive territory. This ballot was taken on Tuesday afternoon, March 15th, between 1 and 6 o'clock, the mines being closed in these particular coal fields between those hours in order to give every mine worker an opportunity to vote. The balloting was upon the direct issue: The operators' proposition, or a strike. The result was in favor of a continuance of work under a reduction in wages by a vote of 101,792½ to 68,485½. The fraction of a vote in the totals is explained in the fact that boy members each have one-half a vote. In a circular to the mine employees in the districts affected, sent out prior to the balloting, the national officers of the United Mine Workers stated that industrial conditions generally were adverse to the success of a strike at that time, and they recommended the acceptance of the operators' proposition. This one fact—this voluntary acceptance of a wage reduction—would seem to place the trade agreement machinery on a sound and enduring foundation as a part of the coming industrial state.

While the joint movement was resumed in the central competitive soft coal territory in 1898, it has not been in continuous operation, there having been years when the miners and operators were unable to come to any satisfactory understanding. Under such conditions, it has nearly always been the case that trade agreements were entered into between the miners and operators of the separate states. This is the situation at the present time. It is important to note that during the continuance of the agreement of contract no strike or lockout of any serious proportions has occurred in any of the states subject to its jurisdiction. In the four years preceding 1898, during which the agreement had lapsed for various causes, strikes and lockouts and general industrial unrest among the mine workers were the rule rather than the exception. It does not follow, however, that the joint agreement prevents absolutely all possibility of industrial disturbances—this power is not claimed for the movement even by its most ardent advocates. It does tend, however, to preserve industrial harmony between the two conflicting interests, secure more stable market and labor conditions, and reduce to a minimum the possibility of strikes and lockouts.

THE WAGE SCALE AGREEMENTS OF THE MARITIME UNIONS¹

BY RALPH KENDALL FORSYTH,
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Any intelligible discussion of the wage scale agreements of the maritime unions must necessarily take into consideration the industrial conditions out of which these agreements were evolved. It will, therefore, be necessary first of all to familiarize the reader with the early conditions of the shipping industry of the Pacific Coast, as typified by its principal port, San Francisco. Secondly, to review briefly the early attempts of the sailors at concerted action, which ultimately resulted in permanent organization among the seamen and shipowners, and thereby made possible and necessary the wage scale agreements. Thirdly, to discuss, in relation to the wage scale agreements, the crimping system, maritime legislation,

¹The data for this article was obtained from the following sources:

The files of the "Coast Seamen's Journal" in the Leland Stanford Junior University Library. The earlier files of the "Coast Seamen's Journal" in the office of the "Coast Seamen's Journal" in San Francisco, which the writer was kindly permitted to use by the present editor, Mr. W. Macarthur. Probably the most valuable material was obtained from the original agreements between the Sailors' Union of the Pacific and the various companies and shipowners' associations of the coast, which the writer was permitted to use through the courtesy of the secretary pro tem. of the Sailors' Union of the Pacific, Mr. E. Ellison. An article in the "Coast Seamen's Journal" for July 8, 1908, "First Coast Seamen's Unions," by Dr. Ira Cross, of Stanford. Also a chapter from the manuscript of his "History of the Labor Movement in California." Other material was also placed at my disposal by him. Various reports of the Bureau of Labor Statistics for the State of California have been freely consulted.

Besides the above sources, the constitutions, by-laws and working rules of the various unions and employers' associations were used. The last three pages of this article contain the gist of information obtained by the writer from personal interviews with Mr. H. L. Stoddard, secretary and treasurer of the Shipowners' Association of the Pacific Coast, and with Mr. E. Ellison, secretary pro tem. of the Sailors' Union of the Pacific. Numerous suggestions and ideas obtained from the lectures of Dr. T. S. Adams, of the University of Wisconsin, and Dr. J. M. Motley, of Stanford University, have been incorporated. The substance of a very considerable portion of this discussion is contained in a thesis presented as partial requirement for the master's degree to the Department of Economics of Leland Stanford Junior University, May, 1909. The writer wishes to express his appreciation to Miss Grace Holt, of the English Department of the Santa Barbara High School for her many kindnesses and helpful suggestions in the preparation and proofreading of this paper.

and the Shipowners' Association,, citing typical agreements. And finally, conclude with a summary of the present situation.

This discussion will be confined to the maritime unions and conditions as they exist on the Pacific Coast, for it is here that the highest degree of organization among the seafaring craft has been reached. Not that there has been nothing accomplished in this regard in the Atlantic and Gulf States, or on the Great Lakes, but, rather, that the maritime unions of the Pacific coast have been the leaders in this respect, and may be taken as typical.

San Francisco being the center of the Pacific shipping, having two-thirds of the import trade and one-half of the export trade of the Pacific Coast, is also the center of organization among the various branches of labor employed in connection with that industry. These branches include sailors, firemen, cooks, stewards and waiters, bay and river men, fishermen, engineers, masters, mates, and pilots. They are organized either on the purely trade union principle, as in the case of the sailors, firemen, etc., or in the ostensibly beneficial and fraternal form, as in the case of the masters, mates, and pilots. Practically all the organizations representing these crafts maintain branches in the larger ports of the coast, but the headquarters in each case is located in San Francisco. It may, therefore, be said that treating of the conditions of maritime labor in San Francisco, embraces that question as it exists throughout the entire length of the Pacific Coast.

While these various organizations exist and each has its influence in its respective craft, the sailor, the man before the mast, is the primary or basic element in the shipping industry, from which it follows, that the conditions of all labor in that industry are determined very largely by those of the sailor. Since the Sailors' Union of the Pacific represents this primary or basic element, this study of the wage scale agreements will center about it as the leader of the coast maritime unions in this regard. The transactions between this union and the shipowners of the coast afford the key to the existing conditions.

Prior to the discovery of gold in California, San Francisco was not considered a port of any importance, but immediately after the discovery of gold, in 1848, her rating as a port quickly changed. Hundreds of ships entered the bay, but all of the crews forthwith deserted and made their way to the gold fields. Such captains as

were able to get their ships to sea again found it necessary to comply with the demands of the crew for an extortionate wage, which, during the intense part of the gold rush, reached the handsome figures of \$200 and \$300 per month for the common sailor. This condition, obviously, was abnormal and of brief duration. The reaction set in during the first half of 1850. Men who had failed to find their fortunes in the gold fields of the interior were returning to the coast discouraged and without means to pay their passage to their homes in the Eastern States. The captains were not slow to take advantage of this opportunity to reduce the sailor's wage to the nominal sum of twenty-five dollars per month. The first strike of August, 1850, followed, but the larger number of men eager to return to their homes in the East were anxious to ship with meager or no wages and the strike accomplished nothing. However, conditions continued to fluctuate during the 50's, owing to the opening of new gold fields in different parts of the state, and at times captains found it impossible to obtain crews for the trip out of San Francisco Bay. Boarding-house keepers and other middlemen assisted in obtaining crews, and shanghaiing was the method frequently resorted to in order to obtain the full crew.

By 1866 the leaders among the sailors had conceived the idea of organization, and in January of that year "The Seamen's Friendly Union and Protective Society" was organized. This union had a small membership from the beginning and soon passed out of existence. Twelve years later, in February, 1878, "The Seamen's Protective Union" was organized. A resolution was adopted pledging the members not to ship on any coasting vessel for less than thirty dollars per month. Originally the organization was composed of about one hundred charter members, but shortly afterward was increased to about two hundred. It enjoyed a rapid growth for several months, and by April had a membership of 600. Owing to depression of trade and lack of continued enthusiasm on the part of its members, however, this union followed in the wake of its predecessors, and after a few months passed out of existence.

Nothing further was done in the way of attempting organization until 1880. In August of that year the "Seamen's Protective Association" was organized. On account of the opposition of the boarding-house masters and others, the new organization grew very slowly, but in spite of this fact it did a remarkable work, due

largely to the efforts of its leader, Roney, an Irishman of considerable enthusiasm and zeal, who is considered by some to have been one of the ablest men ever connected with the labor movement on the coast. However, this association, for various reasons which we will not enter into here, met for the last time on November 4, 1882.

Wages of the seamen continued to fall, and by 1885 they had reached the bottom figure of twenty-five dollars for coasting sailors and twenty dollars for deep-water men. In May of 1885 agitation was started by a few leaders among the sailors to go on strike for better wages. This agitation resulted in a goodly number of men leaving their vessels and the strike became pretty general; very general, indeed, for a craft that was unorganized. A meeting was called on March 6 and "The Coast Seamen's Union of the Pacific Coast" was formed. The organization grew rapidly, and by March 23d it is said to have had 1,000 members. The strike continued for some time after organization and finally resulted in a number of the shipowners paying the thirty dollars per month asked by the sailors. Thus it was, that the first permanent organization was formed among the sailors of the coast. Among certain classes of maritime workers, such as firemen and engineers, permanent organization had been effected before this date, but the formation of "The Coast Seamen's Union," now "The Sailors' Union of the Pacific," on March 6, 1885, marks the transition from individual to collective bargaining and from a personally bartered wage to a uniform wage scale agreement between the sailors and the shipowners of the Pacific Coast. The above date is also significant in this connection, as marking the beginning of organization among the shipowners of the coast.

Further than this brief review of the early situation, this discussion of the wage scale agreements of the seamen's union need not extend back of the above date, and will, in fact, be most concerned with the period from 1901, at which time the first step toward formal recognition of the unions took place. In May of that year the Pacific Coast Steamship Company entered into an agreement with the Sailors' Union of the Pacific. This was the first agreement signed between the sailors and the shipowners of the Pacific Coast.

Of course, it must not be understood that the sailors and other

maritime workers of the coast had nothing to say in regard to wages, hours, and the like, until they were able to obtain signed agreements from the shipowners. As a matter of fact, they had considerable control in some of these and other respects pertaining to their craft prior to that date, as is evidenced by the local press of the time. Although it is very probable that they did not have anything like complete control of wages, hours, and working conditions, or even as large a degree of control as the articles of their own journal at that time would lead one to believe. These articles, of course, must be taken as partisan.

Those features embraced in the economic phase of the seamen's condition which bore with greatest severity upon the classes affected, and which constituted the chief, or at least the most immediate motive of organization among the classes, may be described in general terms as the features of the crimping system; that is to say, they included the method of shipment and discharge and the distribution of wages actually earned.

Before the Sailors' Union of the Pacific was organized, as has already been noted, the nominal rate of coastwise sailor's wages was low, being at times twenty dollars per month, as compared with the present rate of forty-five and fifty dollars. The foregoing statement, of course, does not hold good during the period of the gold rush, at which time, as has already been pointed out, common sailors received as high as \$200 and \$300 per month. However, this temporary and abnormal state of affairs does not concern us in this connection. To be sure, every possible effort was made to increase the rate of wages, but inasmuch as under the crimping system then in vogue, the sailor's wages were absolutely controlled by the crimps, being quite commonly paid to and disbursed by the latter, the rate of wages was a matter of secondary importance to the sailor himself. Naturally the first efforts of the union were directed toward securing control of the wages actually earned, by the establishment of a system of direct payment to the sailor, regardless of all claims, real and alleged, made upon them by the crimper. This step involved the abolition of the existing system of shipment, under which the crimps controlled the avenues of employment to such an extent that no man could get work except upon their terms, the prime condition of which was that the sailor should put up at one or the other of certain boarding-houses, which in turn implied

the surrender of all earnings to the boarding-house keeper. Working conditions, hours, food, living quarters, etc., on board ship were bad in all respects, but as these features were very largely the corollaries of the system of shipment and discharge, they could not be improved except through improvement in the latter regard.

Inasmuch as the seaman's wages depended upon his control of the shipping, that is, the seamen's opportunities of employment, it was natural that the sailors' union, in its efforts to place the control of wages in the seamen's own hands, should seek this end by means analogous to those in vogue. Accordingly, one of the first steps taken by the union was the establishment of a shipping office. The union elected its own shipping master and offered every facility for the transaction of business between the seamen and shipowner, without cost to either party or interference of any kind from any species of middlemen. After a brief experience the shipping office was abandoned as a failure. The incidental causes of this result were numerous, but, irrespective of all minor causes, it may be attributed to the fact that the shipowners refused it their support. In other words, the shipowners continued to employ their crews through the crimps, being actuated in this course by the dual motive of hostility to organization among the seamen and a desire to perpetuate existing conditions as to wages and the like. Thus, in the struggle for the control of the engagement of seamen the crimps were favored.

Meanwhile the sailors' union had engaged in several strikes, the outcome of which afforded no material or permanent change in the prevailing conditions. However, except in a few instances of extreme depression, the unions continued to retain control of the men engaged in the respective crafts, although they were usually in these exceptional circumstances forced to give way in the demand for the maintenance of the stipulated rate of wages. When confronted with necessity of waiving recognition of the wage schedule, the unions endeavored to restrain their members from seeking employment indiscriminately—that is, from bidding against each other. The effect of this course was to prevent wages from falling as low as they inevitably must have gone in the absence of such checks. On the whole, it may be said that at no time since 1885 have seamen's wages fallen to the industrial depression rates prior to that date.

The severe nature of the seamen's struggle to gain control over the avenues of employment and the small uncertain measure of success attained during the decade 1885-1895, was due principally to the state of law under which the seamen lived. The features of the law which bore most heavily in restraint of the seamen's liberty may be summed up under the following heads: (a) imprisonment for desertion; (b) allotment to original creditor; (c) attachment of clothing. The import and effects of the statutes concerning these points may be stated briefly as follows: The law of imprisonment for desertion provided that a seaman, who having signed articles for a specified voyage left, namely, deserted, the vessel before the expiry of his contract should be subject to arrest and imprisonment for three months. In the case of a seaman engaging for a foreign voyage, the signing of the articles was mandatory; in the coastwise trade it was optional with the seamen to sign articles. Theoretically, the latter feature of the law enabled the coastwise man to preserve the right of personal liberty, that is, the right to leave his vessel in any safe port.

Practically, however, this right was denied the seamen by the simple fact of agreement among the shipowners to request that all crews should sign articles. Thus the seaman was confronted with the alternative of signing articles, thereby surrendering his right to leave his ship at any time during the voyage, or remaining idle. Of course, the seaman's necessity forced him to accept the former of these conditions. Having thus subjected himself to the penalty of imprisonment for desertion, the seaman was forced to submit to whatever exactions might be imposed upon him. The ordinary course of the land worker when conditions became unbearable, namely, the strike, meant arrest and imprisonment either during the period specified by law or until the vessel was ready for sea, in which latter case, the deserter was placed on board by the port authorities and forced to return to work. This part of the law was indeed very objectionable.

Allotment to original creditor was designed as a convenience to the seaman, enabling him, if he so desired, to allot a certain part of the wages to be earned during a voyage to an original creditor in payment of any just debts for board, lodging, or clothing. In practice, however, allotment to original creditor is everywhere recognized as the chief support of the crimping system. In every day

operations of the allotment system the "original creditor" is commonly the crimp, while the "just debt" for board, lodging and the like is mainly a levy upon the seamen in payment of shipping fees and other illegal charges. Attaching the seaman's clothing was the final resort of the crimps. If, as sometimes happened, a seaman refused to agree to the terms of shipment, allotment, etc., his clothing was attached.

The organized seamen recognized their helplessness under these conditions and determined upon an effort to change the maritime law, particularly in the respects here noted. In 1892 the Sailors' Union of the Pacific elected a legislative committee which, with the aid of necessary legal counsel, drafted a bill for the repeal of the obnoxious features of the then existing law. This bill, which was introduced into Congress by Representative Magurie, of the Fourth Congressional District of California, became a law in 1895. The measure abolished imprisonment for desertion in the coastwise trade and in the trade between ports of the United States and Canada, Mexico, Newfoundland, Bahamas, Bermudas and West Indies. It also prohibited allotment to original creditor by seamen in the coastwise trade and made illegal the attachment of seamen's clothing.

The enactment of this measure effected a revolution in the legal status of the seamen, while its effect upon the economic conditions of the latter was hardly less remarkable, if not in actual, at least in potential results. The practical results of the law were immediately apparent in the greater independence of the seamen and a proportionate decrease in the power of the crimps. In the Magurie act the abolition of imprisonment for desertion applied only to seamen engaged in the coastwise voyages. This defect in the Magurie act was afterward remedied by the passage in 1898 of the White act.

Any discussion of the wage scale agreements of the seamen's unions that did not take into consideration the shipowners' side of the question, would obviously be partisan and incomplete. It will not be possible or profitable, however, in this discussion to attempt to give the history of the various shipowners' associations that have existed, but rather to confine our observations to the one which has particularly to do with the subject in hand, namely, the Shipowners' Association of the Pacific Coast. It has been between this association and the maritime unions of the coast that most of

the wage scale agreements with which we are concerned have existed. This association is the leader and may be taken as typical of all the others. The organization, as the name indicates, is composed of shipowners, about forty-five in number, actually holding membership certificates, while about twenty others outside the organization abide for the most part by the rulings made and agreed upon between the association and the unions. The association has its headquarters in the Ferry Post Office Building in San Francisco, with branch agencies at San Pedro, Eureka, Astoria, and Aberdeen. "Any firm, corporation, or individual owning or controlling, or acting as managing owner or agent of any sea-going vessel may become a member of this association by being elected to membership by a majority vote of the board of directors, and signing his or their name hereto and agreeing to comply with all rules and regulations of this organization."

"Each and every member of this association shall be required upon joining to agree to act with the other members in all matters that may be adopted by the members or directors of said association, and there shall then be issued a membership certificate signed by the secretary and president and under the seal of the association." As a matter of fact the association has had considerable trouble as an organization to get all members to act together in the case of a fight or strike with the maritime unions. The reasons for this are obvious. The strike always occurs when conditions in the shipping industry are prosperous. That is, the sailors always ask for an increase in wages when conditions in the shipping industry will justify their receiving the increase asked for. Such being the case, it is always a temptation to members of the association to break away from the other members and grant the increase in wages demanded by the sailors or other maritime workers, in order that they may avail themselves of the high rates they are able to secure during such times. In the present association, according to one in close touch with all of its members, when rates are high and the sailors or other maritime workers walk out and tie up their vessels, it is almost impossible to hold the members of the association together and put up a strong and continuous fight of any duration.

It should be mentioned just in this connection, however, that the attitude of the shipowners' association has been and is, "mil-

lions for defense but not a cent for tribute." That is, the association, as such, has as a rule, preferred to fight the unions and spend thousands of dollars, if need be, rather than consent to an increase in the wage schedule. This is the case as stated by one of their representatives and is not the union's side of the story. They spent about \$30,000 in the strike of 1906, rather than increase the wages of the sailors and other maritime workers, which they could have done on half or a third the amount spent fighting. The defense fund of the association is raised, for the most part, by the assessment of its members at the time money is needed. Of course, in a wealthy organization of this kind plenty of money can be raised on short notice by assessment without there being any particular provision for it in their by-laws.

The provision for a grievance committee should be noted in concluding this brief discussion of the association. The following is quoted from the association's by-laws: "Grievance Committee: It shall be the duty of the Grievance Committee to settle all matters of dispute as to agreements and customs with the unions and organizations with which the association has dealings. This committee shall be composed of members who are interested in both sail and steam vessels."

As has already been pointed out, the first formal recognition of the seamen's union by the shipowners was in 1901, when an agreement was entered into between the Sailors' Union of the Pacific and the Pacific Coast Marine Firemen's Union, on the one hand, and the Pacific Coast Steamship Company, the principal line in the coastwise passenger service. This agreement provided for the full recognition of the unions—that is, it provided for the employment of members of the union exclusively, so far as the latter were able to supply the labor needed on the company's vessels. In all other respects the agreement was satisfactory to the parties concerned. However, within a short time after the conclusion of these terms a great strike occurred, involving all the maritime organizations in San Francisco. Under the guidance of the City Front Federation, a body of delegates representing all organizations, both maritime and longshore, connected directly with the shipping industry of the port, the sailors, firemen, cooks and stewards went on a strike in August, 1901, in support of the local branch of the Brotherhood of Teamsters.

Although the teamsters alone were directly affected at the outset, experience in a number of similar crises led the organizations affiliated with that craft to apprehend a general attack upon themselves should the movement against the former prove successful. Accordingly, the maritime organizations, in common with the other bodies represented in the City Front Federation, quit work on all vessels. The Pacific Coast Steamship Company declared this action to be a violation of the agreement between it and the two unions. The strike was called off at the end of nine weeks by the formal action of Governor Henry T. Gage, acting by authorization of the City Front Federation and the Employers' Association. The Pacific Coast Steamship Company thereafter refused to recognize the agreement as in any way binding upon it. On the contrary, the company brought suit against the unions of sailors and firemen for damages in the sum of \$20,000 in each case, claiming damages to that amount as a result of the "tie-up" of its vessels during the strike. These suits were not brought to trial, but were withdrawn upon the resumption of mutually satisfactory relations.

In 1902 an agreement was entered into between the Sailors' Union of the Pacific and the Shipowners' Association of the Pacific Coast, an organization at that time representing the owners of sailing vessels. This agreement has been renewed periodically since the date of its first expiration and is virtually still in force. In 1903 an agreement was entered into between the Sailors' Union of the Pacific, Pacific Coast Marine Firemen's Union and the Marine Cooks and Stewards' Association of the Pacific, on the one hand and the Steam Schooners Managers' Association, representing all the large owners of steam and freight vessels. This agreement has also been renewed at regular intervals. •

In 1903 an agreement was entered into between the Sailors' Union of the Pacific, the Pacific Coast Marine Firemen's Union and the Marine Cooks and Stewards' Association of the Pacific, on the one hand, and the Oceanic Steamship Company, owner of passenger and mail line between San Francisco and Australasian ports. It has also been renewed.

These agreements represent the first formal recognition of the maritime unions by the shipowners of the Pacific Coast; nevertheless, they do not, by any means, represent the first recognition of the unions by the shipowners in an informal manner, as is evidenced

by many former acquiescences. On numerous occasions prior to the date of the first signed agreement the representatives of the unions had been recognized by the shipowners in interviews, and the demands of the former were frequently granted. There have never been any regular conferences between the maritime unions and the shipowners, but matters requiring the attention of the representatives of both sides have usually been settled in irregular negotiations at such times as they have come up for settlement, which have been rather frequent.

While the unions and owners have no provisions for regular joint conferences, they meet together and thrash out their difficulties in an informal, effective, and so far, satisfactory way.

In the earliest agreements between the seamen and the shipowners no provisions are made for settling grievances or renewing agreements. In the agreement between the Sailors' Union of the Pacific and the Shipowners' Association of the Pacific Coast, on April 3, 1902, we find the first provision for a grievance committee. The section is as follows: "A standing committee of three from each association to be appointed to adjust grievances that may arise from time to time."

In an agreement with the Oceanic Steamship Company, on August 6, 1903, we find the following: "It is understood that when any unusual work arises in isolated cases, not covered by this agreement, the men, when called upon, shall perform such labor, and the compensation therefor shall be determined and adjusted between the officers of the union and the company, and in the event of any disagreement, shall be arbitrated as hereinafter provided for the arbitration of differences, controversies, and grievances.

"All items not mentioned in this agreement or the schedule herein, shall be performed and the payment shall be made for work done under this agreement in accordance with the usual custom heretofore prevailing.

"In the event of any controversy arising between the unions and the company, or in the event of any of the unions having any grievances, the men shall continue to work, and all such grievances and controversies shall be settled, if possible, by representatives of the company and representatives of the union. If such grievances and controversies cannot be settled, then they shall be arbitrated by choosing a third disinterested man, upon whom a

representative of the unions and a representative of the company shall agree, and the decision of any two shall be final. If the representative of the unions and the representative of the company cannot agree upon a third man, then each side shall choose a disinterested man, and said three men shall constitute a board of arbitration, and a decision of a majority of the said three shall be final, and all parties shall abide thereby." The board must meet within two days after grievance arises.

In an agreement between the unions and the Steam Schooners Managers' Association of April 27, 1903, the following provision is made for a permanent standing grievance committee: "A standing grievance committee of six shall be appointed, one from the Sailors' Union of the Pacific, one from the Pacific Coast Marine Firemen's Union, one from the Marine Cooks and Stewards' Association of the Pacific and three from the Steam Schooners Managers' Association, vessels not to be tied up pending settlement of controversy." This last case is the earliest instance of a provision providing for a permanent standing grievance committee. In most instances the grievance committee is convened for each case.

The following extracts taken from agreements are typical. The eighth article of the Pacific Steamship Company agreement, May 15, 1901, runs as follows: "Outside of the port of San Francisco, nine hours to be considered a day's work, the time to be averaged at the rate of six days to the week. Any work over that to be considered as overtime. Two hours will be allowed on Sundays and holidays. Any more work to be considered as overtime."

An agreement with the Oregon Coal and Navigation Company reads, in part, as follows: "Outside the port of San Francisco. After passing the outer buoy going into Coos Bay and while in there, nine hours to constitute a day's work, the time to be averaged, but for the first forty-eight hours (two days) only. Any work over that to be considered as overtime. Two hours' work to be allowed on Sundays and holidays; any more work to be considered as overtime. Work done at Port Oxford either going or returning, shall be counted in the regular sea duties and not considered in the hours of labor." In the first agreement it will be noted that nine hours are to be considered a day's work, "the time to be averaged at the rate of six days per week. Any over that to be considered as overtime." In the second agreement, "nine hours to constitute a

day's work, the time to be averaged, *but for the first forty-eight hours (two days) only*. Any work over that to be considered as overtime. The advantage of the revised wording to the seamen is obvious.

In this connection it would be well to look over an early agreement noticing in particular the wage schedule. The following is taken from an agreement with the Shipowners' Association, April 3, 1902:

"Sailing vessels trading to outside ports, per month, \$45; overtime 50 cents per hour. Sailing vessels trading to inside ports and bar harbors, in the States of California, Oregon and Washington, British Columbia and Alaska: wages per month, \$40; overtime 40 cents per hour. Sailing vessels trading direct to Marshall, Caroline, Ladrone, Gilbert, and Philippine Islands, Siberia, and Central America, per month, \$30. Sailing vessels trading direct to South America, China, Japan, Australia, Africa, New Zealand, and New Caledonian Islands, \$25. Vessels chartered in one port of the United States to load in another port of the Pacific Coast of the United States and British Columbia for offshore points, wages to be the same as on the coast until the vessel is loaded and cleared, viz., \$40 per month."

From the above it will be noticed that the wages vary from \$25 to \$40 per month, depending on the length of the voyage, location of terminals, and the like. The detailed and minute provisions for territorial variation should also be noticed. In the same agreement (April, 1902), we find this article: "No demand to be made for a lump sum rate of wages for any single voyage, and crews to be employed in loading and discharging coasting vessels either by themselves, or along with stevedore's gang or longshoremen. If, however, vessel is to be detained over seven days waiting for a berth, owner to have the right of paying off the crew." The ninth article of this agreement reads as follows: "In all cases where a vessel is bound for Puget Sound or British Columbia, to Australia, Africa, or West Coast, and proceeds from there direct, or via some other loading port to the Hawaiian Islands for discharge, the wages of the crew shall remain the same as stipulated in the articles until the vessel's arrival back to Puget Sound. If, however, the vessel discharges in the Hawaiian Islands and loads cargo for San Francisco, the crew shall then receive the rate of wages ruling

between the Hawaiian Islands and San Francisco." This last is a good example of provisions for different wages in different waters and different trips, or, in other words, territorial variation. The following is that part of the agreement pertaining to wages, which was entered into with the Shipowners' Association, October 21, 1902:

"If the crew is not furnished within forty-eight hours after written notice has been given to the union agent by the master, owner, or agent, the master, owner, or agent, may get crew elsewhere. Fares to be paid by vessel and wages to begin when men come on board." "Nine hours to constitute a day's work in all bar harbors and inside ports of the Pacific Coast to the north of San Francisco and all ports south of San Francisco and the Hawaiian Islands. Provided, that in the Hawaiian Islands and the South Sea Islands, laying in open ports, the working hours may be varied so as to begin not earlier than six a. m., and not later than seven p. m., but that in no case, unless overtime is paid, shall working hours exceed nine hours per day. Coffee time to be limited to ten minutes." "No demand to be made for a lump sum of wages for a single voyage, and crews to sign for the round trip, to be employed in the loading and discharging coasting vessels either by themselves, or along with stevedore's gangs or longshoremen. Whenever a crew is signed from a coast port to San Francisco and return, and vessel's destination is changed or vessel is laid up waiting for a berth, the master may pay the crew off at any time, but shall pay in addition to wages then earned, the fare back to port of shipment in money, unless crew shall agree to sign over for a new voyage." It should be noted in the last article just quoted that there is a change in provision stating explicitly that the fare shall be paid "back to port of shipment *in money* unless crew shall agree to sign over for a new voyage." This is a distinct advantage for the seaman over a similar agreement signed in April, 1902, quoted above.

This discussion would be incomplete, possibly misleading, without a final word relating to the present. The relations existing between the employers and the employees in the shipping industry, are just now, it seems, in a transitory stage. There is a tendency at present on the part of the shipowners, without any serious objections from the unions, to abandon the signed agreement which has

prevailed hitherto, and substitute for it what they style a "Tacit Agreement," which is about the same as the former signed agreement without the signature of the shipowners and the unions. At the present time the shipowners' association is under signed agreement with only one of the maritime unions of the coast, viz., the marine engineers. All the other agreements with the other organizations have either expired and have not been renewed, or have been abrogated by the association. The essential reasons for the association's action in the matter, as stated by their representative, may be summed up as follows: First, a signed agreement with a union means nothing because the union is not incorporated and hence not responsible. Secondly, the signed agreement has to be renewed periodically and the date of renewal is always preceded by numerous demands from the unions which if not granted, lead to a fight and "tie up." The shipowners contend that the signed agreement with the unions is of no value unless backed up by good faith, and that the good faith can be had just as well without the signed agreement and thus eliminate the objectionable features that go with it.

The unions have no serious objections to doing away with the signed agreement, because, in the first place, they have a practical monopoly of the supply of labor of the shipping industry and are so well organized as to control completely the men in the various branches of the industry. It is to be noted that most of the men who go to sea are foreigners coming for the most part from the northern countries of Europe direct to New York, the number reaching San Francisco by way of the Horn being comparatively small. The majority of those on the coast come across the continent, with the result that there is no surplus from which the shipowners can recruit their forces in the case of a strike, and a virtual monopoly of the supply of labor is enjoyed by the maritime unions of the Pacific Coast. The same fact that makes this possible, however, on the Pacific Coast prevents it on the Atlantic. The large number of immigrants constantly landing in New York and other ports of the Atlantic Coast makes it practically impossible for the unions to get control of the available labor force that can be employed on ships. The large number of immigrants constantly arriving from Northern Europe enable shipowners to obtain crews with ease at all times.

On the coast the only man who comes in contact with the seamen is the ship's delegate, who is a representative of the union. Whenever an order is turned into the shipowners' office for a man or a number of men, the order is handed to the delegate and he secures the men. In this way the delegate is the only man with whom the sailors come in contact and they naturally look upon him, a representative of the unions, as the chief factor in their employment. This condition of affairs, the owners claim, makes the seamen hold allegiance to the unions first and service to the shipowners second. For this reason they would like to dispense with the ship's delegate, but so far they have been unable to do so. To eliminate the delegate would necessitate a complete change of the system of securing crews as it exists at the present time, and, besides, the unions would not consent to it.

Under the new plan, since the signed agreement has been eliminated, the representatives of the unions and the representatives of the shipowners meet together and talk the situation over and decide on such terms as are mutually satisfactory. The shipowners then embody these terms in the form of a tacit agreement and issue them as their rules governing men in their employ. The unions do likewise, except that they issue them as their working rules governing the employment of members of the unions. This is a peculiar evolution of the wage scale agreement, but encouraging, inasmuch as it adheres to collective bargaining.

THE ANTHRACITE BOARD OF CONCILIATION

BY HON. T. D. NICHOLLS,
Member of Congress from Pennsylvania.

The Board of Conciliation for the adjustment of difficulties or disagreements arising between the employers and employees in the anthracite industry was established by the award of the Anthracite Coal Strike Commission appointed by President Roosevelt to decide the questions in controversy between the operators and mine workers in the strike of 1902. This award was based upon the demand of the miners for "satisfactory methods for the adjustment of grievances which may arise from time to time, to the end that strikes and lockouts may be unnecessary." The authority of this board is confined strictly to the settlement of questions "arising under this award." The commission doubtless found justification for an arbitration board in other trade agreements.

For many years prior to the award of the Anthracite Coal Strike Commission, no definite agreement covering wages, prices and other conditions of employment existed between the miners and operators. All employment was upon an individual basis. With rare exceptions, no definite wage schedule was maintained at the collieries, to which miners or operators could refer for a settlement of disputes as to what wages should be paid in certain cases. The workmen complained that the absence of a written or printed schedule of wages, prices and standards enabled the employers to reduce wages and increase the size of the car or ton.

The employers also claimed the right to pay various wages to those employed to do the same kind of work; sometimes employing new men for less than was paid those whose places they filled. This method would finally result in a general reduction of wages, and caused the demand for a minimum wage for each occupation; the employer to be allowed to pay as much more as he pleased in such individual cases as he deemed worthy. Many disagreements and strikes resulted because of the lack of a definite wage agreement between employers and employed. Security of standard

wages is very much appreciated by workmen generally, but liability to sudden reduction is the cause of suspicion and irritation. Contentment is engendered by security, and discontent by insecurity.

In some of the exceptional cases mentioned, definite wage and price schedules were adopted by agreement and printed for general use by the miners and operators. Very little friction has occurred in the relation of employer and employees over the questions definitely covered by said schedules, except where general demands for improved conditions have been made, as in the strike of 1900 and of 1902.

In addition to the question of wages, and prices for piece work, there were other matters which from time to time caused friction. The dockage system, under which an employee of the company judged the cars of coal as they came to the breaker to be dumped, and deducted from the price to be paid the miner, such portion of the whole as he cared to fix as a penalty for light loading or for impurities in the coal, was a continual source of irritation. There were charges that it was used as a more or less uniform method of reducing wages, and that docking-bosses were employed for that purpose. The system was undoubtedly abused in many places, and in those cases instead of causing miners to be more careful in loading clean coal, discouraged them and caused them to allow the crime to fit the uniform punishment. I was informed personally by a fellow miner, that having been docked unreasonably for some time, he became desperate and ordered his laborer to load up the refuse, which he had thrown aside, until the car was nearly full and cover it over with good coal. He expected to be charged with the matter and haled before the manager, but no notice was taken of the car by the docking-boss, the docking being as usual; proving that no real attention was paid to the condition of the cars and that the docking was uniform. The manager coming into his working place later on and asking where the refuse had been placed, was informed of the facts in the case. Instead of discharging the miner, he caused the docking-boss to be discharged for allowing a carload of refuse to pass unnoticed.

Trouble occurred at times over the question of whether or not a regular time for the noonday meal should be allowed the day wage men and boys employed in moving the cars throughout the mines,

the officials claiming that work should not cease while there were cars on hand to use, and the employees claiming that the chance to eat dinner was too uncertain and irregular. In the absence of a detailed agreement many other matters were the source of unrest and dissatisfaction.

A question that has caused considerable agitation for many years is the demand of the miners that wherever practicable coal should be weighed in the mine car and the miner paid by weight. This demand was reiterated in 1900 and again in 1902. In 1875 the state legislature passed a law providing that coal should be weighed and the miner paid by the pound, provided that no other method was mutually agreed upon by the miners and operators. This law has never had any effect, being entirely ignored and lost sight of, until its existence was discovered and brought to the attention of the Coal Strike Commission. The operators claiming that the proviso exempted them from paying by weight, inasmuch as miners continued to accept employment and payment by the car for coal mined. The argument made by the miners for the abolition of the car system was that they were expected to so load the car at the working place in the mine that it would have a minimum of six inches of coal built up above the top of the car by the time it reached the breaker, in some cases miles away from the working place. They claimed that with the jolting and settling of coal during its passage over the mine roads it was impossible to guarantee any particular condition when the car reached its destination. They also argued that in the endeavor to make sure that the car would have the required height of "topping" when it reached the breaker, they would very often heap on more than a sufficiency, but received no extra payment for the surplus. Then again, under the system of dockage for light loading, they were docked generally a minimum of a quarter of a car, although the topping may have been only one or two inches less than the required six inches. The demand for payment by weight was based upon the proposition that each miner would receive payment for the exact weight of coal in the car, and that this would do away with the unreasonable requirements as to topping, together with the dockage for light loading. Under the car system, miners working a short distance from the surface could load their cars very little over the height of topping required, and the car would reach the breaker in good condition. Those who

worked far away from the surface would have to load their cars with considerably more coal on the top, in order to allow for settlement while the car traveled from the working place to the breaker. The inequality is clearly shown, in that one miner would have to load more coal for the price paid per car than another, and yet be more liable to dockage for light loading.

The price of powder was also the subject of a long-continued agitation. The price usually charged for a twenty-five pound keg of black powder was three dollars. In the early eighties a reduction of twenty-five cents per keg was allowed, leaving the price at two dollars and seventy-five cents. The miners claimed that this powder could be bought in the open market for a little over one dollar per keg, and complained that they were compelled to purchase it from the coal companies at \$2.75.

For a number of years the miners had expressed a desire that their wages be paid semi-monthly instead of once a month, as was the rule of the region, with some exceptions in later years. The state legislature had endeavored to bring this about by legislation, but until 1901 the monthly pay continued to be the rule.

Organization

Realizing their utter helplessness in fixing wages for themselves by individual action, the anthracite miners have from time to time organized unions and united in making demands for certain wages and prices, and for the privilege of having representatives of the whole body negotiate with the employers as to the conditions of employment. These demands for collective agreements were generally opposed by the employers, and the disagreements often resulted in strikes. These movements did not always cover the whole anthracite region and while the miners of one section would strike the other sections might remain in operation. These sectional strikes were failures in most cases, and the necessity for a more general organization, including as members, the miners of the whole region, became apparent.

In 1900 the United Mine Workers of America made its first attempt to inaugurate a general demand for a wage agreement between the miners and operators of the whole region. Many miners would not join the new movement because of repeated failures of former unions, claiming that sectional struggles would again

bring disaster. Finding that they were unsuccessful in bringing the miners of the whole region into the union without a definite policy, the members in convention decided to make general and specific demands upon the operators for improved conditions. After this action, when it seemed that the demands would be insisted upon, a greater interest was taken in the new union, and many joined its ranks, thousands of them immediately preceding the day the strike was inaugurated. There were, however, only about eight thousand who had been members long enough to be reported to the national office. This strike lasted six weeks and was settled by the acceptance of notices posted by the operators of a ten per cent advance in the day wages and a reduction in the price of powder from \$2.75 per keg to \$1.50 per keg, considered seven and one-half per cent, accompanied by an advance of two and one-half per cent in the mining price.

The strike of 1900 settled the powder question, and in 1901 the semi-monthly pay day was instituted. The other matters were, however, left as they were, save for the general advance in wages. The operators had refused to recognize the miners' organization, and no agreement or wage scale was negotiated. In 1902, after a failure to agree upon a wage scale another strike ensued, lasting over five months and involving the whole region. The demands were similar to those of 1900 in that a definite and detailed wage agreement was requested. As before, the operators refused to recognize the miners' union and make an agreement with its representatives. This strike was finally ended by the appointment of the Anthracite Coal Strike Commission, with authority to settle the questions at issue.

Difficulties of the Board

The Board of Conciliation was instituted as a court for the interpretation of the award of the Anthracite Coal Strike Commission, or, in other words, to interpret an agreement between the miners and operators, for both agreed to abide by its terms. By the very limitations of the case, I judge, the commission was unable to see its way clear to go into the details of the matter and establish minimum wage rates for each occupation and fixed prices for piece work. Therefore, the award was only general as it covered these matters. It simply provides for those employed for

daily wages, "that from and after April 1, 1903, and during the life of this award, they shall be paid on the basis of a nine-hour day, receiving therefor the same wages as were paid in April, 1902, for a ten-hour day.

"And that an increase of ten per cent over and above the rates paid in the month of April, 1902, be paid to all contract miners for cutting coal, yardage, and any other work for which standard rates or allowances existed at that time, from and after November 1, 1902, and during the life of this award."

Now, while the authority of the board is limited to the interpretation and application of these general awards as they cover wages and prices, the cases which come before it concern actual concrete wages and prices. The question is: what were the wages and prices paid in April, 1902? The fact that there was no agreement or definite schedule of wages and prices in existence in 1902 which could be referred to for evidence, has been the source of many complaints, and has made the work of the board very difficult. Proof might be presented showing that a certain price was paid per car, but the size of the car left uncertain; the pay statements not showing the cubic contents of the car. Again, in a dispute concerning the size of new cars in use at a certain mine, there would not be found any document recognized by employer and employee as an authority upon the standard size of the cars in use. In one case where a new and larger car was introduced, a disagreement as to the price to be paid was brought before the board for adjustment. No standard could be ascertained from the evidence presented, as there were two sizes in use previous to the introduction of the new car. These cars were both being loaded for the same price. The case was disposed of by averaging the sizes of both old cars on the basis of their proportionate numbers, thus forming a new basis for the consideration of the relative increase in size and price of the new car.

A disagreement as to the wages being brought before the board, the operator might show that he had been paying various rates of wages for the same work in April, 1902, and therefore claim the right to pay either rate to the complainant, whether lowest or highest. Disputes as to prices paid for cutting rock, brought forth satisfactory proof as to the price paid in 1902, but left the thickness of the rock and consequent amount of labor

expended, a matter of uncertainty. The testimony of miners and operators was often in flat contradiction, and as oral testimony was very often the only kind of evidence, it made an exact disposition of such cases most difficult. These difficulties were, however, inherent in the matter because all proofs hark back to April, 1902, and not even then to a definite existing instrument.

The board has had some serious disagreements, but because both sides felt the responsibility of carrying out the main agreement, these difficulties were passed over safely. A number of cases were disagreed upon by an evenly divided board and referred for settlement to an umpire, as provided for in the award of the commission.

In my opinion, a general wage scale prescribing uniform minimum wages for equal occupations, hours of labor, and general methods in all matters of a general character, and providing that these general provisions should be incorporated in each local schedule, together with local mining prices and necessary regulations, would reduce to a minimum the number of cases referred to the Board of Conciliation. I base this opinion on similar conditions coming under my personal observation.

Notwithstanding the many difficulties which hamper the work of the Board of Conciliation, I believe it has justified the purpose of its existence. I do not contend that it has given complete satisfaction, for I have pointed out the inherent uncertainties as to facts in numerous kinds of cases brought before it for adjudication which would render perfection impossible. The board was established for the purpose of adjusting difficulties without recourse to strikes and lockouts. With few exceptions this has been the result. It has given stability to the agreement between miners and operators and continuous employment during its terms. The personal contact of the representatives of the operators and miners as members of the board has been beneficial to both interests and the public; for rough edges are smoothed, and unreasonable prejudice is dissipated by personal contact.

THE WORK OF EMPLOYERS' ASSOCIATIONS IN THE SETTLEMENT OF LABOR DISPUTES

BY JAMES W. VAN CLEAVE,

Chairman of the National Council for Industrial Defense, and Former President of the National Association of Manufacturers.¹

When the Board of Editors of *THE ANNALS* of the American Academy of Political and Social Science asked me to write a paper for them on "The Work of Employers' Associations in the Settlement of Labor Disputes," I felt honored. I have been familiar with the Academy's publications for years. Their contributors are men who speak with authority on the subjects which they touch. Everything which carries the Academy's imprint is studied all over the country by investigators and thinkers in the broad field which it covers.

As an employer for many years, as president of the National Association of Manufacturers for three terms, and as chairman of the National Council for Industrial Defense ever since its formation in 1907, consisting of 228 national, state and local organizations of business men, nearly all the members of which are employers, I naturally have had a good deal of interest in the question which I have been asked to treat. As all of us see, from the great number of labor disturbances of one sort and another in 1910, this question is becoming more and more an issue of grave national concern.

In discussing the question which is the subject of this paper it will be necessary to examine it on all sides, and particularly to avoid making the mistake of supposing that all the blame for labor disputes belongs to the workers. Let me quote here a few expressions from an address which I delivered at the annual convention of the Citizens' Industrial Association of America, held in Chicago, in December, 1906:

"As an advocate of fair play for everybody I will say a few words to-day to my fellow employers on our duty to give a square deal to our employees. We see socialists, anarchists and extremists

¹This article was written by Mr. Van Cleave just before his untimely death. It represents his last work. In him the Academy lost a loyal friend and a frequent contributor to its publications.—(EDITOR.)

of all sorts springing up in large numbers all around us. Let us question ourselves and learn whether or not we have had any part in generating these destructionists.

"As we all know, there are autocratic and oppressive employers. Judging by many of their acts they seem to believe that the relations between capital and labor are like those between belligerents in war. . . . With them every sort of aggression which they can perpetuate without coming into collision with the statutes is fair. These employers seem to think that they are justified in taking every advantage which offers itself over their employees, and also over the public.

"Of course this class of employers is far in minority. It is numerous enough, however, to reflect discredit and to inflict injury on the entire guild of employers. It is the one oppressive employer out of the one hundred who generates the wrath of the demagogues and their dupes. . . . This one sinner, therefore, becomes more of an enemy to the rest of the members of his order than he does to the element which he arouses into irruption.

"In several ways the labor unions have done good service to the workers. They have promoted a fraternal feeling and cultivated a spirit of mutual helpfulness between men in many sorts of occupations. They have aided in advancing the wages of workers, and thus have obtained for labor a large share of the profits which the cooperation of labor and capital have brought. As fair-minded men we must concede all this. I, for one, have no desire to take away any of the credit belonging to the labor unions for any of the good which any of them have done."

Holding these views, and believing that workers have as good a right as employers to organize, I welcomed combination among workers because of the opportunity for collective bargaining which it would offer. Manifestly it is easier for an employer to make a contract with a thousand workers in a body than it would be to do this with each of them separately. I think a large majority of employers hold this view.

But here a drawback enters: We must devise a way by which the unions shall be compelled to respect their contracts. They should be legally responsible so that the law can reach them when they break faith with their employers, just as the employers are punishable by law when they violate their agreements.

This untrustworthiness and irresponsibility in labor unionism is something of which I have had an embarrassing personal experience. A violation of contract by a portion of the employees of the Buck's Stove and Range Company, of Saint Louis, of which I am president, resulted in the boycott which the American Federation of Labor declared against us. Our company is an open shop. It employs men regardless of their membership or non-membership in labor societies.

A small number of our employees who belonged to a union wanted to work fewer hours than they had been working up to that time, and fewer than the rest of our employees were working. If we granted their request a corresponding reduction would have been rendered necessary in the hours of the remainder of our forces, who outnumbered the malcontents many times over. As this would have involved a curtailment of production which would have placed us at a great disadvantage as compared with our competitors in Saint Louis and all over the country, we refused their request. The matter was submitted to arbitration, but a general strike was declared by the local union before a final decision was made, thus violating a contract. A boycott was set up against our products, and the American Federation of Labor declared war upon us.

In defense of the principle that an agreement is binding for the term which it covers, unless it is changed by the free and amicable consent of all parties to it, we were compelled to strike back. We did this in a legal way. From the Supreme Court of the District of Columbia—the headquarters of the American Federation of Labor being in Washington—we obtained a temporary injunction, which was afterward made permanent, restraining the Federation from placing the name of our company on the "Unfair" list in that organization's publications. A sentence to various terms in prison was inflicted on certain officers of the Federation for disobeying the court's orders. On appeal the case of these offenders is now before the United States Supreme Court.

Thus my experience of the arbitrariness of some of the labor unions under their autocratic and anti-American leaders, and their disregard of pledges, give me an especial reason for urging the adoption of some means whereby the unions, as unions, may be made responsible for their acts. The experience of most of the other employers of labor on a large scale is like mine on this point. For

their own and the workers' interest employers should advocate the placing of full legal accountability upon labor unions, so that the duties and responsibilities, as between employers and workers, shall be reciprocal and equal. When this elemental demand of justice and fair play is met, employers will be able to exert much more influence in the adjustment of labor disputes than they have heretofore. As a class, employers are always glad to meet workers half way in settling disagreements regarding wages, hours of work and other conditions when the workers present their side in an amicable spirit, and when they give any assurance that their pledges will be kept in good faith. Industrial peace is to the interest of employer and employee alike.

In support of my assertion that, as a class, we desire to settle disputes with employees in a peaceable way, I will cite one of the planks of the "Declaration of Labor Principles," adopted by the National Association of Manufacturers in 1903.

"The National Association of Manufacturers disapproves absolutely of strikes and lockouts, and favors an equitable adjustment of all differences between employers and employees by any amicable method that will preserve the rights of both parties."

This is the creed of an organization of employers who represent more workers and more wealth than any other combination of men on the globe. Let the reader of these lines observe that the National Association of Manufacturers opposes lockouts by employers just as strongly as it does strikes by employees. To it the lockout is as objectionable as the strike. With this principle I have always been in hearty accord. I have been against strikes, lockouts and blacklists from the beginning of my days as an employer.

Manifestly the influence of the National Association of Manufacturers in the equitable adjustment of labor controversies has been far reaching. It has extended to thousands of employers outside of our organization. The same attitude is taken by most of the employers represented in the 228 organizations affiliated with us in the National Council for Industrial Defense. We have exerted our influence in a decidedly practical way. When the officers of the American Federation of Labor have, on several occasions, attempted to coax or coerce Congress into the enactment of laws which, in industrial disputes, would virtually have abolished the injunction and have legalized the boycott, representatives of our organizations

have appeared before Congressional Committees and in conference with Congressional leaders, and have given practical voice to the American hostility to class legislation of any sort. Thus the special favors which the labor union magnates asked from Congress were refused. Before state legislatures all over the country we have done similar work. Our influence was exerted in the same way in the Republican National Convention of 1908, where we defeated a plot by which the same elements attempted to commit that party and its Presidential candidate to the policy of licensing a favored order of law breakers in the community.

Thus we have aided in improving the relations between employers and workers, have assisted in protecting the non-union worker as well as the employer in the enjoyment of his rights, and, by example, have furnished to the intelligent and public-spirited members of the labor societies an incentive to curb the arrogance and rapacity of their leaders.

At the beginning of this article I quoted some expressions from an address which I made in Chicago in favor of peace between employers and workers. This necessity is greater in 1910 than it was in 1906. Business is more diversified and expanded now than it was then. Our manufacturers, to a steadily increasing degree, outrun home consumption. Coincidentally with the growing need of winning new foreign markets for our surplus products there comes a closer competition between us and the great industrial countries of Europe. For these and other reasons the establishment of industrial peace becomes more and more imperative every year. At the same time anything like extended peace becomes more difficult to win and to hold. Notwithstanding the hard blows which have been dealt to them by the courts in recent years, some of the labor leaders are getting to be more arrogant and aggressive than ever.

Philadelphia had an illustration of this truth recently in the street car strike and in the sympathy strike which followed it. Of course the latter failed. Always and everywhere sympathy strikes fail. Sympathy strikes are the quickest and most effective means of alienating sympathy from the strikers which the mind of man has yet devised. In Philadelphia, too, at a meeting of the American Academy of Political and Social Science, shortly after the strike, the head of the American Federation of Labor renewed his denunciation of the judges and the courts because the boycott has been

outlawed, because injunctions are still issued for the purpose, if possible, of averting irreparable injury, and because the courts refuse to draw any line of distinction between law breakers among employers and workers, labor unionists and capitalists.

These outbreaks of demagoguery place obstacles in our way in our endeavor to diminish the number and the destructiveness of labor disturbances. They tend to make labor union workers discontented and inefficient, and, in some degree at least, they increase the cost of living. Moreover, they give aid and comfort to the socialistic enemies of the existing order.

In the election of April, 1910, the Socialists obtained control of Milwaukee, which is the largest American city to come under their sway. At its annual conventions the American Federation of Labor has repeatedly voted against socialist propositions, but by many of its teachings and practices that organization has worked into the hands of the Socialist party throughout the country. In a large degree the words and deeds of the leaders of the Federation contributed to the election of Seidel, Milwaukee's Socialist mayor, and of its board of aldermen of the same class.

The maintenance of our whole industrial structure depends upon the efficiency and the reliability of labor, and the promotion of peaceable relations between employers and employed. As shown by a bulletin recently issued by the United States Labor Bureau at Washington, within the past two years thirty-two states have enacted fifty-four laws, or amendments to laws, in this broad field. This shows the importance of the subject. Some of these statutes, however, are calculated to harm instead of help our industrial interests, and thus ultimately to injure the element which they were designed to aid. This is particularly true of employers' liability laws, a few of which were enacted, and other measures in the same line which, though defeated or averted, in the sessions of some of the legislatures in 1910, are certain to be brought forward in the next sessions. Some of these statutes make employers' risks so great that they may be compelled either to reduce wages or to close their mills.

A labor measure was before the Massachusetts Legislature at its recent session, however, which had real merit. It provided that no strike or lockout in any activity in which twenty-five or more persons were employed could take place until the controversy was submitted to a competent tribunal and a finding had been made.

Thirty days' notice was to be given by employers or workers of contemplated changes in wages or hours, the case, in the interval, to be appealed to a regularly constituted tribunal, if requested by either party. In a general way this measure was based on a statute which has been in operation in Canada for three years, except that the Canadian law applies only to mines and public utilities. A powerful element of the people of the Dominion, especially the labor organizations, like the law so well (it has resulted in the peaceable settlement of ninety-seven per cent of the labor controversies) that an endeavor will be made to extend the statute so as to cover all industries.

On the other hand, the Massachusetts labor leaders, supported by the principal officers of the American Federation of Labor, opposed the measure when it was before the Legislature of that state. They did this on the ground that the privilege of striking suddenly, and without notice to employers or public, is a powerful weapon of coercion in the hands of the unions, and should not be surrendered. This is one of the many points on which the demands of the labor union chiefs conflict with the convenience and the rights of the community.

But in appeals of labor controversies to regularly or specially constituted tribunals the public should insist that these bodies be impartial as well as intelligent. They must be free from prejudice of any sort, must refuse to be swayed by the clamor of the demagogue or professional agitator, and must render their judgments with courage and absolute fairness to all interests which are involved. In these days of mobs and hired cliques this requirement of fearlessness and evenhanded justice on the part of boards to which labor controversies are submitted is imperative.

Employers, workers and the general public, however, should understand that no general or lasting industrial peace is possible except through the establishment and maintenance of the open shop. The recognition and the application of this truth form the basis of the success which has been won by the Saint Louis branch of the Citizens' Industrial Association of America, one of the 228 organizations making up the National Council for Industrial Defense. I can speak upon this point with authority, for I was one of the founders of the Association, and was the head of the Saint Louis branch from its organization in 1903 to the present day.

The Association was founded to aid, by all lawful means, the regularly constituted officials and machinery of the city, the state and the nation in enforcing the laws in our community, to establish cordial relations between employers and employees, and to work for the betterment of the city's material and social conditions. Primarily our program was educational, and only secondarily was it corrective and punitive.

At the outset the punitive part of our program was rendered imperative, and we aided in placing many law breakers, chiefly labor unionists and their accomplices, in jail or penitentiary, and sent many others into permanent exile. At the same time, through lectures by men of national repute on the various phases of the general subject of industry, economics and good citizenship, supplemented by leaflets distributed by the hundred thousand, or supplied at nominal figures, we carry on an educational propaganda which has brought a sweeping transformation in the entire industrial situation in the city and its vicinity.

As compared with other centers of its class throughout the country, the relations between employers and workers are more amicable; the open shop—open to union and to non-union men on equal terms—is more widely diffused; the number of strikes and other labor disturbances are fewer in Saint Louis than elsewhere. This is one of the results of the work of 8,000 of the leading citizens of Saint Louis, representing all parties, all religions, and all callings. What the Citizens' Industrial Association of Saint Louis has done in the past few years in establishing industrial peace in that city can be accomplished by the citizens of any other trade center by the display of the requisite intelligence, persistence, courage and tact.

WELFARE WORK AS A WAY TO PREVENT LABOR DISPUTES

BY TRUMAN S. VANCE,

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Welfare work is not a new movement, but has existed in some form or other ever since the first employer was willing to do a little more for his employees than he had to under wage and other contract stipulations. The name has been applied only since such willingness has crystallized into a well-planned and supervised work. Early efforts were often wrong in principle because they consisted mostly in giving for immediate need, regardless of whether that need was caused by misfortune or shiftlessness. The present form of work is more the giving to employees the opportunity to help themselves to better position and fuller life.

While welfare work has done much, and is destined, I believe, to play still greater part, in preventing labor disputes, the man that inaugurates such work with this for his purpose is foredoomed to disappointment. Welfare work belongs, not to the realm of expediency, but of love. One man may do very little, but in the spirit of unmistakable sympathy and intelligent interest he will establish an inter-feeling of good will and confidence that makes labor misunderstandings and conflict well-nigh impossible; another may have the most elaborate schemes of schools, kindergartens, and general uplift work and in the hour of extreme need find that all his efforts have been considered by his employees as a subtle means to keep them from demanding their rights. Sometimes the employee is right. Men are not wholly lacking in the industrial world who are willing to spend a few hundreds in a generous-appearing way to keep down a discontent that would cost them a ten per cent increase in wages; and again, the man adjudged by his employees out of touch and sympathy with them is often unfit to see more than his own side of the question. Such men are as great enemies to the cause of industrial peace and harmony as the harsh and overbearing.

The first welfare work with which I came in touch was of a crude and unnamed type. The Winifrede Coal Company was a Philadelphia concern with mines employing nearly a thousand men at Winifrede, West Virginia. The houses, while better than at most of the mines, were no better than good business sense would dictate building, the prices in the commissary department were no better than the average, and throughout, the enterprise was organized on a sound business basis that defended its policy of betterment against the charge of being Quixotic, as many mine operators at the time were inclined to regard it. In the center of the village, if a mining town scattered for three miles up and down a narrow valley can be said to have a center, was a little English-appearing church, covered with ivy and set in the midst of a well kept plot of grass. It was just a little bit of refinement that the roughest miner unconsciously revered whether he ever attended the services or not. Besides building it, the company added five dollars a Sunday to the scant support of the preachers of the three denominations who used the church. At a battered old building near by was a library where you could get very clean volumes of Ruskin and Carlyle, or very much bethumbed volumes of more doubtful literary merit, especially if they afforded colored pictures. A one-legged employee would stump solemnly down to the library three evenings per week and Sunday afternoons, and as solemnly stump about the room in what usually proved a futile search for the volume called for. Later the company built a good town hall and sent in troupes of Japanese acrobats and jugglers, readers, and better grade entertainers. It paid the cost of these beyond what crowded houses of employees and their families at small admittance yielded. But, like the library, the church and the five dollar spot of green in the preacher's financial desert, it was a token of the company's interest in them and it stood the company in good stead on more than one occasion during my connection with it as cashier.

In 1893, I believe it was, market conditions forced operators to reduce the price of mining from fifty-six and a quarter to fifty cents per ton. Practically all the miners in the Kanawha Valley went on a strike, though the labor in few was organized. Winifrede miners continued to work because they believed the company's statement that it could not pay more than fifty cents a ton for mining. Those of the other mines ordered them to join in the

strike. Their reply was: "You strike if you want to. We are going to dig coal." Then the rougher element of the strikers, 500 strong, marched against the Winifrede mines to compel their closing down. In anticipation of such a hostile move, the company had ordered fifty repeating rifles and as many employees had volunteered to defend the property. Twenty-six were sworn in as special constables and armed. Their determined stand prevented any violence but I shall never forget the thrill that went through me as I looked out of my window that night and counted seven men stationed at various points with the moonlight glancing from their rifle barrels. As an adventurous youngster I was spoiling for a fight and the thought of these men, whether they were right or not, being willing to risk their lives for the company in which they believed, made it savor of a war-time patriotism. The Winifrede mines ran straight through the strike and, out of appreciation of their loyalty, the town hall was given them and the entertainment course inaugurated. It was simply a case of the employer expressing an interest in the employees by doing something more than he had to, and workers believing what the company told them of market conditions.

The only other mine that ran steadily through the strike was the Campbell's Creek Coal Company, which was organized on a co-operative basis. The company took the first profits to the extent of ten per cent on a fair capitalization and the rest was divided among its operatives each Christmas in proportion to the total wage of each. Besides this they allowed the men to buy their homes on easy payments. When this strike was ordered the superintendent called the men together and said to them: "We made money during the first five months, but the market has gradually dropped during the last two months till we are losing money. We have cleared the company's ten per cent and \$3,800 to divide among you men. Now it is for you to decide for yourselves whether you would rather dig coal at two cents a bushel and let us clear about an eighth of a cent (you get back all we make anyhow, because we have our ten per cent made already) or will you run on at two and a quarter cents until you lose your \$3,800 already earned? When you get down to our ten per cent we will shut down or reduce the price." They decided, after a brief discussion, to accept the two cents, as all the profits would come back to them anyhow. If I remember aright they had a total of about \$7,000 to

divide among them the following Christmas, and this was the happy ending of what proved a disastrous year to both operatives and operators at most of the mines and all because the company had the forbearance to consider ten per cent as a legitimate share of the profits.

The causes of labor disputes are as often imaginary as real. Without doubt there are numberless cases of unfair division of profits, wages on one hand and dividends, on the other, being out of proportion to the service rendered; or conditions and surroundings of the workers may be needlessly bad. But often workers waste their wages in dissipation and are rendered surly and discontented by the thought that years of labor have left them nothing the gainer in anything. The welfare work done by the Young Men's and Young Women's Christian Associations in industrial fields very wisely lets alone the question of wages and dividends and confines their work to the betterment of environments and morals. While I was employed looking after some cotton mill work in the South, there came to me confidential reports of a marvelous work being done in some construction camps along the line of the Chicago, Milwaukee and St. Paul Railroad's extension to Seattle. Soon one will travel smoothly along this route to the Pacific, with all the comfort of modern travel. Great bridges will attract but passing attention, tall trestles and long tunnels will cause less wonder than annoyance at their frequency; but here for many months thousands of men beside the great rivers and among the mountains builded and burrowed and dug and died at the battle front of industrial progress. Hardship and monotony made the life of all a desert; saloons, gambling places, and fallen women made it a hell. Sunday was not observed because it would have been a day of dissipation likely to prove but the beginning of a prolonged spree to many.

The first point at which work was taken up was Pontis, South Dakota, where some 500 men were building a \$2,000,000 bridge over the Missouri River. Every bunk house was full to overflowing and many sleeping in box cars, but the company agreed to send up an old passenger coach to be used for Y. M. C. A. purposes. But the biggest asset of the work was the secretary, Mr. Morrison, whose vigorous and novel methods of work made equipment a secondary consideration. Allow me to quote from International Secretary Day's report:

"I found there was no one in charge of the mail for the camp, and as a consequence it was brought from the little post office at Flora, two miles away, at irregular intervals and dumped on to the counter where were sold tobacco, overalls, etc., with the result that in such a promiscuous mess it was a common occurrence to have letters lost or the envelopes worn out before they reached the owner. Then, too, it was impossible for any one to register a letter or secure a draft from the bank at Mobridge, which was the only way for them to send money home, without losing a half day's work, so I suggested to Mr. Morrison that he immediately take charge of the mail in the camp, build pigeon holes for the letters and provide boxes for papers, etc., and also offer to register letters for the men and provide them with postage and other conveniences. We also got out immediately a large quantity of letter heads and stocked up with pens, ink, etc., and provided every bunk house with suitable writing materials and urged the men to write letters home, offering to mail them twice a day. The effect of this was that even the foreigners who could not understand our language could understand our kindness, and they felt kindly toward Mr. Morrison. The result of this work was that the number of letters written home increased three-fold immediately.

"The car was set on a piece of track at a convenient location in the camp and fitted up with electric lights, supplied by the local plant. The company also kindly built a storm shed, on one end of the car, putting in small tables for reading and writing, provided hard coal for the two stoves in the coach, and extended every courtesy possible to assist in making the work a success. A good list of magazines and papers was provided; also checkers and chess.

"From the day the coach was opened it has been used to its full capacity. It is open constantly, and men are always found there. Sometimes as many as fifty at a time, reading, playing checkers, chess, etc. Gospel meetings are held in the car on Sunday nights, and although it seats but fifty, as many as 100 men would crowd into the car for these services. After a short time the Sunday services were transferred to the camp dining-room, where they were largely attended. A stereopticon and talking machine were provided and are in constant use, some social affair being conducted every week. I visited the camp about the middle of December and

gave the men a stereopticon talk. Over two hundred and fifty crowded into the dining-room, filling every bench, some sitting on tables and all as orderly a congregation as one would find in a modern church. At the close of my talk I thought it would be well to try to get the men to sing as a fitting close to the evening's service, the only song I had with me. 'Yield Not to Temptation,' and when Mr. Morrison threw it on the screen such singing I have seldom heard. They fairly made the windows rattle. I closed the meeting, or thought I had, but the men did not move, and some one called out: 'Let us sing more.' From the only song book in the camp, an old 'Gospel Hymns,' we sang there an hour, the men calling for hymns such as 'Rock of Ages,' 'Nearer My God to Thee' and 'Where is My Wandering Boy To-night.' When I saw how late it was getting I announced that we would sing one more hymn and then close to let the cooks have the room to arrange for their early breakfast. One of the men, an employee of the 'bull gang,' leaned forward and in a half whisper said, 'Don't close, partner, until you pray for us,' and I did pray as earnestly as I knew how for those hundreds of hungry-hearted men into whose faces I was looking. As we went out into the moonlight one of the men asked me to go to his bunk house and talk with his partner who had gotten to gambling. I rather protested that it was a delicate matter to go into a bunk house occupied by so many men to talk upon that matter, but he insisted that I should go with him and I did so. As we approached the bunk house he explained that we would find them all gambling, but he said, 'Don't you be afraid to talk to them, for it will do them all good.' To his surprise, we found upon our arrival that there was no gambling going on in the bunk house, and he exclaimed, 'Well, I'll be——partner, your meeting knocked out the gambling to-night.'

"His partner proved to be a strapping big fellow of about twenty-five, and he yelled to him, 'Come here, Bill, I brought this fellow over to talk to you about your gambling.' It is needless to say that I was somewhat embarrassed, as six or eight other men sat about the table smoking. However, I began to get acquainted with 'Bill,' in the meantime edging toward the door, and soon got both men outside where we had a real heart-to-heart talk over the whole matter, with the result that when I left they had covenanted together to both 'cut it out.'

"Several barrels and large boxes of books have been sent from various points on the road, and carried free by the company for use not only in this camp, but this matter is carried out along the line for 150 miles by the secretary and distributed in small camps in which are quartered about 1,000 men in addition to those at the bridge. This is greatly appreciated, and the men frequently write in, urging that more reading matter be sent them.

"Although the attraction of the car kept a good many men from Mobridge on the next pay day, which occurred December 24th, a large number of them went up there, and with money in their pockets and the Christmas spirit in the air, it is not altogether strange that a good many got 'roaring drunk.' Morrison did not lose his head, but started for Mobridge, and when men would get drunk he would get them into a rig and haul them down to Pontis and put them to bed in their bunks. Among others whom he took care of in this way was a little Irishman who had started in to lick a fellow about twice his size, and was making splendid progress when Morrison stopped him, loaded him into a wagon, packed him off to camp and put him to bed. Before leaving him, Morrison secured a promise that he would come around the next day and sign the temperance pledge. True to his word, he showed up about seven o'clock at the bunk house where Morrison was then sleeping. Pounding on the door, he told Morrison he had come to take his pledge. After he had signed it, Morrison was hesitating whether to pray with him or not, as it was a little embarrassing because of the presence in the room of six or eight other men, most of whom were surveyors. While he was waiting undecided what to do, there was another knock on the door, and a big engineer who runs the carrier, a machine which is used in erecting steel beams, walked in and told the secretary that he too had come to take the temperance pledge, 'for,' said he, 'I'm sick of the life I have been living.' After signing the pledge he reached his big hand across to Morrison and said, 'Mr. Morrison, I mean business. I want to go all the way with this thing and I want you to pray for me right here.' They knelt beside one of the bunks and both of them prayed most earnestly for God's help in saving this man to the uttermost.

"As they arose from their knees, the little Irishman who had been looking on piped up, 'Boss Morrison, ain't yer goin' to bless me off too?' 'Certainly I will,' said Morrison, and they got on their

knees beside the bunk and prayed that Mike might be thoroughly saved and kept from his old life. As they arose the six surveyors came across the room, and taking both converts by the hand assured them of their sympathy and help in their new life—the first converts of the Pontis Railway Construction Camp.

“One of the worst evils of these camps is the cashing of pay checks in the saloons. This is a great convenience to the men, because they cannot go to town and get their checks cashed at a bank without losing a half a day’s work. The result is, that they go to these places after work is over, and the saloons always make it a business to have money on hand for cashing these checks; they invariably get a considerable part of it back in the drinks, gambling and other evils which are found at such places. I was able to induce the banker to send the money to the Y. M. C. A. car on the condition that the Y. M. C. A. secretary guard the money, for it is a risky thing to carry money three miles in a buggy in that country where every man is a law unto himself. At the appointed hour Morrison appeared at the bank mounted on a ‘calico’ bronco with a six-shooter in his belt, escorted the money to the camp, where he guarded it while it was being paid out; at the same time he urged each man as he received his money to deposit a part of it with the banker, and as a result over \$2,000 was put back into the banker’s hands to the credit of those hard-working men—making over \$8,000 which these men have been induced to save or send home in three months that Morrison had been there, four times as much as they would have saved before. It had been customary there for several months to have at least fifty drunken men in the camp, immediately following pay day, and it was an established rule that the cooks would get drunk. The first time the checks were cashed by the Y. M. C. A. there were but two drunken men in the camp and none of the cooks were drunk, much to the surprise of the management, and I imagine to the disappointment of the saloons at Mo-bridge.

“Upon my recent visit to Pontis, I asked Morrison about his list of ‘D. T.’ men (delirium tremens) and found that he had but two on the list, one of whom was Dan, the hostler of the camp, a genial, big-souled fellow who always boozed after pay day, and never had been able to keep sober for a month at a time. As usual, Mrs. Morrison was fixing up poached eggs, toast and other deli-

encies for this poor fellow, which Morrison took to him in his bunk, showing him other kindness in the way of attention, and as soon as he was able to be out again they invited him over to their one-room home for supper. As they sat about the table the sight of the two little boys, three and five years of age, and the home touch which only a woman can give, greatly impressed Dan with his need of living a better life. After supper the conversation led to his spiritual condition with the result that before he went home he had knelt with the family and accepted Christ as a personal Saviour. That was over a month ago and the change in Dan's life is one of the modern miracles which has made a deep impression upon the men in that camp.

"A few days ago Mr. and Mrs. Morrison invited Dan and a friend of his, named George, to take supper with them. When they sat down to the table, George did not begin eating, but hung his head. Dan asked him if he was not hungry, and he replied, 'Yes, but I can't eat anything for I am so ashamed.' Mr. Morrison urged him to eat something, but he only replied, 'I am too ashamed of myself.' It seemed to Morrison that now was the time to present Christ, for it was evident that this was his great need, and he urged him then and there to take Christ as a Saviour and keeper, and when the question was put straight to him as to whether he would do so, he replied, 'Yes, I want to be like Dan.' The supper was stopped and Morrison, his wife and the two little boys, and Dan and George all went on their knees in prayer, and when they arose George had won the greatest victory of his life. Dan went around the table and putting his arm about George's neck, said, 'Now, then, we are two of a kind,' and supper was resumed and finished. Mrs. Morrison's loving interest in and sympathy for these sin-tempted men had much to do with winning them for Christ. When I suggested to her one day that I thought she was a heroine to make the sacrifice which she is doing to live in such an isolated camp as that, she replied, 'Heroine nothing. If these other women in camp (five or six wives of employees) can live here simply to make money, it certainly is no sacrifice for us to live here for a higher motive.'"

Lack of patronage closed several of the saloons at Moberge and an enforcement of the law forbidding a saloon within five miles of a construction camp rid the town of the rest of them.

When the bridge was finished, the car was sent up and down the road serving a number of points in the same way. Camps at tunnels that required long periods of work were provided with temporary buildings for social, educational and religious work. Foreigners were taught English; Americans given courses in everything from English literature down to the rudiments. College men, one an LL.D., of Ann Arbor, were really plentiful, cast up by dissipation's tide and they celebrated a new life by teaching night classes, leading debates and aiding in social work, and thus among the greater number in the camps the dead monotony of the life was broken by clean recreation and mental improvement instead of wild abandon, and the cause of industrial peace and good will enrolled the men of real leadership along a great railroad system.

But why give more instances? As our old chemistry professor once said to a student who accused him of not having read all his rejected thesis: "Mr. Gaines, one doesn't have to eat a whole ox to know whether the beef is good or not." So from the great mass of good that is being done among employees I have given but one instance of modern welfare work that analyzes high in helpfulness and hopefulness. It seems that men are beginning to apply the Master's teachings to the industrial problem. He once said that we should treat our fellow men as we would have them treat us. Men recognized the wisdom and goodness of this and called it the Golden Rule, but unfortunately they put it by in a sort of glass case of impractical veneration, to be seen and admired, but not to be used. It is to await the arrival of the golden age it is believed; while, in reality, the golden age awaits a sensible use of the Golden Rule. We have been using the Iron Rule, a standard very like a carpenter's square, with one long and one short end, and labor disputes have too often been the result of each side trying to hand the short end of it to the other. Welfare work simply says there is a better rule and has shown that it is practical.

THE SYMPATHETIC STRIKE

BY C. O. PRATT,

Chairman, General Executive Board of Amalgamated Association of Street and Electric Railway Employees of America.

The sympathetic strike judiciously used is a potent weapon for good. Arbitrarily used it is dangerous and would result in a calamity. Self-preservation is the first law of nature. In order that the smallest amount of injustice may result we have a government which is supposed to guarantee equal rights to all and special privileges to none, and every citizen is guaranteed the right to life, liberty and the pursuit of happiness. The centralization of wealth in the hands of unscrupulous employers who have studiously entrenched themselves, has changed these conditions to the extent that the interests of individuals are entirely lost sight of. Instead of a government of the people, by the people and for the people we discover, in some instances at least, that we have incompetent municipal officials who are as putty in the hands of those who mold and control them for the benefit of private interests.

As an illustration of a condition that warrants a general strike, the recent street car strike of Philadelphia affords an example. The political and transit interests in this city are so interwoven that each has tried to serve the other's interest regardless of the rights of the people. A year ago the street car men of this city established a union for their elevation and self-preservation. The political interests immediately sought to control the votes of these men and use them as an asset to their political intrenchment. Paid spies and detectives were worked into the union, but notwithstanding all the efforts made, the carmen were not to be controlled. Because of this, immediate plans were begun to exterminate the union and its leaders who were unwilling to surrender their political freedom and become a part of a machine which has for its purpose the perpetuation of its political power and domination.

To sum up the situation briefly, it can best be described by a statement that I am creditably informed was made by a representative of the political-transit interests prior to the strike. "The car-

men's union is going to be exterminated. We have been successful in electing a district attorney and the courts are at our disposal. The city administration is absolutely with the company and the cars will be run even if necessary to man them with the firemen and policemen. The state constabulary is also at our command and the newspapers have been bought up. Through the company's press agent we have discredited the carmen's union with the people and they will not have public sympathy. We are going to force the strike at a time of the year when the weather is most inclement and that will further incense the people against the carmen and they will also practically be compelled to ride in the cars."

The company's secret detective force, augmented by the city's detective force attempted bribery, intimidation and coercion. Kidnapping and spiriting to Moyamensing Prison in order to discredit and besmirch the character of the carmen's representatives were also resorted to. This was the elaborate programme mapped out and worked out for weeks before the strike took place. Trickery and treachery were resorted to in attempting to negotiate a settlement that would of itself destroy the union without a strike. Finally, wholesale discharges of the oldest and best employees of the company "for the good of the service" forced a lockout. Imported armed thugs by the trainload were dumped into the city to incite riot and to shoot to kill. It is currently reported that practically the entire Pinkerton detective force was also turned loose, the state constabulary were brought in, "Brownie" policemen were recruited from Bowery and Tenderloin districts, and well-known thugs and criminals were uniformed and given guns and clubs.

The manufacturers and merchants and business men's associations all over the country poured in telegrams endorsing the gigantic conspiracy of the political-transit combination, pledging moral and financial support and commending the company in their refusal to arbitrate. Polished perjury by men of high rank was indulged in an effort to misrepresent the strikers and place them in a false position before the public. This was a part of the gigantic "sympathetic" combine of capitalists, employers and professional politicians who were determined to destroy every vestige of the carmen's union.

It was an unequal contest for one organization of labor to meet single-handed, deprived of every weapon of defense, and practically pinioned as a target for a hired band of strikebreakers who were put

upon the cars, and the city's blue-coated police, wrongly called minions of the law. There was a total disregard of the rights of the people by the city officials, who ignored and violated their oath of office (notwithstanding the fact that the city has a contract with the traction company, which makes every citizen an interested party to a controversy which involves their welfare). After a week of most cruel and unwarranted strife, there was an open revolt on the part of the wage-earners, organized and unorganized alike.

Why should not the wheels of industry be stopped in the face of such a conspiracy as this? Should working men and women continue at the wheel and turn out profits for their employers to be handed over to the gangsters for the purpose of destroying their fellow-workers and simply await their turn to be selected for the sacrifice later on?

It is claimed in their last year's report that the United States Steel Corporation realized a profit of \$600 as an average off of each of their employees, yet a large percentage of their employees receive less than \$500 for their entire year's labor. How can a wage-earner support a family decently on that amount? Surely he cannot afford to give from that small pittance to assist a fellowman on strike. The employer takes all of the profits and, therefore, so long as his business is not interfered with he can contribute that profit to another employer who has a strike on his hands. When the wheels of industry are stopped the profits to the employers cease, they then have financial losses of their own to meet and cannot give money to another employer to assist in destroying a labor union and forcing down wages.

The general strike in Philadelphia was a decided success. Without it the carmen would have failed. Public sentiment would have died out, for the people would never have understood the true facts as there was not a newspaper in this city that ever published them. It was an educational movement that enlightened the people to an extent that could not otherwise have been done. They witnessed the desecration of the stars and stripes by the city police. They saw innocent people arrested and railroaded through the courts. Drivers were not permitted to carry passengers in their vehicles. Meeting halls were raided and wholesale arrests were made without right or reason. They saw city officials deny the people their constitutional rights, defy and set aside all law, and prostitute their oath of office.

The general strike was positive evidence before the world of the justice of the carmen's cause, and there was no other way by which this fact could be established. The truth of the actual conditions became generally known and understood. It was a test and an evidence of the loyalty of the working class of people to the principles of our republican form of government, and proved conclusively that they can be depended upon to defend justice and right and the preservation of our constitutional liberty against any foe.

Our forefathers acted in sympathy when they threw off the yoke of tyranny and fought for the establishment of a government of the people, by the people and for the people. Our own fathers, many of them, from '61 to '65 did not stop to ask if they had contracts with their employers when they went to the front to fight for the preservation of the union and eventually the freeing of the chattel slave. Nor did they stop to question whether such an action would injure a friendly employer. There was a paramount issue involved which surmounted all other questions that were insignificant in comparison. So it was in this strike. The combined employing interests, controlled by a corrupt political ring which deals out special privileges to one class and attempts to terrorize the other, demanded the complete surrender of the rights of the working class. In this they failed, and their failure was due to the sympathetic or general strike, the fruits of which are yet to be more fully realized.

It is true that the innocent often times suffer with the guilty, but the object is to obtain the greatest good for the greatest number. The chattel slave owners were made to suffer and were financially ruined. The wage slave owners of to-day are often more brutal and intolerant than were the chattel slave owners. The system may operate differently, paid spies, the blacklist and the prison are used, while the professional strikebreaker acts as the modern slave driver armed with blackjack and gun instead of the rawhide and the whipping-post of former days.

A strike can best be settled before it actually occurs. If the employers and the employees are not sufficiently broad-minded to meet in conference and work out a satisfactory adjustment of differences, then voluntary arbitration should be entered into. Especially is this true where a quasi-public corporation is involved

which affects the entire community. If let alone the Philadelphia Rapid Transit Company would never have permitted this strike to take place, but under the political lash they were compelled to say "there is nothing to arbitrate." The director of public safety is a heavy stockholder in this company. Why should he not use his public office to protect his private interests, politically as well as financially? Other politicians are deeply concerned in the financial interests of the Philadelphia Rapid Transit Company. The official head of the city was quoted as not believing in arbitration, either in the settlement of industrial disputes or in disputes between nations—that they must be fought out. A so-called contract exists between the Philadelphia Rapid Transit Company and the city, which permits the city to have three directors upon the company's board of directors, the mayor is one, George H. Earle, Jr., was another and William H. Carpenter a third. None of these men ever advocated or urged arbitration.

Net results, thirty innocent lives crushed out under the wheels of cars that were operated by incompetent and unskilled men. No one knows how many hundreds of accidents occurred that will cripple or maim people for life, nor is it known how many were shot and killed during the strife. Some one is responsible for that senseless strike, and the wanton sacrifice of life. Nothing was gained by the company or the political interests. Indeed, both are in worse repute and both on the verge of political as well as financial bankruptcy. The carmen's union is back to work for the company without having sacrificed its political freedom. The great civic awakening caused by the general strike is yet to be taken into account. The benefits that will result therefrom will be immeasurable. Organized labor in this city has been increased by at least 20,000 members and the work is still continuing with rapid progress. Wages throughout the entire community have been advanced, and other employers have modified and improved working conditions to an extent unequaled at any previous time. Unionism was placed on trial. All over the country unionism was victorious. No demands were made upon the traction company by the carmen, no question of new conditions was involved. It was the breaking of a contract by the company made and entered into by the two contending parties last June. It was a prearranged lockout of the union. Senator McNichol and the Mayor had pledged that if the June con-

tract would be accepted by the carmen at that time that they would guarantee its fulfillment by the company. What a reflection upon their guarantee! What a double cross!

A thorough organization of labor directed by wise and conservative leadership is the strongest fortification that can be established for the preservation of our republican form of government. It is the strongest guarantee that our constitutional liberties will be protected and perpetuated. Without such an effective balance of power we will become a judicial monarchy controlled by selfish moneyed interests that will lead the nation back to the oppression and tyranny that our forefathers fought against and from which they successfully escaped.

STATE AGENCIES FOR DEALING WITH LABOR DISPUTES—THE EXPERIENCE OF NEW YORK¹

BY JOHN LUNDRIGAN,

Chief Mediator, Bureau of Mediation and Arbitration, Albany, N. Y.

It is to be assumed that we are all practical men seeking a practical solution (perhaps improvement would be better) of the existing relations between employers and employed. Therefore it is well to look over the record of past experiences with a view to pointing out the obstacles encountered and with the hope, and in some degree the expectation, that at least partial remedies may be suggested.

Governmental, provincial and state laws are enacted, construed and executed—I almost said in a spirit of confusion—to say the least, without any active consultation or co-operation between the separate government agencies. For instance, we find twenty-five states having some form of statute law dealing with this subject and charging its execution or enforcement to certain state officers, the provisions of no two statutes being alike. Titles of officers, together with their methods of procedure, compensation, number of executive officers, etc., are so out of harmony or proportion that they might well cause one unfamiliar with our general system of government to wonder whether the several states occupied harmonious or antagonistic governmental relations with each other. The blame or responsibility for this condition rests on no one and nowhere in particular because of the fact that until within the present generation there appeared to be only few occasions when it seemed either wise or necessary that the government should interfere directly with industrial relations between employer and employed.

With the latter-day growth of industrial effort through the consolidation and amalgamation of productive agencies represented by the employing interests as well as the employees' unions and associations, we are face to face with the fact that industry has

¹Extract from an address delivered at the International Convention of Arbitration Commissioners in Washington, January, 1910.

eliminated state lines in every sense of the word so far as development and direction, I think I could say control, are concerned, subject only to certain police powers and taxation for that portion of its plant or capital within certain state lines. The workingman's combination or organization has long been interstate, but really more intrastate or local, in character than most large employers, owing to the generally known fact that especially in matters which might result in an interruption of industry in the form of a strike, the smallest factor, that is, the local organization directly concerned, must exercise original jurisdiction or decision and its course of action be sustained by the national or international body; whereas in the case of an employing corporation which is apparently a state corporation having plants or facilities in other states, the controlling corporate authority can at its pleasure cause the cessation of industry in any of the states where it operates.

Then comes the third estate, the general public, which is made up very largely of employers and employees. This interest is supposed to be the special charge of governmental agencies, and its welfare and protection their first duty. What the public as a whole seems to want at this time is publicity. That is, as I understand it, positive, accurate, public official information. Believing that when this is promptly had public sentiment will compel a reasonable solution, my judgment conforms to this idea, at least to the extent that if the expected relief does not ensue, government will have at hand the necessary information to create and apply such legislative and executive remedies as conditions warrant. No one will fail to grasp the necessity for co-operation and uniformity in both manner and method of carrying out this principle. For instance, in the case of a corporation engaged in telegraph, telephone or express business or the manufacture of steel, iron, paper and many other commodities, the corporation may be a state corporation with its executive offices in one state and its productive departments and energies in several other states. It is possible that a large part of the industry may be interrupted on account of a strike or lockout, and that there may be no interruption in the state where executive authority exists. Under such circumstances at the present time there is no possible legal method of securing accurate information. I doubt whether or not one can be established except through federal authority, although it might be

possible if all state agencies had the authority to investigate now vested in some of the states to conduct a co-operative investigation, *i. e.*, each state investigate that portion of the industry involved which was actually within its own jurisdiction. Here will be seen the necessity for uniform authority and especially uniform methods, together with actual co-operation with the other state governments and the federal government as well. We should also do everything in our power to encourage and secure the assistance and co-operation of any and all civic bodies which are not engaged in open warfare on the principle of industrial collective bargaining as well.

In the first place, there should be written into the public records of our national industrial life definite information, commonly termed statistics, showing the loss of industrial energy caused by strikes and lockouts, together with causes, methods of termination, etc. It may be contended that this is done at present. My answer is, this information is at best collected and computed without any reference to uniformity of system or method as between separate states or subdivisions of government. It is true the federal government undertakes to collect and compile this information at separated intervals, but it is nearly always confronted with the situation that the dispute and very often the direct participants, especially the representatives of the employees, have passed into oblivion before the work is undertaken. I strongly urge the importance and value of uniform methods in both collection and compilation of statistical information on this subject and recommend that a committee be appointed to consider the systems now in vogue with the object of recommending to this conference, or later to the participants therein, methods which will have a uniform basic principle and as nearly as possible similarity of detail.

The logical sequence to this recommendation is also an argument for, in fact demonstrates the necessity for, co-operation between separate state boards and federal departments in the collection of information with reference to disputes interstate in character, as, for instance, the national strike of telegraph operators three years ago, the International Paper Company strike of last year and the hatmakers' strike of the year just closed. I venture the opinion that no bureau or department has or ever will have reasonably correct statistical data on those or similar disputes, mainly

due to two causes—lack of uniform methods and absence of co-operation, as well as dearth of resources. Hence I trust this conference will, so far as possible, encourage and promote the principle and practice of co-operation between the several states and with the federal government.

Practically speaking, we will now assume we have discovered the existence of a strike or lockout. We have provided and are putting in practice a comprehensive system or method of securing and compiling the statistical information. Other states in which a portion of the industry may be located are co-operating with us in this direction. But what about making an effort to terminate or adjust the dispute? Every man who has had practical experience will join in the contention that there is no hard and fast rule to go by, and in the light of experience I cannot refrain from suggesting a comparison which occurs to me, inspired by the remark of an old consulting physician in a case of serious illness. He looked the patient over carefully, asked numerous questions and later said: "Well, the patient is going to recover, but," he said, "do you know, I would give up the business of a consulting physician if I could afford it, because I am scarcely ever called in until there is no help for the patient and when death ensues, I head the list of physicians in attendance." So with the public official; he is not wanted, often not tolerated until one of the parties to a dispute is at the end of his other resources, then said party demands that the public agency interfere, but the other party says the dispute is dead. That is human nature, I might say human selfishness—possibly human suspicion—and after all, we might present the same attitude in the other fellow's place.

Consequently the public official who seeks to intervene in labor disputes with the limited authority at present vested in such officials must conduct a continuous campaign of demonstration to his constituency, embodying the positive propositions of ability, courage and integrity; ability standing for actual and practical knowledge on the general subject of industrial disputes and courage to demonstrate that fact, prepared after reasonable inquiry to make some positive recommendation or suggestion to meet or overcome the questions in dispute and, if necessary, to take the responsibility for criticising the position, attitude or contentions of either or all parties to the controversy. It goes without saying that no one

who has the appearance of prejudice or bias, or whose personal or official integrity is even doubtful, can engage successfully in work of this character. Summed up, there is no place in an industrial dispute which has assumed the form of a strike or lockout for a public official who has neither the ability to recommend some reasonable method of solving the problem presented nor the courage to present it.

This brings us to the stage where mediation and conciliation have failed, and what then? It seems to me that depends on the character and importance of the industry. If it be of a public or quasi-public service character, necessary to the welfare, comfort or convenience of the general public, there should be forthwith a thorough public investigation conducted by the state or governmental body having jurisdiction in the premises. And, by the way, state and national statutes should be created or strengthened so that either the federal or state government should have jurisdiction in every such situation. I am firm in the belief that if it were a generally accepted fact that a full and thorough official investigation of every important strike and lockout would be promptly made and a formal finding and public official recommendation ensue, a very material reduction in the volume of such disputes would be effected.

But, my friends, *here is the rub*. It takes time and money to conduct investigations. As a matter of fact, it takes time and money and tact and patience and oftentimes self-restraint to do almost any of the things indicated in the mystic words, "conciliation, mediation and arbitration." Have we said, or can we say, that, given so many more dollars, we will return it manifold to the state through minimizing interruptions to industrial energy? Whether or not such statements would be credited is another matter. In any event, it is a foregone conclusion that a percentage of our people would immediately raise the question of governmental interference with individual or property rights, which could well provoke the retort that labor disputes are about, if not quite, the only phase of human existence or endeavor in which government does not now interfere and, I might add, while I am at this time opposed to compulsory arbitration, industrial disputes are about the only form of human contention in which government does not arbitrarily compel adjustment.

Then we always have with us the individual who insists on preserving the autonomy and authority of the state. I would have no objection to his contention if the factors composing our industrial life were confined to state limits or jurisdiction. We all realize this to be not only an impossible proposition, but an undesirable one as well. We are in an age of combination, the doing of things collectively, especially as applied to industry, and it stands to reason if there is to be any effective supervision or regulation it must be collective or at least co-operative in character. As a matter of fact, in nearly all large avenues of employment, especially those that are public or semi-public service in character, the individual employer has given way to the corporation, which is a creature of government. I can see no good reason why, when through the medium of a labor dispute an industry controlled by a corporation is suspended or seriously impaired in operation, the stockholders, to say nothing of the public, are not entitled to know the cause thereof. It would also seem that this knowledge would be of great importance to the legislative branches of government in order that if legislation were advisable or necessary it might be based on reliable information.

Turning to the federal department of labor and federal legislation on this general subject, I believe no one at all familiar with the recent industrial history, especially the two critical situations on the railroads, first the so-called Western Association dispute three years ago and a year later the dispute on the railroads in the South, will other than thank Providence and the United States Congress that we had such a statute as the Erdman Conciliation Act, and it might well be said, such capable men as Commissioner of Labor Neill and Chairman of the Interstate Commerce Commission Knapp, to administer it. Inasmuch as this is practically all of the executive authority the federal government has thus far enacted into law on this subject, it would perhaps be well to consider whether or not it is adequate to meet conditions which may at any time arise. Personally, I am of the opinion that it is not. As a matter of fact, a situation familiar to several of those present appears to have existed on the Great Lakes during the entire season of navigation for 1909 which was investigated so far as possible by the combined boards of arbitration of several of the great states of the Union, which according to a statement signed by them con-

tained many grave contentions, and apparently involved nearly 8,000 workpeople as well as a loss to industry which cannot be measured or computed. No single state had either sufficient jurisdiction or equipment to make proper inquiry. Although I am merely stating a fact in asserting that all the representatives in the joint conciliation board were of the opinion that a full inquiry should be made, I believe the federal law should be so amended as to include all interstate commerce industrial disputes within the jurisdiction of conciliation and investigation.

Another point I desire to make, in justice to, rather than in criticism of, the present federal officials charged with its execution. It seems to me that both the federal commissioner of labor and the chairman of the Interstate Commerce Commission are so thoroughly and completely engrossed with other important and often imperative administrative duties that they, not the present individuals but the officials referred to, should be relieved of the administration of this law, and other agencies provided. I also believe the principle of permissive or positive right of official investigation should be incorporated into the law and that the present avenue for appeal by either party should be retained as well. This would eliminate the possible contention as to the right or jurisdiction of government to intervene, without taking away any relief now afforded to the contestants and, which is perhaps of more importance, permit the governmental agency to determine when intervention or investigation was advisable or necessary without waiting for request from either party.

Another, and, in so far as it can have practical application, perhaps the most important phase of the whole subject, is prevention of strikes and lockouts. At times this looks to be an impossible proposition, but when we stop to think of the many ramifications of human existence which in the past were admittedly or at least negatively impossible of correction which time and education have solved, we are encouraged to renewed effort, firm in the belief that human character is being continually elevated and purified and that our constantly enlarging and improving educational facilities must and will aid materially in the substitution of right for might, reason for force and conciliation coupled with arbitration for strikes and lockouts. Summed up in that potent phrase,

"Let us reason together." We said in substance in our 1901 report to the New York State Legislature:

A somewhat new development is being manifested in our industrial life by the creation and organization of associations of employers. . . . If the dual organizations of employers and employees realize and recognize their interest in and dependence on each other and each within its proper sphere gives consideration to the claims and contentions of the other, good rather than evil must result. . . . It goes without saying that practically all employers in a given locality engaged in the same general avenue of industry are natural competitors and in a position to grant practically the same terms and conditions of employment, which must have the effect of eliminating the labor cost as a factor in competition. Therefore agencies through which uniform terms and conditions of employment can be established in competitive industry are more just and feasible than the enactment of separate bargains by separate employers and individual employees or separate groups of employees. We know of no vehicle through which this can be accomplished except that of the trade agreement.

I can see no reason to vary one iota from the text as then written on the subject of providing the most reasonable expedient now at hand for a clear and comprehensive understanding between the organized forces of capital and labor. It is nevertheless a fact that many strikes have occurred as a result of the single contention "whether or not an existing trade agreement should be renewed." We have met this situation by urging parties to such agreements to inaugurate a specific provision in all new agreements and old ones renewed providing that "This agreement shall be in full force and effect from (date) to (date) and thereafter until either of the parties shall have given the other (number) days' notice in writing of their intention to terminate the same, and that nothing contained herein shall be construed to prevent either party from proposing any amendment to take effect at any time after the original period designated." The effect is to provide a continuous agreement which can easily be terminated and at the same time give ample opportunity for discussion and amendment. Our experience justifies the contention that this provision is assisting materially in preventing strikes and should be generally recommended.

The policy of the New York State Bureau of Arbitration in dealing with this subject is so clear that he who runs may read. We enter into no defense of our position or policy, neither do we

apologize for anything connected with our treatment of this subject except our own personal limitations. Since the establishment of the present bureau in 1901, all of the energy and effort at our command have been directed toward seeking to conserve honorable industrial peace between employer and employed. At no time during that period have we been able to see how this could be generally accomplished except through the medium of mutual understandings between the employers and employed. The only sane method of which we are yet aware is what is usually termed mutual bargaining or trade agreements, coupled with provisions for local or other arbitration of questions which cannot be mutually decided or that arise outside of such agreements. We have proceeded on the theory that as a general proposition the most lasting and satisfactory industrial peace can be secured through agreements made by the parties at first interest and we have stood ready to furnish such data, advice or information as we were possessed of to either or both parties. On the other hand, where there has been a continued interruption of industry causing not only loss and inconvenience to the parties directly involved but to the general public as well, we have not hesitated to place the responsibility where it appeared to us to rightly lie and in the case of serious interruption of public utilities or practical public service corporations to go so far as to suggest the possible necessity of compulsory settlement. Public officials or others engaged in an honest effort to promote industrial peace along the foregoing lines need not expect either consideration, support or sympathy from those who believe in the right of might.

We see men who appear to be fair-minded and intelligent on most subjects insisting on the right of their interests to consolidate and amalgamate and absolutely denying such right to the other fellow; men decrying paternalism and contending for the absolute right to dictate the conditions under which other men shall earn their living. We prefer to look at the whole subject of our industrial life from the viewpoint that its development has been so wonderfully vast and rapid that many of its important ramifications have been at least partially neglected, the bad effects of which are becoming more patent and for which remedies must and will be provided. Organization is here, both of capital and labor, and here to stay. There are, no doubt, many phases of organization,

corporate and otherwise, capital and labor, that are harmful and even wrong. Let us seek to cure the evil instead of undertaking to kill the principle.

It seems a pretty good proposition to subscribe to that government is greater than any of its creations whether they be citizen or corporation, and, it might as well be said, greater and more important than any of its sub-divisions; and I believe that government will eventually find a way to dispose of this question in such a manner as to operate for the general good, even if it is necessary to interfere with some of the so-called existing rights of individual citizens, corporations, organizations or even sub-divisions of government.

THE NEXT LEGISLATION ON INDUSTRIAL DISPUTES IN MASSACHUSETTS

BY ROBERT LUCE, ESQ.,
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Throughout most of the world existing laws for the control of industrial warfare are accomplishing relatively small results. For example, in Massachusetts in the five years 1904 to 1908, inclusive, there were 950 strikes, affecting 3,196 establishments, involving 94,923 strikers, throwing out of work 45,535 other employees, thus causing loss of wages all told to 140,458 workers, who lost approximately 5,353,839 working days, which at the average wage-rate meant a loss to the employees of about \$8,500,000, with a loss to the employers of corresponding profits, to say nothing of waste through idle plants, interest on idle capital, loss of customers, and damage to allied industries. About twenty-four per cent of the strikes wholly succeeded; thirteen per cent succeeded in part; five per cent were reported as "indefinite or unsettled," and fifty-eight per cent failed; two-fifths succeeded wholly or in part; three-fifths failed.

In Austria in 1906 there were 1,083 strikes, affecting 6,049 establishments. In Belgium in the five years covered by the report of 1907 there were 474 strikes, affecting 1,281 establishments. In France in 1906 there were 1,309 strikes, affecting 19,637 establishments. In Germany in the same year there were 3,328 strikes, affecting 16,246 establishments; in Great Britain, 486 strikes and lockouts. Russia had 1,765 strikes in ten years. Arbitration as a remedy has not met expectations. Of the 547 strikes in Massachusetts in the three years ending with 1908, only twenty-three were settled by arbitration, four per cent, one in twenty-five. Of very close to 14,000 strikes in the United States in five years, less than two per cent were so settled. Yet long after the agitation for arbitration began in the middle of the last century, enthusiastic reformers thought it the panacea for labor troubles. When in England they began working for it, they seem to have thought it the idea embodied in the *Conseils de Prud'hommes*, the industrial tribunals created by Napoleon when at the height of his power. These

have indeed for a hundred years served France admirably, but their success has been due to the reason that they concern themselves only with shop disputes where the facts can be known. It was supposed their principle was put into Lord St. Leonard's Act of 1867 and the Arbitration Act of 1872. Under these two laws, however, not a single application was ever made, and in 1896 the present plan was substituted, being a mild measure for voluntary conciliation and arbitration. This brought about in the next seven years the settlement by arbitration of an average of twenty-two cases a year, about three per cent of all the strikes and lockouts.

In this country New Jersey and Pennsylvania led the way, being followed by Massachusetts in 1886 with the creation of its present Board of Conciliation and Arbitration, largely due to the interest of Senator W. L. Douglass, afterward Governor. Great hopes were entertained of it. Yet it has not ended strikes, has not even conspicuously lessened industrial warfare.

The reason is not far to seek. There are two classes of disputes in industry, one relating to things that have happened, one relating to things that are to come. By far the greater number of strikes concern things that are to come, such as wages and hours. Arbitration is all right when the past is concerned, almost always sure to fail when the future is concerned. Arbitration means reference to an umpire with an obligation to be bound by the decision, a voluntary obligation here, a compulsory obligation in New Zealand. A decision on the basis of known facts will be accepted as it is in the case of lawsuits. There one party is right and the other wrong. But when the future is in issue, both parties may be right. The employer, for instance, may be within his rights when he says he cannot afford to pay more than two dollars a day; the employee may be equally justified in saying he cannot afford to take less than two dollars and fifty cents. The solution must be a bargain, not a decision, for a decision implies a basis of known facts. Men will not consent that third parties shall make bargains for them. Furthermore, in the case of a sympathetic strike there is literally "nothing to arbitrate." Voluntary arbitration, then, should be retained for cases such as the interpretation of a contract, where the facts can be ascertained. Many shop agreements now provide for arbitration of this sort. But for disputes relating to the future the remedy is to be sought elsewhere.

Compulsory arbitration, as attempted in Australasia, will in all probability not be tried here in our time, for two reasons: first, it is contrary to American conceptions of individual liberty; and secondly, it is based on an economic fallacy—the notion that wages can be fixed by law, for that is what it amounts to. That was attempted nearly six hundred years ago, by the Statutes of Laborers, after the Black Death carried off half the population of England. It has been elsewhere tried since, always with failure and disaster in its train. No judge, no legislature is competent to prescribe what an employer shall pay a workman. No employer will consent to wages that spell ruin; no workman will accept wages less than he can earn elsewhere. Compulsory arbitration, therefore, is not the thing here to be tried.

Study of the problem in the light of experience brings into relief two of its phases: First, it becomes clear that remedies so far tried have been in large measure spoiled by the fact that they were applied after the disputants had become embroiled, after war had been declared, after the battle was on, when passion had embittered the situation, when pride had made conference useless and concession impossible. These remedies mean the pound of cure instead of the ounce of prevention.

Secondly, it becomes clear that there are three parties to every industrial dispute, the public being a third party. When Charles Francis Adams began urging this seven or eight years ago, he was met even by men of intelligence with the argument that only employer and employee were concerned, and that it was the business of nobody else. For the state to interfere in a private quarrel, was thought preposterous. Now men are coming to see that every quarrel affecting commerce or industry, involves the prosperity of the community, and that neither the wage-earner nor the wage-giver has a right to injure his fellows in order to better his own condition unfairly. It is now seen that every strike injures the public; some strikes do serious injury. For instance, a despatch to the Boston "Herald," of February 7th, said that the expense of the Ludlow strike to the little town amounted to \$8,500, and taxes would be raised. "The merchants have felt it severely and it will take many of them some time to get on their feet again."

The Lynn lasters' strike of October, 1908, starting because twenty men assemblers were replaced by twelve girls, threw out of

work 12,761 men and women employed in sixty-seven establishments, and lost to Lynn the making of 1,136,344 pairs of shoes that would have had a selling value of \$1,715,766. It at any rate hastened the departure of two factories, one of which went out of the state, and it has been announced that the factory in which the trouble started will this summer be removed.

Late in 1906 these considerations set W. L. Mackenzie King a thinking. He was a young, earnest, vigorous, thoughtful Canadian, in the service of the government, sent in the course of duty to the province of Alberta to see if he could settle a big coal strike. He found employer and employee equally obdurate. Meanwhile the people froze. He came back convinced of the two things I have emphasized—that the public as a third party has the right to compel measures likely to secure industrial peace, and that they should be resorted to before rather than after the outbreak of hostilities. So there came about the passage of the Canadian law for the investigation of industrial disputes—to-day the most promising remedy for the evils of industrial warfare.

The Canadian Act requires that in the event of a dispute arising in any industry known as a public utility, it shall be illegal to resort to a strike or lockout until the matters in dispute have been laid before a board of investigation. Such a board is appointed by the Minister of Labour on the application of either party. One of its members is named by the employer; one is named by the employees; these two choose a third, or on their failure to agree, he is named by the minister. The proceedings and final report are at once published extensively, for their influence on public opinion. After the report, and not until then, the employer may lock out or the employees may strike, if either declines to accept the advice of the board.

Harris Weinstock in January of this year made to the Governor of California his report of fifteen months of investigation of labor laws and conditions in Europe and Australasia, as a special labor commissioner. He found that voluntary arbitration was largely a failure the world over, and concluded that compulsory arbitration would not fit the conditions of California. Before learning of the Canadian law he had reached the opinion that "an important stride would be made in the direction of industrial peace, if legislation was created calling for a public inquiry in labor disputes before

they had reached the serious stage of strike or lockout." Thus quite independently he hit upon the principle already applied in Canada. He has advised the passage of a law along precisely the same lines, restricted to public utilities.

Dr. Victor S. Clark has made for the United States Bureau of Labor two thorough and conservative reports on the Canadian law, one appearing in the Bulletin for May, 1908, and the other in that for January, 1910. In the conclusion of the later report he says: "Under the conditions for which it was devised, the Canadian law, in spite of some setbacks, is useful legislation, and it promises more for the future than most measures—perhaps more than any other measure—for promoting industrial peace by government intervention."

Observers watching the actual results of the principle as applied in Canada have sought its application elsewhere. It has been copied in the Transvaal. In the United States attention was called to it by articles of strong praise by President Charles W. Eliot. Campaigns for its introduction are under way in several American states. Those active in the fight feel confident of ultimate victory; for, thanks to Canada, they have at command the arguments of experience. "The proof of the pudding is in the eating."

In the first three years of the operation of the Canadian law (March, 1907-March, 1910) eighty-two applications were received for the establishment of boards of conciliation and investigation, as a result of which seventy-four boards were established. In sixty-eight out of the seventy-four cases referred for investigation, the inquiry resulted either in a direct agreement between the parties, or in such an improvement of relations as led to the settlement of the dispute. In two of the cases where reference under the act was not successful in either averting or terminating a cessation of work, the men finally returned on the terms recommended by the board.

In the ten years prior to the enactment of the Canadian law there were 100 strikes in public utilities—an average of ten a year. In the three years after its enactment the average fell to two a year. In every single case where the question was one of wages, hours, or conditions of employment, investigation prevented strike or lockout. Altogether nearly 60,000 employees were directly concerned in the disputes settled. Had strikes not been thus avoided, it is estimated they would have lost \$3,500,000 in wages.

Compulsory investigation secures such remarkable results because it is based on common sense and human nature. Notice of grievance acquaints the other side and gives chance of concession before the parties get embroiled. Calm inquiry discloses with some accuracy the points in dispute, ignorance or misunderstanding of which has led to many a costly strike. It nips trouble in the bud. As things go now, once hostilities have begun, false pride forbids either party to retreat. Then original causes are forgotten in the new grievances that friction develops. The new plan prevents hasty, rash action, gives chance for inflamed passions to cool, for angry words to be forgotten. Most important of all, it brings the disputants face to face, lets them talk it out, gives them a chance to be heard. Experience in Canada shows that with the disputants on opposite sides of the same table, with no lawyers present, with the reporters excluded, and with dispassionate investigators directing the conference, an atmosphere of good will is soon created, suspicions are allayed, concessions are encouraged. After the investigators have given their advice, if it is accepted, there is no more resentment, malice, spite, no consciousness of humiliating defeat by overpowering strength, no desire for vengeance.

The great value of the law lies in its providing a negotiating rather than a deciding body, thus preventing strikes by bringing the parties to a voluntary settlement. Its real worth does not lie in holding over them any sort of a club in the nature of a penalty, whether moral or otherwise. In practice the penalties have been found unimportant. Most workmen and most employers want to be law-abiding citizens. If the state says they must not strike or lock out until after investigation, most of them will comply regardless of penalty. The others, few in number, would probably evade any law that could be written. Employers can evade this law by shutting down on some pretext. Employees can evade by the runaway strike, vanishing one at a time. The answer is that in Canada as a matter of fact they do not.

In this respect as in other particulars public opinion largely controls the situation. Fear of it incites both sides to comply with the spirit of the law. Fear of it keeps either side from asking investigation of an unjust position. Fear of it impels each party to make reasonable concessions. Publicity compels fair play.

The Dominion Trades and Labor Congress, the most influential

labor body in Canada, is probably the best exponent of labor sentiment throughout the Dominion, and carries most weight with political parties. Its president is a member of Parliament. The following report by the executive officers was made to the congress at the Winnipeg session:

"The Trades Dispute Investigation Act, 1907. Your executive, after careful consideration, gave its hearty endorsement to the principles of the bill. Organized labor does not want to strike or enforce its demands if the consideration of them can be attained without recourse to this remedy. The strike has been our last resort, and as the bill continued our right to strike, but assured a fair hearing of the demands of the workers, there was nothing to do but to give our support to it. Nor is organized labor blind to the fact that in every great industrial struggle the public have a large interest as well in the result as in the means adopted to reach that result. The least the public are entitled to is a knowledge of the merits of the dispute. This knowledge will be given to them under the procedure outlined in the bill. Your executive believes it will be a happy day when every labor dispute can be settled by the parties meeting together in the presence of an impartial tribunal to discuss their differences. Our great difficulty in the past has been that we could not get a hearing."

After debate in which twenty of the delegates, including executive officers, took part, the following resolution was adopted by a vote of eighty-one to nineteen:

WHEREAS, Organized labor has from time to time expressed its disapproval of strikes except as a last resort in industrial disputes; and, whereas, particularly in disputes in connection with public utilities the public have rights that must be respected and considered; and, whereas, the Lemieux Bill is designed to avoid strikes and lockouts, in connection with industrial disputes, in certain public utilities, until such time as the merits of the dispute are publicly investigated; and, whereas, organized labor always courts investigation of its grievances by reason of the justice of its claims and its desire to be fair;

Resolved, That this Trades and Labor Congress of Canada hereby express its approval of the principles of the Lemieux Bill as being in consonance with the oft-expressed attitude of organized labor in favor of investigation and conciliation.

A proposal to have the act amended so as to exempt the employees of both steam and electric railways was voted down. The

big organizations of railroad men in Canada were at first sceptical about the law or openly hostile. Now the railroad men are practically a unit in its support, doubters not being plenty enough to take into account. Indeed the only serious opposition to the law that remains among those with practical experience, is found on the part of some of the mining unions so dominated by socialistic beliefs as to be hostile to any remedies not based on the principles of socialism.

Another labor organization, the National Trades and Labor Congress, heard this from its Executive Committee at Quebec after the law had been in force almost a year and a half:

"No legislative enactment since confederation has had so immediate and far-reaching an influence upon organized labor in Canada as the Industrial Disputes Investigation Act of 1907, known as the Lemieux law. From the official reports of investigations of disputes under the act, from its enactment March 22, 1907, to the present time, the majority of the unions involved have expressed satisfaction with the award, and as a result, the principle of compromise, so powerful a factor in society as it is constituted to-day, has been recognized, the duration of strikes has been reduced, large strike funds have become less important as a fighting weapon, and outside interference has not only become unnecessary, but even a cause of loss of public sympathy."

The Secretaire General of the Parti Ouvrier du Canada writes:

"The law is certainly a good one and has proved so in many cases, because it gives the workingman the opportunity of bringing his complaints and his real situation before the general public. Furthermore, the law has recognized the official existence of labor organizations, and has prevented many strikes and lockouts. I am one of those who really believe that this law ought to be made compulsory to all employments. If it is a good law for some industries, it ought to be good also for all."

The Grand President of the Canadian Brotherhood of Railroad Employees writes:

"The law as it stands is in my opinion a good one. The only change I could suggest, which would be of advantage, would be to widen its scope to take in all classes of employment."

The Grand Secretary of the Provincial Workmen's Association writes:

"I think it is wise legislation. I have had some little experience with it all over this province, and the more I see of it, the more I am impressed with its fairness to both parties of the dispute. I do not think it would hurt the parties to any dispute to have public investigation into the cause of the dispute."

On the advice of the Canadian Minister of Labour and a majority of the many Canadians with whom correspondence was instituted, we drew the bill for Massachusetts to apply to all industries, instead of confining it to public utilities as in Canada. After test of it there for some months the Dominion Trades and Labor Congress, the most influential labor body in Canada, voted by fifty-nine to twenty-two to ask that it be extended to cover all industries. The Canadian Federation of Labor at its convention last fall passed a similar vote, and in accordance therewith a delegation headed by the president of the Federation, laid the request before the Minister of Labour, who expressed his sympathy with the idea. His own view was that a beginning in the way of extension might be made by including the building trades within the operation of the act, these trades being, as he believed, to a large degree within the meaning of the term "public utilities." It was his purpose to extend the law into other occupations as fast as feasible.

It has been suggested that in some of our states it might not be constitutional to have the law apply to all industries, though undoubtedly valid for public utilities. The best authority sees no difficulty on this score. The bill does not propose to make it unlawful for an employer to discharge a man or for an employee to quit work. What it does do is to declare the purpose of lockout or strike unlawful, prior to investigation. Our courts have held that an innocent act may be made unlawful because of its purpose. A strike is concerted action with a purpose, and concerted action may make an innocent act unlawful. There is no reasonable doubt that under the police power we may prohibit concerted action, if its result would be to disturb the public peace or injure the public welfare, or indeed could prohibit individual action if it threatened such result.

It was not the purpose of the bill drawn for Massachusetts to abolish the State Board of Conciliation and Arbitration. It was meant simply to add the function of compulsory "investigation." Another bill, introduced on the petition of President Eliot and

George B. Hugo would in practice have resulted in the speedy abolition of the Board of Conciliation and Arbitration, and such was understood to be the object of its backers. This did not seem to some of us prudent or desirable. Arbitration is occasionally available and ought to be retained. Furthermore many shops in Massachusetts are now working under agreements to refer disputes to the state board for arbitration and it would be a pity to interfere with this practice. So our bill would keep the state board at the command of those who are willing to arbitrate.

The Canadian law creates a special investigating board for each dispute, partly because Canada is so large that a central body could not handle everything from Halifax to Vancouver. A permanent board would be more economical, its members would have the advantage of experience, and in more or less cases it would be acceptable. To combine the merits of each method, we provided that the disputants might have a special board or use the state board, as they should elect.

Organized labor in Canada was apprehensive that under their law as written, employers could evade the spirit of it by massing strike breakers in anticipation of an unfavorable opinion from the investigating board. So the Dominion Trades and Labor Congress asked certain changes in phraseology to meet this, and they were incorporated in the Massachusetts bill. Otherwise our bill followed the Canadian law as it stood, with some changes to conform to Massachusetts practice. It was passed on by the Canadian Minister of Labour, and only changes meeting his approval were made.

Our experience in the first attempt to enact the principle of the Canadian law in Massachusetts, may be instructive. At one time it looked as if the measure would pass without serious opposition. Then both employers and employees began to magnify dangers to selfish interests. The leaders of the unions woke up to the fact that the bill meant to them the loss of the power given by the sudden blow. They swiftly spread throughout the ranks the belief that strikes were to be made crimes. Impassioned orators crowded the committee room with denunciations of this treacherous plot to throttle organized labor. Most careful explanations of the law fell on deaf ears. It was in vain that the hearty words of approval written by Canadian labor leaders were read again and again. It was of no use that proof was brought of the desire of organized

labor in Canada that the law shall be extended to cover all industries. The workers became convinced that their cause was attacked, and they refused to believe that men not of their numbers could really have their interests at heart.

On the other hand, certain employers at the head of large non-union shops, content with their own success in warding off what they deem the aggressions of labor, discovered a chance that the law would interfere with their discipline and might compel them to negotiate with their workmen. Unfamiliar with the merits of collective bargaining, exaggerating its defects, accustomed to exercise the authority of dictators, they resented the suggestion of any measure of control in the public interest. One of them saw in a bill meant to protect and relieve and help the employer just as much as the employee, one more handicap on Massachusetts industries in their competition with those of other states. Another saw in it the opportunity for one manufacturer to pry into the books and learn the trade secrets of his competitor. Still another was apprehensive lest the law might foment labor troubles and incite his employees to make demands, on the ground that they had nothing to lose and a chance to gain. Still others argued that as they were themselves getting along all right with their men, it would be better to let well enough alone.

The proofs from Canada that their apprehensions were bugaboos, that the law had not in fact stirred up strife, that trade secrets had not been disclosed, that all parties had distinctly gained, that peace had been encouraged and strife lessened—all fell on ears just as tightly closed to the lessons of experience as those of the union leaders. So it became clear that no speedy acceptance of the truth was possible, but that one more long, hard and costly campaign of education must be carried through before common sense can prevail.

Proud as one may be of the governmental processes of the United States, such an episode can hardly fail to make one uncertain as to whether they are after all distinctly superior to the system of ministerial responsibility to which England and her colonies are accustomed. In Canada a small group of men—the ministry—became convinced that Mr. King was right and that his solution of the strike problem was sane and practicable. They took the responsibility for putting it into law and the issue justified them. Once

well tested, employers and employees alike approved and accepted it. Here, on the other hand, we must convince employers and employees and public—thousands on thousands of persons—before a test can be made. We must conquer a myriad of fears and alarms, a multitude of misconceptions. While other countries act, we talk.

Doctor Clark is of the opinion that the adoption of a statute similar to the Canadian law in any state or by the United States Government, whether desirable or not, is likely to be opposed by organized labor, and probably could be secured only after some industrial crisis profoundly affecting public opinion had centered popular attention upon the question of strike prevention. This may be true, and yet it is of importance that those who already appreciate the need of action shall without waiting for emergency take every opportunity to encourage accurate and rational discussion of the problem. It may take time, but in the end the justice and the expediency of industrial peace will alike appeal to those who create the opinion on which law is based. Peace is to the interest of all parties, peace with honor, and that is what compulsory investigation gives. It promises wage-earners a chance for fair play. It promises the employer security. It means for industry what the tribunal at the Hague means for the nations.

THE CANADIAN INDUSTRIAL DISPUTES INVESTIGATION ACT

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In laying a statement concerning the origin and operation of the Industrial Disputes Investigation Act 1907 before the readers of this publication, who, it may be presumed, are very generally citizens of the United States, it may not be out of place to dwell for a moment on the essential differences, from the legislative point of view, between the United States and its northern neighbor; the reader may be thereby enabled the better to appreciate the political atmosphere of environment of the Canadian law and to estimate how far this may affect the question of the applicability of the measure to other political systems.

The government of Canada, like that of the United States, is federal in character and based on a written constitution. Under the letter of its constitution, the Dominion possesses relatively less power than the American constitution gives the government of the United States; in practice, owing to the greater elasticity of its political system, which is modeled closely on that of Great Britain, the federal power in Canada is considerably stronger than that of the United States, excluding, of course, all relation to such functions as are, in the case of Canada, exercised by the British government. The chief difference in the political systems of the two countries lies in the acceptance in Canada, as in England, of the doctrine of ministerial responsibility. This theory requires the heads of the various departments of the Canadian government—who are also the political party leaders—to occupy seats in Parliament, compels them to keep in the closest touch with the parliamentary representatives of the party in power, and affords them in most cases a greatly longer period of political life and influence and a proportionately larger scope for the play of personality, than is possible in the case of the members of the United States Cabinet, who are without seats in either branch of the legislature, and whose political lives seldom extend beyond the

term of the President whom they serve as administrative assistants or auxiliaries. It is not material to the purpose of the present paper to determine which of the two systems may ultimately and in the largest sense prove the better; it is intended only to indicate the influence which tends to give the federal power in Canada a strength and elasticity with which the United States system cannot be invested. Whether or not these conditions make for the ultimate good of the community to be governed, is a separate proposition; but there can be no doubt that when the question at issue is one which touches that borderland, or, as it has been called, "twilight," that lies between or jointly affects federal and local jurisdiction, the Canadian system gives the advantage to the federal power.

So it is that in the case of legislation relating to industrial disputes, although there is theoretically little difference in the powers in this direction of the two governments under comparison, it has yet been possible to enact in Canada a federal measure which may not be regarded as falling within the sphere of federal jurisdiction in the United States.

With this brief and inadequate comment on the difference between the political systems of the two countries concerned, we may proceed with a more direct discussion of the subject of the paper. The first Dominion statute dealing directly with the question of the settlement of industrial disputes was that of 1900, known as the Conciliation and Labour Act. This act, by virtue of which also the Department of Labour of Canada was itself established, was modeled closely on the Conciliation Act of Great Britain. Under its terms the department was enabled, with the consent of the parties concerned, to intervene with advantage in numerous industrial disputes. The intervention was effected, however, by the Deputy Minister of the Department in person, and not by means of conciliation boards after the method for the most part followed under the English Act and, it may be remarked, contemplated under the Canadian Act; sentiment has not, in the United States or Canada, favored the growth of voluntary conciliation boards as in the industrial districts of Great Britain.

While many disputes were, and might have continued to be, amicably arranged under the terms of the act in this way, it was obvious that many occasions might arise where the services of departmental officials would be unavailable or inadequate for the

settlement of industrial disputes, and, apart from other necessities, some further development of the law of 1900 would have been desirable and natural in the ordinary course of events. In 1903, the Railway Labour Disputes Act was enacted, which permitted the establishment of a board of conciliation in the case of a railway dispute when one of the parties to such a dispute applied for the same; this was, of course, a step further than the Conciliation and Labour Act went, but the right to strike or lockout, instead of resorting to the method of adjustment provided by statute, was not affected. A further advance was no doubt hastened by means of a serious object lesson in the winter of 1906-07. Throughout nine months of the year 1906 a strike had prevailed in coal mines located at Lethbridge, Alta., collieries which supplied fuel to a large district of the western prairie country; the strike continuing until the approach of winter, serious apprehension came to be felt as to the supply of fuel. Eventually in mid-November, the Prime Minister of the Province of Saskatchewan requested the intervention of the Department of Labour. The Conciliation Act, it should be said, permitted the intervention of the department only by consent of both parties, and in the case of this coal mining dispute the department had been informed by the employers that they were averse to intervention. The demand for intervention being now made in the public interest and by the leader of a provincial government, it was considered proper by the department to take action. Mr. W. L. Mackenzie King, the Deputy Minister at that time, immediately proceeded to Lethbridge, and after considerable negotiation succeeded in securing an agreement between the coal company and its employees, the alarming situation in reference to the fuel supply having an appreciable influence in bringing about a more conciliatory attitude in the case of both parties. It was as the outcome of this dispute, and because of recommendations made by the Deputy Minister of Labour in his report of the enquiry into the dispute that the Industrial Disputes Investigation Act was enacted somewhat later in the same winter of 1906-07.

Hitherto, the only alternative to conciliation as a method of adjusting industrial disputes had been compulsory arbitration, which, of course, finds vogue in the Australasian states. As an experiment in social legislation, compulsory arbitration in these countries has been a matter of surpassing interest to students of

economic problems, but it is not yet clear that this legislation is even substantially effective. The period during which compulsory arbitration has ruled in these countries has been on the whole one of rising prices and rising wages, and the outcome of enquiries into disputes has usually been the increase of wages paid to employees. In spite of this, there have been numerous strikes, and the enforcement of the penalty in each case has been found a matter of extreme difficulty, if not of admitted impossibility. The experiment in compulsory arbitration is, moreover, of too limited a character, both as to time and territory, and the industrial conditions of the territory covered have been of too exceptional a character, to allow of the test so far made to be regarded, especially at this distance from the scene of action, as decisive, whether for or against the principle. It is impossible to say with any preciseness what may have been the result of the compulsory feature of the law as a preventive of industrial strife. It is well also to bear in mind, in considering the cases of Australia and New Zealand with regard to legislation of this nature, that these countries are in a position of peculiar independence and even isolation in industrial matters, differing widely in this respect from the industrial countries of Europe and North America, which are all keen competitors one with another. The view gradually formulated in the Department of Labour of Canada, and apparently endorsed by the Canadian public, was that industrial disputes should be separated into two classes, those in which the average citizen is directly affected or liable to be affected in his own person, so that the grievance may relate to an entire community; and those in which the average citizen is only remotely or indirectly concerned. A strike of coal miners, railway men or telegraph operators, of gas or electric light fitters or of street railway employees may be, for instance, the means of bringing confusion and disaster on an entire community; a strike in a cotton mill or a shoe factory, on the other hand, affects the printer, plumber or professional man, the general public in fact, only so far as it may serve to depress commercial conditions in a particular district. On this point, the Deputy Minister of Labour in his report on the Lethbridge mines difficulty, remarked as follows:

When it is remembered that organized society alone makes possible the operation of mines to the mutual benefit of those engaged in the work of production, a recognition of the obligations due society by the parties is

something which the state is justified in compelling if the parties themselves are unwilling to concede it. In any civilized community private rights should cease when they become public wrongs. Clearly, there is nothing in the rights of parties to a dispute to justify the inhabitants of a province being brought face to face with a fuel famine amid winter conditions, so long as there is coal in the ground, and men and capital at hand to mine it. Either the disputants must be prepared to leave the differences which they are unable to amicably settle to the arbitrament of such authority as the state may determine most expedient, or make way for others who are prepared to do so.

What I know of conditions in the Canadian West leads me to believe that the labour troubles in the mines which this country has been forced to witness during the present year, will not be without repetition, at some future time, unless, and this, I fear, is improbable, the attitude of the parties towards each other becomes vastly different from what it has been in the past, or some machinery is devised by the state—either the federal or provincial government—whereby the parties will be obliged to refer to an impartial tribunal such differences as failing an amicable adjustment, are likely to lead to a lockout or strike.

It may be well here to include the precise recommendation of Mr. Mackenzie King on the question of legislation, since the same embodied the basis of the law subsequently enacted. Mr. King's report closed with the following sentences:

The purpose of Parliament in enacting both the Conciliation and the Railway Disputes Act might, it seems to me, be considerably furthered were an act, applicable to strikes and lockouts in coal mines, similar in some features to the Railway Labour Disputes Act also enacted. Inasmuch as coal is in this country one of the foremost necessities, on which not only a great part of the manufacturing and transportation industries, but also, as the recent experience has shown, much of the happiness and life itself depends, it would appear that if legislation can be devised, which, without encroaching upon the recognized rights of employers and employees, will at the same time protect the public, the state would be justified in enacting any measure which will make the strike or lockout in a coal mine a thing of the past. Such an end, it would appear, might be achieved, at least in part, were provision made whereby, as in the case of the Railway Labour Disputes Act, all questions in dispute might be referred to a board empowered to conduct an investigation under oath, with the additional feature, perhaps, that such reference should not be optional, but obligatory, and pending the investigation and until the board has issued its finding the parties be restrained, on pain of penalty, from declaring a lockout or strike.

In view of past experience and the present situation, I would, therefore, respectfully recommend that the attention of Parliament be, at as early a date as possible, invited to a consideration of some such or other measure

with a view to preventing a possible recurrence of an experience such as this country has been forced to witness during the past month, and of promoting in the interests of the whole people the cause of industrial peace.

With regard to the respective proportions numerically of strikes in the domain of public utilities and in other classes of labor respectively, the experience of Canada had shown that the public utility class involved a large proportion of the total number. Taking the six years prior to the period when the new legislation was recommended, it was found that the total number of work people affected by strikes in Canada was 142,027, of which exactly one-third represented disputes in mining, transportation, street railways, telephony, and telegraph. The Deputy Minister's recommendation was subsequently elaborated into a bill which was presented to Parliament by the then Minister of Labour, the Honorable Rodolphe Lemieux, during the session of 1906-07, and having passed through both Houses became law on March 22, 1907. The fact that the bill was piloted through Parliament by the Honorable Mr. Lemieux as Minister of Labour has led to the measure being widely known as the "Lemieux Act." As will have been gathered from the foregoing quotations from the Deputy Minister's report, the principal feature of the measure was the provision that a lockout or strike might not legally take place in connection with any mining or public utility industry until after an investigation had been made into the subject of dispute and every reasonable effort had been made to bring the parties concerned to an agreement.

It is not perhaps necessary to make more than a brief reference to the machinery of the act. The board before which the compulsory enquiry takes place is composed of three persons, one recommended by each of the disputing parties and appointed by the Minister, the third recommended jointly by the two members first appointed, or if a joint recommendation from them is impossible then the third member is selected and appointed by the Minister. If either party fails to nominate a person to the board within the period of five days after being requested by the Minister to do so, or within such extension of that period as the Minister may, for reasons stated, allow, the Minister is then required to make the necessary appointment without a recommendation, though it is obvious that in such a case one of the leading factors in conciliation is lacking. The act further prescribed that thirty days' notice should

be given in the case of either employer or employees before any change affecting wages or general conditions of work could go into effect. It should be noted that during the recent session of Parliament this last provision of the act was amended so as to provide that such changes may not take place "until the dispute has been finally dealt with by a board." Application forms are supplied by the department on request, though it is not necessary that applications should be confined to such forms, but the application must be, in any event, accompanied by a statement setting forth (1) the parties to the dispute; (2) the nature and cause of the dispute, including all claims and demands made by either party on the other to which exception is taken; (3) an approximate estimate of the number of persons affected; and (4) the efforts made by the parties themselves to adjust the dispute. The law requires further that the application should be accompanied by "a statutory declaration setting forth that failing an adjustment of the dispute or a reference thereof by the Minister to a Board of Conciliation and Investigation under the act, to the best of the knowledge and belief of the declarant a lockout or strike, as the case may be, will be declared, and that the necessary authority to declare such lockout or strike has been obtained." This last provision has been quoted somewhat fully because the act has been in this respect also the subject of a slight modification during the recent session of Parliament. Representations had been made repeatedly by railway men to the effect that in obtaining the authority to declare a strike or lockout over a line of railway several thousand miles in length, much expenditure of money and time was necessitated, and that the act in this respect bore severely on the class of labour indicated. The act was therefore amended in this respect so as to provide that where a dispute concerned employees in more than one province there should be an alternative procedure free from these objections. So that both parties to the dispute may be made acquainted with the proceedings taken under the act at the earliest moment possible and all unnecessary delay prevented, the applicant for the establishment of a board is required to send to the other party to the dispute a copy of the application at the same time the latter is transferred to the department, and the second party to the dispute is similarly required to prepare without delay a statement in reply and forward the same to the department and to the other party to the dispute. The act is

precise in indicating who shall be regarded as properly representing the various parties making application for the establishment of boards. Upon the establishment of a board, the department is required to forward to the chairman a copy of the application received and of the statement received in reply. In the course of the investigation that follows the board may make all suggestions and do all such things as it deems right and proper for inducing the parties to come to a fair and amicable settlement of the dispute, and if a settlement of the dispute is reached by the parties during the course of its reference to the board, a memorandum of the settlement is to be drawn up by the board and signed by the parties and may be made binding if the parties agree as provided by a subsequent section of the act, and a copy of the memorandum, with a report on the proceedings, is to be forwarded to the Minister. If a settlement of the dispute is not arrived at during the course of its reference to the board, the board is required to make a full report thereon to the Minister, and make such recommendation as it sees fit for the settlement of the dispute; and when it is deemed expedient to do so, is also to state the period during which the proposed settlement shall continue in force and the date from which it shall commence. This report is to be sent to the registrar, and similarly, a minority report may be made by a dissenting member of the board. The board is invested with all necessary powers for summoning and enforcing the attendance of witnesses, the administering of oaths and otherwise, so far as may be necessary to a full investigation of the matters brought before it. The board has further the right to investigate and to allow those whom it may indicate to investigate all books, documents, etc., brought before the board, but the information contained therefrom shall not, except in so far as the board deems expedient, be made public. The act makes all necessary provision for the payment of witnesses, and for imposing penalties where the summons or order of the court has been disobeyed or where any person may be guilty of contempt to the board. The board is further invested with power to enter or to authorize others to enter any premises associated with the dispute which has been referred to it, and may there pursue its investigation.

Any party to a reference may be represented before the board by three, or less than three persons designated for the purpose, or by counsel or solicitor where allowed, and such counsel or solicitor

shall be entitled to appear or be heard before the board only with the consent of the parties to the dispute, and, notwithstanding such consent, the board may decline to allow such appearance.

Members of the board must be British subjects, though not necessarily residents of Canada. The sittings of the board are fixed as to time and place by the chairman, and the proceedings conducted in public, unless the board of its own motion or by request of any party to the dispute direct that they be held in private. The board may at any time dismiss any matter referred to it which it deems frivolous or trivial; also it may, with the consent of the Minister of Labour, employ any competent experts or assessors to examine the books or official reports of either party and to advise upon any technical or other matter material to the investigation.

The act provides for the adequate payment of the members of the board during the time they are employed on the task in hand, also for their necessary traveling expenses, and further expressly prohibits the acceptance by any member of the board of any perquisite or gratuity apart from his remuneration by the government on account of any matters brought before the board and makes the acceptance of such perquisite or gratuity an offence punishable by a fine not exceeding one thousand dollars. The compensation for members of the board was originally placed at twenty dollars a day for the chairman and fifteen dollars a day each for other members. During the recent session of Parliament, however, the act was amended by increasing the fee in the case of each member of the board to twenty dollars daily.

The penalties prescribed by the act are as follows: Any employer declaring or causing a lockout contrary to the provisions of the act becomes liable to a fine of not less than one hundred dollars, nor more than one thousand dollars, for each day or part of a day that such lockout exists; while any employee who goes out on strike contrary to the provisions of the act becomes liable to a fine of not less than ten dollars nor more than fifty dollars, for each day or part of a day that such employee is on strike; also, any person who incites, encourages, or aids in any manner any employer to declare or continue a lockout, or any employee to go or continue on strike contrary to the provisions of the act, shall be guilty of an offence and liable to a fine of not less than fifty dollars and not more than one thousand dollars. It may be added that the act does not con-

template that the Department of Labour should institute proceedings when the act is believed to be infringed; any individual may lay the information necessary.

The text of the award of findings of the board in each case is published in the "Labour Gazette," the official monthly publication of the Department of Labour, and the findings received during a given official year are published collectively in the annual report of the department.

It has been found in the experience of the department that the act is much more effectively worked when free, so far as possible, from the formal procedure suggestive of the ordinary judicial court. The taking of sworn evidence, with stenographers' reports, has been particularly discouraged as having proved far from conducive to an amicable adjustment of differences, apart from the inevitable delay associated with such procedure and leaving out of account also the very considerable expense involved in it.

The most obvious virtue of the act lies, it will be seen, in bringing the parties together before three fellow citizens of standing and repute, one at least of whom is a wholly disinterested arbiter, where a free and frank discussion of the differences may take place and the dispute may be thrashed out in such a manner as is frequently quite impossible as between the disputants directly. Grant that such discussion and investigation take place before a strike or lockout has been declared and that the board acts with ordinary discretion and tact, the chances are largely in favor of an amicable adjustment of the differences at issue. Much, of course, depends upon the chairman, and it is a *sine qua non* that he shall be a gentleman whose reputation both as a practical man and as a man of judicial bearing shall command respect on the part of the disputants and of the public generally. The experience of the Canadian act has shown that in somewhat less than half of the cases referred under the act, the parties themselves will agree on a chairman; in the remainder the appointment has been made by the Minister of Labour.

Apart from the advantage of thus bringing the parties together before a board, the act invokes the factor of publicity, and this has proved a weighty instrument in averting extreme methods on the part of employer or employees. There is, first, the publicity involved in the investigation itself; as a rule a disputant does not desire to

submit for investigation a case which is obviously unfair, and the impending investigation leads, therefore, to the abandonment of extreme propositions or contentions. There is, secondly, the publicity involved in the publication of the official report and frequently of newspaper reports of proceedings, though the latter may be limited by the action of the board. The publication of the official findings of a board on a given dispute acquaints the public with the precise circumstances of the situation, enables the public to determine the degree of reasonableness or unreasonableness of either party, and practically assures in advance the defeat of action taken by either party contrary to the findings or recommendations of the board. This has been the practically invariable experience of the operation of the act in Canada, and after three years' active operation of the measure the general feeling with regard thereto is that it has easily justified its existence and that the principles on which it is based are obtaining continually a wider recognition both in Canada and elsewhere. It will be of interest to state briefly the nature of the proceedings during these years. The total number of applications under the act from the date of its enactment, March 22, 1907, to the end of the financial year March 31, 1910, a period of three years, is eighty-two, of which thirty-five were received during the first year, twenty during the second, and twenty-seven during the third. The number of employees estimated to have been affected in the eighty-two disputes is 85,500. Of the total number of applications, thirty-four related to coal mining, six to metalliferous mining, thirty-eight to transportation and communication, one to municipal public utility, and three to industries other than mines and public utilities. The special trades or callings involved included those of coal miners, silver miners, copper miners, conductors, locomotive engineers, station agents, railway telegraphers, brakemen, firemen, baggagemen, freight clerks, machinists, mechanics (including boilermakers, blacksmiths, steamfitters and gasfitters), round-house employees, maintenance of way employees, carmen, freight handlers, longshoremen, lake seamen, street railway employees, teamsters, municipal employees, cotton mill operatives, and boot and shoe workers.

In a very large majority of cases the matters at issue related to hours, wages, or conditions of labor, and in only two of the cases in which wages or hours were directly concerned have proceedings

under the act failed to avert the threatened strike. It was not found necessary to establish a board in the case of every application received, the compulsory feature of the act occasionally serving to effect an adjustment without the application of the full machinery; during the three years six disputes were settled in this manner.

There have been in all during the three years indicated six instances in which strikes have occurred after the reference of disputes under the terms of the act. One of these six disputes concerned the railway industry; the other five related to the mining industry, and in four cases had to do in whole or in large part with the question of alleged discrimination against or the recognition of labour unions. The six cases in question are as follows: (1) Cumberland Railway and Coal Company, of Springhill, N. S., and its employees; (2) Canadian Pacific Railway Company and its mechanical employees; (3) Nicola Valley Coal and Coke Company, of Middlesboro, B. C., and its employees; (4) British Columbia Copper Company, of Greenwood, B. C., and its employees; (5) Dominion Coal Company, of Glace Bay, N. S., and its employees; and (6) Cumberland Railway and Coal Company, of Springhill, N. S., and its employees. In No. 1, the strike lasted from August 1, 1907, to August 31, 1907, when the employees returned to work on the conditions recommended in the report of the board. In No. 2, the strike lasted from August 5, 1908, to October 5, 1908, when the employees returned to work on the conditions recommended in the report of the board. In No. 3, the employees went on strike on April 28, during the process of establishing a board, and returned to work early in June on lines recommended by the board. In No. 4, the strike lasted from June 28 to July 24; in this case three reports were put in by the members of the board, and the settlement was on the lines substantially of the chairman's recommendations. In No. 5, the strike lasted from July 5, 1909, to April 28, 1910, when the employees returned to work on lines recommended in the report of the board, with such modifications as had been made in the same by an agreement subsequently effected with the men who had refused to participate in the strike. In No. 6, the strike was declared on August 9, 1909, and was continuing at the date of writing; it should be noted that the parties concerned in Nos. 1 and 6 are identical. During the three years, however, there have been several instances in which strikes in industries affected

by the act have been declared without reference to the law, although in most of these cases a board has been subsequently established; and in no instance where a board has been established under such circumstances has it failed to secure an adjustment. The industries affected have been usually those of coal miners or longshoremens.

Much interest has been taken in the act in foreign countries, and particularly in the United States. The question of the degree of benefit resulting from the operation of the act in Canada and of the applicability of its provisions to industrial disputes in the United States has been for several years a favorite subject of debate in high schools and colleges throughout the United States and innumerable requests have been received in the department for information on the subject. Requests for addresses from those who have been concerned in the administration of the act have also been frequently received, and Professor Adam Shortt, formerly of Queen's University, Kingston, now a civil service commissioner at Ottawa, and who was chairman of numerous boards established during the first eighteen months of the life of the act, has frequently by request addressed gatherings in Canada and in the United States as to the principles and operation of the act. It may be worth quoting at this point some sentences from an address given by Professor Shortt before the American Association for Labor Legislation at Atlantic City in December, 1908. Professor Shortt's address was not in the nature of an analysis of the act, but consisted rather of observations and deductions derived from his large experience of the practical administration of its provisions. The closing sentences of his address show concisely the character of the act and the methods by which it is induced to work most effectively:

Considering how very seldom in their discussion of the merits of their respective cases the weaknesses of their own position and the strength of their opponents are frankly admitted, I have been agreeably surprised to find how readily in the end, even in the discussion before the board, but more particularly in the separate discussions afterwards, each side could be brought to concede the validity of their opponents' position on many points. Another encouraging feature, considering what interests are at stake, is the general calmness and good feeling which prevail in the discussions before the boards. Occasionally the temperature may exhibit a sudden rise when some tender spot is rubbed, but such occurrences are rare. Much the liveliest case we experienced, in the way of an exchange of picturesque compliments, was one in which two very respectable interna-

tional unions were seeking to establish themselves on the same base and on the same side of it with reference to a railway company.

There are many reflections suggested by the experience of the concrete cases which have been brought under the operation of the Canadian act, but only a few samples could be presented in this paper. The policy and method of the Canadian act by no means afford a certain remedy for industrial disputes. No practical man dreams that industrial disputes can be prevented from occurring, because there will always be cases where justice, unavoidably pertains to both sides. There are, however, many disputes which are chiefly due to historic prejudice, mutual ignorance and misunderstanding, and it ought to be possible to dispose of most of these and to effect a working settlement in the case of many of the others. All that one may claim for the essential features of the Canadian act is that, if tactfully handled, they provide a reasonable method of securing the maximum of concession with the minimum of compulsion.

With regard to the question of the applicability of the act to the United States, reference should be made to the special inquiry conducted on this subject by Dr. Victor S. Clark, the noted sociological writer of Washington, D. C., who visited Canada in the spring of 1908 at the special request of Mr. Roosevelt, the then President of the United States, for the purpose of making an investigation into the working of the act. Dr. Clark's report was published in the May issue of the Bi-Monthly Bulletin of the United States Bureau of Labor, where it occupied eighty pages. The report was an extremely valuable analysis of the act. Generally speaking, the findings were favorable to the measure, which had, however, it must be remembered, been in operation at the time of Dr. Clark's inquiry only one year. "So far," said Dr. Clark, "as can be judged from the experience of a single year, the Industrial Disputes Act has accomplished the main purpose for which it was enacted, the prevention of strikes and lockouts in public service industries;" and at another point the writer observes:

Apparently, it has not affected adversely the conditions of workingmen or of industries where it has been applied. It is much more applicable to American conditions than compulsory arbitration laws, like those of New Zealand and Australia, because its settlements are based on the agreement of the parties and do not prescribe an artificial wage, often illy adjusted to economic conditions. Employers and the general public in Canada, with a very few exceptions, favor the law. The working people are divided. Possibly workers do sacrifice something of influence in giving up sudden strikes, but they gain in other ways, especially in having a better alternative to a

strike than before. And as part of the general public they profit by the saving of industrial waste through strikes.

After such a law is once on the statute books, however, it usually remains, and in New Zealand, Australia and Canada it has created a new public attitude toward industrial disputes. This attitude is the result of the idea—readily grasped and generally accepted when once clearly presented—that the public have an interest in many industrial conflicts quite as immediate and important in its way as that of the conflicting parties. If the American people have this truth vividly brought to their attention by a great strike, the hopeful example of the Canadian act seems likely, so far as present experience shows, to prove a guiding star in their difficulties.

Some fifteen months later, during the summer, namely, of 1909, Dr. Victor S. Clark again visited Canada, and made a supplementary investigation of the operations of the act. His report is again published, in Bulletin No. 86, of the Department of Commerce and Labor, and, as voicing the view of an unprejudiced and careful observer, it is of special interest to note his conclusions after this second investigation. These conclusions are summed up in the following sentences:

The act seems to be gaining support with longer experience, and has very few opponents outside of labor ranks. The act has afforded machinery for settling most of the disputes that have occurred in the industries to which it applies; but in some cases it has postponed rather than prevented strikes, and in other cases strikers have defied the law with impunity. Most of the amendments proposed look toward perfecting details rather than toward revising the structure of the law. There is no likelihood that the act will be repealed, or that it will be extended to other industries or toward compulsory arbitration. The most serious danger it faces is the non-enforcement of the strike and lockout penalties in cases where the law is violated.

Under the conditions for which it was devised, the Canadian law, in spite of some setbacks, is useful legislation, and it promises more for the future than most measures—perhaps more than any other measure—for promoting industrial peace by government intervention.

It may be added that during the recent session of the Massachusetts legislature an act embodying the principles of the Canadian measure and modeled closely on its lines was before it for consideration and an active discussion on its merits took place in the American press; the measure was eventually deferred until the following session for final action, and its promoters are hopeful that it will then become law.

In the State of California also the principle of the Canadian

act has been endorsed in an elaborate report presented to the governor of that state by Mr. Harris Weinstock, a special labor commissioner, who was commissioned to investigate the labor laws and labor conditions of foreign countries generally in relation to strikes and lockouts. Mr. Weinstock's report, which is an able document of over one hundred and fifty printed pages, setting forth concisely the laws on this subject in all civilized communities, strongly recommends legislation on the lines followed by Canada, and contains the draft of a measure closely approximating the Canadian act. It is a curious fact that Mr. Weinstock had been, by independent observation and inquiry, led, as his report states, to the conclusion that the principles forming the basis of the Canadian act, of which he had at the time never heard, offered the most hopeful and practicable method for dealing with industrial disputes. The closing sentences of Mr. Weinstock's report, as bearing on this point, are specially worthy of note:

It is generally conceded that public opinion is a most important factor in the settlement of labor disputes, more especially when they are of a character likely to affect public convenience or comfort or profit. It is rarely if ever that a strike or lockout can succeed that has public sentiment against it. The problem, however, has ever been how properly to enlighten public opinion and how to place before it the actual facts involved in a labor dispute as found by a disinterested inquirer in whom the public would have confidence.

With these thoughts in mind it seemed to me that an important stride would be made in the direction of industrial peace, if legislation was created calling for a public inquiry in labor disputes before they had reached the serious stage of strike or lockout.

I realized, however, that any legislation along such lines, in a country such as ours, must at best be experimental. While in that stage I feel that the proposed legislation should be confined to disputes likely to arise in the conduct of public utilities, since it is strikes and lockouts in these activities that, as a rule, more seriously affect the public welfare. Should the proposed legislation after a fair trial prove a success it would then be in the interest of all concerned to broaden it so that all industries might be brought under its influence.

This conclusion having finally been reached on my part, I forwarded it on paper while in Brussels, Belgium, in the nature of a rough draft of a proposed law.

On arriving in Paris a few days later I found awaiting me there a packet of printed matter sent me by the Canadian Labour Department through the courtesy of Mr. Dougherty, of the Canadian Department of Agriculture, whom some months before I had met while in Rome.

Looking over this printed matter I was surprised to find that my idea had been anticipated by the Deputy Minister of Labour of Canada, Mackenzie King, who had recently formulated and had succeeded in getting the Canadian Parliament to pass a public inquiry act. My satisfaction can be understood when I found among other documents in his collection the first annual report just issued by the Canadian Labour Department of the operation of the act which showed that ninety-seven per cent of the labor disputes submitted to a public inquiry had been amicably adjusted, and that in only three per cent of cases inquired into had there been strikes after an award was made.

Here we have a most striking illustration of the difference in effectiveness between voluntary arbitration and public inquiry. Under voluntary arbitration, having behind it all the machinery and influence of the state, there are strikes and lockouts in about ninety-seven per cent of cases, and peaceful settlement without cessation of work in about three per cent of cases. Under public inquiry we find the very first year of its trial in Canada, when at best the system could not yet have been perfected, ninety-seven per cent of peaceful settlements without cessation of work and but three per cent of strikes. Whatever doubts or misgivings I may have had as to the desirability or the practicability of the proposed public inquiry law were removed by the showing made by Canada as the result of an actual application of the principle. Surely, if in California we can, through the medium of public inquiry, adjust peacefully ninety-seven per cent of labor disputes, we shall have accomplished a most important work and shall have come as near establishing industrial peace as under our system of government is possible.

Sailing from Egypt to India, it was my good fortune to meet Mr. Mackenzie King, the framers of the Canadian public inquiry act, to whom I am indebted for valuable hints and suggestions embodied in the following recommendations, which I have the honor to submit herewith to Your Excellency.

It is understood that the Californian measure was held in abeyance for some time on account of the alleged unconstitutionality of certain of its provisions. This point has, however, been subsequently waived and the measure will now shortly be dealt with in the legislature.

An act similar in character has been introduced into the Wisconsin legislature, again after consultation with the Department of Labour of Canada, and in this case also has been held pending the consideration of the question of constitutionality. The decision in California will no doubt affect the situation regarding the act in Wisconsin, and the action of the legislature of Massachusetts will probably also have its due effect in both cases. The State of Ohio has been in active communication with the department, various

officials and public men having indicated a desire to see whether similar legislation might not be made effective in that state.

In the case of Illinois it is not understood that any definite action has been taken in the direction of legislating along the precise lines of the Industrial Disputes Investigation Act, but at a convention of officers of conciliation boards and boards of arbitration in Washington in January last, the special representative of the Governor of Illinois, in the course of a paper on Compulsory Arbitration contributed by him to the proceedings of the conference, spoke in the most cordial terms of the principle on which the Canadian act is based and strongly commended its general features.

Turning to the other side of the world, South Africa, again we find the influence of the Industrial Disputes Investigation Act in a marked degree. The legislative authorities of the Transvaal had been in close touch with the Department of Labour for a year or two regarding labour legislation generally, and in September last the Minister of Labour received the following letter from the Honorable Jacob de Villiers, Minister of Mines of the Transvaal, saying that a measure had been enacted in that country modeled closely on the lines of the Canadian act:

I have to thank you for your letter of the 24th July last, and also for the very interesting documents which have been forwarded by Mr. Acland, the Deputy Minister of Labour.

I enclose a copy of the Industrial Disputes Act, as passed in the Transvaal Parliament at its last session. I regret that I am unable to forward you the official reports of the debate, as they are not at present available, but will do so later.

The bill, as you will see, is modeled on practically identical lines with the Canadian act, changes being made merely to suit differences in local conditions. The bill received the support of all sections of Parliament, the principle of conciliation and investigation being accepted in preference to that of compulsory arbitration.

In preparing and introducing the bill I was much assisted by the valuable reports published by your department.

I wish to tender you the thanks of my government for your kind offer of co-operation and assistance, which I greatly value and reciprocate.

It has already been indicated that in a few cases, six out of eighty-two, where, after disputes had been referred under the act the threatened lockout or strike has not been averted, the disputes in question related to union recognition. There is probably no

other question in which the parties concerned are so little susceptible to the process of conciliation or where investigation can hope to accomplish so little as in disputes of this nature. A complete surrender by one side or the other of ideas wholly divergent would appear to be the only means of settlement, and the main achievement of an inquiry under such circumstances is likely as a rule to be that of placing before the public a plain and impartial statement of the case, with findings accordingly. In the event then of lockout or strike the public is in a position to determine as to the degree of responsibility attaching to either party. Experience of the workings of the act has shown so far that the disposition of the public is to uphold the findings of a board, and that a lockout or strike declared in face of such findings fails of public support and is foredoomed as a rule to failure as a consequence. It is possible that continued experience of the present act will demonstrate to the parties to a dispute the futility of opposing the carefully considered judgment of a board of conciliation and investigation. In each case where, since the inception of the act, a strike has been declared in face of the findings of a board the strike has ended disastrously and the employees have in the end adopted substantially the recommendations made at the outset by the board which conducted the inquiry.

A word may be said, in conclusion, as to the question of penalties. As above indicated, no action has been taken by the Department of Labour or by any other department of the Dominion Government in the case of any alleged infringement of the act, either against employers or employees. There have been several convictions under the act where information has been laid by one party or other concerned in a dispute, but it will, however, be obvious from a study of the act as outlined in the preceding pages, that its success must ultimately depend less upon the question of the enforcement of penal clauses than upon the acceptance of the principle that the concentration of public opinion on an industrial dispute by means of an official inquiry is calculated to prevent either party from taking a position of manifest unfairness; while on the other hand the general good of a community, aside from the particular welfare of those concerned in a dispute, is a matter of such paramount importance as to justify the outlawing of strikes or lockouts until the dispute to which they relate has been made the subject of investigation.

SETTLEMENT AND PREVENTION OF INDUSTRIAL DISPUTES IN NEW ZEALAND

BY PAUL KENNADAY,
New York.

New Zealand came upon the scene when railways were soon to be a necessity, when home industries were being displaced by factories and when labor legislation in England was already giving expression to the new theory of the state's right and duty to protect the workers against the grosser forms of industrial barbarity. The stubborn fighting of the native Maoris helped to knit together all the more strongly the isolated church colonists of 1840 and their early followers, and the government then established and so secured, rich in land but with a treasury depleted by the wars, freely sold of its many acres to its people eager to secure homes upon the land and the best of grazing pastures for their sheep.

As the colonists grew in number, later comers discovering that the richest and most accessible lands had been taken up by those first in the field, turned to the state for help, and land reform came to be a burning issue between those already on the land and those who demanded advances to settlers, low rentals, freeholds upon easy terms and the "bursting up" of large estates.

When private capital was lacking for the building of railways it needed no campaign of education, no butting against interests already vested, to induce the new settlers again to turn to their state for the opening up of lands required for settlement and for the further development of existing holdings. When shops and factories began to assume some importance in the new country and strikes came to be matters of not unusual occurrence and gross sweating in certain trades was disclosed, once again state aid was called for and this time with insistence by an urban working class steadily gaining in numbers upon the older middle class of pastoralists and employers. By 1890 the Progressive Party was brought into power for the first time through the votes of a united working class indignant over their complete defeat in the Maritime Strike, and by those who demanded land settlement laws much more liberal

in character that the large sheep-run holding and moneyed conservative class were prepared to countenance.

At the outset of the new régime under the remarkable and all-powerful Richard Seddon, one of his most able lieutenants, Mr. William Pember Reeves, Minister for Labour, laid before Parliament a well-considered plan for the compulsory arbitration of labor disputes. For three years even New Zealand law makers, busy with more urgent land reforms, viewed askance this novel scheme. But by dint of much persistence upon the part of its author the bill was enacted by a narrow margin in 1894, and thereafter has continued with many and frequent amendments to the present time. Of these amendments the most numerous and far-reaching were those of the session of 1908, when Parliament was compelled to recast the old act, now become thoroughly unsatisfactory to employers much perturbed by a half dozen small strikes in which the workers had successfully defied the law of the land and had withstood the judgments of the Court of Industrial Arbitration.

The present act, The Industrial Conciliation and Arbitration Act, 1908, and the seventy-four sections in amendment, of the same year, is a careful attempt to avoid the failures and causes for friction of the antecedent acts. Again conciliation becomes the foundation and the trade union remains the keystone to the arch bridging over the opposing interests and misunderstandings separating capital and labor. The worker may avail himself of the privileges of the act, only as he is a member of a registered union keeping regular books, having a common seal, with capacity to sue and be sued, whose property may be attached and whose members may be disciplined. Conciliation is first attempted between the union and the individual or associated employer; after that is exhausted, recourse is had to arbitration.

For the administration of the act the country is divided into industrial districts in each of which a Commissioner of Conciliation, holding a salaried three-years' appointment from the governor, is ready, upon application to him made by employer or employee, to set up a Council of Conciliation for the hearing of any case involving differences not adjustable by the parties themselves. Each side may nominate one, two, or three representatives, who, if accepted by the commissioner, then as a Council of Conciliation under the chairmanship of the commissioner, proceed to hold public hearings

of the matters in dispute. The council has the usual powers to summon witnesses, to administer oaths, to examine books and papers, and has a wide latitude in the matter of procedure and the character of the evidence it will admit. The hearings, marked by informality and freedom from legal technicalities, become, in fact, amicable conferences of men mutually desirous of settling their differences upon the best terms possible. The council members being men trained in the trade under review, handle with a dispatch surprising to the layman the intricate and lengthy trade logs before them and adjust to a penny, indeed to a half penny, day-work and piece-work rates. Whether it be wages, hours, the open or closed shop, or any other of the causes of friction between employer and employed, if an agreement is reached by this council of representatives, an award is drawn up and filed with the registrar appointed to administer the act and the parties are forthwith bound for any period agreed upon of not more than three years.

In case no settlement of the dispute is possible, the council is authorized to "make such recommendation for the settlement of the dispute according to the merits and substantial justice of the case as the council thinks fit and may state in the recommendation whether, in the opinion of the council, the failure of the parties to arrive at a settlement was due to unreasonableness or unfairness of any of the parties to the dispute." This provision, taken from the Canadian Industrial Disputes Act, is an attempt to put the responsibility for failure to agree where it belongs and to inform the public of the true nature of the dispute. It is, however, a counsel of perfection not likely to have much bearing on actual disputes as the assessors, representatives of opposing sides, must be unanimously agreed before the recommendation may be made.

But whether such opinion is delivered or not, all cases before councils in which settlements are not "sooner arrived at by the parties and embodied in an industrial agreement duly executed" must be referred to the Court of Arbitration not earlier than one month or later than two months after the date fixed by statute for the original hearing of the dispute before a council. The court of arbitration thus becomes a court of appeals, divested now of all its former original jurisdiction, and so, as an important consequence, no longer weighted down with a calendar of cases so long that its decisions cannot be rendered without a delay causing loud complaint

from parties demanding some immediate and definite basis for their daily relations.

Again the litigants appear before referees of their own selection, predisposed, it may be assumed, one part to one view and the other to the opposing view of the controversy. If one judge of supreme court qualifications, holding office for life on appointment from the governor and two "nominated members", appointed for three years upon recommendation respectively of employers and workers, may not seem as unprejudiced and impartial a tribunal as might be desirable to mete out exact justice, the practical-minded New Zealander would admit the compromise and point out that the complexities of the situation had driven him to it. As a matter of fact, the two nominated members of the court would fill no very useful function if a competent judge were found willing to retain his office for more than a few years. But the position is an arduous one, open to almost constant and often bitter criticism, and the presiding judge, before he has long been upon this novel bench, is anxious to return to the more peaceful channels of law gliding along through well-marked precedents. And so the court representatives of employers and employed, though they may usually be depended upon to take opposite views on general principles, render a distinct service in bringing to bear upon technical trade questions a more exact information than would usually be possessed by the usual judge learned only in the law.

The proceedings before the court, though somewhat more formal in character than those before the councils, yet have little of the delays and circumlocutions and technicalities of the common law court, an end in numerous ways sought to be obtained by the statute makers, and by none with more general approval than by the prohibition of the representation of parties through lawyers. In addition to the more speedy trials thus assured and the relief to the court from the burden of original jurisdiction formerly held by it, the enforcement of judgments and the collection of fines and penalties is now left largely with the magistrates' courts. As a result the court may now attend to the business brought before it with the despatch which the peculiar and pressing nature of that business manifestly requires.

In its judgments the court may impose preference in employment to unionists, if competent unionists offer from unions open

upon small stated initiation fees and dues to all of sufficient trade skill who apply; it may fix a minimum wage, making lower allowances for "under-rate," incompetent labor; it may determine hours of employment and the amount of compensation for overtime work; it may bring in employers and unions of workers not parties to the original proceedings, and it may make its decisions a common rule for one or more industrial districts.

By so providing for the immediate calling together of representative expert conciliators and by setting up a permanent ready appeal court with peculiar knowledge of industrial matters, coupled with large powers in their regulation, a most effective method seems to have been adopted for the prevention of strikes and lockouts. Express penalties, such as the suspension of union registration and fines ranging from \$50 to \$2,500, may be imposed in case of strikes or lockouts by parties bound by an award, or who are before council or court for a determination of their claims, and no part of the act came in for more heated discussion at the time of the latest amendments than these strike-prevention clauses. Employers, smarting under the well-founded conviction that the old act held them willy-nilly, while the workers were free to obey or to disregard judgments rendered against them, went so far as to demand imprisonment as a penalty for striking. The minister for labor actually brought in a bill so to promote conciliation and industrial peace. But it is not through the fear of fine, and certainly not through the martyrdom of imprisonment, that men and women are to be led to agree with their masters. The new act will continue to succeed as a preventive of strikes in spite of its strike-prevention clauses, rather than because of them.

But whatever may be the measure of success of this new arbitration and conciliation act, and however much the old act may have helped to prevent strikes in New Zealand, before it is concluded that industrial legislation of this character would be practicable in larger and more complex industrial communities, it is necessary to consider certain conditions unique to New Zealand which have had a far-reaching effect upon the operation of all her labor legislation. Consideration must be given to the manner in which the country came to adopt the principle of state intervention in labor disputes along with other measures of a state socialistic character. Even when compulsory arbitration was in its first early experimental days

the people of New Zealand had become accustomed to a wide application of the principle of state aid and intervention. These settlers in this far-off country were a homogeneous people, British born or British descended almost to a man, driven to their fertile island home by a common impulse to make a better and an easier living than was possible for them in the old, crowded, slow-changing England, full of hope, with a large measure of determination to build better than their fathers, and possessed of their father's respect for law as law. The labor leader's shocked reply to the natural American suggestion that his union should strike to remedy an intolerable situation, "Why, it's against the law, Sir!" was an illustration of an un-American attitude of mind that in itself has made compulsory arbitration in New Zealand possible. Coupled with this is a respect for the judiciary and a respectable judiciary not yet attainable in a land where it is common report that more than one judge has been placed upon the bench by this or that corporate interest, while others have paid to their political masters from ten thousand dollars to one hundred thousand dollars for nominations. With an inevitable class consciousness in presiding judges of the New Zealand Arbitration Court, labor takes for granted and even objects, and at times, strongly, that it cannot appear before a judge uninfluenced by a certain prejudice, unconscious but none the less actual, in favor of the employing class in which the judges have been born and reared, where their friends and former clients are. But of their venality, of deliberate unfairness, of intended partiality, of dishonesty and corruption in securing office, not a suggestion is ever made and no suspicion seems ever to be entertained.

As compared with countries where a constant and large fringe of unemployed are ever driven by want to depress the wages of the employed, New Zealand labor is peculiarly fortunate and intends by all restrictive immigration laws in its power to continue so to remain. There is a relative scarcity of labor in New Zealand, especially of skilled factory labor, that of itself maintains wages and makes demands for their increase or for the reduction of hours difficult to withstand. Coupled with this has taken place a large increase in the spending power of a community of less than a million souls whose exports have increased from \$41,000,000 to nearly \$100,000,000 in the fifteen years since the arbitration act has been in force, and whose government has borrowed abroad, and spent

largely at home, moneys now totaling \$332,000,000 as against \$200,000,000 of national debts in 1895. It has been easy enough to pay the piper while the dance was on and all had money in their pockets. But when retrenchment in borrowing shall become necessary and when it becomes manifest at last to the most unblushing of protectionists that tariff walls cannot be raised any higher about the fields and flocks of New Zealand, it will be no longer the facile and acceptable device it is now to shift on to the consumer the cost of court-increased wages. Even the steady, compromising English descended New Zealand workman, with all his inherited respect for law in general, with his acquired dependence upon the arbitration act in particular has manifested upon several occasions a surprising inclination toward forcible objections when demanded improvement in wages and hours have been withheld. It is by no means certain that when the arbitration court refuses to place further burdens upon industry face to face with a falling market, that then New Zealand will be free of strikes. But it will be freer than if without its conciliation and arbitration act, and until then, and in part because of the act, New Zealand, no doubt will continue to enjoy the blessings of industrial peace.

That the compulsory and court features of the New Zealand act could not be applied in America or in any other large country of great and varied industrial interests seems almost as patent as that conciliation upon the New Zealand model would be not only desirable but altogether possible of accomplishment. The mere machinery in readiness to move disputing parties to a reasonable and quiet consideration of each other's side would prevent not a few open ruptures, while hearings held and cases discussed could hardly fail often to end in satisfactory settlements.

But the experience of New Zealand points to the conclusion that in proceedings of this nature the state and its tribunals must deal with the union of the workers; cannot, indeed, but refuse to grant to the ununionized, irresponsible individual workers his day in this particular sort of a court. So long as American employers continue to fight unionism as unionism, to insist upon the shop closed to unionists, to blacklist strikers, and to refuse to recognize that steam and electricity have altered the status of the industrial worker even as they have revolutionized industry, an American act for the conciliation of labor disputes, would be but one more added to our long list of moral aspirations enshrined in statutes.

THE GERMAN COURTS FOR THE ARBITRATION OF INDUSTRIAL DISPUTES

BY HARRIS WEINSTOCK,
Special Labor Commissioner for California.

During the summer of 1908 I was making investigations in Berlin on German labor laws and labor conditions as Special Labor Commissioner for California. In the course of an interview with His Excellency Herr Delbruck, German Minister of Commerce, I invited his opinion on compulsory arbitration. His reply was to the effect that the German government does not favor compulsory arbitration for fear that it might find itself unable to enforce the decisions of its industrial courts and that a failure to do so would bring the administration into contempt.

The German authorities are exceedingly slow about exercising any compulsion in the settlement of labor disputes. The relations between organized labor and the German federal administration at best are strained and more or less unfriendly. This is largely due to the fact that the trade unions and the social democratic party in Germany consist practically of the same membership.

Politically the government and the social democratic party have little in common and, as a rule, are found in the attitude of bitter political opponents. The frequent instances of political warfare between them have led to strained relations and to each regarding the other with suspicion and with more or less hostility. Organized labor in Germany now embraces a membership of about two millions and is steadily growing. In 1907 the Social Democrats cast 3,259,000 votes, elected to the Lower House 43 out of 397 members, had 2,000 mayors and other executive or administrative officials in the Empire, and published 158 journals and periodicals.

His growing strength has won for the German wage earner, his trade union and his political party, the wholesome respect, if not the fear, of those in power. The German government, therefore, is very loth to attempt to pass legislation along the lines of compulsory settlement of labor disputes, which in all likelihood would

be regarded as a governmental effort to curb the liberties and the freedom of action of the worker. The government, however, has taken progressive measures along the lines of encouraging conciliation and voluntary arbitration. The first attempts in this direction were made in 1890 when legislation was passed regulating the industrial courts. There had existed in various parts of Germany, for nearly seventy years, various courts dealing with arbitration or conciliation for collective disputes. This, however, resulted in great diversity of form and procedure in the courts, causing considerable dissatisfaction, and finally led to the adoption of the law of 1890 which provided for a uniform regulation.

The tribunals as since constituted are composed of an equal number of workers and employers. The local authorities appoint in addition a president and a deputy. The chief function of these tribunals is, upon complaint of either party, to adjust individual disputes. Their jurisdiction extends only to those employed in factories. A further provision of the law of 1890 specifies that¹

Courts may act as conciliation bureaus in case of disputes concerning the terms of continuation or renewal of the labor contracts (Art. 61), but only on condition that both parties request such action and, where they number more than three, and appoint delegates to the hearing. Such delegates must be twenty-five years of age and in the enjoyment of full legal rights. The Conciliation Bureau consists of the president of the court and at least four members, two employers and two workmen, but there may be added, and must be when the delegates of the two parties so request, representatives in equal numbers named by the employers and employees. Both these representatives and the members of the bureau must not be concerned in the dispute in question.

The first step in the procedure is a determination of the facts by hearing the delegates from each side and the examination of witnesses, the bureau having power to summon and examine witnesses, though no penalty is provided to compel their presence. Following this each side must formulate in conference its opinion upon the allegations made by the other party and the witnesses, and then an effort at conciliation is to be made. If this succeeds, the agreement signed by the bureau and the delegates is to be published. If not, the court is to render a decision by a majority vote, though in the case of a tie the president may decline to vote and declare that no decision could be rendered. When a decision has been given, the delegates must declare within a specified time either acceptance or rejection thereof;

¹"Report of French Bureau of Labor." *De la Conciliation et de l'Arbitrage dans les Conflits Collectifs entre Patrons et Ouvriers en France et à l'Étranger*, 1893, p. 476. See Bulletin No. 60, Sept., 1905, Department of Commerce and Labor, Washington, D. C.

failure to make declaration to be taken as refusal. At the end of the time allowed the bureau is to publish the decision. It will be seen that everything in the proceeding is absolutely voluntary for the parties in dispute.

Organized labor in Germany has for years been battling for recognition at the hands of the employer. Thus far, as pointed out in my report to Governor Gillett on strikes and lockouts in foreign countries, January, 1910, aside from the printing, book binding and building trades, it has not been successful in obtaining the desired recognition excepting in the case of some of the smaller employers. The great German employers of labor, including the employers in the metal and the textile industries, have steadily and persistently refused to deal with or to recognize labor unions. Employers in these industries, with three million wage earners on their collective pay rolls, are strongly organized and in a most determined manner refuse to treat with or to acknowledge the existence of labor organizations or their representatives. The employers contend that union workers, as a rule, are also members of the social democratic party, which has persistently and needlessly antagonized capital and capitalists by violently denouncing both, and that so long as this policy on the part of organized labor maintains, employers will refuse to recognize trade unions.

Exceptional cases will be found where large employers will recognize unions composed, however, exclusively of their own workmen. For example, Messrs. D. Peters & Co., of Elberfeld, manufacturers of woolen and cotton stuffs, have a council composed of nine employees, four of whom are nominated by the employers and five are elected by the workmen, with a member of the firm as president, who, however, has no vote. All differences arising in relation to hours of labor, or wages, are referred to this council, whose decisions have ever been accepted by both parties. This plan seems to have worked to the satisfaction of all concerned.

The state has thus far refrained from even attempting to exercise any coercion in forcing settlements in labor disputes. It is a strong believer, however, in the exercise of conciliatory measures. With this end in view a law was enacted creating what has since become known as the arbitration courts for trade disputes. There are between four hundred and four hundred and fifty such courts in Germany. The court in Berlin, for example, has eight depart-

ments, with a judge for each department. These courts have three separate and distinct functions:

(a) To decide disputes between individual workmen and their employers.

(b) To conciliate in disputes between bodies of workers and their employers.

(c) To give expert information and opinions in reference to trade questions to legislators and to state executives.

Under the law the court awaits the registering of a complaint by either party. It also has the power, however, to take the initiative and to summon both parties to a hearing, subject to a fine of twenty-five dollars for failure to respond to such summons. There is no penalty for either side refusing to answer questions put by the court or for refusing to enter into negotiations with the other party, even at the instance of the court.

The theory of the German law is that one-half the battle in a labor dispute is won in the direction of peace if both parties can be brought together by a third party, who in this instance is the court, which is disinterested and in whom both sides can place confidence. I was informed by Herr Gustav Melisch, Chief Secretary of the Industrial Court of Berlin, that seventy per cent of the disputes are submitted to this court, and that as a rule the decisions rendered are accepted, although under the law there is no obligation to do so; most cases are settled by compromises effected between the parties in dispute, while the case is in course of investigation and prior to the court decision.

It is well to bear in mind, however, that, as a rule, the cases dealt with by the industrial courts are confined to those arising between the smaller employers and their workers. As previously explained, the large employers will in no wise recognize unionized labor, or the industrial courts, except to respond to the legal summons and then to decline answering questions which under the law they may legally do, and the power of the court is at an end. An exceptional case occurred in the summer of 1908. A national strike in the building trades was threatened throughout the Empire. Through the efforts of the industrial court a hearing was held at which representative building contractors and wage earners from various parts of Germany were present. The conference continued for many days, and finally, through the good offices of the court,

mutual concessions were made and an agreement for an extended period was entered into which insured industrial peace in the building trades until this present season. Seemingly, it has been impossible for the industrial court to repeat its successful effort, as the press has been publishing recent accounts of the general building strike now on throughout Germany.

When I was last in Germany, His Excellency Herr Delbruck, the Minister of Commerce, stated that the draft of a law was then under consideration regarding so-called "Chambers of Labor." These chambers of labor are to serve as courts of arbitration wherever special arbitration courts for trade disputes do not exist, or if the employer and employees are engaged in the districts of several existing arbitration courts, or if no agreement can be reached concerning a dispute in the ordinary court for trade disputes. The composition of the proposed labor councils, their functions and powers, had at that time not yet been fully determined upon, beyond the general idea that they are to be composed partly of employers and partly of employees. At this writing I am unable to learn whether this proposed measure has been enacted.

The wonder is not that so little has been achieved by the German industrial courts, but that in view of the very limited powers granted these tribunals, that so much has been accomplished. It can easily be understood that a fine of \$25.00 for failure to respond to a court summons can have very little terror for a great corporation about to lock out its men, nor is this trifling amount likely to have a deterrent effect on a powerful labor union that has voted to go on strike, and that believes it can get better results from a strike than through conciliation.

The industrial court serves very useful purposes where both parties to a labor dispute are ripe for a conference, but hesitate to take the initiative for fear of its being mistaken by the other side as a sign of weakness. The intervention of the court releases both sides of this responsibility, and paves the way without prejudice for a "get together" conference. Yet another helpful feature in the German industrial court system is the practice often followed during the course of public negotiations, by the assistant judges, of discussing the points at issue separately and privately with the parties to the dispute, frequently bringing about in this manner compromises and agreements.

In the matter of dealing with labor disputes Germany seems to be to-day where England was several decades ago. The attitude toward organized labor on the part of English employers, as a rule, is in marked contrast to that of the German employer. The English employer has long since discovered the wisdom and expediency of recognizing and dealing with organized labor, and his policy has made for a much higher degree of industrial peace. This fact is emphasized by comparing England's record of strikes in recent years with that of Germany. Owing to the difference in method followed by these two countries in keeping their strike records, an exact comparison is not possible, but the following figures are sufficient to indicate that the policy pursued by English employers is making for industrial peace, whilst that followed by German employers in refusing to recognize or to deal with organized labor is making for increasing industrial war.

The following figures are taken from the English government report of 1907 on strikes and lockouts:

Year.	No. of disputes.	Work people involved.	Duration of working days lost.
1897	864	230,267	10,345,523
1907	601	147,498	2,162,151

It will be noted that during the intervening ten years for which the figures are given, the number of disputes has diminished by 34.40 per cent, the number of workmen involved has been decreased by 36.03 per cent, and the number of working days lost, which after all is the correct unit to be considered, has been reduced by 79.10 per cent. To the best of my knowledge this is the most remarkable showing of any industrial country in Europe.

Compare the foregoing record of England with the following figures taken from Bulletin 86, page 243, January, 1910, issued by the Department of Commerce and Labor at Washington, D. C., and it will be seen that German employers have paid a heavy cost for their unwillingness to recognize or to deal with organized labor:

Strikes in Germany

Year.	Strikes.	Establishments affected.	Strikers.
1899	1,288	7,121	99,338
1907	2,266	13,092	192,430

(450)

In the nine years for which comparative figures are here given, the number of strikes in Germany has increased over 75 per cent, the number of establishments affected has increased over 83 per cent, and the number of strikers has increased over 93 per cent—a sad commentary upon the policy pursued by the German employer. Nor is the end yet in sight. Despite the attitude of German employers, organized labor in Germany has gone forward in recent years with rapid strides and is destined to a continued growth. The persistent and steady refusal on the part of German employers to deal with labor unions inevitably must still further widen the gap and increase the existing bitterness between wage payers and wage getters, with heavily added cost, if not with ultimate disaster to both.

It might be assumed from the foregoing statement that I was either a trade unionist or that I held a brief for organized labor. It happens that neither is the case. I am and have been for over thirty years a large employer of labor. I am not writing this, however, as an employer, nor from the employer's standpoint. I am writing purely as an investigator and as a chronicler of authenticated facts. As one who has had the rare opportunity of officially investigating the labor laws and labor conditions not only of Germany but also of the leading industrial countries of the world, I would be blind indeed or stupidly prejudiced against trades unions did I not see with perfect clearness that organized labor has come to stay, and that so long as the wage system prevails unionism is destined to be a permanent and growing institution of modern industrialism. Moreover, no fair-minded investigator who has noted the work achieved by trade unionism in the interest of the wage earner and his dependents can help but feel that for trade unionism to fail, is to mean for the worker a backward step that in the end would force his return to the wretched condition of his forbears.

The only protection the worker can hope for in these days of gigantic industrial organization is that which comes to him from solidarity and collective bargaining. That industrial nation then, all other things being equal, is likely to enjoy the highest degree of industrial peace and to make the greatest industrial progress, whose employers, great and small, in common with the employers of England, are wise enough to take conditions, not as they would like

to have them, but as they are, and deal with these conditions accordingly.

The employers of Germany can no more hope to destroy trade unionism by refusing to recognize it, than can the ostrich get rid of his pursuer by hiding his head in the sand. Sooner or later German employers, in common with employers in most other growing industrial countries, will see the wisdom of recognizing organized labor. They will see the wisdom of inviting the State to intervene in disputes that cannot in any other way be settled. They will see the wisdom of having the State assume the part of public inquirer, investigator and conciliator, not, as now in Germany, with little or no power at its command, but with the fullest right to summon witnesses, place them under oath, examine books and documents, and do all other things that may enable it to reach the facts involved in the industrial controversy, so that through published statements issued as the result of such public inquiry, public opinion may be enlisted to cast its weight and its influence against the side in an industrial dispute which may assume an unfair or an unreasonable attitude.

BOOK DEPARTMENT

NOTES.

Adams, E. D. *British Interests and Activities in Texas, 1838-1846.* Pp. viii, 267. Price, \$1.50. Baltimore: Johns Hopkins Press, 1910.

Professor Reeves' study of American Diplomacy under Tyler and Polk is now followed by a study of British Diplomacy in the same field covered by the earlier work. The material is drawn almost exclusively from the Public Record Office in London. Many new sidelights are thrown on controverted points. It is shown that England at first was indifferent to Texas. Only toward the close of his ministry did Palmerston realize how important to England as a check upon the United States an independent Texas might become. When Aberdeen succeeded to the ministry, the friendship of the United States was desired by England. Aberdeen was disposed to disregard Texas and go back to the traditional policy of friendship to Mexico. Under the influence of the abolitionists, however, he was led to favor abolition in Texas and to counsel Mexico to ask it as one of the conditions of peace. This it was which enabled Calhoun to charge him with attacking an American domestic institution. Humanitarian interest was interpreted as political intrigue. Thus the man who wished to conserve American friendship was put in the position of one making a covert attack.

American Sociological Society, Publications of the. Volume IV. Pp. 217. Price, \$1.60. Chicago: University of Chicago Press, 1910.

Batten, S. Z. *The Christian State.* Pp. xv, 458. Price, \$1.50. Philadelphia: The Griffith & Rowland Press, 1909.

The author attempts in this volume to interpret the state, to show the relation of democracy to human progress, and to indicate the real relation of the state to the kingdom of God, as well as "the lines of effort for the divine potencies of the gospel." The nature, origin, functions and forms of the state are discussed in the first part of the work; the beginnings, advantages, perils and tasks of democracy comprise the second; and the relation of Christianity to these institutions, with a final chapter on The Realization of the Christian State, comprise the third and final part. This work aims to arouse Christian men to make the coming age Christian in spirit and method. The trend of the present is in this direction, as the nature of these institutions indicates. The author is to be commended for the scientific manner in which he has combined the conclusions of political science with the ideals of Christianity.

Beard, C. A. *American Government and Politics.* Pp. viii, 772. Price, \$2.10. New York: Macmillan Company, 1910.

This text is interestingly and carefully written and is of usable size. The proportions are good. Of the 750 pages, one-fifth treats of the historical

basis of the government and the rest of the book is about evenly divided between the federal and the state and local governments. The references, which are given at the foot of the pages, are to authorities usually available, even in the libraries of the average college. Good use is made also of the collections of "Readings" recently published by Ames, Reinsch and the author. Rather more attention than in other texts is given to the increasingly important administrative services of the government. Municipal government—the branch which affects the individual most nearly—is emphasized. The discussion of party activity, especially in the local units, is especially to be commended. Specific legislative problems such as corporation control, railway taxation, child labor and the like are given a brief but clear review. The author is much to be complimented on his successful attempt to make government appear as the "going thing" which it is.

Bruce, H. Addington. *Daniel Boone and the Wilderness Road.* Pp. xiii, 349. Price, \$1.50. New York: Macmillan Company, 1910.

Those who have read Mr. Bruce's Romance of American Expansion will expect here as they found there a vivid account of developments not quite ranking as a history but as much more than a story. Mr. Bruce writes well. The book, though it at times wanders far from Boone and the Wilderness Road, has unity. It is a picture of the pioneer's *drang nach westen*. Boone, Sevier, Robertson, the Girtys, Braddock, Clark and lesser heroes and ruffians of the border all play their parts. The trails of the pioneer, the buffalo hunt, the salt making, fur trade, Indian raids, early constitutions, the Revolution in the West and the host of other elements that made Western life unique are brought within close range. Not the least interesting chapters—in fact the chapters which make the book valuable are those which treat of Boone's later life, when he moved on to Missouri and took Spanish citizenship, only to find himself once more an American, thanks to the whim of Napoleon. A good picture, too, is given of the old man pressed by civilization, and even in his last years' longing for the yet farther West where he might again shoot the buffalo from his doorstep.

Carré, H. *Histoire de France.* Vol. VIII. Le Règne de Louis XV. (1715-1774). Pp. 428. Paris: Hachette & Co., 1909.

This last contribution to the great work on French history begun by M. Lavissee is in every way worthy of its predecessors. M. Carré is Professor of History at the University of Poitiers and a specialist in French history of the eighteenth century. The first five chapters are devoted to the Regency of the Duke of Orleans, whose versatility, training, etc., are placed in strong contrast to his utter indifference, incapacity and debauchery; the second book deals with the years of Fleury's ascendancy and the wars following the accession of Maria Theresa in Austria; the third with that of Madame Pompadour and Choiseul, and the fourth with the last years of the reign. There are interspersed several exceptionally good chapters on the civilization of the period, as for example "*La Cour, les mœurs, l'art et la mode pendant la Régence*" (Bk. I, Ch. IV); "*La Vie intellectuelle, depuis la Régence jusqu'au milieu du Siècle*" (Bk. II, Ch. IV); "*La propagande philosophique*" (Bk.

III, Ch. III), and "*Le mouvement économique et les finances, etc.*" (Bk. III, Ch. V).

At the beginning of each of the broad divisions of the subject is found the critical and well selected list of authorities usual in this work.

Draper, A. S. *The Rescue of Cuba.* Pp. 235. Price, \$1.00. New York: Silver, Burdett & Co., 1910.

Immediately after the Spanish-American War the first edition of this book was written. It bears the marks of the chauvinism that characterized public opinion at the time. There is little that can be said in favor of the Spanish government or the Spaniards except when the American victories are discussed. Then the enemy are valorous foes vanquished by the "indomitable courage" of the Americans. With the exception of this prejudice and high coloring due to hero worship the book is good. Misstatements of fact are few and the style of the narrative is such that many a schoolboy will be given a clear idea of the course of the war which but for such glowing descriptions would for him remain locked in formal histories.

Eastman, C. *Work Accidents and the Law.* Pp. xvi, 345. Price, \$1.50. New York: Charities Publication Committee, 1910.

Farrington, F. E. *French Secondary Schools.* Pp. ix, 450. Price, \$2.50. New York: Longmans, Green & Co., 1910.

The author begins with the revival of learning, deals at some length with the Renaissance period and devotes the major portion of the book to the organization of the program of the modern secondary school. Many of the chapters are extremely detailed, dealing with "modern languages," "history," "geography," "mathematics" and other specific subjects in the curriculum.

The organization of the French secondary school reflects strongly the central form of administration provided by Napoleon. The schools are directly under the minister of public instruction and fine arts and are subject to the decisions of certain academic councils through administrative boards. The French secondary school is peculiar in that it is not in reality a secondary school, but a complete school in itself, designed for the socially élite. While it is anti-democratic in the extreme, it is maintained through the influence of the professional and administrative classes.

The work is aptly done, the analyses are complete, but the material presented is so detailed as to be of little interest except to the student of technical educational problems.

Fuller, Thomas E. *The Right Honorable Cecil John Rhodes.* Pp. xii, 276. Price, \$1.60. New York: Longmans, Green & Co., 1910.

Few men are as was Rhodes, both prophets and empire builders. How great a man in both ways was the "Emperor of South Africa" is the theme of Mr. Fuller's appreciation of one of the most spectacular of the figures of the later nineteenth century.

Only the portion of life during which Mr. Rhodes made the history of South Africa his own life history is described. Broad human interest, implicit trust in men of sound character, hatred of pettiness and a remarkable

ability to "mesmerise" those with whom he came in contact are portrayed as his dominant personal characteristics. As a statesman his life work was of course the expansion of English control northward to meet the sphere of influence extending south from Egypt, but this did not blind him to other issues. The confederation of South Africa, the obliteration of racial prejudice, efficient rule of Cape Colony, a scheme of higher education for South African youth and a multitude more claimed his attention.

Mr. Fuller is not unaware of his friend's faults. Rhodes was not always delicate as to means, and he never forgave the men who wished to keep him under a cloud after the Jameson raid, but he never lost his love of the empire and the colony he had made his home. His life was a constant labor for high ideals. At death he longed to be again in harness because there was "so little done; so much to do."

Godfrey, H. *The Health of the City.* Pp. xvi, 372. Price, \$1.25. Boston: Houghton, Mifflin Company, 1910.

While not at all scientific, the present volume is one of the most acceptable of the numerous recent books upon the subject of health in cities. Air, milk supply, food, water, ice, sanitation, noise and housing, comprise the topics considered in the book. The style is interesting, but is lacking in statistical material.

Gompers, S. *Labor in Europe and America.* Pp. xi, 287. Price, \$2.50. New York: Harper & Brothers, 1910.

Haney, Lewis H. *A Congressional History of Railways in the United States.* Vol. II. Pp. 335. Madison: Democrat Printing Company, 1910.

Hicks, R. D. *Stoic and Epicurean.* Pp. xix, 412. Price, \$1.50. New York: Charles Scribner's Sons, 1910.

Holdrich, T. *The Gates of India.* Pp. xv, 525. Price, \$3.25. New York: Macmillan Company, 1910.

Jameson, J. F. (Ed.). *Johnson's Wonder-Working Providence, 1628-1651.* Pp. viii, 284. Price, \$3.00. New York: Charles Scribner's Sons, 1910.

This, the latest addition to the admirable series of "Original Narratives of Early American History," is a new edition of what the editor terms "the first published history of Massachusetts." In 1653 there was published in London a small octavo entitled "A History of New England, from the English Planting in the Yeere 1628 until the Yeere 1652." The name of the author did not appear, but the running caption of the volume was "The Wonder-working Providence of Sion's Saviour in New England," by which unique title the work ever since has been known. As the sale of the work was disappointing, the publisher five years later unscrupulously utilized the unsold sheets as Part III of Georges' "America Painted to the Life." This led to a public protest and repudiation by the younger Georges. It was reserved to the later New England historian, Thomas Prince, to disclose the true authorship of the book, attributing it to Captain Edward Johnson of Woburn. The present scholarly edition is provided with an introduction and with copious

and helpful notes by the editor, a descendant of Captain Johnson. The volume is especially valuable as "the honest attempt of a Puritan man of affairs to set forth to his fellow-Englishmen the first twenty-three years' history of the great Puritan colony."

Kautsky, Karl. *The Class Struggle.* Pp. 217. Chicago: Charles H. Kerr & Co., 1910.

Karl Kautsky is acknowledged to be one of the leading socialists of the nineteenth century. He comments upon the development of the proletariat, the capitalist classes, the class struggle which has arisen out of this development, and the commonwealth of the future which must arise when the proletariat comes into its own.

Kelly, E. *Twentieth Century Socialism.* Pp. xix, 446. Price, \$1.75. New York: Longmans, Green & Co., 1910.

Leland, A. *Playground Technique and Playcraft.* Pp. 284. Price, \$2.50. Springfield, Mass.: F. A. Bassette Company, 1909.

Leupp, F. E. *The Indian and His Problem.* Pp. xiv, 369. Price, \$2.00. New York: Charles Scribner's Sons, 1910.

Lock, R. H. *Recent Progress in the Study of Variation, Heredity and Evolution.* Pp. xiv, 334. Price, \$1.50. New York: E. P. Dutton & Co., 1910.

In THE ANNALS for May, 1907, Vol. 29, there appeared a review of the first edition of this work. It is a pleasure to note that it has been so favorably received that a second is necessary. With the exception of Chapter X (Eugenics), which is practically new, there are few changes. This chapter on Eugenics is a synopsis of the work of Galton, Karl Pearson and the other Englishmen who have made the matter prominent in recent years. This volume is one of the best for any student who wishes to know the present views of scientists.

Marx, Karl. *The Poverty of Philosophy.* Pp. 227. Chicago: Charles H. Kerr & Co., 1910.

Mathews, S. *The Social Gospel.* Pp. xx, 168. Philadelphia: The Griffith & Rowland Press, 1910.

It is the purpose of this volume "to set forth the social teachings of Jesus and his apostles, as well as the social implications of the spiritual life;" not to give technical instruction on social questions, but to define and stimulate the Christian attitude toward such questions. For this reason the spiritual, rather than the economic, significance of Christianity is emphasized. The gospel is represented as an inspiring hope and promise for the future, rather than a new group of laws, the principles of which must be incorporated into our social life or become inoperative.

The chapters have been planned for class work in introducing young people to the study of social problems. Each chapter is concluded with a "Quiz" and "Questions for Further Study." The work is divided in five parts under the heads, General Principles, The Family, The State, Economic

Life and Social Regeneration. It is a valuable contribution to this phase of social science.

Mundy, F. W. (compiled by). *The Earning Power of Railroads*, 1910. Pp. 461. Price, \$2.00. New York: J. H. Oliphant & Co., 1910.

Myers, G. *History of Great American Fortunes*, Vol. II. Pp. 368. Price, \$1.50. Chicago: Chas. H. Kerr & Co., 1910.

The first third of the book contains a somewhat general and sketchy discussion of certain of the more important phases of the development of our industrial society, such as the seizure and spoliation of the public domain, the struggle of the workers for better conditions, and the passing of the middle class.

The remainder of the volume is devoted to the presentation of data, much of which has hitherto been unpublished, concerning the origin and growth of the Gould and Vanderbilt fortunes. The author's style is vigorous, sarcastic, pessimistic, and radical.

O'Donnell, F. H. *A History of the Irish Parliamentary Party*. Two Vols. Pp. xxi, 1002. Price, \$5.00. New York: Longmans, Green & Co., 1910.

O'Shea, M. V. *Social Development and Education*. Pp. xiv, 561. Price, \$2.00. Boston: Houghton, Mifflin Company, 1909.

Individual education constitutes the central thought of the first part of the book while Part II is devoted to social education proper. In Part I, the author has attempted to show the development of social attitudes and viewpoints from birth to adolescence. He lays particular emphasis on the anti-social nature which the natural man possesses and upon the necessity of an emphatic social education if a social viewpoint is to be secured. Even with the best of training, up to the age of twelve or thereabouts, children are extremely anti-social. Their problems are primarily personal, and their sympathies center in these personal problems rather than in the problems of a more social nature.

The discussions in Part II deal with the creation of an environment which will involve real social education. The chapters on education from a national standpoint, co-operation in group education, suggestion and imitation are particularly valuable in their bearing on the problem of social education.

Overlock, M. G. *The Working People*. Pp. 293. Price, \$2.00. Worcester, Mass.: Blanchard Press, 1910.

The work centers about tuberculosis, its cause, character and remedy, although chapters are devoted to the more ordinary diseases, to sanitation, hygiene, over-exertion, industrial hygiene, city life, and other problems of wealth. The book is written from the outside with little realization of the actual economic questions which confront the man earning ten dollars a week. The book will, therefore, fail to appeal to this class of the community. It will, at the same time, fail of acceptance among scholars because of the failure to present facts or to state authorities.

Palmer, Frederick. *Central America and its Problems.* Pp. xiv, 347.

Price, \$2.50. New York: Moffat, Yard & Co., 1910.

This work is not intended to be an exhaustive study either of Central America or Mexico. The volume contains the notes of an able newspaper man, who has kept his eyes open and who has seen many things which often escape the notice of more highly trained investigators.

We know so little of the Central American situation that we must be grateful for any light that is thrown on it. Mr. Palmer's book offers a most excellent introduction to the subject, and will stimulate many readers to further inquiry into a group of problems of vital interest to the United States. It is to be regretted, however, that so competent an observer did not go more deeply into the subject. He is more interested in personal relations than in the analysis of underlying forces. It may be that in planning this work he felt that it was necessary first to attract the attention of the American public through a work replete with personal touches. If this be the case it is to be hoped that we may have from his pen a second volume dealing more fully with racial relations within the Central-American states and with the international relations in this section of the continent.

Phillipp, E. L. *Political Reform in Wisconsin.* Pp. 253. Price, 50 cents.

Milwaukee: E. L. Philipp.

"This is a history—not an apology or a defense," the author would have us believe, but the reader need not go far to discover that it is none of these. Primary elections, taxation reform and railway rate regulation are discussed. In each case it is claimed that the "reformers" began no new work, but perverted a steady development begun long before. The results of "reform" have been negligible. At this point the argument breaks down, especially in the portion treating of taxation. Though much interesting material is printed, especially touching the early granger legislation, the discussion is too biased to be accepted as "history" in any sense.

Plunkett, H. *Rural Life Problem in America.* Pp. xi, 174. Price, \$1.25.

New York: Macmillan Company, 1910.

Reid, David C. *Effective Industrial Reform.* Pp. 287. Stockbridge, Mass.:

By the author, 1910.

The author maintains that our present centralized control of great wealth by a few men is bound to result in despotism, extravagance and luxury and these in turn in degeneracy. The remedy which the author sets forth in detail is the social ownership of industry through a form of partial individual subscription to the stock of the various industries. The scheme is in reality a modified form of Christian Socialism, based on individual capitalism. The author does not show how the average man would be financially enabled to subscribe to such schemes. The means which the author presents for maintaining control of industries also seem inadequate. Throughout the book, facts are poorly stated, and few authorities are cited.

Richardson, Bertha J. *The Woman Who Spends.* Pp. 161. Price, \$1.00.

Boston: Whitcomb & Barrows, 1910.

Women in the past were the producers of all economic goods; the women of the present have ceased to produce economic goods and have become largely the consumers and spenders. This change in woman's sphere from production to consumption forms the central theme around which the author builds the structure of her suggestive book. Women must be taught careful and judicious purchasing. The final chapter of the book deals with the author's panacea—accounts.

Roe, A. S. *China As I Saw It*. Pp. vii, 331. Price, \$3.00. New York: Macmillan Company, 1910.

Like most travel books, this one is valuable because it gives the clear-cut first impression—something which always pales on closer acquaintance. The vividness of the pictures is heightened by the fact that the author has a woman's quickness of perception in seizing striking situations and contrasts. The letters—for such the work really is—have no plan or plot. They follow whither the journey leads.

Too often works of this sort touch only the coast towns, as the European visitor to the United States often gets no farther inland than Philadelphia or Baltimore, but this is not a fault of this work. Besides the regular points of call accessible by rail and steamer, side trips are taken from Chefoo and up the Yang-tze, and later an excursion into the interior of Shan-si. These give good pictures of the contrasts between the interior and the coast. On the whole, barring an occasional paragraph which seems to view the "celestial" as a barbarian, the book gives an excellent glimpse of Chinese life. Superstitions, funeral customs, temples, marriages, mule-litters, pidgin English and a host of similar subjects are described in word pictures of unusual vividness. The illustrations from photographs are exceptionally good.

Scholefield, Guy H. *New Zealand in Evolution*. Pp. xxii, 363. Price, \$3.00. New York: Charles Scribner's Sons, 1909.

New Zealand, and some of the states of Australia, stand out pre-eminently as pioneers in the development of social legislation and the improvement of living conditions. The economic factors lying back of these improvements constitute an interesting story which the author has presented in a most acceptable manner. The book is far less partisan than the average work dealing with the same problem. The author begins with the history of the economic development of the island, treating of the fight for British sovereignty, of the development of gold and coal mining, the waste of the forests, and the growth of the wool and various other important New Zealand industries. The agricultural problems are next analyzed, the land policy receiving particular attention. The Single Tax Theory has been put into operation in New Zealand, and while it has not been carried to its logical conclusion, the spirit which dominates it has directed the land policy. In dealing with the industrial problems, the author lays particular emphasis upon the dissatisfaction which has arisen with compulsory arbitration because of the subserviency of the courts to the financial interests. The book is well written, and is a welcome addition to the story of New Zealand.

Schroeder, T. (compiled by). *Free Press Anthology*. Pp. viii, 266. Price, \$2.00. New York: Truth Seeker Publishing Company, 1909.

Stelzle, Charles. *The Church and Labor*. Pp. 95. Price, 50 cents. Boston: Houghton, Mifflin Company, 1910.

This little volume is published in the "Modern Religious Problems" series, and is intended as a handbook for ministers and social workers. The church will hardly relish some of the criticisms made about its attitude towards labor, but the author speaks with a knowledge of the facts and is able to interpret them in a prophetic spirit. The book is written largely from the point of view of labor and will, if given the circulation it merits, render no small service in bringing about more cordial relations between organized labor and the church.

Stopes, Marie C. *A Journal from Japan*. Pp. xiv, 280. Price, 7/6. Glasgow: Blackie & Son, Ltd., 1910.

Trenholme, N. M. *An Outline of English History*. Pp. xii, 122. Price, 50 cents. Boston: Ginn & Co., 1910.

This is a helpful topical treatment prepared by the Professor of the Teaching of History of the University of Missouri. Its aim is to provide a companion and guide for students using Professor Cheyney's excellent text-book of English History. Political, social and economic aspects are all treated.

White, B. *The Book of Daniel Drew*. Pp. x, 423. Price, \$1.50. New York: Doubleday, Page & Co., 1910.

The diary of Daniel Drew was dug up from the rubbish in an old attic and put in finished form. It tells the life story of this most unique and interesting Wall Street speculator. It abounds in apothegms and epigrams, is colloquial in style and dramatic in its recitals.

White, William A. *The Old Order Changeth*. Pp. 266. Price, \$1.25. New York: Macmillan Company, 1910.

The author has outlined in a remarkable way the forces which are at present breaking down the political and industrial traditions which have so seriously hindered social progress. The book begins with the portrayal of the original democracy in America, shows its modification due to the assumption of political power by industrial leaders, indicates the progress which American cities have recently made in democracy and points to the schools as the mainspring of democracy. The book is written by a man who has come into intimate contact with political and industrial forces, and it reflects throughout the attitude of a practical mind dealing with theoretical questions. It might well be characterized as needlessly or even dangerously optimistic, for the impression derived from the reading of certain chapters is that if we will but let things work themselves out, adjustment will be automatically secured. On the whole, however, the work is stimulating because it is based upon a deep insight into the modern, industrial and political world, and an abiding faith in the fundamental ability and intelligence of the American people.

Who's Who in America. Vol. VI, 1910-1911. Pp. 2468. Price, \$5.00. Chicago: A. N. Marquis & Co., 1910.

This volume, edited by Albert N. Marquis, gives a brief, crisp, personal sketch of every living man and woman in the United States whose position or achievements make his or her personality of general interest, giving for those who are most conspicuous in every walk of life, the parentage, the date and place of birth, education, degrees, marriage, positions and achievements, politics, societies, clubs, business, occupation, etc.

The appended addresses also constitute a valuable feature. No other publication has ever attempted the difficult task of finding and furnishing the addresses of prominent Americans in all parts of the world. "Who's Who in America" not only tells who the leading people are and what they have done, but also tells where they are at the present time and what they are now doing.

The completeness and reliability of the volume make the book indispensable to every one who aims to keep abreast of the times. It answers, instantly, thousands of questions of every-day import—questions for which answers can nowhere else be found.

The book has been thoroughly revised and brought down to date. The present volume contains 17,546 sketches, 2,831 of which have not appeared in any previous edition. It is compact in treatment, handy in arrangement, convenient in size.

Willcox, D. F. *Municipal Franchises*. Pp. xix, 710. Price, \$5.00. Rochester: Gervaise Press, 1910.

Wilder, Elizabeth, and Taylor, Edith M. *Self Help and Self Care*. Pp. 134. Price, 75 cents. Boston: Small, Maynard & Co., 1910.

Wilkinson, M. *The Latest Phase of the League in Provence, 1588-1598*. Pp. vi, 84. Price, \$1.50. New York: Longmans, Green & Co., 1909.

This little volume needs a secondary or explanatory title, for the reader soon finds that it is made up of extracts from documents drawn mostly from the archives of Marseilles, Aix and Carpentras, loosely strung together by editorial comment so as to suggest a fairly connected account of the subject. More can scarcely be said of the author's work. The book is not a history of the "Last Phase of the League," though to the initiated it affords excellent material for such a history. The absence of the usual table of contents, chapter headings and index are further evidence that Mr. Wilkinson felt that, having gone to the trouble of getting the documents, making his selections, and seeing them through the press, he had fulfilled every obligation. This is the more unfortunate because we need a history of this phase of the religious wars in France, and Mr. Wilkinson's intimate knowledge of the sources should have given us the work.

REVIEWS.

Appleton's New Practical Cyclopedia. A New Work of Reference Based Upon the Best Authorities, and Systematically Arranged for Use in Home and School. Edited by Marcus Benjamin, Ph.D., Sc.D., F.C.S., Editor of the United States National Museum, Washington, D. C., Assisted by Arthur E. Bostwick, Ph.D., Librarian of the St. Louis Public Library; Gerald van Casteel, Chief of Editorial Staff, and George J. Hagar, Expert Compiler and Statistician, with an Introduction by Elmer Ellsworth Brown, Ph.D., LL.D., United States Commissioner of Education. Six volumes. Pp. 3040. Price, buckram, \$18.00; half morocco, \$24.00. New York: D. Appleton & Co., 1910.

Having had experience in creating six encyclopedias varying in subject and scope, Appleton's have brought out a reference work for use in the home and school. It is properly designated "practical" instead of popular; for, while there are but six volumes, every effort has been made to create a comprehensive and concise work instead of a superficial one. The articles are written in non-technical language that may be understood by school children and by adults of average education. It is not a cyclopedia for the specialist, but for the general student and general reader. The low price of the six volumes will permit the work to be secured by all schools and prosperous homes and will greatly increase its "practical" value.

The character and the educational purpose of this "practical" cyclopedia, as contrasted with the many-volumed expensive works that seek to include an entire reference library in a single set of books, are well stated by the editor in the following quotation from the preface:

"The following of the conventional idea of what a cyclopedia should be, rather than a consideration of the actual use to which the work is to be put, has too often resulted in a collection of learned treatises, useful to specialists, but of little service to most of those who refer to their pages for information. The cost of such works is to many prohibitive; the immense amount of detail which they contain is wearisome, and too often obscures the information which is sought. Except in public libraries they are apt to be carefully guarded in the bookcase instead of being used currently by the owner and his family, and they give little aid in the habit of acquiring exact knowledge upon current topics, which, if consistently followed, is a most liberal and practical form of education. At the other extreme, are the briefer 'popular' cyclopedias, hurriedly compiled from whatever sources are available, with scanty, and inappropriate illustrations, and with a few showy 'selling points,' but with no attempt at serious preparation. The publishers of 'Appleton's New Practical Cyclopedia' feel that there is a place for a brief, serviceable work of reference which combines moderate size and low price with comprehensiveness, accuracy, and authority."

In addition to the characteristics of conciseness, comprehensiveness and low price, the "practical" value of the work is increased by two other features—the illustrations and the indexes. The editor claims, with apparent accuracy, that "the present work is unrivaled in the number, range, and

appropriateness of its illustrations." There are over 1,500 textual illustrations, 24 full-page maps, 24 full-page colored plates, and 24 black and white plates consisting of group and graphic illustrations. The pictures are numerous, but are not a conspicuous part of the volume; they are, for the most part, reproductions of drawings that illustrate and supplement the text. The half-tones and colored plates are not so numerous nor so conspicuous as to make them "selling points." The maps are doubtless as good as could be included in a cyclopedia of the size and price of the present work; but they are on a small scale and the data upon them are presented in the manner that has long prevailed among American map-makers. Possibly in future editions of the work, the publishers may feel financially justified in substituting a higher grade of maps.

The two indexes add much to the usefulness of the cyclopedia. In an analytical index is presented, "in proper alphabetical order, subjects which are not assigned individual articles in the body of the work, but which are treated as parts of articles found under some other key word." Thus if a subject is not found upon consulting the body of the work, it may be located by referring to the analytical index. In the synthetical index are grouped, under appropriate headings, all the articles bearing upon each important topic. Thus, from the index, the student may readily find all the information upon each subject discussed in the cyclopedia.

In a word, the work is a practical cyclopedia of moderate scope; and it seems probable that the publishers will realize their "hope that the work will be found especially helpful to the student, and to the busy man wishing to obtain quickly the essential facts upon the subject in which he is interested."

EMORY R. JOHNSON.

University of Pennsylvania.

Cory, G. E. *The Rise of South Africa.* Vol I. Pp. xxi, 420. Price, \$5.00. New York: Longmans, Green & Co., 1910.

Mr. Cory's book is excellent. It represents the beginning of a work which is to reach four volumes. Seventeen years have been spent in the work, which, though undertaken as a recreation, shows the marks of thoroughness. The style is flowing, citations accurate and the point of view judicial. The discussions in the latter part of the book naturally include race conflicts in which especially at this distance of time the truth is hard to ascertain since all accounts are partisan. Mr. Cory has shown himself in these chapters (especially the one treating the affair of Slagter's Nek) to be both fair and sympathetic.

The history of South Africa begins in the Age of Discovery. The Cape was first an obstacle to be rounded, later a victualling station, then an outpost, with the native problems that confronted the conquerors in all parts of the globe. The early struggles, up to the French Revolution, occupy only the first two chapters. The rest of the volume covers the period up to 1820—a period complicated by internal discussions, native wars and successive

shiftings of sovereignty between the Netherlands and England. The latter period strongly parallels in social changes the conditions in Louisiana, Texas and California before the advent of the settlers from the United States. The old dreamy, patriarchal society struggles against the new forces which are to clear the way for the bustling, progressive civilization which is to take its place. In working up this period, Mr. Cory has relied not only on documentary evidence, but upon the testimony of old settlers. He presents also an excellent series of photographs showing the chief places to which reference is made. No one who is interested in frontier life can fail to be pleased by this interesting narrative.

CHESTER LLOYD JONES,

University of Wisconsin.

A Documentary History of American Industrial Society. Edited by John R. Commons, Ulrich B. Phillips, Eugene A. Gilmore, Helen L. Sumner, and John B. Andrews. Prepared under the auspices of the American Bureau of Industrial Research, with the co-operation of the Carnegie Institution of Washington. With Preface by Richard T. Ely and Introduction by John B. Clark. Complete in ten volumes, with supplement to Vol. IV. Price, \$50.00. Cleveland, Ohio: The Arthur H. Clark Company, 1910.

This "Documentary History"—of which the first six volumes have now appeared—outranks all other publications upon American labor, both because of the value of the documents to students of history, and because of the illuminating economic analyses by which the volumes as a whole and the several subdivisions are introduced. Professor Commons and his associates have placed all students of the history and economics of labor under lasting obligation; the material contained in these ten volumes—in part rescued from early destruction, and in large share brought forth from places so obscure or so inaccessible as to have kept the information out of the reach of even the serious investigator—makes a permanent addition to the equipment of American scholars.

The creation of such a set of books as these would have overtaxed the ability and resources of the individual investigator. The financial support of an organization, the co-operation of collaborators and the aid of a corps of assistants were required. It was the American Bureau of Industrial Research, conceived and organized by Professor Richard T. Ely, that made possible the work of Professor Commons and those who aided him; indeed, as Professor Ely explains in the preface to the "Documentary History," it is the outgrowth of his book on "The Labor Movement in America" and of his subsequent efforts to secure the materials necessary for the preparation of a comprehensive history of labor. "The Labor Movement" published in 1886 was considered by its author "merely as a sketch which will, I trust, some day be followed by a book worthy the title 'History of Labor in the New World.'"

After Professor Ely had made a large collection of books, pamphlets and newspapers, he "decided finally that a work of the scope I had planned was beyond the power of one man to accomplish, and I set myself, therefore, to secure by the co-operation of many what could not be accomplished by one." Having received the financial support of Mr. V. Everit Macy, Mr. Robert Fulton Cutting, Mr. Justice Henry Drugo, of New York; Mr. Stanley McCormick, of Chicago; Captain Ellison Smyth, of Greenville, N. C., and others, the American Bureau of Industrial Research was organized in March, 1904, and Professor John R. Commons was secured to direct the work of the bureau. After the work of the bureau was well under way it received a small appropriation from the Department of Economics and Sociology of the Carnegie Institution, and Professor Commons, in 1909, became one of the board of twelve men that have for some years been collaborating with that department of the Carnegie Institution in the preparation of an economic history of the United States. Thus the "Documentary History," as stated on the title page, has been "prepared under the auspices of the American Bureau of Industrial Research, with the co-operation of the Carnegie Institution of Washington." The Bureau and the publishers have thus far spent about \$75,000. The Bureau has secured the data from which Professors Commons and Ely are to write and interpret the history of labor, or of industrial society, in America. The ten volumes of "Documentary History," now appearing, are a by-product of the industry whose finished work will be the systematic and interpretative history of American labor.

The first task undertaken by the Bureau of Industrial Research was to locate materials, and a thorough search was made through libraries and private collections in different parts of the country. An extensive correspondence was carried on with libraries to ascertain the titles and whereabouts of publications. Next, as much as possible of the discovered material was collected in Madison, Wisconsin, the headquarters of the Bureau. In case a printed copy of rare and important documents or articles could not be secured, transcripts were made. "Along with the collecting was carried on the equally arduous and important work of classifying and cataloguing. For this, a large staff of stenographers, clerks and copyists was necessary. A card catalogue has been made of all books, manuscripts and pamphlets dealing with labor conditions and labor movements from 1815 to 1875; and a second card catalogue for those from 1875 to the present. Another card catalogue has been made of all labor papers and papers sympathetic or actively hostile to labor in the country so far as known. This information has been classified in two ways, first under the name of the paper and second under the name of the library where the paper is to be found. Another card catalogue lists all the material to be found in Madison, and finally a card catalogue has been made of all articles transcribed from documents or newspapers in other libraries with a notation where they are to be found."

The wide scope and great value of the materials thus collected and catalogued led Professor Commons to suggest "that the most important documents be printed for the benefit of scholars to whom the collection itself

was not accessible." The suggestion was adopted by the directors of the Bureau and the "Documentary History" was the result. The scope and main subdivisions of the material contained in the ten volumes (eleven counting the supplement to Volume IV), and the names of those who have edited and interpreted the documents contained in the several volumes are shown by the following list of volume, titles and authors:

Vols. I-II. "Plantation and Frontier;" by Ulrich B. Phillips, Ph.D., Professor of History and Political Science, Tulane University.

III-IV. "Labor Conspiracy Cases, 1806-1842;" by John R. Commons, A.M., Professor of Political Economy, University of Wisconsin, and Eugene A. Gilmore, LL.B., Professor of Law, University of Wisconsin.

V-VI. "Labor Movement, 1820-1840;" by John R. Commons and Helen L. Sumner, Ph.D., of the U. S. Bureau of Labor.

VII-VIII. "Labor Movement, 1840-1860;" by John R. Commons.

IX-X. "Labor Movement, 1860-1880;" by John R. Commons and John B. Andrews, Ph.D., Executive Secretary of American Association for Labor Legislation.

Volume X also includes the "Exhaustive Analytical Index."

Volume I opens with a general preface, fourteen pages in length, by Professor Ely. Then follows a general introduction, thirty-one pages long, by Professor John B. Clark, of Columbia University, who successfully sketches in broad outline the main phases of the industrial evolution of the United States. Professor Clark's essay emphasizes the truth that "a key to the understanding of American history and of all history is furnished by a knowledge of economic events," and it is his opinion that the "work undertaken by Professors Ely and Commons and their associates enters what is possibly the richest of all comparatively unworked fields of history and promises to yield especially large results in economics."

Professor Clark's general introduction to the set of volumes as a whole is followed by Professor Ulrich B. Phillips' introduction to Volumes I and II, which contain classified documents concerning "Plantation and Frontier, 1649-1863." Professor Phillips has an enviable reputation as a student of the economic history and life of the South; and his thirty-five-page introduction gives an admirable statement of the rôle of the plantation in American industrial evolution.

"The plantation system," Professor Phillips says, "was evolved to answer the specific need of meeting the world's demand for certain staple crops in the absence of a supply of free labor. That system, providing efficient control and direction for labor imported in bondage, met the obvious needs of the case, waxed strong, and shaped not alone the industrial régime to fit its requirements, but also the social and commercial system and the political policy of a vast section; and it incidentally trained a savage race to a certain degree of fitness for life in the Anglo-Saxon community. Through the Civil War and political reconstruction of the South, accompanied by social upheaval, the plantation system was cut short in the midst of its career. It only survives in a few fragments and in forms greatly changed from the

characteristic type. Both the frontier and the plantation systems can now be studied in the main only in documents."

The character of the documents which occupy most of Volume I and all of Volume II, are indicated by the titles under which they are grouped—plantation management, plantation routine, types of plantations, staples, supplies and factorage, plantation vicissitudes, overseers, indented labor, slave labor, slave trade, fugitive and stolen slaves, slave conspiracies and crimes, negro qualities, free persons of color, poor whites, the immigrant, migration, frontier settlement, frontier industry, frontier society, manufacturing, public regulation of industry, artisans and town labor.

Volumes III and IV contain the reports of the court proceedings in fourteen of the eighteen labor conspiracy cases in the United States, beginning with the Philadelphia Cordwainers' case in 1806 and ending with the decision of Justice Shaw, of Massachusetts, in *Commonwealth v. Hunt*, 1842. The four cases not reprinted are those of which reports may be found in the larger public libraries—the Master Ladies' Shoemakers, 1821; New York Hatters, 1823; Geneva Shoemakers, 1835; and *Commonwealth v. Hunt*, 1840 and 1842.

The Philadelphia Cordwainers' case, 1806, and several others are presented by reprinting, without abbreviation, the stenographic report of the testimony, argument, and charge to the jury. The report of the Philadelphia Cordwainers' case occupies 190 pages, and the remainder of Volume III is taken up with the report of the trial of the Baltimore Cordwainers, 1809, and of the New York Cordwainers, 1810. These reports are rich mines of information regarding the conditions of labor and industry at the opening of the last century. The cases reported in Volume IV are the Pittsburgh Cordwainers, 1815; Buffalo Tailors, 1824; Twenty-four Journeymen Tailors, 1827; Philadelphia Spinners, 1829; Chambersburg Shoemakers, 1829; Baltimore Weavers, 1829; Hudson Shoemakers, 1836; Thompson Carpet Weavers, 1834-1836; Taylor *v.* Thompsonville, 1836; Twenty-one Journeymen Tailors, 1836; and Philadelphia Plasterers, 1836. The editor states that "All of these documents are rare, many of them excessively so. In several cases, but one copy has been found after years of thorough and extensive search in all the libraries and private collections of the country and through correspondence. . . . In a few cases reliance has been necessarily placed upon current newspaper reports."

Professor Commons introduces Volumes III and IV by an exceptionally interesting analysis of the several steps in the evolution of industry and of the status of labor in the manufacture of boots and shoes from "the stage of the itinerant shoemaker working up the raw material belonging to his customer in the home of the latter, to the stage of the settled shoemaker working up his own material in his own shop;" and on through the various stages by which the present system of factory manufacture and wholesale and retail trade has been reached. The analysis closes with the generalization "Thus have American shoemakers epitomized American industrial history. Common to all industries is the historical expansion of markets. Variation

in form, factors, and rates of progress change the picture, but not vital force. The shoemakers have pioneered and left legible records. Their career is 'interpretative' if not typical."

The documents contained in Volumes V and VI illustrate the progress of the labor movement from 1820 to 1840. The general changes in the economic status of labor during these twenty years are explained in an introduction written jointly by Professor Commons and Miss Helen L. Sumner. The introduction, which is preceded by a chart showing the movement of wholesale prices from 1820 to 1898, opens with the statement that the movement in prices gives a clue to the labor movement of the time.

"Each upward turn of the curve of prices," say the authors, "points to a period of business prosperity, each pinnacle is a commercial crisis, and each downward bend is an index of industrial depression. During a time when the level of prices is rising, employers are generally making profits, are multiplying sales, are enlarging their capital, are running full time and overtime, are calling for more labor and are able to pay higher wages. On the other hand, the cost of living and the hours of labor are increased and workmen, first as individuals, then as organizations, are impelled to demand both higher wages and reduced hours. Consequently, after prices are well on the way upward, the labor movement emerges in the form of unions and strikes, and these are at first successful. Then the employers begin their counter organization, and the courts are appealed to. The unions are sooner or later defeated, and when the period of depression ensues, with its widespread unemployment, the labor movement either subsides or changes its form to political or socialistic agitation to ventures in co-operation or communism, or to other panaceas. This cycle has been so consistently repeated, although with varying shades and details, that it has compelled recognition in the selection and editing of the documents of this series."

The reasons why the editors close the first period of the history of the labor movement with 1820 and divide the sixty years following 1820 into twenty-year periods, and group the illustrative documents accordingly, may best be stated mainly in their own concise language:

1. "The colonial period, in its economic characteristics, extends to the decade of the twenties in the nineteenth century. This is the dormant period of the labor movement, although a slight awakening appears as a result of the extension and unification of the markets." In this period is begun the effort to enforce the principle of the closed shop and to control the rate of wages; this brought on the conspiracy cases in the courts, as reported in Volumes III and IV.

2. "The period from 1820 to 1840 may rightly be named the Awakening Period of the American Labor Movement" . . . "that of the merchant-capitalist or merchant-manufacturer with its extension of waterways, highways and banking facilities, and its awakening of labor as a conscious movement." It "reached its height in 1835 and 1836 and its collapse in 1837. This period is covered in Volumes V and VI."

3. "The two decades, 1840 to 1860, Volumes VII and VIII, retain econom-

ically the characteristics of the merchant-capitalist period, but they are clearly marked off by the new phenomenon of philosophical, humanitarian and political protest. This protest, diverted into the anti-slavery contest after 1852, gave way to a 'pure and simple' trade union movement in 1853."

4. It was in "the two decades, 1860 to 1880, Volumes IX and X, with the market nationalized by the railway and protected by the tariff, that invention in the technical processes of industry came to have profound effects. This was a truly revolutionary period in which the merchant-capitalist system was giving away to the factory system."

The current events in the history of labor—those that have occurred since the full establishment of the factory system about 1880—are not covered by the documentary history which ends with 1880.

Volumes I to VI and the supplement to Volume IV have appeared at the time of the writing of this review; Volumes VII to X are being printed and will shortly be issued. The documents have been ably edited and are being published in attractive and enduring form. Type, paper and press work are excellent. The Bureau of American Industrial Research is, indeed, to be commended for giving historians and economists the assistance which they will derive from this most helpful *Documentary History*.

EMORY R. JOHNSON.

University of Pennsylvania.

Dyer, Henry. *Japan in World Politics.* Pp. xiii, 425. Price, 12/6. Glasgow: Blackie & Son, 1909.

Like his previous work, "Dai Nippon," this study by Professor Dyer gives a mass of information not easily available to any but those who have spent many years in the far east. The historical part is chiefly a summary of material included in the previous work. So long as the discussion rests on affairs in Japan, the author's familiarity with his subject prevents slips. When a wider field is entered mistakes become frequent. The Spaniards, for example, are said to have sent eight ships yearly between the Philippines and Mexico (p. 16); they sent but two. They are charged with massacring all Chinese in the islands on two different occasions (p. 33). History records no such event. On page 265 we learn that the "Monroe Doctrine" "forbade any European or Asiatic Power effecting a lodgment on South American soil." Examples could be multiplied. There are also numerous digressions which, in spite of the breadth of the title of the book are hard to justify.

Japan's mission is important. In the author's opinion it will prove the universality of civilization, harmonize eastern and western thought, regenerate China and Korea and promote the peace and commerce of the East. It is needless to say that the author is frankly pro-Japanese. He sees no faults to mention except a degree of personal untrustworthiness, though this cannot be charged against the government. The nation is peace-loving, and no fear need be held that it will provoke war with any of its neighbors. The treaties entered into since the Russo-Japanese War represent not paper

agreements but national policy. If a war with the United States should break out, however, the Philippines would be an easy prey to Japan. A review of Japanese foreign relations in detail and a discussion of the assimilability of the Japanese conclude the book.

CHESTER LLOYD JONES.

University of Wisconsin.

Gray, J. C. *The Nature and Sources of the Law*. Pp. xii, 332. Price, \$1.50. New York: Columbia University Press, 1909.

Professor Gray classifies himself with those "who are considering not what fancies may be dreamed in order to tabulate the facts in accordance with some preconceived system," but who seek to discover "what the facts really were and are." And here his professed task is to call attention "to the analysis and relations of some fundamental legal ideas rather than to tell their history or prophesy their future development."

The Austinian theory of law as the command of a sovereign is rejected. The author knows no sovereign. The state is a useful personified abstraction invented to give title to the acts of the ruling persons who are the actual sources of authority. It is, however, needless to invent another abstraction to which to attribute a fictitious command. Law first arises when the judicial authority of a political community lays down a rule in deciding controversies. On any given point there is no law until the court declares it. Custom is not law, because custom is practice, and law is opinion. Statutes are not law, for they are not self-interpreting. "Their meaning is declared by the courts, and it is with that meaning as declared by the courts and with no other meaning that they are imposed upon the community as law." A judicial decision is at the same time a law and an important though not controlling source of other laws. Though in fact a court is free to make a law for each particular case as it sees fit, custom, legislation, precedent and the opinion of experts are given legal recognition by the courts as sources of future decision. Each rule declared by the court is a law. *The law* is the body of rules so declared. Yet how this congeries of particulars become fused into a conceptional unity is not made manifest.

Professor Gray has no relish for fictions or abstractions. He seems drawn into much of his discussion reluctantly, impelled solely by a desire to clear away the dust raised by his predecessors. And the merits of his work as a contribution to the philosophy of law will be found mainly in his destructive criticism of the speculations of others. His own comment is suggestive. "Especially valuable is the negative side of analytical study. On the constructive side it may be unfruitful, but there is no better method for the puncture of wind-bags." Such a puncturing he gives us in language always refreshing and with a logic that never trips.

THOMAS REED POWELL.

University of Illinois.

Hughes, Charles Evans. *Conditions of Progress in Democratic Government.*

Pp. 123. Price, \$1.15. New Haven: Yale University Press, 1910.

The lesson that progress in political affairs is not a matter of electoral machinery is a hard one for Americans to learn. Governor Hughes insists that democratic institutions, if they are to succeed, must be a part of the life of the individual. The state cannot live without individual interest. An increase in material prosperity which induces disregard of the civic duties breeds moral unsoundness. "The peril of this nation is not in any foreign foe! We, the people, are its power, its peril, and its hope!" Good-will will never do the work of will. Fear for business interests, friendship, party loyalty, none of these must be allowed to blunt the citizens' zeal for the common good.

In the face of increasing governmental functions we must have an increase in the efficiency of our governmental machinery. Inefficient legislation must be eliminated and, perhaps, most important, the administration of the law by the executive must be improved. The dignity and responsibility of public office must be increased. The party system too has its advantages and its perversions. Mr. Hughes emphasizes the importance of a two party system. He believes it is firmly established in this country. It brings the advantage of focussing public opinion with the danger of creating a party fetish. There follows an excellent discussion of the independence of action which should be preserved even within party lines. The discussion of the difference between faction and party recalls the writings of Burke. The closing pages point out the importance of differentiating local and national issues, the advantages to be reaped through civil service reform, corrupt practices acts and general education which latter after all is the first condition of a real republican government.

These were lectures to college men, but they are lectures for every citizen. There are few of us who, after reading them, will not doubt whether even we are doing all we should for the common weal.

CHESTER LLOYD JONES.

University of Wisconsin.

Hughes, Edwin H. *The Teaching of Citizenship.* Pp. xv, 240. Price, \$1.25.

Boston: W. A. Wilde Company, 1909.

This is a book of suggestions to teachers for increasing our national spirit and imparting warm-blooded patriotism to the citizens of the next generation. The purpose of the book as stated by the author, is "to suggest certain natural and human starting points for the teaching of patriotism and citizenship" whereby teachers may "prepare their charges by certain mental, as well as by emotional exercises, to catch the thrill, to appreciate the privilege, and to take up the duty of good citizenship." The book first shows the need of such teaching by every teacher—no matter what his department—in this age of alleged declining patriotism and commercialism. The difficult reform

of placing more stress on types of peaceful public usefulness as substitutes for the appeal formerly made by the sacrifice of war, must be accomplished. Suggestions of various lessons follow with concrete examples to aid the teachers such as the lessons of instinct, lessons of breadth,—which is not incompatible with patriotism, but rather an outgrowth of true patriotism—lessons of cost, of protection, of benefit, of character and duty.

Under the last head emphasis is placed on the duty of political activity—especially in voting, in participation in the jury service, caucuses and primary, and holding office, and in giving an honest administration of public funds. The book is a much-needed help in pointing out our duty of arousing within children a true national spirit which will demand and secure efficient government, and Mr. Hughes has given teachers many new ideas for the practical teaching of citizenship in the schools.

JANNETTE STERN.

New York City.

King, Irving. *The Development of Religion*. Pp. xxiii, 371. Price, \$1.75. New York: Macmillan Company, 1910.

Once in a while in every field a volume appears which really breaks new ground and furthers the development of human thought. Such is the book now under review. Professor King seeks to give, as it were, the natural history of religion. His volume, as his sub-title indicates, is a study in anthropology and social psychology. Man has not increased his mental capacity, but has been building up a complex of psychological concepts and activities from generation to generation. He has sought to put a value on the various phases of human experience. This valuating attitude is a common element of all religions. Religion is a social development, growing out of association in the group. It has not merely molded the previous social institutions, but "is rather an organic part of the general social milieu."

From this beginning, the development of various religious concepts is traced from the belief in a mysterious power or manitou, with an excellent chapter dealing with the relation of magic and religion, the origin of the belief in divine beings and its development, the problem of monotheism and the theory of the supernatural.

In barest form this is the outline of the ground Professor King seeks to cover. He is not attempting to bolster up any theological propositions, but rather to trace actual development. The statement that the social act becomes religious may disturb many conservative people, also the statement that at any stage of culture relative primitive types of action are likely to occur, and hence programs which bear the name of religion always need careful inquiry. Religion, in other words, according to Professor King, is as normal and natural a part of man's social development as is the state, family, or the school. It is a growth from within them, not something injected from without. Religion is essentially a faith, "that the universe, in which we have our being, contains the elements that can satisfy in some way our deepest

aspirations." The author is a little hazy about the starting point of religion in man, but his account of its development is one of the best the reviewer has ever seen.

CARL KELSEY.

University of Pennsylvania.

Laprade, W. T. *England and the French Revolution, 1789-1797.* Pp. 232. Baltimore: Johns Hopkins Press, 1909.

Despite its broad title, this study is in the main confined to two questions, both of which are intimately connected with the French Revolution. The first is the breaking up of the solidarity of the Whig opposition; the second, the foreign policy of Pitt with respect to France.

The breach in the ranks of Fox's supporters appears first in the defection of Burke. The gifted orator's disappointment and irritation at the indifferent, even critical, reception of his *Reflections*, etc., by his own party, together with maliciously exaggerated reports of secret agitations in England, served as the lever which Pitt so adroitly used to disrupt the opposition. Casual remarks by Fox were insinuatingly misconstrued as implying secret support of English agitations for reform, or worse, and in this way the Whig leader was discredited while the aristocratic element of his party was made to feel that their material and class interests would be best served by Pitt. This appeal was the more effective, because with it there came alluring offers of office from the astute prime minister to the more influential among them. Loughborough, Windham and Portland were all tempted. By winning over this element of the Whigs, Pitt was able to rid himself of that element in his own party represented by Thurlow, which stood in the way of his complete personal control of the administration. The story of how these things were done and the manner in which the consequent alignment of parties worked out is very well told. Incidentally, Dr. Laprade points out (pp. 62-66) the difference between the real plan for the realignment and one of doubtful authority long accepted by historians.

The second part of the work does not show the same mastery of the material. The presentation is too distinctively from the standpoint of English parliamentary conditions. Even the diplomatic sources do not appear as fully as one might wish, and there seems to be an inadequate appreciation of Grenville's part in the foreign policy of the period. (Cf. p. 30, *et passim*, and contrast Dr. Adams' *The Influence of Grenville on Pitt's Foreign Policy*.) The conclusion that Pitt forced the war on France to keep in office, and because he saw an opportunity to reduce the power of France and aggrandize England is too sweeping, and fails to note the deeper and more complex motives. Causes much deeper than the personal motives of the prime minister were at work. The opening of the Scheldt was more than a shuttlecock for the play of ministers. Treaty rights were involved, says Dr. Laprade, but why not draw attention also to the fact that in this matter the all-powerful British commercial interests were deeply concerned. The great contest which marks the final struggle for colonial and commercial supremacy

between France and England has deep-seated causes which the author neglects too much in his interest in the diplomatic game.

Moreover, at a time when the overthrow of the social and economic order in France was the universal topic of discussion, one might reasonably expect some reflection of economic conditions in England in a study with this title. But apart from two pages (133-4) on the financial crisis resulting from the war, and one page (160) on the effect of the war on food prices, there is no treatment of this side of English history in relation to the French Revolution. The statement (Preface, *et passim*) that the English societies and organizations for reform were due to conditions in England itself rather than to outside influences is, when based upon the research the author has plainly given to the subject, a distinct contribution, but it is far from sufficient in a work purporting to be so broad in its scope. Indeed, in the interests of accuracy, a study so exclusively related to Pitt's policy ought well be more narrowly defined in the title.

W. E. LINGELBACH.

University of Pennsylvania.

McConnell, Ray M. *The Duty of Altruism*. Pp. 255. Price, \$1.50. New York: Macmillan Company, 1910.

In the first or critical part of his book, "The Duty of Altruism," Mr. McConnell undertakes an investigation to ascertain whether there has yet been discovered any satisfactory rational ground for the duty of altruism, the obligation to serve the interests of others rather than one's self. Taking up in turn the various grounds for obligation offered by theology, metaphysics, law, logic, psychology, physiology and evolution, he rejects all in turn; the religious and metaphysical, because they are transcendental rather than empirical or scientific; the legal, because they are based on external restraint; the logical because they depend on premises seemingly gratuitous; and the scientific, because they are shown to be explanations of, rather than a basis for, morality.

The constructive part of the book shows that egoism and altruism do not rest on rational grounds, are not matters of reason, but are rather phenomena of the will which is shown to be the fundamental thing in every individual with the intelligence or reason secondary and subservient to it. Altruism is not the result of any process of reasoning, but is an achievement of the will which is purely a product of nature. In the normal man, this will expresses itself in a will to live the largest life with full activity of the senses, the æsthetic, intellectual and social nature of man. The basis of altruism then rests on the fundamental tendency of man towards an enlargement of self, the will to live within and through others. The book is clear, systematic and convincing, and reaches conclusions which lead to individual freedom and tolerance.

AMEY B. EATON.

Providence, R. I.

McLaughlin, James. *My Friend the Indian.* Pp. xi, 416. Price, \$2.50. Boston: Houghton, Mifflin Company, 1910.

All who are interested in that race of men which has been displaced by white men "in carrying out the immutable law of the survival of the fittest," in the development of American civilization, will welcome this book from the pen of James McLaughlin, who for thirty-eight years has lived among the red men of the Northwest, serving as Indian agent at the Devil's Lake and Standing Rock reservations from 1871 to 1895 and as United States Indian Inspector from 1895 to the present. Perhaps no other man has been instrumental in carrying through so many "treaties" and "agreements" with the Indians. To him also the government is indebted for much of the improvement in the conduct of Indian affairs.

The book is written chiefly in autobiographical style, which gives a vividness to his narrative which far surpasses that of the mere descriptive historian. The story is told largely from the Indian's point of view, especially such events as the annihilation of Custer's troops at the battle of the Little Big Horn, which he declares to have been "Not a massacre, but a battle."

The scant appreciation which the author has for the work of ethnologists who have studied tribal life among the Indians should not detract from the value of the ethnological and sociological material which he furnishes. His work abounds in interesting descriptions of Indian village life, social and religious customs, dances, family organization, etc. His frank criticism of the government in its treaty-breaking policy and its paternalism, and his plea for "giving the Red man his portion," will be read with great interest by all who seek the Indian's good. Perhaps the title, "My Friend the Sioux," would have been a little more appropriate for a volume dealing almost wholly with the Indians of the Dakotas.

J. P. LICHTENBERGER.

University of Pennsylvania.

Odum, H. W. *Social and Mental Traits of the Negro.* Pp. 302. New York: Longmans, Green & Co., 1910.

Purporting to be based upon a special inquiry, this study is distinctly disappointing. In style it is rambling and verbose, with constant repetition. In few places is concrete evidence given, while chapter after chapter is couched in the general terms so characteristic of most discussions of the Negro. The author is capable of better work. Hailing from Mississippi, he is evidently very familiar with many phases of Negro life, is friendly in his attitude, and gives reason to hope that future studies will avoid the generalities so conspicuous in this study.

The schools, the church, fraternal orders, home life, crime, social status, relation of emotions to conduct make up the bulk of the volume, to which is added "An Estimate of the Negro" which is really a discussion of the economic situation.

Dr. Odum believes that the first thing is to understand the Negro. He

recognizes the responsibility of the whites. He sees that the schools have been unsatisfactory, that the white church should take more interest in the Negro; and he fears that the great development of lodges is interfering with the church. In the low standards of home life and personal conduct he finds constant challenge to normal progress. In the music of the Negro he finds much of promise.

The question is not whether the Negro is so handicapped by nature that he can never do the work of the white. It is rather to help bring about such conditions and ideals that at least the Negro may realign himself—the future will determine the issue. The author deserves praise for his avoidance of pessimism and his recognition that North and South must unite in constructive programs.

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Welsford, J. W. *The Strength of England.* Pp. xviii, 362. Price, \$1.75.
New York: Longmans, Green & Co., 1910.

This is a sketch of the history of England, or so much of that history as the author lived to complete, written with the idea of bringing out some of the economic features of the story, and especially to prove the desirability of a policy of protection to home industry and trade. Of this kind of writing it is a favorable example. It is the result of much reading, thought, and care in statement. It includes many suggestive explanations and comments. But there is a fundamental difficulty with this whole form of treatment of history. As far as it is work in history it is one-sided, arbitrary and inadequate. Historical consequences have flowed from the whole body of historical conditions not from one particular group of them. So Mr. Welsford has not only left out whole fields of historical occurrences, but has been led into making many entirely improbable and certainly quite unsupported historical assertions, besides a rather large body of minor misstatements.

As far as such a work is an argument for protection as a practical present-day policy, the vast number and variety of occurrences in the life of a nation through many centuries of time, provide an embarrassing abundance of material. By a selection of events and a series of statements and explanations quite as justifiable and sound as those of the author of this book, a free-trader could make a politico-economic history of England that would interpret it in exactly the opposite way and teach free-trade instead of protection. Work must be much more critical, thorough, accurate and profound than such a sketchy outline of a large subject as this before it can have any very serious value.

EDWARD P. CHEYNEY

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THE PROBLEM BEFORE THE NATIONAL MONETARY COMMISSION

BY HONORABLE A. PIATT ANDREW,
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About three years ago most of us found ourselves in a country where business was conducted by curious methods. It was a large and prosperous country whose people had long prided themselves upon their achievements in business and upon the superiority of their commercial and financial equipment, yet, singularly enough, in all of the leading cities of the country coin and legally authorized currency circulated at a premium, while the usual means of payment were inconvertible notes issued without any sanction of law by banks, railroads, mining companies and other firms. At the time of which I write, conditions had reached such a state of demoralization that any one who had a payment to make and felt so inclined, issued notes instead of paying cash. These notes in a majority of cases offered no promise of immediate redemption; in the case of some issues they frankly stated that they would only be repaid when the issuers deemed it advisable; in other cases they stated that due notice of redemption would be given in the daily papers; occasionally they purported to be payable to Richard Roe or John Smith, or some other fictitious character; but ordinarily they were launched with the simple statement that they would be received by their issuers and certain other affiliated firms. I made a collection at that time of nearly two hundred different varieties of this peculiar currency and as the occasion will probably never again occur when such a collection of private, illegal, irredeemable paper money can be made in any highly developed country, I anticipate that my collection will not improbably become in the future an object of curiosity and value. I have several times had occasion to show samples of the collection to European bankers, and have found that they excited much curiosity, for nothing like them has been seen elsewhere than in this country for the greater part of a century.

There were no less than twenty-five thousand banks in the

country under consideration, but the majority of them had suddenly curtailed the facilities which they usually extended to the public. It was in the autumn months just as bountiful crops, vastly exceeding in amount those of any other country in the world, were being brought to market, but on account of the peculiarities of the banking system these crops could only be marketed with the greatest difficulty and at a heavy loss. The 25,000 banks were so singularly unrelated and independent of each other that the majority of them had simultaneously engaged in a life and death contest with each other, forgetting for the time being the solidarity of their mutual interests and their common responsibility to the community at large. Two-thirds of the banks of the country had entered upon an internecine struggle to obtain cash, had ceased to extend credit to their customers, had suspended cash payments and were hoarding such money as they had. What was the result? During a season when nature was offering plentiful harvests, farmers and dealers in produce were refused credit to handle their crops at the very moment when credit was indispensable, and when they had every reason to expect that it would be granted. The owners of factories which had hitherto been working overtime were now for a similar reason obliged to close them down. Railroads which had been running to their utmost capacity suddenly found themselves burdened with idle cars. Thousands of men were thrown out of work, thousands of firms went into bankruptcy, and the trade of the country came to a standstill, because the credit system of the country had ceased to operate.

Such singularly crude forms of inconvertible paper money and such general disorganization in the banking arrangements an uninformed foreigner would doubtless assume must have been the result of a disastrous war. He would imagine that such a situation could only have arisen as news of defeat after defeat had terrified men out of their reason and made them despair of the survival of law and government, but this was not the case. There was no disastrous war, nor had there been any threat of war. There was not the remotest hint of political revolution, nor were there disruptive labor troubles. There had been no conflagrations or national catastrophes. There was no explanation of the condition of the country's business in the political, industrial and physical events of the time.

Unfortunately it is not necessary to mention the name of the

country whose discreditable conditions I have been describing. No property holders in America would mistake the description for a picture of conditions in Central America or the Philippines, however glad he might be to be able to do so. We do not regard the United States as still undeveloped in most respects, or as poorly equipped with the institutions and arrangements of civilization, and yet the collapse of our currency and banking arrangements which I have described was not a unique experience in this country's history. Similar conditions have occurred here before not infrequently and they have similarly been without any visible cause. In 1893, and twenty years before that, in 1873, and intermittently during the earlier phases of the country's history, as well as in 1907, a majority of the banks have suspended payments, inconvertible and illegal paper money has taken the place of coin and legal tender and the business of the country has been brought to an abrupt and disastrous halt.

Yet in none of the leading countries of Europe during the past hundred years, except in periods of war and revolution, has there been any such general collapse of credit and general suspension of the banks as that which I have been describing. In England one has to go back to the period of the Napoleonic wars to find such a premium on money as was witnessed in this country in November and December of 1907. In Germany no such suspension of payments and premium upon money has occurred since the German Empire was founded, nor, so far as I know, among the German states for a long time before. In France, even during the troubled years from 1870 to 1873, when the country was overwhelmed with one catastrophe after another, including the war with Prussia and the Commune and the payment of the Great Indemnity, the premium on coin was only on one occasion as high as was the premium on money in New York for several months in the quiet autumn of 1907.

I do not mean to imply that there has not been in these countries an unceasing alternation of trade activity and trade relaxation. There have been fat years and lean years in every country ever since Adam delved and Eve span. Nor do I mean to imply that there have not been great failures of banks and business firms of all sorts. They will not cease to occur until human honor and human judgment and knowledge cease to have bounds. In Great

Britain powerful banks have failed, like the firm of Overend Gurney in 1866, the Bank of Glasgow in 1878, or the Baring Brothers in 1890. In France great banking firms have gone to the wall, like the Union Generale in 1882, and the Comptoir d'Escompte in 1899. In Germany there have been great financial bankruptcies like that of the Leipziger Bank in 1901. The essential and impressive fact, however, is this, that upon all of these occasions there has been leadership and the situation has been kept firmly in hand; there has been no infectious panic and no general rout in which innocent and guilty alike were crushed to earth; the failures in each of these cases have been confined for the most part to the persons and firms who had been responsible for previous excesses.

It was on account of this striking contrast between experiences here in America and conditions abroad that the National Monetary Commission, in undertaking its investigation of possible means for improving the credit arrangements of this country, began by examining the banking institutions, customs, and regulations of the leading countries of Europe. If among other people in most respects not unlike ourselves, financial panics do not occur and the credit systems maintain themselves intact in the face of stress and strain, then the reasons for that difference require examination. In the summer of 1908, shortly after the appointment of the commission, several of its representatives visited England, France and Germany, the three countries of Europe in which conditions most closely resemble our own, examining their banking systems by personal interviews with the directors and managers of the leading banks and arranging for the preparation of papers and monographs by the leading authorities of those countries. Since then representatives of the commission have also been deputed to investigate the banking systems of most of the other leading countries, including Canada, Scotland, Belgium, Sweden, Switzerland, Italy, Russia, Mexico, and Japan.

In all of these countries the liveliest interest in the work of the commission was manifested. It was borne in upon us time and again that our problem was a world problem, and that Europe and the rest of the world had suffered from the consequences of the American panic of 1907 only slightly less than America herself. I remember an interview in London during the summer of 1909 with a representative of the Bank of Sweden, who told us how even in

his country, which seems to be fairly disconnected from our own, business had suffered long and heavily from the American panic of 1907, and I recall also in this connection a dispatch from Signore Luzzatti, now Prime Minister of Italy, whom we had invited to prepare a paper upon banking conditions in Italy, and who cabled back that he would be very happy to contribute to the work of the American Monetary Commission, upon which, as he believed, the monetary peace of the entire world depended.

For two years the commission has been collecting material concerning the banking systems of the more important countries. The leading financial editors, bankers, government officials and university professors in Europe and America, and even in the Orient, have contributed to the commission's publications, which constitute a library of more than forty volumes. The publications of the National Monetary Commission thus furnish an unparalleled opportunity for those who are interested in American financial problems to make a comparative study of conditions and experiences here and abroad. The public and Congress are equipped to-day as they have never been before in the case of any other great problem, with the most expert knowledge which the whole world has to offer.

No one can foresee what the commission may eventually agree to propose, but without in the remotest manner pretending to indicate what they are likely to recommend, it may not be inappropriate to direct attention to some of the respects in which the banking arrangements of European countries differ from our own. Not because any one believes that we ought to adopt, or that we could adopt in this country, the specific arrangements of any other country, but because the experiences of the older world may possibly yield some general suggestions which can be modified and adapted to our own peculiar conditions. This is easily done, and in the remaining pages I shall accordingly direct attention to certain broad and general features in which the banking practices and regulations of all European countries coincide, and in regard to which banking arrangements in America are peculiar.

First of all, the American observer is sure to be impressed by the fact that the banks of European countries form parts of a coherent system, subject in a greater or less degree to common leadership. No matter what country you have in mind, whether a

monarchy or a republic, you will invariably find some sort of an institution which, on account of its preponderant capital, its peculiar privileges, its relations to the government, or on account of the recognized disinterestedness of its policy, is able to exert a controlling influence over the other banking institutions. Its officers are recognized guardians of the country's credit. They survey conditions with an eye cast beyond the immediate future, and with a regard directed not merely to the prosperity of one section, but to the growth and development of all sections of the country. If credit seems to be expanding feverishly at certain times or in certain lines, their influence is directed to impede excessive advance. If a safely managed and solvent bank finds itself in temporary difficulties owing to conditions which it could not have foreseen or guarded against they will render assistance until the strain is relaxed, and if, because of an unexpected catastrophe the confidence of the community tends to be unsettled, they are able to prevent the disorder from spreading. Such leading and influential institutions, organized not with the primary object of obtaining dividends for their stockholders, but organized and managed to support the public credit and the common interests of the country, play a predominant rôle in the banking organization of every European nation. Their functions and the details of their organization differ from one country to another, but they coincide in the facilities which they extend to other banks and the preponderant influence which they exert over them, and in the fact that their officers and directors recognize an unusual measure of public responsibility.

No phase of recent American banking is more striking than the groping of our 25,000 independent banks toward some coherent organization and leadership. This is shown not merely in the consolidation of great city banks and the affiliation of banks and trust companies, but in the development of association and joint control through the clearing houses, and the absorption on the part of these institutions of new and far-reaching functions. The adoption of methods of mutual supervision through clearing house bank examinations which has been so much in evidence in western and middle western cities during recent years is one step in this direction. The more careful regulations governing the conduct of firms which are admitted to membership in the clearing house, and with regard to the non-member institutions which clear through members, about

which so much controversy has centered during recent years in New York, is another instance of the same tendency. Above all, the resort to clearing house loan certificates in times of unsettlement which became so surprisingly general throughout the country in 1907 is the best illustration of the way in which our banks are forced at times to act together under common leadership. It shows, too, how an ingenious people can improvise a needed institution if it does not already exist. The operations of the clearing house associations during the panic of 1907 were essentially akin to the ordinary functions of the Bank of England, the Reichsbank, and the Bank of France. With the banks as customers, these clearing house associations made loans on collateral, rediscounted notes, and made the reserves of all of the banks available for each other in practically the same way as do the great national banks of Europe. The operations were of an identical nature, but there were two essential differences in form and in measure of effectiveness. First, the arrangements had to be devised in the stress of an emergency, and only began to operate after the panic had become acute, and it was no longer possible to forestall the general collapse. Second, there was no general clearing house association for the country as a whole, and even though the banks of each locality were able by a belated expedient to pool their reserves and transform their commercial paper into available, liquid assets, there was no arrangement for a similar settlement of accounts as between different cities. Hence the struggle which was witnessed of each locality endeavoring to fortify itself at the expense of every other locality—a spectacle which could not have occurred in any European country and which we ought to make impossible of recurrence here.

Another respect in which the banking arrangements of other countries differ from those of our own lies in the greater mobility of their reserves. This is partly due to the absence of any requirement that a proportionate minimum of actual cash be maintained inviolate against all deposits,—a requirement which exists in our national banking law and has been copied to some extent in the banking laws of most of the states, but which has no counterpart, so far as I am aware, in the legislation of any other country in the world. With us it fixes an uncompromising limit to the expansion of loans and discounts and prevents the reserves of our banks from

really serving as reserves. From the instant that the required reserve has been touched, no matter how critical the need, if the law is strictly enforced, no further accommodation can be granted. There are no such restrictions in other important countries where most of the reserves are pooled in the central institution and where the usual practice in periods of unsettlement is to lend and discount freely to all who have legitimate requirements. Thus panics are suppressed elsewhere as gypsy moths or other pests are suppressed, while they are still in embryo. The requirement of an unusable cash reserve against deposits is peculiar to our system alone. One of the German bankers whom we interviewed last year, described the American reserve system very aptly by comparing it to the regulations with regard to cab-stands in the city of Berlin, where the law demands that there shall always be at least one vehicle at each of the appointed stands. Under this law, a man returning home in the course of a wet and windy night and finding a cab on the street corner may be unable to employ the cab because the law provides that there must always be a reserve of one cab at each of the appointed stands. So, no matter what the exigency, no matter how insistently a precarious situation in the financial world demands a liberal extension of accommodation on the part of the banks, our institutions, unlike those of any other banking system in the world, are prevented from responding to these demands by this uncompromising restriction of deposits to an untransgressible maximum proportioned to the cash reserves.

The reserves of the banks in European countries are more mobile than our own for another and more important reason. In England, or France, or Germany, or in any of the other important countries, the banks are accustomed to consider as equivalent to cash actually held in their own vaults, the balances held for them by their great central institutions. If because of the seasonal recurrence of increasing credit demands, or on account of temporary unsettlement of confidence, the reserves of the banks need to be strengthened, such increases can always be effected by the individual banks by transferring to the central institution some of their bills-receivable, or commercial paper, and receiving in exchange through the direct or indirect process of rediscount, an increased balance upon the books of the central institution. As these balances are regarded and treated as identical in every way with cash, the

reserves of European banks are widely flexible, and the banks are able at any time within reasonable limits, to transform their solvent assets into available reserve funds. At the same time the pooling of a large part of the reserves of the individual banks in the central institution makes it possible to supply without disturbance unusual demands for cash arising in any particular part of the country as well as at particular seasons of the year. The lack of any such flexible and easily mobilized reserve power in America forms one of the most conspicuous contrasts between American and European banking arrangements.

A third respect in which the drift of the world's banking is in a different direction from that of this country concerns the matter of note issue. The tendency of note issue regulations in every other country is manifestly toward concentration in its control. When the great act of Sir Robert Peel in 1844 established the English system of note issue upon the basis on which it stands to-day there were 279 banks in England issuing notes. The act provided for the gradual absorption of all of these issues by the Bank of England, and at the present time there remain less than thirty note issuing banks outside of the Bank of England, with a total issue amounting to less than £500,000, or only one per cent of the total issue. In Germany when the bank act of 1875 was adopted thirty-two other banks throughout the empire were issuing notes to the extent of 135,000,000 marks, but that act, like the English act of 1844, provided that as these banks forfeited their rights to circulation the Reichsbank should be allowed to absorb their note issuing privileges. To-day there remain in Germany only four note issuing banks aside from the Reichsbank with a total note issue averaging less than twelve per cent of the whole. In France the Bank of France has been the sole source of circulation for more than sixty years, or since its reorganization in 1848.

In quite recent years a number of other countries have brought their bank note issue system into line with those just mentioned. In Italy, beginning in 1893, the government entered upon a course of legislation tending toward the concentration of note issue in the Bank of Italy, and already of the six banks which at that time were issuing notes, only three remain—the Bank of Naples and the Bank of Sicily, with minor privileges, and the Bank of Italy, sponsor for

three-quarters of the total circulation of the country. When Japan, emerging from feudalism, reorganized her banking system early in the seventies, she adopted the American system of decentralized issue, but after an experience of only a few years she turned to Europe for her models and adopted a system of centralized issue patterned after that of the Bank of Belgium. In Sweden, one of the last countries to change, down to 1900 there were no less than twenty-seven separate *enskildabanks* endowed with the privilege of issuing notes, but by legislation of that year, a centralization of issue was arranged for, and since January 1, 1904, the Bank of Sweden alone has had the privilege. Most recently of all in Switzerland, where for generations notes have been issued by a system of cantonal banks, the Swiss National Bank, organized by the act of 1905, has taken over the authorized circulation of the eleven other institutions which up to that time had enjoyed the privilege of note issue. The fundamental reason for the drift of the world toward centralization in the control of note issue is not altogether clear, but the main advantage probably lies in the possibility of concentrating its control under a single body of men who are conscious of public ends and the opportunity which ensues for better adaptation of currency supply to currency demand, for stronger control over credit expansion and for wiser and more immediate relief in times of emergency and incipient distrust.

The importance of the question of note issue arrangements has been very much exaggerated by writers upon currency reform in this country. In the course of the last half century it has become the custom of banks throughout the world, and more particularly of banks in the Anglo-Saxon countries, to lend their credit in the form of deposit accounts rather than in the form of notes; on this account the matter of the issue privileges, which was formerly the principal feature in banking legislation and the main subject of discussion in banking literature, is ceasing to have the importance which it used to command. The thought of the world moves slowly, and it only recognizes essential changes in conditions reluctantly and long after they have occurred. The banking problem as it still presents itself to many financial writers is limited to the search for improvements in the regulation of note issues, but in reality this question has for decades only concerned a minor phase of credit organization.

This is not the occasion to present the details of the banking systems of other countries. I have only intended here to sketch in broadest outlines some of the features that are common to the banking systems of practically all of the other countries of the world—features which we in America lack, and which perhaps may have enabled other countries to meet the fluctuating exigencies of business more effectively than we have been able to do. I have not sketched the peculiar features of any single country; I have merely gathered together what is common to them all. I have no idea and no member of the commission has any idea that the detailed arrangements and regulations governing banking in any other country are applicable to the United States. I do believe, however, that some of these features which are common to all other banking systems should be carefully examined before we make any attempt at domestic reform, and, as I have endeavored to explain, the most distinctive characteristics of European banking, in my opinion, are the greater unity and coherence of their organization, the greater mobility of their reserves and the greater concentration of control in their note circulation.

The history of currency legislation in the United States during the last forty years has not presented a story to which any well-informed and intelligent American can point with pride. At the end of the Civil War we found ourselves encumbered with an inconvertible paper currency issued to defray the expenses of that great war, and for fourteen years thereafter this currency circulated at a discount while successive legislatures proposed varying plans for its retirement and for the resumption of specie payments, only to modify and repeal them. It was not in fact until 1879, or nearly a generation after the issue of the greenbacks, that the government fulfilled its obligation and undertook their redemption. From that date for another generation successive Congresses dealt with the problem of silver coinage with equally inapt vacillation, and it was not until the year 1900 that the world was finally assured that this country would continue to use as its monetary standard the metal which had been the undisputed standard of all the other leading nations for a quarter of a century. We are confronted to-day with the third great currency problem of the last fifty years. We are looking for the means of improving our banking system so that we

may avoid for the future the wide-ranging catastrophes with which American business has been periodically distressed, and through which the respect for this country abroad has been impaired. Having established our standard of value on the world's basis, we are now trying to devise a banking system more worthy of our position in the world and better adapted to further the uninterrupted development of our great resources.

Fortunately in this great task we are presented with a means of resolving the complexities of the problem such as has not existed with regard to any other problem in our history. We have a commission of distinguished membership which is devoting itself with deliberation to a scientific study of banking difficulties at home and banking experience in the rest of the world. The commission includes representatives of all sections of the country, from states as widely separated as Maine, Louisiana, Texas, Pennsylvania, Virginia, Colorado, and California. At its head is a masterful leader, clear thinking, unvisionary and thorough, whose one ambition is to crown a long career with a great constructive law. The outcome I am confident will show that the members of this commission, whether Republicans or Democrats, realize that the questions before them are vital to the development of the common country, and that the issues are of far too wide a scope to be treated from the viewpoint of sectional interests or partisan politics.

The problem before the National Monetary Commission is well suggested by its analogy with the problem of providing protection against certain kinds of physical catastrophes, such as fire. There are at least three ways to protect one's self and belongings against loss by fire. One may equip a house with fire-escapes and in case of a blaze make one's way out as best one can, saving one's self but leaving home and possessions to destruction. A better method is to equip one's house with fire extinguishers, so that if an incipient blaze occurs one has the means to combat the flames and to prevent the complete destruction of one's property. The best method, however, of protecting self and home is by fire-proofing the entire structure; then there remains no real need for anxiety, for only under conditions of extreme carelessness can any considerable damage be accomplished by fire.

In the financial structure of this country we have seldom pro-

vided any method of protection against possible disaster beyond the means of escape, and even these we have generally left to be improvised after a catastrophe was under way. Under the so-called Aldrich-Vreeland act of May 30, 1908, provision was made for equipping our financial edifice with something akin to extinguishers in the shape of currency associations and emergency currency to which the banks could run for relief in case of impending destruction. But these extinguishers are only of limited usefulness. They can only be employed after emergencies are under way, and the law only gave them a period of effectiveness of six years. The act of 1908 provided, however, that during these six years experts should be engaged to examine into the methods of panic-proofing employed in other countries in order that means may be devised by which our own financial system may be panic-proofed and panic risks for the future eliminated. This is the problem before the National Monetary Commission.

FINANCING OUR FOREIGN TRADE

BY FREDERICK I. KENT,
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The foreign trade of the United States has increased during the last forty years about 370 per cent. The combined exports and imports in 1870 were exceeded by the exports alone in 1880, and in 1909 the total foreign trade was almost double that of 1880 and amounted last year to \$3,203,000,000. This increase in our foreign trade reflected not alone our own marvelous development, but as well the wonderful growth of trade throughout the world. The United States stands third among the countries of the world, its foreign trade being exceeded only by that of the United Kingdom of Great Britain, whose total in 1909 reached \$4,881,000,000, and Germany with a total of \$3,544,000,000; France was fourth with \$1,995,000,000.

Before considering the methods under which our trade is financed, it would be well to have in mind the nature of our foreign trade, including in a general way the commodities imported and exported and the points from which they emanate and to which they go.

Imports each exceeding \$100,000,000 in value:

Beverages, including coffee, tea and cocoa.

Silk and manufactures.

Hides, skins and leather.

Metals—copper, iron, tin and lead.

Under \$100,000,000 and exceeding \$75,000,000:

Sugar.

Various chemicals.

India rubber.

Wool and manufactures.

Under \$75,000,000 and exceeding \$50,000,000:

Manufactures of cloth and laces.

Fruits and nuts.

Wood and manufactures.

Under \$50,000,000 and exceeding \$20,000,000:

Wines and spirits.

Diamonds and precious stones.

Tobacco.

Furs.

These few commodities represented about seventy-seven per cent of our imports in the year 1909. Of the total imports \$763,000,000 came from Europe, \$277,000,000 from North America, \$193,000,000 from South America, \$190,000,000 from Asia, \$32,000,000 from Oceanica, \$17,000,000 from Africa. Aside from the imports from North America, practically all of these commodities were financed through Europe and a large proportion of this total through London. The detail of this financing was largely carried on under the instrument known as the commercial letter of credit. An explanation of the operation of the commercial letter of credit will, therefore, disclose the methods and conditions under which our imports are financed.

The commercial letter of credit is an authorization, say of an American bank to its London correspondent, to honor drafts for its account drawn at various tenors by foreign shippers or others against shipments of merchandise to this country. These credits are of two kinds, documentary and clean. Under the documentary credit the London bank is authorized to accept drafts for the account of the American bank only when the bill of exchange is accompanied by certain documents described in the letter of credit. These documents may be the bills of lading for the goods, consular invoices, insurance certificates and possibly other papers. Probably a large proportion of such credits requires that drafts be drawn at sixty or ninety days' sight. So many elements of danger are involved in financing commodities under commercial letters of credit, even where the control of the goods is given to the bank issuing the credit or its agents, that the financial standing of those asking for credits must be the first consideration in their issuance. Dishonesty on the part of the shipper, resulting in a drawing under the credit against forged documents or against shipments of inferior merchandise, is always possible, and the financial responsibility of the buyer of the credit is all that stands between the banker issuing the credit and a loss in such cases.

In order to obtain a clear understanding of the working of a

commercial letter of credit, we will take a concrete example and follow its every transaction. An importer of coffee (A) in New York purchases a certain number of bags of coffee from an exporter (B) in Brazil. A agrees to furnish B with a commercial letter of credit. B is not in position, we will say, to await the arrival of the coffee in New York and the return of a remittance before receiving his pay. A on the other hand is unable to remit B for the coffee before its receipt and sale to his customers. A goes to his banker in New York and requests him to authorize B to draw upon the New York banker's London correspondent at ninety days' sight with bills of lading for coffee to the amount of the purchase attached to the draft, consular invoice and insurance certificate, if B is to furnish the insurance. If A's banker is willing to extend the credit he writes a letter (or uses a printed form), requesting his London banker to accept B's drafts upon presentation under the conditions already mentioned and others of minor importance. This letter is issued in duplicate, one copy going to the London banker, the other being delivered to A. A then mails the copy received by him to B. B thereupon arranges to ship the coffee, obtains the bill of lading, invoice, etc., and takes them with the copy of the credit to his banker in Brazil. A draft is then drawn on the London bank under the terms of the credit at ninety days' sight and is discounted by the Brazilian banker, the proceeds being placed to the credit of B's account or given to him in the form of a check or cash. The Brazilian banker then forwards the draft and documents, except such documents as the instructions may require to be forwarded direct to New York, to his London banker. He may secure discount of the bill at once by cable or await its arrival in London before doing so, or he may request his London banker to have the bill accepted and hold it for maturity. If the bill is discounted the Brazilian banker may draw against it immediately and thus put himself in funds to purchase other coffee bills. Upon receipt of the bill by the London correspondent it is presented to the London banker on whom it is drawn for acceptance. The acceptor bank examines the documents and if they are drawn according to the terms of the credit accepts the draft and returns it to the correspondent of the Brazilian bank, retaining the documents, which it then forwards to the New York bank which opened the credit. In accepting the draft the London bank has in effect agreed to pay it at the end of ninety days,

or, figuring grace, ninety-three days. Upon maturity payment is made and the amount is charged to the account of the issuing New York bank. Upon receipt of the documents the New York bank delivers them to its customer under a trust receipt or against collateral, and the latter is then in position to obtain the goods. Ten days before the bill of exchange is due in London the New York bank collects the amount from A, together with the commission agreed upon when the credit was opened, and remits the amount to its London banker to meet the draft. On all such transactions the London banker, while not himself advancing any money, is extending a credit for which he charges the New York bank a commission. The result is that we are paying tribute to European bankers amounting to an immense sum annually for the purpose of financing our imports.

The fact that London exchange is more marketable generally throughout the world than New York exchange is one of the principal reasons why it is necessary for us to issue credits upon London instead of upon New York. Another reason lies in the doubtful authority of American banks to accept time drafts upon themselves.

If our foreign trade should become extended enough to make New York exchange thoroughly marketable in all parts of the world, banking conditions in this country would have to be changed somewhat before we could save the cost of the commissions for acceptance, which we now pay to foreign bankers. We must expect, therefore, to continue to pay Europe commissions for acceptance, as well as freight and insurance in carrying on our foreign trade until our laws are changed. These three items undoubtedly go a long way toward offsetting our favorable trade balance in merchandise.

Our imports are distributed generally throughout the United States. The importers, however, are mostly situated at the ports of entry. A very large proportion of them obtain their credits through New York institutions, although some of them deal direct with foreign bankers. Imports may be stored in bonded warehouses without the payment of duty until such time as the importer desires to obtain the goods for delivery to his customers, provided they are not left to exceed three years. The interest saved on the amount of duty payments thus delayed is quite an item and enables our importers to ship to this country many classes of goods at the low rates that orders in bulk make possible, which they could only

otherwise import in small quantities and at high prices. While practically all classes of our imports are distributed generally to our people, yet our exports are largely localized. The center of our manufacturing industries lies not far from the center of the State of Ohio. The center of our cotton area is in Mississippi, of our corn area in the western central part of Illinois, of our wheat in Iowa and of our total farms in central Missouri. Our exports are made up of products from these various areas, the centers of which have been continually moving westward and will probably continue to do so for some years yet. Our principal export is cotton, which in recent years has averaged about \$650,000,000 annually. Other exports are copper, iron and steel, \$250,000,000; meats and dairy products, \$150,000,000 (a sum which has been decreasing annually for several years); corn, wheat and flour, \$125,000,000; oil, \$103,000,000, and other commodities totaling under \$100,000,000 but exceeding \$25,000,000 in about the following order: Lumber, leather (manufactured and unmanufactured), tobacco, coal and coke, cotton manufactures and agricultural implements, all together amounting to seventy-seven per cent of our total exports.

Probably a smaller proportion of our exports is financed by means of commercial letters of credit than of our imports. Different commodities are handled in accordance with special customs which have grown up around them, due partly to trade conditions and partly to the nature of the products. Sellers of grain usually draw at sixty days' sight upon the foreign buyer instead of under a bank credit. These bills, under the customs prevailing in most foreign countries, may be rebated by the foreign buyer whenever he desires to obtain the goods at the "bank rate" or one per cent under the bank rate, or such other rate as custom in the country on which the drafts are drawn requires. Such drafts, with bills of lading and such other documents as are necessary, are purchased by American banks and are forwarded by them to their European correspondents. The American banker is obliged to advance the money on such paper, unless he draws his own time bills against them, until such time as they are rebated. In the case of grain bills the average time rebated is probably around fifty-six days, which places the American bank in possession of demand foreign exchange, against which it can draw in order to reimburse itself with the loss of a very few days' interest.

Flour bills, which are financed in the same manner as grain bills, usually run nearly to maturity before they are rebated, although the condition of the discount market sometimes influences the purchaser, and causes him to take the bills up more promptly. Many foreign shipments are made under three day sight bills, which uses the money of the American banks making the advance from four to seven days or more, depending upon whether the laws of the country on which the bills are drawn allow grace or not and whether the bills are purchased with intervening days before the sailing of steamers. Other classes of bills are drawn at sight. This includes a portion of our lumber shipments and miscellaneous articles. Where shipments are made on sailing vessels, drafts are frequently drawn at four or six months' sight, and many other transactions go through against cable payments.

As nearly forty per cent of our exports consist of cotton, the method under which it is financed is worthy of special consideration. Cotton bills are ordinarily of two kinds: documentary payment bills and bills drawn upon bankers. Documentary payment bills, which are drawn upon cotton merchants or spinners at sixty or ninety days sight or other tenors, are handled in the same manner as flour bills. The cotton merchant accepts the draft upon presentation and rebates it when the goods arrive, or when he desires to obtain the cotton. A small percentage of cotton is handled in this way. Most of the commodity is financed by means of credits opened by the foreign buyer through his banker. Various abuses have developed under this system, which have caused losses running into millions of dollars to all of the various parties engaged in carrying the transactions to their close. These losses have only been possible because of the turning over of credits by the foreign buyers to irresponsible concerns in America in their endeavor to obtain cotton at lower prices than their competitors. A foreign buyer makes arrangements with certain American concerns to cable him offers of cotton. The American firms whose offers are accepted receive cablegrams from the buyer advising them of the acceptance of their offers and giving them the names of the foreign bankers on whom the drafts in payment of the cotton are to be drawn. The American sellers thereupon ship the cotton to the buyer under bills of lading drawn to the shipper's order and endorsed in blank. The bills of lading are then attached to drafts drawn upon the bankers designated by the buyer

at the given tenor, which is usually sixty or ninety days. This exchange is then sold in the market to the highest bidder or it is forwarded to New York to be sold in the same manner upon arrival. The American exchange buyers have no means whatever of designating whose bills shall be upon the market, as the sellers are all agents of the European buyers. The American exchange houses in their need for exchange to meet the demands of their importers have accepted the bills offered in the market, each exchange man endeavoring to keep his "water line" on weak names as low as possible. If the European buyers only dealt with first-class houses only first-class bills would be offered, but when they deal with second- or third-rate houses, or houses with no standing whatever, such bills drawn upon prime European banks come upon the market.

The American exchange buyers having the cotton as collateral while the drafts are on the water, and then having the acceptance of a prime European bank for the sixty or ninety days following before maturity of the draft, have accepted these risks, although unwillingly, for want of better bills. They endeavor to protect themselves as far as possible by trying to buy bills only of those in whose honesty they have reason to believe, whether they have any capital back of them or not. If the cotton were actually shipped under a bona fide order, any fluctuation in the value of the cotton which they accepted as collateral, although taken entirely without margin, would probably cause them neither loss nor friction. They have run the risk, however, of having forged documents forced upon them which did not represent goods, or exchange that was drawn without authority. Lines which exchange buyers are willing to take from each cotton shipper before acceptance, and the name of a prime European banker is added to the paper, have to be based upon this consideration.

In the spring of 1910, forged and fraudulent bills of lading for cotton were attached to drafts that were sold in the foreign exchange market, which resulted in serious losses to both foreign and domestic buyers and bankers. The foreign bankers thereupon appointed a committee to investigate the matter and to recommend some means under which bankers accepting drafts for cotton could be protected. This committee instead of coming to America met in England, which being so far from the seat of the trouble made it impossible for it to get at all of the facts. The committee arrived at a decision

not at all in accordance with the requirements nor the possibilities of the case. A resolution was then passed demanding that American exchange buyers guarantee the genuineness of the signature on all bills of lading and the further fact that the goods had actually been delivered to the railroads. In the meantime American bankers and railroad men were holding meetings for the purpose of changing the methods under which bills of lading were issued in such manner as to make fraud more difficult and the risk undertaken by foreign bankers in accepting drafts with cotton bills of lading attached a more reasonable one. A system of validation was agreed upon under which "through order notify" bills of lading are to have validation certificates attached, which proclaim the authority and guarantee the genuineness of the signature of the railroad agent. The validation certificates are to be charged to the agents and audited in the same manner as is done with passenger tickets. They are to be numbered and printed upon a specially protected watermark paper, and are to be attached to the bills of lading in such manner as to make it practically impossible to remove them without detection. These validation certificates will serve a number of purposes and among others will make it possible for those who wish to advance money upon bills of lading to determine with some certainty whether the bills are genuine.

The old form of the cotton bill of lading which has been signed by freight agents or their assistants or others has been an instrument not possible to authenticate. This was particularly dangerous, due to the manner in which bills of lading were issued. They were formerly given out to the shippers, who filled them in and returned them to the railroad agent, who in turn often signed them without having any knowledge as to whether the goods called for by the bill of lading were in his possession or not. Under the new system, no validated bills of lading are to be given up until the goods are actually in possession of the railroads. This system went into effect September 1, 1910, and it is confidently hoped that it will give sufficient added safety to the bills of lading of American railroads to satisfy the foreign bankers.

The very act of guaranteeing such bills is recognized by foreign bankers as being wrong in principle, and while they are requesting that American exchange buyers guarantee bills of lading for exports yet on the other hand they particularly call attention to the fact that

no bills of lading which pass through their hands for imports to the United States are guaranteed by them in any way, shape or manner. This glaring inconsistency and abrogation of a principle even while it is being stated, can only be attributed to a lack of proper consideration of the subject. There is no doubt, however, but that the whole matter will be adjusted in a manner which will be fair to all concerned. It was quite natural that the tremendous losses incurred through the recent frauds should have at first caused extreme action to have been taken, but it is confidently hoped that our exports of cotton will be handled this coming season without friction or delay. This being the case, the time bills upon foreign bankers will be discounted abroad and the proceeds used to pay for our imports as usual.

The money to finance both our imports and exports is largely furnished by foreign bankers or discount companies. This is of great value to the old countries where capital has accumulated that would otherwise lie idle, and it is of great value to the United States as it enables us to use our own rapidly multiplying capital to develop our country and our industries. In the case of both imports and exports, while the actual capital is largely furnished abroad, our own banking institutions are primarily extending the credits, either through an authorization to foreign bankers to charge drafts drawn under commercial letters of credit to their accounts at maturity in the case of imports, or through the endorsement of bills for exports. Our bankers consequently first feel the necessity for gold shipments, as their inability to meet their obligations with exchange on the one hand or to find a market for their exchange on the other calls for the exportation or importation of gold.

Our imports average about the same amount monthly throughout the year, except during the time of a financial crisis or a change in the tariff. We have then had sudden fluctuations in the imports, which have been very marked. For instance, in 1907 our imports fell off after November from \$110,000,000 a month to \$92,000,000 in December and \$84,000,000 in January and February of 1908, and again in the year 1909 great quantities of merchandise were brought in anticipating expected changes in the tariff, which were being considered that year.

The exports, on the other hand, do not go out regularly, but are much larger in the fall and winter months than during the sum-

mer months. The reason for this lies in the fact that a large proportion of our exports is made up of various crops which ripen in the summer and mature in the fall. A larger amount of exchange, therefore, is made from our merchandise exports after the summer months are over than is required to pay for our imports. Due to various causes, our exports are gradually changing their character and manufactured articles are making up a larger percentage of the total. If it were not for our tremendous exports of cotton, which will undoubtedly continue for the time being in spite of the more or less spasmodic attempts of various foreign countries to grow their own supplies on colonial lands, our exports would soon become as regular as our imports are: as the increase in proportion of manufactured products, which can be produced and shipped equally well at all seasons of the year, has a tendency to equalize monthly shipments. This will have its effect upon foreign exchange rates and cause them to rule more uniformly throughout the year, except at such times as they may be influenced through extraordinary occurrences, such as extreme buying or selling of stocks by foreigners, panics, unusual differences in the value of money in the different countries, etc.

In summary, it may be said that our foreign trade is actually financed largely in London and partly in Paris, Berlin and other European financial centers, but at the risk and upon the credit of American banking institutions. We pay Europe interest and commissions for the use of its money; and, while we have been content to do so in the past, the future will find a shifting of the load on to our own shoulders to a considerable extent. This will come about more and more as our floating capital finds less demand for use in our industries and in the development of our resources. Such a condition will, of course, be greatly retarded by our banking laws, but when the necessity becomes sufficiently great they will be changed to meet the emergency. Then the laws of supply and demand will be allowed free action and will be unhampered by expensive and unnecessary restrictions. In the meantime, while our influence will be great, our actual international, financial force will continue to be comparatively small; but the day will surely come when we shall take our place among the nations of the earth as a real commercial power.

THE EXTENSION OF AMERICAN BANKING IN FOREIGN COUNTRIES

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Until recent times foreign affairs have commanded comparatively little public interest in the United States, but with the broader political position of the nation resulting from the Spanish war and the establishment of a more definite and continuous foreign policy, the interest in our international relations has become much intensified. Along with this quickened interest has come a more general study of our commerce abroad. This study is partially inspired by the general interest in our foreign political relations, but more potently stimulated by the realization that we are reaching the point where, as a nation, we have need at home for those materials and food products which have in the past constituted the bulk of our export trade. Although we have had an increased production during the last three years, our export of unmanufactured food products has declined forty-two per cent, and the export of food products partially manufactured has diminished twenty-two per cent. This decrease has been so marked as to strengthen the conviction that the contribution of foodstuffs that the United States is able to make to the outside world is steadily diminishing, both in actual value and in the percentage of our exports which this class of goods represents. Practically all our public lands have passed into private and productive ownership, and the growing need for our agricultural products, at home, has been such that the competition in domestic markets has raised the price until the exporter is unable to meet the competition of foreign producers. Wheat has, for a large part of the time during the last two years, been steadily above parity for the Liverpool market. American beef, at current prices, can compete in London with the products of Australia and Argentina only in a limited section of the trade. Not having tillable public lands in reserve, we can increase our production only by more intensive processes and on a higher basis of cost. As a consequence, we are

necessarily turning to manufactured products to maintain our balance of trade with other nations.

In the past the people of the United States have concentrated their minds upon domestic problems; enormous resources had to be developed and a new civilization established. By logical sequence it follows that the American is not a cosmopolitan; that he is indifferently qualified to approach business problems with a clear understanding of the world's needs. The growing necessity for a trade abroad in manufactured articles is forcing the American into a comparatively new field, for which he is admirably equipped in all save experience and the institutions constituting the machinery of such commerce. Raw materials and food products—necessities abroad—have easily been marketed, requiring no such equipment or skill as the merchandising of manufactured goods when in competition with foreign tradesmen who long have occupied the field. American merchants and, to some extent, the American public, are beginning to recognize this situation. From an attitude of complaisant superiority they are becoming aroused to an intelligent examination of foreign markets, and to a comprehension of the conditions that must be complied with, and the equipment necessary to successful operation. The essentials for this foreign merchandising, obtainable through individual application, can be readily acquired; the particular customs of a market, the characteristics of the people, and the class and quality of the goods desired. But that part of the equipment for foreign commerce, which provides transportation and financial exchange, is not to be procured by individual efforts. It can be obtained only through the organization of certain specific forces of civilization, such as units of capital, highly specialized knowledge and the authority and co-operation of governments. It is the acquiring of this part of the equipment for foreign commerce that presents the more serious problem.

It has long been a subject for comment that Americans are obviously content to do their international business through the banks of their foreign competitors. That they have done so at any time, contentedly or not, is inconsistent with American characteristics. That they continue to do so, after having amassed an enormous banking capital and a foreign trade of more than \$2,500,000,000, calls for some explanation. Whatever the past causes for such inaction may have been, it is no longer to be explained on

the ground of indifference. The necessity for the establishing of American banks abroad, in the aid of commerce, has been repeatedly and persistently pointed out by American travelers, the consular service, the State Department of our Government and the public press; and of late it has been so insisted upon as to augur an oblique criticism of the initiative and intelligence of American bankers.

American banks in foreign markets would be powerful aids to the upbuilding of our commerce; manifestly and for the subjoined reasons are they indispensable:

First. They would furnish a direct financial exchange.

Second. They would provide a safe and efficient means of obtaining credit-information, independent as to foreign merchants and impartial as to American exporters.

Third. They would correctly present to foreign customers the standing of our own export houses.

Fourth. They would furnish capital or credit at the foreign market.

Fifth. They would bring American financial interests in touch with foreign enterprises, which, if exploited, would create business for the American exporter.

A direct financial exchange is important because it puts the least burden on the business and is most readily understood and relied upon by the merchant. The difficulty in obtaining a direct exchange with another country comes not only from the dearth of American banks abroad, but from the legal restrictions that obtain as to domestic banks. One of the fundamental principles of European banking practices is that a bank is permitted to sell its good name in lieu of money advanced or a credit placed at the disposal of a borrower. An English manufacturer purchasing materials abroad does so through personal representatives or local firms appointed as agents. When a purchase is made, knowing that the goods must be paid for before shipment, he receives from his banker, commensurate with his financial standing, a credit, to the effect that the bank will *accept* (guarantee payment) sixty- or ninety-day drafts drawn by the foreign agent with shipping documents attached. These shipping documents are so made as to give the holder of the full sets of bills of lading an absolute control of the goods until they reach their destination. The agent, armed with this draft and the shipping documents, is enabled immediately to place himself in funds

by the negotiation of this instrument; and the purchaser of the drafts is absolutely protected until the bill of exchange is accepted by the English banker, to whom, in consideration of his acceptance, the document must be surrendered. This practice enables the European merchant to finance his purchases in foreign countries at a minimum cost; and it has contributed enormously to the development of foreign trade. This simple and inexpensive means of bridging the seas could be secured to the American merchant in either of two ways; by the establishing of domestic banks with branches abroad, or through the domestic banker's acceptance of the merchants' drafts. If but American banks had branches abroad, the merchant's deposit in the parent bank could readily be made available at any of its foreign branches; or if an American bank, well known abroad, could add its credit to that of the merchant's by guaranteeing his transactions in accordance with established business usage, he could deal direct with all the ports of the world.

But the American banks have no branches abroad, and they are, moreover, restricted by law from making time acceptances or otherwise guaranteeing commercial paper; and in consequence the American merchant is forced to employ the services of European banks to finance his transactions. This facility, of course, must needs be well paid for, as the good name of the European banker is not sold cheaply. As a result, the American importer must establish his credit with strangers or suffer the inconvenience, delay and expense of an indirect exchange. A like disadvantage confronts the exporter, for the identical conditions that forced payment in European drafts made those same European drafts the most available exchange for the purpose of collection. Thus the European banker takes toll of our commerce, be it export or import. In addition to the immediate handicap, resulting from indirect exchange, the American suffers collateral disadvantages. For instance, the quotations of the markets of the world are expressed in the nomenclature of Europe—marks, francs or pounds sterling—seldom if ever in American dollars; therefore the American, in naming his price, unavoidably directs the mind of his customer to the European competitor. Furthermore, American prestige suffers seriously from these indirect financial transactions. America conducting her foreign trade through the banks of her neighbors is in about as commanding a position as is a

bank in a large city that is not a member of the Clearing House Association.

Apart from the question of exchange, the American merchant, in extending his trade, suffers from the lack of intimate contact and confidential relations with the business life of other countries, which can best be supplied by resident American bankers. Under the present state of affairs, if he would inform himself as to particular trade conditions, as to the standing of a customer or make any of the confidential inquiries that are incident to business, he must seek some other firm that is engaged in the same territory in which he is operating, or a banker having much closer affiliations with his competitors in Europe. There has been an effort made to supply this deficiency through the mercantile agencies, but the people of South America and the Orient do not take kindly to the interrogation of such agents; and the information, which otherwise would be readily obtainable by a banking institution, is often withheld and the inquiry resented. American banks abroad would be dependent for their prosperity very largely upon the extent of American commerce in their territory, and, by reason of self-interest, would be the most potent promoters of American enterprise, just as experience has proven the European international bank to be a vitalizing element in the all-nations trade of Europe. Excepting the United States, every important country that is engaged in the exporting of manufactured products, has furnished the facilities under notice for trade through the extension of its banking system to foreign territory. The customs of banking and the laws of the various European commonwealths are not unfavorable to the upbuilding of international banks, consequently the European banking house may set up its branches to the ends of the earth. English banks are as universal as commerce, while those of Germany, France and Italy are co-extensive with German, French and Italian trade. For illustration, take a certain English international bank as being typical under the British system. This is a bank incident to the English interests in South America. Its home office is in London and, as an institution, it is a citizen of England and under the protection of that government's foreign policy. It has branches in Valparaiso, Santiago, Iquique, Antofogasta, Copiapó, Coquimbo, La Serena, Chillan, Concepcion, Punta Arenas and Ovalle, Chili; Buenos Aires, Mendoza, Bahia Blanca and Rio Gallegas in the Argentine Republic:

Montevideo, Uruguay and Oruro, Bolivia, and additionally some forty-five agencies in other parts of South America. The ease, facility and safety for financial transactions, afforded to the Englishman and his interests in that part of the world covered by this institution, can be appreciated at a glance. The banking systems under which these banks are operated make it possible for them to utilize the credit and funds of the entire institution where and as needed, and, by means of the power of acceptances, to furnish the most stable and least expensive way for the transference of credits.

Unfortunately, no such freedom has been granted the banking capital of America. The United States has only one international bank, operating chiefly in the Far East. This unique position of a nation attempting to build a foreign commerce without the equipment of foreign banks is due to the restrictions of the American banking laws,—restrictions that in effect prohibit the setting up of such institutions. The National Bank Act was enacted at a time when little thought was given to foreign commerce. It was drawn solely with an eye on the internal needs; and a study of its text leads one to the conclusion that its author not only failed to make any provision for foreign banking, but, unwittingly, prohibited it by the terms of the act.

Under existing conditions it is possible to establish a bank in the United States in one of three ways: under the National Bank Act, as a national bank; under state law as a state bank, or by means of a co-partnership as a private bank.

Section 5190 of the United States Revised Statutes—part of the National Bank Act—sets forth the following edict:

The usual business of each national banking association shall be transacted at the office or banking house located in the place specified in its organization certificate.

This section has been interpreted by every Comptroller of the Currency as prohibiting a national bank from establishing branches. The only exception to this prohibition has come by the conversion of state banks into national institutions under the authority of section 5155 of the Act, which declares:

It shall be lawful for any bank or banking organization organized under State laws and having branches, the capital being joint and assigned to and

used by the mother bank and branches in definite proportion, to become a national banking association in conformity with existing laws, and to maintain in operation its branches, or such one or more of them as it may elect to retain, the amount of the circulation redeemable at the mother bank and each branch to be regulated by the amount of capital assigned to and used by each.

Under this section, only, the following named banks have been converted from state into national banks, retaining their branches under the provision of this section:

First National Bank, Milton, Ore.; branch located at Freewater, Ore.; converted July 23, 1908.—Bank of California (National Association), San Francisco, Cal.; branches at Virginia City, Nev., Portland, Ore., Seattle and Tacoma, Wash.; converted February 5, 1910.—Pascagoula National Bank, Moss Point, Miss.; branch at Scranton, Miss.; converted March 14, 1907.—First National Bank, Pontotoc, Miss.; a branch at Ecu in same state; converted February 21, 1908.

State banks, under the laws of but few states, are allowed to have branches outside of their immediate states and possibly abroad; but, if it were permissible to convert them into national banks, their branches would have to be designated before such conversion could be effected, thus making the organization inflexible as to its subsequent growth, either as to the number of branches or the amount of capital available for their separate use. It is true of the greater majority of the states that a bank, organized under state law, is restricted to one place of business, or, at least, to branches in the city specified by its charter as the place where its business is to be conducted. Mostly all of the states prohibit any foreign corporation, other than a national bank, from receiving deposits, discounting notes, or carrying on the usual transactions of banking within the borders of the state. The International Banking Corporation, chartered under a special act of the legislature of the State of Connecticut, has an organization with branches in England, China, the Philippine Islands and Panama, with its principal executive office in New York. But, withal, it can do no banking business in New York, and, perforce, is obliged to carry on its transactions in this country through an agency, on exactly the same basis as banks of foreign countries, a hindrance technically valid under the law, but, in equity, a poor recognition of the patriotic spirit and intelligent enterprise that prompted the founding of that institution.

Private or co-partnership banks are necessarily too restricted as to capital and resources and too unstable in their organization to command the credit and prestige necessary to foreign operation. Foreign corporations are excluded from the banking field here and in many of the foreign countries as well.

From the foregoing it is plainly evident that, under the prevailing status of the law, it is impossible to establish a bank with American citizenship that could conduct a banking business at any important point in the United States and, coterminously, do a primary business abroad.

If there is to be a normal growth in the foreign commerce of the United States there must be an extension of our banking system, adequate to meet the conditions imposed upon the American merchant in his competition with the rest of the world. Obviously the first step toward securing such an extension would be to expand the scope of our banking laws, so as to give some legal basis for the international business. This might be accomplished by permitting the establishment of a new class of banks,—these banks to be under the authority and supervision of the Federal Government to the same extent as are now the national banks,—giving them all the powers vested in national banks, with the added privilege of establishing branches abroad, together with the liberty of making time acceptances of foreign drafts or other forms of commercial exchange originating abroad. Due caution could be observed by putting a logical limitation upon the power of such banks to lend their credit; moreover, by restricting the amount of outstanding guarantees to a definite proportion of their resources,—just as custom and the settled opinion as to sound banking now limit such operations on the part of European banks. The same result could well be achieved by extending these privileges—subject to regulation—to all national banks of sufficient capital, upon the approval of the Secretary of the Treasury and the Comptroller of the Currency. Either course would open the way for the international bank, with its headquarters at one of the centers of trade in this country and its branches covering a definite field of commerce abroad and with strength of capital that would give prestige and stability to its most inferior branches; or, to the same end, invest a national bank with the power to establish isolated branches where the needs of its patrons would make profitable such extensions. Thus situated, such banks would be enti-

tled to the full protection of the Federal Government in the proper exercise of their functions abroad; but, if subject to the supervision and regulation of federal officers, they would be powerless to embarrass our government in its foreign relations. And no good reason presents itself why such banks could not be given efficient federal supervision. Examinations of foreign branches, co-ordinately with the parent bank, could be made by consuls or other resident government agents, appointed as deputy examiners for such a purpose. The four national banks, previously mentioned, have been regularly examined since their conversion from state banks, and, too, without administrative difficulties. Substantial precedents have already been created for the federal supervision of banks in a non-contiguous territory. There are four national banks in Hawaii, one in Porto Rico and two in Alaska. These banks are regularly examined and reported upon by deputy examiners resident at the several localities mentioned.

In brief, this extension could be brought about by amendments to the National Bank Act that would affect neither the present status of our domestic banks, nor would it incur the dangers and disadvantages that have been so unremittingly urged by the opponents of a revised banking system. Such a modification of our banking laws would disturb no vested interests and would confer no special privilege. Instead, it would open the foreign field equally to all sections of the country and secure to our foreign trade a normal development along the lines of the least resistance. This country, to-day, is employing a banking capital of \$3,700,000,000, represented by the capital and surplus of its banking institutions; and when we compare this with the £84,000,000 of English banking capital, it can hardly be questioned that we are fortified abundantly to finance our own foreign commerce, and that the opportunity for so doing would straightway be turned to profitable account. Such a move would be timely from the standpoint of our present necessities, and would be a most important and logical step toward enabling the United States eventually to become a creditor nation.

ENGLISH METHODS OF LENDING AS CONTRASTED WITH AMERICAN

BY LAURENCE MERTON JACOBS,
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Dissimilarities between English and American methods of lending are extraordinary in significance rather than in number. The principal points of contrasts may be attributed in the first instance to differences in geographical or physical conditions. The restricted area of England has made it peculiarly dependent upon other countries for raw materials and for markets for its manufactures. It has meant for England the concentration of a large part of its energies on the development of its foreign trade. The vast extent of the United States, on the other hand, has placed us under no similar necessity as to markets and materials. Great natural resources have enabled us to work with a wide margin of profit. England in its foreign trade has been compelled to work with a much narrower margin. Differences in margins of profit mean differences in necessity as to measures of economy, and herein we find the true basis of the more important elements of variance as respects English and American banking practice.

The effect of money rates on the profits arising from the development of natural resources, in mining, in the raising of grain and cotton is relatively small. On the contrary it is an item of prime importance in manufacturing industries, particularly in a country situated as is England. Our shipper receives payment for his raw cotton through the sale of time bills of exchange drawn on London or Liverpool as the case may be. The amount of dollars which he will receive for a given amount of sixty days' sight sterling bills depends directly on the rate at which these bills can be discounted in the London market, a high rate acting as a deduction from the price at which the sale and purchase of the cotton were arranged and a low rate having the opposite effect. The shipper, in other words, wants to be able to discount his bills at a low rate. If he can do this it means, other things being equal, a slightly higher price for his cotton. Conversely, it means that he can afford to take a slightly

lower price to the ultimate advantage of the English manufacturer of cotton goods. Whether, therefore, the discount rate is three per cent or five per cent is of material consequence to such manufacturer, adding to or lessening his cost of production and going far toward determining his ability to compete in foreign markets.

Likewise the probability of no extraordinary fluctuations in discount rates is of value in that it makes possible forward contracts for purchases of materials upon a favorable basis. A seller who can be reasonably sure that he will be able to discount his bills three or four months later at three per cent or four per cent or even five per cent will naturally be willing to take a less price for his goods than if there was a possibility of much higher rates prevailing at the time of the fulfilment of the contract.

The enormous responsibility which falls upon the English banking system to keep down money rates and to prevent wide fluctuations finds no counterpart in the United States. It is perhaps due to the fact that in England the function of the banks in lessening the cost of materials entering into manufactures and of imported food supplies is a matter of more or less general recognition, and banks are left comparatively free of legal restrictions which might tend to lessen their ability to meet the exigencies of the situation; whereas our comparative self-sufficiency in the matter of food supplies and raw materials has had the effect of minimizing popular interest in the workings of our banking laws and making difficult reforms which would inure to the public good. It is, at any rate, this difference in responsibility which accounts in a considerable degree to differences in methods of lending.

The most striking peculiarity of English banking practice, when brought into contrast with our own, is the use in the London money market of time bills of exchange as a basis for short loans, for a day or for a week. An explanation may be found in the fact that the extension of British foreign trade has carried with it the creation of a great amount of time bills of exchange, whereas the development of a new country of large area, such as the United States, occasioned the issue of a large amount of stocks and bonds of railroads and other industries, so that the loans of our American banks and English banks are naturally based upon quite different classes of securities. This explanation, however, is not sufficient. It does not take account of the fact that, as a basis for loans, according to Eng-

lish practice, bills of exchange are made to rank side by side with British consols and other government guaranteed securities. It affords no reason why bills of exchange are made in the estimation of the English banker to rank above, so far as their utility as a basis for short loans is concerned, English railroad, industrial and municipal bonds and stocks which are not only sound in themselves but whose total is amply sufficient. The real explanation goes back to the difference in necessity of maintaining low and stable money rates. It involves, moreover, a further, though closely related distinction, between English and American banking objectives. This distinction is that England's prestige in the trade of the world is bound up in the preservation of London's position as the international banking center, while in a country as large as the United States, banking capital is necessarily spread over a wide area, a situation which militates against its concentration in New York and relieves us of any immediate ambitions to contest London's supremacy.

As differentiated from stocks and bonds, bills of exchange possess singular qualities with reference to their desirability as collateral to loans. They represent in large measure actual goods in transit. They are evidences of specific trade transactions. Within a short period they "will turn themselves into money." They therefore contain within themselves essential elements of security. Furthermore, the purpose which under ordinary circumstances is served by a loan on bills of exchange is one of high economic interest. In the London money market bills are dealt in by brokers who make their profits by financing their purchases by means of a loan and later selling the bills on a discount basis lower than that on which they were bought. In consequence, the lowering of the rate for short loans directly influences the market discount rate, and to that extent tends to lessen the cost of importing materials from abroad, thereby acting as a stimulus to trade and industry.

Apart from these considerations, there is a scarcely less important reason for the position occupied by bills of exchange in relation to short loans under the English banking system. It is that loans based upon them can, to a far greater extent than advances secured by stocks and bonds, be called with a minimum of market disturbance. Bills of exchange in the very nature of things are not suited to general investment purposes. They are not a form of

security which can be readily handled by private investors. Their early maturity and low yield make them undesirable. The margin of profit in buying them is also too small to warrant speculation in them in the ordinary sense of the word.

The absence of public interest and speculative positions in the securities, bills of exchange, upon which a part of his loans are based relieves the English banker to this extent of the anxiety attached to lending upon stocks and bonds. He is left with a comparatively free hand. Almost his sole consideration needs be his own position. His sense of security is twofold. In the first place any considerable calling of day-to-day loans is fraught with materially less risk to the general situation than if they were secured by stocks and bonds. Such a process does not involve the possibility of provoking realizing sales of securities by speculators who may either be frightened at the withdrawal of accommodations or who see in it an opportunity to make a profit on the short side of the market. It does not involve the public at large and lessens the danger of a rapid spread of alarm and the precipitation of a panic.

Another element of safety to English banks in the practice of lending upon bills of exchange is that the calling of such loans does not absolutely necessitate the borrower securing fresh money in London. When a joint-stock bank requires a bill broker to reduce his loans the latter first turns to some other joint-stock bank, or if he cannot make suitable arrangements there he can always fall back upon the discount facilities of the Bank of England. Even this resort, however, is not final in anything like an emergency, and for the following reason: Sterling bills of exchange are a favorite form of investment among continental banks and their transference from the loan departments of London banks to the discount portfolios of, for example, Paris banks, is neither unusual nor difficult. Almost immediately there is such a contraction in London money market supplies as to raise discount rates above the levels prevailing in European centers, and funds begin to move to London from these centers for investment in bills. Many of the great continental banks have London agencies, so that the process of shifting loans on bills is rendered doubly simple.

Loans upon bills of exchange are, in a word, loans which are essentially secure in themselves; they are of direct benefit to trade and industry even to the extent of operating to lower the cost of

the workingman's food supplies; they may be called without fear of reaction upon the lender, inasmuch as widely held investment securities are not involved; and they may be readily shifted to foreign banking institutions. The safety therefore with which banks lend their money on bills of exchange contributes to the effectiveness of the English banking system in meeting the primary requirements of low money rates and the maintenance of London's position as the financial center of the world. In the first place the assurance that its loans, or a considerable part of them, are liquid to an extraordinary degree enables a bank not only to lend at a low rate but lessens the necessity of maintaining a large cash reserve, which in turn means an addition to the supply of loanable capital with a tendency further to depress rates. In the second place it minimizes the danger of a collapse of the credit fabric such as we experienced in 1907. London's methods of lending are calculated to avert a similar situation so far as England is concerned, a situation in a material degree made possible by our practice of placing our almost sole reliance upon stock-exchange securities as collateral for day-to-day advances. Doubt as to the strength of certain banks led to withdrawals of deposits. Withdrawals of deposits made necessary the replenishment of reserves by the calling of loans. The calling of loans resulted in liquidation on the stock exchange. Falling prices of securities tended to spread alarm among investors generally, carrying with it further withdrawals of deposits, necessitating in turn the calling of other loans, until we reached the point when for practical purposes demand loans were little more callable than time loans. Unlike London we could not shift a part of our loans to Paris. The French banks saw a difference between bills of exchange with but a few weeks to run, and stocks and bonds the market value of which might be considerably less than the amount loaned within an equal length of time.

London's prestige rests as much upon its ability to withstand financial shocks, to ward off panics, to continue payments in gold at any and all times, as it does upon its great resources. In fact an important part of the resources which enable it to maintain low money rates and to handle great international loan operations is due to the position which it has so long occupied. Its bank deposits are not purely English. They are made up in part of foreign accounts, representing remittances from all quarters of the globe.

London cannot afford that these foreign deposits should be jeopardized. Their protection the English banking system has as one of its main objectives, and the success with which it has been accomplished rests in large measure on that practice of lending which has no place in our banking methods.

It is important to understand, however, that while English bankers have two classes of securities of different character, stocks and bonds and bills of exchange, on which to base their call loans, our bankers are of necessity confined to but one. The explanation lies in a further fundamental difference in the practice of lending. Briefly, it is that English banks lend their credit while our banks, national banks in particular, are prohibited by law from similar procedure. The practice also has its origin in that working principle of the English banking system, *i. e.* the safer bank loans and discounts can be made the lower can be the money rates afforded, and the cheaper England can buy and sell in foreign markets. The process is simple. When an English importer is about to buy materials in a foreign country he secures permission from his banker to have the bills of exchange drawn on him, the banker. In other words, for a small commission, the banker takes the place of the importer as the drawee and becomes, as the acceptor of the bills, responsible so far as any other banker is concerned, for their payment at maturity. These are the bills, bankers' bills as they are called, which are chiefly employed as a basis for short loans. These are the bills to which the Bank of England rate applies and which command the finest market discount rates, rates, in fact, usually lower than that of the Bank of England. Obviously the guaranty of a banker of high standing adds an important element of security to bills of exchange as a basis for the lending or investment of bank funds. It is an additional assurance to the foreign exporter that he can discount his bills at a low rate so that he can afford to make a favorable price to the English buyer. It makes them all the more satisfactory investments for foreign banking institutions.

The practice of lending by means of acceptances, so large a factor in the development of England's foreign trade and a substantial protection to the London money market, giving extraordinary security to loans and rendering more easy their partial shifting to continental institutions in times of stress, differs in no essential particular from the use to which credit is put in ordinary commercial

transactions. Apart from his financial resources the principal asset of a business man is his credit, founded upon the excellence of his judgment, his honesty, the carefulness of his methods and his past successes. It is a legitimate asset, one of which he is entitled to make use in securing accommodation from his banker. Under the English banking system, bankers are regarded as possessors of credit and are permitted to make use of it, to lend it. Under our system the credit of our banks is forbidden similar employment. Under our laws it is effectually locked up. There is something paradoxical about our prohibition of a practice of lending so important to English and so common with continental banks. When a bank loans its deposits it is loaning something which does not belong to it, something which it may be called upon to return any day. On the other hand, when it loans its credit, its good name, it is loaning something peculiarly its own, something indeed which in course of time may be lost but while possessed is not subject to withdrawal from day to day.

The extraordinary waste of bankers' credit in this country as compared with the effectiveness of its use under the English banking system is difficult to justify. The most plausible argument is that the use of such credit may very readily lead to its abuse. Aside from the fact that a similar argument applies to almost any device of marked utility, it must be admitted that continued prohibition of the practice of lending by means of bankers' acceptances, safeguarded as it may be by providing that such acceptances shall be given only in connection with mercantile transactions and that every bank-accepted bill of exchange shall bear on its face a clear indication of the nature of the security upon which it is based, is an expensive measure of protection against possibly only occasional instances of bad banking.

The capital and surplus of our banks now amount to something like four thousand millions of dollars. The resources of our national banks alone amount to ten thousand millions of dollars. The possession of such vast sums in part their own, in part entrusted to them, is an indication of the honesty of management, soundness of judgment as to risks, and past successes of our banking institutions. It is an indication of the extent of their credit, credit which according to English banking practice would, in part at least, be put

to work, but which with us takes no part in advancing the great economic processes of production and distribution.

In England the lending of credit by means of acceptances is practiced both by the joint-stock banks and merchant bankers, but in what proportion cannot be stated definitely as the latter publish no reports. There is, however, a considerable difference as to the ratio between capital and acceptances as regards the two classes of bankers. It is regarded as safe for merchant bankers to accept bills to an amount several times their capital. The acceptances of the joint-stock banks, on the other hand, average only about seventy per cent of their paid-in capital and surplus. Taking into account the small cash reserves of the joint-stock banks, the limitation of acceptances by our banks to their capital and surplus would seem to err only on the side of conservatism. On this basis the total waste of banking power under our present methods of lending would appear to be roundly \$4,000,000,000. If we reduce this amount by one-quarter in order to leave out of account small institutions and those not actively engaged in commercial business, we still have a remainder of \$3,000,000,000, or a volume of credit sufficient to provide a banker's acceptance for bills of exchange to cover our total annual imports of merchandise and still leave an unused balance of an equal amount, \$1,500,000,000. In short, the unused credit of our largest and most powerful banks alone would be sufficient to guarantee all foreign drawn bills, giving them a value and standing not possessed by drafts on individual importers.

In discounts, as well as short loans, there is a sharp contrast between English and American methods. English discounts fall into two classes, bank bills and trade bills, the difference depending on whether or not the acceptors are bankers. The former are principally taken into account in the general discount market. The latter, under ordinary circumstances, are bills discounted direct by customers of banks with the banks where their accounts are kept. As they are not equally liquid assets they do not command as favorable rates as bankers' bills. A large proportion of the discounts of our banks, on the other hand, are made up of promissory notes, a class of paper occupying a much smaller place in English banking practice.

The distinction between promissory notes and bills of exchange, bankers' bills in particular, underlies much that is dissimilar in our

banking situation as compared with that of England. Bills of exchange, as has already been indicated, arise out of particular commercial transactions. They are evidences of definite purchases and sales of commodities. They refer to and generally carry with them control over specific shipments of goods. Their discount by a bank is essentially that of providing funds to carry through a single business operation, the satisfactory conclusion of which is within the scope of a banker's judgment. Such bills, for example, represent so much cotton or so much wheat, and the banker can determine for himself with reasonable certainty the probability of the success of the venture. It is not so with our commercial paper. The promissory notes which form the bulk of our bank discounts do not so far as the banker is concerned refer to specific transactions. They do not on their face evidence the character of the particular operations which have rendered necessary accommodation from a banker. Without such evidence there is always the possibility that instead of the discount of the paper partaking of the nature of a temporary measure to relieve a temporary need it in reality becomes a loan of capital for general employment in the business, capital which in an emergency might not be able to be withdrawn without disastrous consequences. When a bill of exchange is drawn at ninety days' sight against a shipment of merchandise there is every assurance to the banker who discounts it that he is not contributing to a possible lock-up of capital. On the other hand, the discount of a promissory note does not carry with it any guarantee that a renewal will not be asked for or arranged elsewhere. Furthermore, our practice of discounting promissory notes, as contrasted with the English practice of confining discounts in large measure to bills of exchange, in and of itself places no check on the volume of notes or paper which may be distributed among a number of banks by a single concern.

Unquestionably the barrier which our laws have raised against the practice of bank acceptances has had a great deal to do with restricting discounts to commercial paper. Moreover, there is reason to believe that the removal of present restrictions would give a decidedly different character to our discounts—that bank-accepted bills of exchange would to a large extent be substituted for promissory notes, carrying with them as they would the additional security of a bank guaranty and evidence of the temporary nature

of the transaction. Doubtless much of our commercial paper is based upon mercantile transactions which could as well be expressed in time bills of exchange, inland as well as foreign. While English joint-stock banks confine their acceptances to foreign drawn bills, their reason for discriminating against inland bills is not that the business is unsound. By accepting inland bills they believe it might be made to appear that they were short of cash else they would have made their customer a straight loan. Obviously such a consideration is not applicable to conditions in this country where banking capital is divided into much smaller units.

The substitution of bills of exchange for promissory notes would not involve any complicated change in our business practice. Instead of a New York importer buying goods in England, borrowing from his bank in order to provide funds to remit in payment, he would arrange with his bank to accept on his behalf time bills drawn on it by the English shipper, the documents to accompany the bills and to be delivered by the bank to the importer under a trust receipt or the goods warehoused by the bank and kept under its control until the importer had had time to dispose of them, within, of course, the period covered by the currency of the bills. Similarly, a St. Louis dry-goods merchant would arrange for his bank to accept bills of exchange drawn on it by a New York wholesale house which had sold certain goods to him. The New York bank, upon presentation to it of a formal letter of credit issued by the St. Louis bank to its customer in favor of the New York wholesale house, would immediately discount the bills. Furthermore, the issuance of a letter of credit would be in many cases unnecessary, owing to the facility with which the New York bank could secure telegraphic confirmation from the St. Louis bank that it would accept certain bills accompanied by certain shipping documents. In short, there is no apparent reason why the principles which govern foreign trade operations should not apply equally well to domestic, particularly in a country of the dimensions of the United States.

One of the most far-reaching effects of our practice of confining discounts to promissory notes is that such discounts become to a large extent fixed investments, fixed in the sense that they may not be readily transferred from one bank to another, from a country bank to its reserve agent, without adding to the liabilities of the former. This is primarily due to the fact that the security for the

ultimate payment of the paper is dependent upon the financial strength of the maker and that the paper carries on its face no indication that the original discount or subsequent rediscount do not constitute an over-extension of credit. Discounts of bank-accepted bills of exchange are of quite another character. Not only do such bills, with shipping documents attached, indicate the nature of the transactions they cover, but, what is more important, their endorsement adds nothing to their security. When a powerful London banking house has on behalf of one of its clients accepted certain bills of exchange, that is, guaranteed by means of its signature their ultimate payment, it is obvious that the endorsement of such bills by a small country bank for purposes of rediscount would add nothing to their security; and, adding nothing to their security, does not for all practical purposes involve any liability upon the part of such bank. Similarly if a great New York bank had accepted certain bills of exchange drawn on it, and a country bank had purchased these bills from a broker as a short-time investment, and, later, finding its needs for cash increasing, decided to rediscount the bills, it could do so without adding to its liabilities, except in the technical sense that if the New York bank failed to meet its obligation as to the payment of these particular bills, the country bank, having endorsed them, would have to take them up.

As far as a few of our largest banks are concerned, whether they did or did not rediscount would not alter the application of the principle involved to our banking situation. As a matter of fact London clearing banks do not rediscount bills with the Bank of England, although there is nothing to prevent their doing so except custom. They accomplish, as we have seen, somewhat the same end by lending on bills to bill-brokers who do rediscounting. The smaller clearing banks regard the custom as an unnecessary hardship. The large ones rivaling in resources the Bank of England itself, and possessing hundreds of branches which are in reality so many country banks, are not to be compared in the matter of rediscounts with the thousands of small banks in the United States.

In the last analysis, we find that, notwithstanding differences in geographical or physical conditions as between England and America, English methods of lending, though widely different from our own in certain fundamental particulars, are not such as would not bear adoption in this country. They appear rather to be

methods most likely to make bank discounts more liquid assets, most likely to increase the public confidence, both at home and abroad, in the soundness of our banking institutions by effectually dissociating our short loans from operations in speculative securities, most likely to give full play to our banking power, as expressed not only in tangible resources but in credit as well, most likely to stimulate trade and industry but making possible lower and less fluctuating interest rates, most likely to increase our ability to compete in the markets of the world, and most likely to inject into our banking system many of those elements of stability for which the English banking system is so renowned.

UTILIZATION OF BANK RESERVES IN THE UNITED STATES AND FOREIGN COUNTRIES

BY HON. GEORGE E. ROBERTS,
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The cash reserve feature of the banking systems of the United States, state as well as national, is peculiar to this country. Nowhere else is a fixed reserve required against deposits. The central banking institutions of Europe are commonly required to keep a certain minimum metallic reserve against their note issues, although there is a notable exception even to this in the case of the Bank of France, but in all foreign countries the question of a proper cash reserve against deposits is left to the discretion of the banker.

The practices and regulations of foreign banking systems are all characterized by this comparative indifference to deposits and emphasis upon the importance of the note issues. On the continent of Europe this may be accounted for in part by the fact that deposit banking is yet undeveloped to any such degree as it is in England or the United States, and the private cheque has not yet taken the place of circulating notes, as it has done to a great extent in these two countries. The common medium of payments in Germany and France is the bank note, while in England and the United States it is the private cheque. The custom of keeping a bank account is much more common in these two countries than anywhere else in the world, and this of course accounts in part for our being more interested in the security for deposits while elsewhere the interest is in security for the circulating notes.

But England, although like ourselves in the use of the bank account and cheque, is like the continental countries in its indifference to cash reserves for deposits. There, too, all emphasis is laid upon the convertibility of the bank note. So far is this true that when the constitution of the Bank of England was reformed in 1844 and provision was made that its issues above a certain amount must be fully covered by gold, the authors of the act seem to have thought the bank absolutely fortified against attack, although no provision had been made to meet a run by depositors. This weak-

ness developed within three years, in the panic of 1847, when the demands on the banking department were so heavy that its cash would have been exhausted had not the government authorities taken the responsibility of advising the bank management to disregard the restrictions of the act and issue notes to meet the emergency. Twice since then, the last time in 1866, the same policy has been resorted to, with the result that although the law has never been changed, public opinion has settled down to the conclusion that the restrictions upon note issues will always be ignored when cash is actually needed. To this day, however, no legal reserve against deposits is required of either the Bank of England or the joint-stock banks of that country, and neither in England nor any continental country do any of the banks except the Central Bank show in their published statements the amount of their cash holdings. In all of these countries the banks report their credits at the Central Bank as cash, and commonly they report cash, credit at the Central Bank, and money at call or short notice in one item. Their reliance is not upon cash reserves, nor even upon balances at the Central Bank, but chiefly upon their holdings of commercial paper of a class which the Central Bank will always take off their hands.

The national banking system of the United States originally required a fixed cash reserve against both deposits and outstanding notes, but in 1874 the note reserve in the individual banks was dispensed with,—and the five per cent redemption fund for notes was established in the treasury at Washington. This fund, however, although set apart for the current redemption of notes, is still included and counted in the required reserve for deposits.

No change has been made in the reserve requirements for deposits since the establishment of the system. Banks in what are known as the central reserve cities, of which there are now three, New York, Chicago and St. Louis, must keep cash reserves in their own offices equal to twenty-five per cent of their deposits. Banks in what are denominated the reserve cities, of which there are now forty-six, must keep reserves of twenty-five per cent, but one-half may consist of balances in the national banks of the central reserve cities. The other banks of the system must keep reserves of fifteen per cent, but three-fifths of these may be kept with the national banks of the reserve and central reserve cities. There is no penalty for the violation of these provisions, but the law forbids the making of loans

while a bank is below the requirement and authorizes the Comptroller of the Currency in his discretion to have a receiver appointed.

The law as to reserves is not, of course, enforced with the same uncompromising rigor as those provisions which relate to the fundamental principles of banking. Every comptroller, while acknowledging it to be his duty to see that the reserve requirements are respected and ordinarily observed, has recognized that their literal enforcement at all times is utterly impracticable. No bank can control the amount of its cash holdings, for it must pay cash on demand and can only replenish its reserves by reducing its loans, and conditions may be such that to stop making loans and attempt to force collections will not only make collections impossible but create a state of panic that will greatly stimulate cash withdrawals. It is now a recognized principle of banking all over the world that in a crisis the banks should lend freely to all responsible borrowers, and no comptroller of the currency has ever insisted that a national bank should refuse to make any loans while its legal reserves were impaired. They have contented themselves with exerting pressure for the restoration of the reserves as soon as reasonably possible. In fact the law has been construed as a grant of authority to the comptroller enabling him to supervise the reserves and keep them as nearly as practicable at the prescribed proportions.

The provision of the statute which allows the banks in the smaller towns and cities to keep a portion of their reserves in the reserve cities, and the reserve city banks to keep a portion of their reserves in the central reserve cities, has been often criticised, and several secretaries of the treasury have recommended its repeal, but it simply recognizes the fact that banks are obliged to keep important cash balances in the central cities and that they pay off their depositors by means of these balances as well as over their own counters. The country banks would have to maintain balances in these cities whether the law allowed them to count in the reserves or not, in order to furnish exchange to their customers. And while these balances are sometimes larger than would be required by the needs of their exchange business, the surplus represents money not needed at home, and there is as good an argument in favor of gathering the idle capital of various localities into a central pool, where it will be available for other sections of the country which may have a seasonal use for it, as there is for gathering the idle

hoards of individuals into banks. This feature of our law is an approximation to the banking practices of other countries, and of course accomplishes a very important modification of the reserve requirements.

It is safe to say as a rule that the country banks and banks of the reserve cities carry more cash in vault than the law requires and would carry no less if there was no legal requirement. They carry considerably greater cash reserves than similarly situated banks in other countries, and feel obliged to because they do not have the same certainty of help from outside in an emergency. On the other hand, the banks of our central reserve cities, which must furnish the final support for the whole system in an emergency, run with much smaller reserves than the central banking institutions of Europe are accustomed to carry, and it is in this scattering of reserves as compared with their concentration in foreign systems that the weakness of our system appears.

The law contemplates that the banks of the central reserve cities shall hold the final reserves of the national banking system and in this respect have a relationship to the other banks similar to that of the central banks of Europe to the other banks there. But with us there is no such concentration of responsibility or special equipment for supporting the situation as there is over there. The national banks of our central reserve cities have no privileges or advantages or special powers. The number is in no way limited; there are many of them, and they are under the stress of sharp competition not only with each other, but with the state banks and trust companies in their own cities and with the banks of rival cities. It has been demonstrated that no agreement to cease paying interest can be maintained under the pressure of these conditions, and this fact alone puts them in a radically different position from the state banks of Europe. None of the latter pays interest and all agree that the practice is inconsistent with the conservative policy which should be followed by a bank holding the final reserves for a country. It is impossible to pay interest on deposits and keep the proportionate reserves that a bank carrying this responsibility should keep.

The Bank of France, at the date of its latest statement,¹ held in cash \$860,492,329 against a total of all liabilities, including notes

¹June 23, 1910.

and public and private deposits, of \$1,166,368,451, or a reserve of seventy-eight per cent. This illustrates its deliberate and consistent policy, and makes plain why the other banks of France may implicitly rely upon it for assistance and need carry only small supplies of cash themselves.

When the National Monetary Commission was in Europe in 1909, seeking information from the leading financial authorities about the banking systems and practices of the different countries, it held interviews with M. Pallain, Governor of the Bank of France, and with the heads of the principal joint-stock banking companies of Paris, in which the relations of the Bank of France to these other institutions were clearly developed. The following is an extract from the interview with M. Pallain:

Q. The published balance sheets of the banks do not state separately the amount in the Bank of France and the amount in their own vaults.

A. In the credit establishments which you will visit you will be able to establish the fact that the liquid cash is, in comparison with their turnover, relatively very small. In France we consider that the strength of a bank consists more in the composition of its portfolio, *i. e.*, in the value of its commercial bills, rather than in the importance of its cash reserve.

Q. In America the question of the proper relation between cash in hand and liabilities is considered very important.

A. It appears to us that for French private banks the proportion of cash to liabilities is less significant on account of the facilities offered by the organization of the Bank of France for the rapid conversion—in a crisis—of a good portfolio into ready money.

Q. We are trying to inform ourselves as to the usages and customs of foreign banks. It is for this reason that we seek to ascertain the percentage of cash which the banks hold to their deposit liabilities.

A. I think I have already replied on this point. The part which the Bank of France plays toward the private establishments permits the latter, as has many a time been proved, to reduce to a minimum their cash reserves, and to devote, without exceptional risk, a larger part perhaps than elsewhere to productive commercial operations.

In an interview with Baron Brincard, of the Credit Lyonnais, an institution with approximately \$300,000,000 of deposits, the following questions and answers occurred:

Q. Is it customary for you to carry quite a large amount of cash in your vault?

A. Every day the amount of cash which is to be kept here in our

vaults is fixed according to the payments to be made during the day. Sometimes our holdings are greatly in excess of our forecast for disbursements. This happens when we do not find ready use for amounts available.

Q. You would not carry a larger amount of cash in vault than required by your daily needs in order that it may serve as a part of your reserve?

A. There is no legal requirement for a reserve in cash; the bank is quite free to keep the amount of cash that it judges necessary. It is the practical business experience of many years which indicates how much cash is needed for the day.

Q. So the cash in hand is merely carried for the necessities of business?

A. Yes; this is the point on which the French situation is quite different from the American, because in France bankers are free to have in their vaults any amount of cash they like. In France we have the Bank of France which regulates the currency of the whole country, and any bank, if it has need for additional cash, may present for rediscount at the Bank of France the bills and other commercial paper which it has in its vaults. The amount we carry in the Bank of France may vary greatly according to circumstances. It is not to our advantage to have too large a sum at the bank, because the Bank of France does not allow any interest.

Q. What per cent of your deposits do you intend to carry in cash either in your own vaults or in other banks?

A. Eight to ten per cent on the average. The excess of deposits is invested almost entirely in commercial paper available for discount with the Bank of France at any moment and in "reports" (loans or securities from one stock exchange settlement to another).

Q. You have nearly ten per cent in this statement?

A. That is perhaps more than we need. It is a matter of practical experience. There is no legal proportion.

It will be seen that the percentage of cash kept in the bank's own vaults is not given, but its cash and cash balance at the Bank of France were together eight or ten per cent of its deposits. The commission went further into the availability of the short time commercial paper as a banking reserve, as follows:

Q. If the Credit Lyonnais were to take bills to the Bank of France for rediscount, would the Bank of France scrutinize those bills beyond the number of signatures and the time they have to run?

A. It would scrutinize the number of signatures and the time. In every branch of the Bank of France there is a committee called the discount committee, which is charged to make inquiries as to the quality of the industrial and business men of the region, and on their advice those persons are or are not admitted to discount. When once a person is admitted to discount the question of his credit is not raised every time that he presents a bill for discount; but if he should offer too many bills the bank would doubtless call

his attention to the fact. In practice no one has ever complained that the Bank of France would not discount a normal bill presented by a proper person.

Q. As a matter of fact, bills offered by the *Credit Lyonnais* would not be investigated very carefully?

A. No.

Q. You regard that item of bills discounted as your practical reserve because of your ability to rediscount the bills at the Bank of France?

A. Yes; bills discounted and cash are, for an establishment such as ours, the most essential part of our liquid assets.

In the interview with M. Ullman, Director of the *Comptoir d'Escompte*, another great French institution, the following colloquy occurred:

Q. Is the Bank of France your principal reliance in case you need money? Do you think it necessary to carry any additional reserve?

A. Under our French system we consider the commercial paper we keep in the portfolio a cash reserve, as we can rediscount it at the Bank of France. We know the Bank of France will discount these bills and thus enable us to convert the bills instantly into cash; this is the basis of the French banking system.

The Imperial Bank of Germany, or *Reichsbank*, performs practically the same functions in Germany that the Bank of France does in France. It does not run ordinarily with as strong a cash reserve, for the position of the Bank of France is unique and due in part to the peculiar position of France as a creditor nation with a constant influx of gold. But at the date of the latest statement available at this writing, the *Reichsbank* held cash reserves equal to seventy-five per cent of its outstanding notes, and above fifty per cent of all liabilities, including the government deposits. In an interview with the Monetary Commission last year, the vice-president of the bank stated that the lowest point ever touched by its reserve was 40.3 per cent, at the close of 1905.

There are no restrictions upon the power of this institution to issue notes except the requirement that a reserve of thirty-three and one-third per cent of cash shall be held against them and the levy of a five per cent tax upon the excess above a certain amount. And even this reserve requirement, like that of the Bank of England and that of the national banks of the United States, is not to be taken too literally, for when the Monetary Commission asked Herr

Dr. von Glasenapp, vice-president, what the bank would do if the reserve fell to thirty-two per cent, he replied:

We should have to go on discounting bills. We should simply have to do it. We could not stop it. If we did it would bring on the greatest panic that we ever experienced.

In other words, the Reichsbank recognizes its responsibility as the keeper of the final banking reserves, and will not cease in a crisis to supply credit and currency to meet the needs of the other banks of the country. This attitude gives absolute confidence to the public.

In the interview held by the Monetary Commission with Herr Paul Mankiewitz, director of the Deutsche Bank, he said:

The great strength of our financial system in Germany is the Reichsbank. Under that system the question of our own cash reserve is of secondary importance, as we can at all times convert our holdings of commercial paper into cash at the Reichsbank. I may mention that of the prime commercial bills we are carrying from \$1,500,000 to \$2,000,000 fall due each day; for these we get cash or credit at the Reichsbank at maturity. It is our usual practice to keep in vaults and banks a considerable amount of cash, often more than ten per cent, and sometimes less, perhaps eight per cent.

This reserve of eight or ten per cent, including cash in bank and credit at the central bank, corresponds to similar figures in France.

In England the practice of counting balances with the central bank as a part of the cash resources prevails as on the Continent, and the other institutions as a rule carry only so much cash in their own offices as they estimate will be needed to meet current demands. Of late, however, a considerable body of opinion has developed to the effect that the burden of providing the gold reserve for the London market is too great to be thrown upon the Bank of England alone. London is the chief international clearing center and the transactions in gold there are very much more important than in any other market of the world. A financial disturbance in any country causes a demand upon London for gold, and it sometimes comes with alarming insistence, as in the case of the American demand of 1907. Although there is no complaint that the Bank of England has not ably and effectively performed the functions

which belong to a central banking institution, the importance of London as the banking and clearing metropolis of the world, has developed so enormously, that the bank has become a relatively smaller institution than formerly, having been passed in volume of business and assets by several of the joint-stock banks. Under these conditions, it has been urged that the other banks should bear some part of the burden of protecting the London market from the unusual demands to which, by reason of its international relations, it is exposed, and some steps to this end have been taken. The average reserve of the banking institutions which center in London, in cash and balances at the Bank of England, have been estimated at fourteen to twenty per cent. As the Bank of England's reserve is from forty to fifty per cent, the average of cash in bank to the total of individual deposits in Great Britain is probably eight or ten per cent.

In the United States, taking only individual deposits in order to avoid duplication, the total for all banks is reported by the Comptroller of the Currency on April 28, 1909, in round numbers as follows:

National banks	\$4,826,100,000
State banks	2,466,000,000
Savings banks	3,713,400,000
Private banks	193,300,000
Loan and trust companies	2,835,800,000
Total	<u>\$14,035,500,000</u>

The cash holdings were as follows:

National banks	\$926,800,000
State banks	227,000,000
Savings banks	32,700,000
Private banks	11,100,000
Loan and trust companies	254,400,000
Total	<u>\$1,452,000,000</u>

or about ten per cent. The actual percentage of cash to liabilities does not appear to be very different from what it is in the three countries reviewed above, but there is no denying that a more effective utilization is obtained in every one of the three than in the

United States. We have more money in the individual banks, but no final banking reserve of sufficient strength to inspire confidence. The ability of the final supporting power, be it a single bank or a group of banks, to give aid to the other banks of the system in a crisis, lies of course in the resources kept ordinarily in reserve. The central reserve banks of our national system are required to keep a reserve of twenty-five per cent and forbidden to make any loans when they are below this figure. Granting that this inhibition is not strictly enforced, it remains true that they are under pressure to maintain their reserves at this point. How much surplus reserve do they usually have above it? The following are the percentages of each city at the date of every official statement from August 22, 1907, which was the last statement preceding the panic:

	New York.	Chicago.	St. Louis.
August 22, 1907	26.81	25.34	23.59
December 3, 1907	21.89	24.21	20.38
February 14, 1908	29.00	27.14	28.98
May 14, 1908	30.52	26.82	28.86
July 15, 1908	28.37	26.59	25.52
September 23, 1908	28.65	25.12	25.41
November 27, 1908	26.02	25.94	25.71
February 5, 1909	25.58	25.99	26.52
April 28, 1909	25.68	26.16	25.44
June 23, 1909	27.27	25.73	25.21
September 1, 1909	25.83	24.30	24.72
November 15, 1909	25.52	24.29	24.80
January 31, 1910	26.64	24.12	24.05
March 29, 1910	25.76	23.35	22.36

These figures show practically no surplus reserves. It is true that all of these banks have a considerable proportion of their loans at call or upon short maturities and any one of them would be able to liquidate rapidly under normal conditions, when it was the only one under pressure. But when a general situation develops and there is a common movement to liquidate, there are no other resources in this country to draw upon and nothing to be done but to sell securities or products or negotiate loans abroad, any of which is a slow and costly process of getting relief in a crisis.

The scattered reserves in local banks are of no avail in a panic. Whether they average five per cent or twenty per cent makes little difference, for the banks that are strong feel none too strong and

will hoard every dollar. Gathered into a central fund they would aggregate a sum great enough to inspire confidence and could be brought to bear at the point of danger to protect every situation.

The most serious result of this fundamental weakness at the center is the lack of confidence which pervades the whole system and the readiness on the part of thousands of individual banks to take alarm and do, for the purpose of self-protection, the very thing that precipitates a crisis. The general suspension of cash payments in 1907 was unnecessary. Outside of New York City depositors were not alarmed but taken completely by surprise by the emergency measures adopted. The natural impulse of the scattered banks to strengthen themselves forced a suspension of payments in the reserve cities and literally broke down the system.

The essential thing required to prevent or allay panics is knowledge that there is a central reserve of credit strong enough to provide every solvent bank and business house with ample support. Periods of industrial reaction and of speculative collapse are bound to come occasionally in every country. Private credit is strained at such a time, solvency is put to the test, and the unsound concerns are weeded out. It is of supreme importance at such a time that banks and business houses which are really solvent shall not be broken down and destroyed through inability to obtain the ordinary consideration to which their assets entitle them. There is literally no limit to which disorganization may go unless there is some power strong enough to stay the panic by interposing its undoubted credit to protect the firms and concerns that it finds to be worthy. This fund of credit the great central institutions of Europe afford, but the machinery of our national banking system does not supply.

The Bank of France and the Reichsbank have the power of actually increasing the supply of money in the country. The Bank of England does not have this power by statute, but as we have seen has three times exercised it, and these instances have satisfied the public that it will be exercised whenever it is necessary. The ability to draw checks on the central institution is all that the banks of any country in Europe ordinarily require to meet the demands upon them.

We have already in the United States a gold reserve great enough to be made the basis of an institution more powerful than any one of those which have been named. The treasury held in the

division of redemption on the 1st day of July, 1910, a reserve of \$862,936,869 in gold coin against outstanding demand certificates of exactly the same amount. The volume of these certificates is always completely covered, and as a government issue properly so. If, however, an institution designed to support the credit system of this country was created, and its notes were made available for the same purposes for which gold certificates are used, they might be substituted for the latter in circulation. In doing so, the treasury certificates would pass into the hands of this new organization and be presented at the treasury for redemption. Thus the reserve would be transferred to the new institution and, starting with a reserve of one hundred per cent, it could take a place in and behind the banking system of this country similar to that held by the great central institutions of Europe in their systems.

The only problem about it is to provide an organization that will be acceptable to the country as giving assurance that the institution will be kept out of politics and not fall under the control of private or special interests. It is generally recognized that the best way to accomplish this is by keeping the management in the hands of the bankers of the country. The capital of the bank, say \$100,000,000, might be raised by selling the stock under a guaranty by the government of a low rate dividend, say four per cent. But, if the stock is sold broadcast the control should be taken away from it, and might be vested in a board of directors elected by the leading clearing houses of the country. Suppose the first twenty-five or thirty clearing houses leading in clearings for the preceding year were incorporated and each allowed to elect one member of a board: Based on the clearings of the first six months of 1910 the membership would then be distributed over the country as follows: Boston, New York, Baltimore, Richmond, Buffalo, Cleveland, Chicago, Milwaukee, St. Paul, Kansas City, Louisville, New Orleans, Denver, Los Angeles, Portland, Providence, Philadelphia, Washington, Pittsburg, Detroit, Cincinnati, Indianapolis, Minneapolis, Omaha, St. Louis, Atlanta, Houston, Salt Lake, San Francisco, Seattle.

Another plan suggested is to distribute the stock with the local banks of the country on the basis of their capital. The national banks could be either required to subscribe or offered inducements to do so, and if they paid in ten per cent of their capital that would provide about \$100,000,000. The directors should be elected by dis-

tricts, so that every section of the country would be represented on the board by a member of its own choosing. Under either of these plans the board of directors would have, through the personal knowledge of its members, all of whom would be bankers of high standing, the most thorough acquaintance with business conditions over the country that could possibly be obtained. Each member would be there as the representative of the bankers of his locality and the bankers of every locality are so closely identified with all its business interests that the latter would be safe in their hands.

The members of the board would naturally be divided in their political affiliations and there is no more reason to believe that political considerations would influence their action than there is to expect the clearing houses to suddenly become political agencies.

The active and responsible officers of the bank should be chosen by this board, but to satisfy public opinion and because of the intimate relations which this institution would bear to the treasury, there may well be another board, supervisory in its functions, representing the government. It might consist of three important officials of the Treasury Department and perhaps two outside members of banking experience, appointed by the President. It would doubtless be advisable to divide the profits between shareholders and the treasury on some such plan as exists in Germany, Austria-Hungary and elsewhere.

It would not be necessary or desirable to have this central institution do a general banking business with the public, or to even hold the reserves of the local banks. It should be established with the slightest possible disturbance of existing banking conditions. For it to undertake to hold the reserves of country banks would involve an enormous shifting of funds from present channels, and, what is more serious, cause a concentration of loanable funds which is distinctly undesirable. The resources of the proposed Central Bank are to be kept largely in reserve. If the present reserves of country banks are taken from the city reserve agents, who now hold them and loan them, and transferred to a central institution which will keep them mainly in reserve, there will be a very heavy and unnecessary loss of working capital to the country. The relations of the country banks to their present reserve correspondents should not be disturbed, but back of the reserve cities and central reserve cities there should be the new central institution

holding the concentrated gold reserve as the basis for a great fund of credit which may be drawn upon as needed.

The country banks should not only be encouraged to keep their reserve or surplus funds with their city correspondents as heretofore, but should be encouraged to get their accommodations there as well. There are forty-six reserve cities and many other important towns where the banks actually carry reserves for smaller banks in nearby towns and make loans to them. These relationships have developed naturally, are based upon intimate acquaintance, and should not be disturbed. Let them all be part of a system at the head of which shall be the Central Bank of Issue. By the use of all these agencies the distribution of credit can be more effectually secured than by attempting to have all of the small banks of this great country do business directly with the Central Bank.

Nor is it necessary or desirable to retire the bond-secured currency, at least at the present time. It is a practically fixed amount and serves the purpose of a circulating medium. To retire it would involve refunding the outstanding two per cents and, what is more serious, it would involve providing \$700,000,000 of currency to fill the void in our currency stock. Future issues of government bonds should be on an investment basis, but the outstanding national bank issues may well be left undisturbed until the bonds upon which they are based are retired.

One of the most important services which a Central Bank could render would be that of handling the treasury funds. The present practice of distributing them, arbitrarily, among the national banks is a continual vexation to the Secretary of the Treasury, subjecting him to constant importunity and criticism. And there is no way of relieving him except by creating a strong responsible agency which shall have such relations to the banking and commercial community that it can handle the large and rapidly growing receipts and disbursements without disturbance.

The common objection to a Central Bank of Issue, *i. e.*, that it would be related to Wall Street and become involved in speculative transactions, is made without knowledge of the functions and practices of such institutions elsewhere. Nowhere are stocks or bonds permitted to be used as the basis of note issues. Everywhere short time commercial paper, representing actual commodities moving to market or in process of production, is required. Wall Street has no

means of creating such paper. A ninety-day bill of exchange, drawn by a Minneapolis milling company and accepted by a solvent merchant, based on a car load of flour, cannot be duplicated in Wall Street. We show our ignorance of world methods when we profess our inability to discriminate between legitimate banking and stock company promotion, or our inability to safeguard the former from the latter. And it is not too much to say that such a state of financial deadlock as existed in the United States in 1907 is a reflection upon the intelligence of the American people and of their moral capacity to do business by the most advanced methods.

THE CANADIAN BANKING SYSTEM AND ITS OPERATION UNDER STRESS¹

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A. INTRODUCTION

Financially Canada is part of the United States. Fully half the gold reserve upon which its credit system is based is lodged in the vaults of the New York Clearing House. In any emergency requiring additional capital Montreal, Toronto, and Winnipeg call on New York for funds just as do St. Paul, Kansas City, and New Orleans. New York exchange is a current and universal medium in Canada and is in constant demand among the banks. A Canadian wishing to invest in securities that may be quickly marketed commonly turns to the New York market for stocks and bonds. Yet the American banker visiting in Canada, if he is unacquainted with the history of banking in his own country, finds himself in a land of financial novelties, for Canada has a banking system unlike any in operation in the United States at the present time. Twenty-nine banks, known as the "chartered banks," transact all the banking business of the Dominion. They have 2,200 branches, and each may establish new branches without increase of its capital stock. They issue notes without depositing security with the government and in such abundance that no other form of currency in denominations of \$5 and above is in circulation. Notwithstanding the fact that the notes are "unsecured," their "goodness" is unquestioned among the Canadian people.

But to the student of the history of banking in the United States there is little that is radically new in the Canadian system. He finds in it many of the practices and expedients that were found excellent in the United States in the first half of the nineteenth century, and is almost persuaded that but for the Civil War what is

¹This paper is taken, with the consent of the author, from a recent report on "The Canadian Banking System," prepared by Professor Johnson for the "National Monetary Commission." The report has just been published by the commission.

now known as the Canadian banking system would everywhere be called the American system.

The fiscal exigencies of war, which have caused changes in the banking systems of most countries, have had no influence upon the development of banking in Canada. During the first half of the nineteenth century the commercial and financial interests of Canada and the United States were comparatively intimate and the financial institutions of both countries developed on similar lines. The safety-fund system, first introduced in the State of New York in 1829, found favor also in Canada and is still an integral part of the Canadian banking system. Branch banking, which was most successfully illustrated in this country by the Bank of Indiana, and which now exists in some form or other in almost all countries except the United States, has always prevailed in Canada. The importance of a prompt redemption of bank notes as exemplified in the old Suffolk banking system in New England before the war, was fully realized in Canada and is probably better illustrated in the present Canadian system than in any other country. There bank notes and bank checks are treated as identical in nature, both being cleared with the same regularity and promptness. The so-called free banking system, which was first adopted in the State of New York in 1839 and thereafter adopted by eighteen other states of the Union, was tried in Canada in the fifties, but not on a large scale. This system, requiring that issues of bank notes should be secured by a segregated deposit of certain classes of stocks and bonds, has never met with approval among the leading bankers of Canada.

The Canadian system is a product of evolution. It has taken its present form because of the commercial and financial needs of the Canadian people. It was not created by lawyers or statesmen to meet a fiscal need of the government, but has grown up gradually under the fostering care of experienced bankers, no changes having been made until experience proved them necessary or advisable. The business interests of the Dominion, through their representatives in the provincial legislatures and in the Dominion Parliament, have had much to do with its development in a natural effort to protect the rights of the borrower, the depositor, and the note holder. The banks do not possess all the privileges many of the bankers would like to have, nor do the business men of Canada believe in the real necessity for all the protection given to the banks

by the law, yet in the main the system is satisfactory both to bankers and to their customers.

The chartered banks transact the business which in the United States is divided among national banks, trust companies, private banks, and savings banks. They buy and sell commercial paper, discount the notes of their customers, lend money on stocks and bonds, make advances to farmers, and sometimes aid in the financing of railroads and industrial enterprises. To a Canadian the word "bank" means one of the twenty-nine "chartered banks," for the law prohibits the use of the word "bank" by any other institution.

Monetary System

Canada's monetary system is substantially the same as that of the United States. The unit is the dollar of 23.22 grains of pure gold. The gold coins of the United States are legal tender in Canada. So is the British sovereign, which is rated at $\$4.86\frac{2}{3}$. Until recently all Canadian coins were minted in either England or the United States, but in 1908 a branch of the British mint was established in Ottawa.

The paper currency of Canada consists of Dominion notes and bank notes. The former are issued by the government under authority of the "Dominion notes act," which permits an unlimited issue, requiring security as follows: That for \$30,000,000 of the notes outstanding the minister of finance shall hold in gold and government securities a reserve equal to twenty-five per cent of the issue, the amount held in gold to be not less than fifteen per cent of the amount of notes outstanding; and that against all notes issued in excess of \$30,000,000 the minister shall hold an equal amount of gold. The framers of the act evidently had in mind the limitation placed upon the Bank of England's issue of notes by the Peel act of 1844. The Dominion notes, accordingly, are gold certificates rather than credit notes. The minister of finance is required to redeem the notes in gold at branches of his department in several different cities. If need be, the minister may sell bonds to obtain gold for use in the redemption of the notes.

Dominion notes are legal tender and may be issued in any denominations, but experience has proved that they are most needed in bills of large denominations for use in banking reserves and in the form of \$1 and \$2 bills, the banks not being permitted to issue

notes under \$5. The average circulation of Dominion notes in 1908 amounted to \$68,602,944, of which amount \$52,882,708 was in \$500, \$1,000 and \$5,000 bills, and \$14,910,365 in \$1 and \$2 bills. There has been a pretty constant increase in the amount of Dominion notes outstanding. In 1900 the total was only \$26,550,465. The bills of large denominations are practically all carried by the banks in their reserves.

Canadian banks are not permitted to issue notes of a denomination less than \$5. Of fives and multiples thereof they may issue an amount equal to their paid-up capital without deposit of security and without payment of tax. As a result the currency in the hands of the people consists almost exclusively of bank notes. The amount in circulation increased from \$50,000,000 in 1900 to \$81,400,000 in 1909.

B. ESSENTIALS OF THE CANADIAN BANKING SYSTEM

A chartered bank in Canada is a bank of branches, not a bank with branches. The parent bank, technically known as the "head office," neither takes deposits nor lends money. All the banking business is done by the branches, each enjoying considerable independence, but all subject to the supervision and control of the head office. The law places no restrictions upon the number or location of branches. Canadian banks, therefore, have branches in foreign countries as well as in Canada.

The general bank act, under the terms of which every bank obtains and holds its charter, is subject to revision every ten years. In its present form it is substantially as passed in 1890.

Process of Incorporation

The provisions of the bank act with respect to the organization of new banks are intended to guard against the entry of unfit or inexperienced persons into the banking business. The minimum required capital of a bank is \$500,000, of which all must be subscribed and one-half paid in before a new bank can open. At least five men of integrity and good financial standing must agree to act as provisional directors and secure a favorable report on their project from the parliamentary committee on banking and commerce. These men must agree to subscribe for fairly large blocks of stock, otherwise the committee will be inclined to reject their

application. They must convince the committee that their project is a well-considered one, that there is need for the new bank, that it is a bona fide enterprise, that they have in mind a competent man for general manager, that they really intend and expect to do a legitimate banking business. If they satisfy the parliamentary committee it will be granted. The bank, however, can not yet begin business. Provisional directors now have merely the right to advertise and cause stock books to be opened. If inside of one year capital stock to the amount of \$500,000 has been subscribed and \$250,000 thereof paid in, the provisional directors may call a meeting of the shareholders, at which a board of regular directors shall be chosen. Before this meeting is held at least \$250,000 in cash must be paid over to the minister of finance. The regular directors must then apply to a body known as the treasury board² for a certificate permitting the bank to issue notes³ and begin business and the treasury board may refuse this certificate unless it is entirely satisfied that all the requirements of the law have been met.

Having obtained its charter, a new bank must open its head office in the place designated, and may then proceed to establish branches or agencies, upon the number and location of which the law places no restriction. Under its charter it has authority to do a general banking business; it may discount commercial paper, lend money on collateral security, accept deposits payable on demand or after notice, and issue circulating notes up to the amount of its unimpaired paid-up capital in denominations of \$5 and multiples thereof. An amendment of the bank act passed July 20, 1908, gives the bank the right to issue what may be called an emergency circulation during the crop-moving season (October 1 to January 31). During this period the legal maximum of the circulation of a bank is its paid-up capital plus fifteen per cent of its combined paid-up capital and surplus or rest fund. The emergency circula-

²The treasury board consists of the minister of finance and five ministers nominated from time to time by the governor in council. The minister of finance is chairman of the board and the deputy minister of finance ex officio the secretary.

³The designing and engraving of the notes is left with the bank itself. Many of the banks have had their notes made in the United States, but a bank-note company has been established in Canada and is getting a larger proportion of this business every year. The notes must bear the signatures of two officers of the bank. The authority to sign, however, may be delegated to subordinates. When notes are shipped by the head office to a branch they are usually sent with only one signature, the other being supplied by one of the branch offices. If the notes should be lost or stolen en route they are worthless.

tion, which consists of notes in form and in other respects exactly like the regular issues, is subject to a tax at a rate not to exceed five per cent per annum, the rate being fixed by the governor in council. If a bank's circulation does not exceed its paid-up capital, it pays no tax.

Security and Redemption of Notes

The law is silent on several subjects that seem of great importance to most bankers in the United States. For instance, it does not require that the banks shall deposit with a government official, or in any way set aside any kind of security for the protection of the note holder. It does not even require that the banks shall carry a cash reserve against either notes or deposits, nor does the law make the notes a legal tender for any payment. A bank need not accept the notes of other banks. The government does not guarantee the redemption of the notes. Neither does it bind itself to receive them in payment of dues to itself.

Nevertheless the notes of the Canadian banks are everywhere acceptable at par, the people apparently not being at all concerned about their "goodness." And their confidence in the note has been well justified, for nobody since 1890 has lost a dollar through the failure of a bank to redeem its notes. Following are the legal requirements, which for twenty years have proved adequate protection for the note holder:

1. Every bank must redeem its notes at its head office and in such commercial centers as are designated by the treasury board. The redemption cities are the same for all the banks. They are Toronto, Montreal, Halifax, Winnipeg, Victoria, St. John, and Charlottetown.

2. Each bank must keep on deposit with the minister of finance a sum of lawful money (gold or Dominion notes) equal to five per cent of its average circulation; the total so deposited is called the "circulation redemption fund." It is a guaranty or insurance fund for use, if need be, in the redemption of the notes of failed banks.

3. Bank notes possess first lien upon the assets of a bank.

4. Bank stockholders are liable to an assessment equal to the par value of their stock.

5. A bank must make to the minister of finance on or before the fifteenth of each month a detailed statement of its assets and liabilities on the last business day of the preceding month. This monthly

return, the form for which is set forth in the act, must be signed by three general officers.

6. The Canadian Bankers' Association, an incorporated body of which each bank is a member, is given supervision by the bank act of the issue and cancellation of notes and of the affairs of a failed bank.

7. The notes of a failed bank draw interest at five per cent from the date fixed for their redemption by the minister of finance, who may redeem them out of the assets of the bank or out of the "circulation redemption fund."

Importance of Redemption

Each of these provisions of the law has its value and significance, but only the first is absolutely essential to the successful operation of the system. All the other provisions might be changed or abolished without impairment of the efficiency of the banking system. But the abolishment of this redemption system would at once give Canada a new banking system. The bank note is almost the sole circulating medium in Canada, and the people have confidence in it because it is tested every day at the clearing houses and proves itself as good as gold. This daily test would probably not take place with the same regularity as now if the banks did not have branches or if they were obliged to deposit security against their issues. Canadian banks are national, not local institutions. All but a few of them have branches in every part of the Dominion, and these branches, as fast as they receive the notes of other banks, either send them in to the nearest redemption center or convert them into lawful money—or its equivalent, a bill of exchange—through branches of the issuing banks located in the same towns. The twenty-nine chartered banks have 2,200 branches and each bank is seeking, through its branches, to satisfy all the legitimate needs of the people for a circulating medium. When the note of a bank is in circulation it is earning money for the bank, but when it is in the vault or on the counter of the bank it is an idle and useless piece of paper. Hence every bank always pays out its own notes through its branches and sends the notes of other banks in for redemption, thus increasing its own circulation and strengthening its own reserve.

Furthermore, if the banks were not allowed complete freedom

of issue within the prescribed limit, but were required to deposit some form of security, as is required of the national banks in the United States, an investment or speculative risk would arise that would inevitably cause friction. If bonds were designated as security, bankers might often be tempted by high prices to sell their bonds and forego the profit on circulation for the sake of making a larger profit by the sale of the security. Thus the volume of bank notes might contract even at a time when the people needed more currency. In such case, of course, Canada would be obliged to import gold in order to fill the gap in the circulating medium.

The Circulation Redemption Fund

The five per cent insurance fund for the redemption of the notes of failed banks is theoretically an important and prominent part of the system, yet practically it would seem to be of little consequence, for not once since 1890 has it been necessary to use a dollar of the fund. Banks have failed, to be sure, but the notes of these banks have always been redeemed either out of the assets or by recourse to the double liability of the shareholders. It is a mistake to suppose that the people of Canada have confidence in bank notes because of the existence of this redemption fund. The average business man knows nothing about the fund and if his attention were called to it as being a source of security for the bank notes he would probably think a five per cent reserve altogether too small. The real reason why the people have faith in bank notes is because the notes are always honored by the banks and never fail to stand the test of the clearing house. In other words, they believe that bank notes are good for about the same reason that they believe the sun will rise in the east every twenty-four hours and do not bother themselves about reasons.

Nevertheless this redemption fund does contribute to the strength of the banking system. It makes each bank to a certain extent liable for the mistakes of other banks, and as a result gives rise to a spirit of mutual watchfulness and helpfulness. Other features of the system contribute to the same result, especially the fact that a Canadian bank accepts from a depositor without indorsement the notes of other banks. Since the banks have branches in agricultural and mining communities, often distant from the railroad by several days' journey, and these branches are accepting the notes

of other banks and giving credit for them as if they were gold itself, it is evidently important that each banker should have all possible information with regard to the status and business of his competitors. As a result one finds among the bankers of Canada a surprisingly intimate knowledge of each other's affairs.

Two Negative Qualities

The two negative qualities of the Canadian bank note—its lack of a legal-tender quality and of a government guaranty—at first sight may seem to readers in the United States a source of weakness. Yet Canadian bankers would doubtless all agree that nothing would be gained by making bank notes legal tender for any kind of payment or by making the government in any measure liable for their ultimate redemption. Such measures would probably be rejected as likely to prove harmful. It would be like hampering a flying machine with unnecessary bars of steel. Bank notes, like bank checks, are mere promises to pay money and are more convenient than money because they can be created as need for a medium of exchange arises. When either has done the work that called it into existence, it should disappear from circulation and be redeemed. If it is made a legal tender like money itself, or if its redemption is guaranteed by a strong government, there is always the danger that ignorant classes of people will regard it as money itself and withdraw it from circulation.

The Canadian government has nothing to do with the daily redemption of bank notes and does not guarantee that they shall be redeemed. It is custodian of the five per cent redemption fund and is under obligation to redeem the notes of failed banks out of this fund, but if a series of bank failures should exhaust it the note holder has no guaranty that government funds will be used for his relief.⁴

The possession by the note holder of a first lien upon the assets of a bank, including the funds that may be collected from shareholders on account of their double liability, gives rise to such general confidence in the ultimate convertibility of a bank note that the notes of a failed bank, on account of the interest they bear, sometimes command a premium. As a rule, the notes of such a bank are col-

⁴Bank act, section 65: (6) Nothing herein contained shall be construed to impose any liability upon the government of Canada, or upon the minister, beyond the amount available from time to time out of the circulation fund.

lected by the other banks and held until the date of redemption has been named by the minister of finance.

Management of Failed Banks

If a Canadian bank fails to meet any of its liabilities as they accrue, it forfeits at once its right of independent management and is taken charge of by a "curator" appointed by the Canadian Bankers' Association.

If the curator within ninety days is able to restore the solvency of the bank so that it is able to resume payments, it may resume business; otherwise the bank may be "wound up" and its charter revoked. During the first three months of a bank's suspension the stockholders have a chance to raise funds and restore the bank to solvency. If they fail, the curator then gives place to an official called a liquidator, who is appointed by the courts. Under a curator the stockholders still have hope and opportunity; under the liquidator the creditors of the bank are in the saddle.

The liquidator must first of all attend to the notes in circulation, their lien upon the assets being prior to all others. Inasmuch as the notes bear interest at five per cent from the date of suspension, the other banks are perfectly willing to hold them in their vaults until such a date as the liquidator names for their final redemption, all feeling certain that the notes will sooner or later be paid, for if the assets of the failed bank should prove inadequate, the mutual guaranty fund in the possession of the government will be drawn upon.

Next to the notes the deposits of the Dominion government have a prior lien, and then the deposits of provincial governments. If the assets of the bank are not sufficient to satisfy all the claims, the stockholders are liable to an assessment equal in amount to the amount of capital stock to which they subscribed plus any portion thereof which has not been paid up. Thus if a stockholder has subscribed for fifty shares of stock, par value \$100, and has paid in only \$2,500, he is liable to an assessment of \$7,500, of which \$2,500 is on account of the unpaid subscription and \$5,000 is on account of the double liability.

Monthly Returns to the Government

The law provides for no publicity with regard to bank affairs beyond the returns to the minister of finance. The minister of

finance may call for supplementary information or "special returns from any bank whenever in his judgment they are necessary to afford a full and complete knowledge of its condition." The law, however, gives him no right of examination, and the government maintains no inspecting force.

Canadian Bankers' Association

The Canadian Bankers' Association is an incorporated body with powers and duties prescribed in an amendment to the bank act passed in 1900. Each chartered bank is represented in the membership and has one vote. The association is required by law to supervise the issue of bank notes and to report to the government all overissues, to look after the destruction of worn and mutilated notes, and to take charge of suspended banks. Its headquarters are in Montreal in the Bank of Montreal building, and its active executive officer is the secretary-treasurer. The expenses of the association are apportioned among the banks and do not apparently constitute a very heavy burden, for the secretary has an exceedingly small staff. All expenses incurred by the association on account of a suspended bank are, of course, a charge against the assets of the bank.

When the notes of a bank are so worn or mutilated that it wishes to replace them with new notes, notice is sent to the secretary of the association, a date is fixed, and in the presence of the secretary the old notes are duly counted and taken to a furnace, where they are consumed in the presence of the secretary and other witnesses. After this solemn operation has been performed and the signatures of all parties observing it have been duly attested, new notes are issued by the association to replace those that have been destroyed. The clearing houses in the Dominion are subject to regulation by the association.

C. THE SYSTEM IN TIME OF STRESS

Since the present system of banking was perfected in 1890, Canada has had no banking panic. She has suffered from periods of depression and hard times, caused either by short crops or by the failure of outside markets to absorb her produce at satisfactory prices, but never from scarcity of currency, from runs upon banks, from business failures, or from the inability of banks to meet their

obligations. It is impossible to escape the conclusion that the credit for Canada's immunity from panic and financial distress is mainly due to the character of her banking system.

No country can expect to be free from periods of dullness, no matter how perfect its banking system. International relations in trade and finance are so close that all countries suffer from the mistakes made by any one. Canada has depended very much upon English capital. She is relatively a large consumer of the products of the United States and has many an enterprise which owes its inception to American initiative. Hard times in England or in the United States must inevitably affect Canadian business. She is borrowing from England as this country did a century ago. Her credit system rests upon the gold reserves of London and New York. Under these circumstances, when one recalls how the credit and financial system of England and the United States have been shaken during the last twenty years, it is remarkable that Canada has escaped serious damage.

Strong Because Elastic

Canada's banking system contains two features that give it great strength under the threat of panic or crises. One is the elasticity of the note circulation, the other the solidarity or unity of the system. The reason why Canada has never suffered from a currency panic lies on the surface. The banks always have cash enough to meet the demands of their depositors. Instead of being in the position of their brethren across the border, that is, anxious to conserve their cash, they welcome any legitimate opportunity for the increase of their circulation. Except for a few weeks during the panic period of 1907, when practically all the banks of the United States had suspended cash payments, the Canadian banks have always had currency on hand in excess of their customers' needs. This currency consisted of their own notes. To their customers the bank notes are perfectly good money. Even though people got suspicious of the solvency of a Canadian bank, its notes would not be in disfavor.

Furthermore, when Canadian banks satisfy their customers' demands for cash, their resources are unimpaired. They are not obliged, as are the banks of the United States, to call loans in order to make good their cash reserve. With the public their notes

have all the efficiency of gold itself, and the fact that they are paid out so willingly by the bankers, the supply as a rule seeming inexhaustible, prevents anything like a panic starting among the people.

The elasticity of the note issue, however is not the most important factor contributing to the peace and security of the Canadian financial system. It must be regarded, indeed, as an essential factor, for without it the banks would be unable to maintain equilibrium without resorting to methods that at times would be perilous. If in any emergency they were obliged to raise their rates of interest and to seek to increase their resources by the reduction of loans, it is doubtful if Canada, despite the strength of its banking system in other respects, could escape from the losses caused by panic.

Solidarity or Unity of the System

The other feature making for financial ease in Canada, namely, the solidarity or unity of the banking system, is not easy to describe. It is a growth, a situation, rather than a creation of the law. When one has in view the protection of Canada's business and financial welfare; it is impossible not to regard the twenty-nine chartered banks, with their 2,200 branches, as a single institution. As lenders of money they are independent units. For that matter, the branch of each bank has a great deal of independence. All are independently seeking for deposits. Each branch is seeking to make the largest possible profit, and its manager is encouraging to the utmost the enterprises in his locality, for on the growth of the business he does depends his favor at headquarters. Nevertheless, from a national point of view, despite the competition among the banks and their branches, there is considerable reason for regarding the twenty-nine chartered banks of Canada as one institution.

Consider, for instance the following facts:

1. Over fifty per cent of the banking business in Canada is done by six banks. One of these, the Bank of Montreal, has assets exceeding twenty per cent of the total. Another, the Bank of Commerce, with head office at Toronto, has resources equal to thirteen per cent of the total.

2. The Bank of Montreal is the depository of most of the government funds and among the people is commonly spoken of as the government bank.

3. The Bankers' Association, an organization created by law,

is a medium through which the best banking opinion finds authoritative expression. Through this association the banks keep advised of all pending legislation in any way affecting banking interests.

4. Bank managers are trained experts and each one has the expert's regard for a man who has had a wider experience or a better training than himself. As a result, no manager will venture far upon a policy which is regarded by his competitors as dangerous.

5. All the banks are equally interested in the unbroken prosperity of the country. The managers of the six largest banks, each having charge of over a hundred branches are particularly watchful. They realize that speculative excesses in any part of the country will bring loss to them and must be discouraged.

6. On account of this mutual interdependence of the banks, no bank in Canada can hope to achieve success by striking out upon an absolutely independent policy, if such conduct is likely to meet with the disapproval of the banking fraternity. The business public, from which a new bank must get its support, has confidence in the management and judgment of the established institutions. A depositor may feel that he ought to get more than three per cent interest on his balance. He may complain that his bank does not give him credit enough, or that it is not liberal enough in its collections. Nevertheless he would be reluctant to give his account to a new institution or to any institution, whether old or new, if it were managed by men not in good standing with the leading bankers.

7. In their insistence on the rule that a man shall borrow from only one bank the banks have done more than appears on the surface to make their system a unit. If a merchant is refused credit at one bank, he finds it practically impossible to get help from any other. This rule certainly makes the twenty-nine banks of the Dominion, from the borrower's point of view, a single institution.

8. There is practical unanimity of opinion among bankers with regard to business conditions and the outlook. The managers of Canadian banks get their information with regard to the country's condition from the managers of branches. Since all know what is going on in every part of the country, it is not remarkable that all usually are very much in agreement for the sources of information of all are practically the same.⁹ As a result, Canada has a "banker's

⁹During the writer's stay in Canada, in April, 1909, he talked with bankers in Montreal, Ottawa, Toronto, and Winnipeg. Everywhere he raised practically the same topics of conversation, and everywhere got practically the same answers.

opinion" with regard to the business situation, as distinguished from the "opinions of bankers" in the United States. In the latter country the bankers in the West are often in disagreement with the bankers in the East, and the eastern bankers are frequently in considerable ignorance of the conditions and events which are shaping the opinions of their western brethren. In Canada, with reference to questions of fact or actual conditions, one finds very seldom any difference of opinion among Canadian bankers. If there is excessive speculation in any part of the country, if a certain industry is suffering because of tariff changes in Europe, or because of a scarcity of raw materials, or if capital is being employed in an industry in amounts not warranted by the demand, or if there is the prospect of a light yield of any agricultural product, the bankers are among the first to get the information, and all of them have it.

Importance of the Banker

This unanimity among the bankers with regard to business conditions makes the individual banker a much more important person in Canada than he is in the United States. Business men there do not speak of him as a mere money lender. They look upon him as a man who has especial facilities for getting information about business and financial questions and whose opinion, therefore, is entitled to great respect. This is true not only of the general managers, who as a rule live in the large cities and are men past middle life, but is true as well of the managers even of the small branches. In every community the manager of a branch bank, especially if it is a branch of one of the half dozen largest institutions, occupies a prominent position and exerts a powerful influence in the shaping of business opinion. Not only does he send reports daily or weekly with respect to events of importance within his field, but he himself is constantly getting letters of advice from the head office. He is the one man in the community who is in touch with the business conditions of the Dominion or, for that matter, of the world. He may be a young man, but he has had a training in the methods of Canadian banking, and it is known that he would not

The managers at the head offices get daily reports and letters from their branch managers, and the head offices in their turn send out information to the branches. As a result the men in the banking business in Canada know more about the whole country than any other set of men. The files of one of the larger banks probably contain more valuable and more accurate information about the current events in Canada than can be found in the files of any newspaper.

occupy his position if his superiors did not have confidence in his judgment.

As a result of all these conditions working together, it may fairly be said that Canada possesses many of the advantages of a central bank. The employees of each bank, from general manager down to the office boy in the smallest branch, are busily occupied in doing their share toward increasing the bank's business and profits. Each is keenly on the lookout for an opportunity to establish a new branch in a promising young community, and each is doing its best to serve its customers and to gain new ones. But if a cloud appears on the horizon, if bad news comes from England with regard to Canadian investments, or if there is wild speculation in Wall street, the leading bankers get together, not formally, but informally, and as a result the Canadian banks become practically a unit in their attitude toward the common peril.

The Panic of 1907

The policy adopted by the Canadian banks at the end of 1906, and followed throughout the strenuous year of 1907, illustrates forcibly the solidarity of the banking system. All business men remember the feverish activity of 1906, the steady advance in prices of goods, the insatiable demand for money, and the high rates of interest everywhere prevailing at the end of the year. To the average man it seemed a period of boundless and unending prosperity. Railroads had not cars enough to haul the freight offered them and could not get them built fast enough. Manufacturers in the United States and in Canada had withdrawn their traveling salesmen because they already had orders for a year ahead.

In the United States a few of the leaders in industry and finance sounded a note of warning, but most men were too busy to hear it and most of the 10,000 bankers refused to believe it justified. As the decline in the market prices of securities began in January, a few bankers in New York City—those in closest touch with the financial needs of corporations and with the temper of foreign money markets—became convinced that serious times were ahead. Most of those men, knowing that a public expression of their apprehensions would do little good and might do harm, silently went about the business of strengthening their resources. Meantime 10,000 or more bankers throughout the country, wondering

why the stock market should be weak when the country was so prosperous, continued to make advances at high rates of interest to expanding enterprises. As a result, when the crash came in October, it is doubtful if more than ten per cent of the bankers in the United States were prepared for it, and for several weeks there was an almost universal suspension of specie payments and withdrawal of banking support from deserving borrowers.

Canadian Banks Were Prepared

In Canada there was no panic. For a year the leading Canadian bankers had been urging upon their customers the necessity for caution, and in their annual reports to the shareholders early in 1907 bank presidents and general managers had given notice that the phenomenal profits and business of the preceding few years could not be expected to continue much longer. Financial journals and editorial writers for the daily press, taking their cue from the bankers, had for months called attention to the strain upon the world's money markets and pointed out the necessity for conservatism, not only among the banks but among the promoters of new enterprises.

In January, 1907, there was only one opinion among bankers as to the financial situation. For several years the country's trade had been expanding by leaps and bounds. Immigrants had poured into the country from Europe and from the United States. New capital had come from England and the United States at the rate of \$200,000,000 a year. The profits of industrial and commercial products had been large. In ten years bank loans and deposits had doubled. In short, Canada's prosperity had been even greater than that of the United States. The demand for capital had outrun the supply, and the strain upon the banking resources every bank manager knew had reached the danger point. Every one of them said this to their shareholders; the newspapers published their remarks, and business men throughout the Dominion knew not only that they ought to retrench, but that they must. They knew that they could get no help from the banks if they sought to enlarge their operations.

Gradual Contraction of Loans

It was impossible, of course, for the banks to call an immediate halt in the expansion of enterprise or in the use of their credit.

During 1906 the current loans in Canada had risen from \$450,000,000 to \$550,000,000, an increase of nearly twenty-five per cent. Any attempt on the part of the banks to bring this upward movement to a sudden termination would have ruined many a solvent concern. For five months, or until the end of May, the banks suffered it to continue, their loans during that period rising from \$550,000,000 to \$590,000,000. Then began a gradual contraction and a steady increase in the cash reserve. Between June 1 and September 1 the total of their current loans in Canada declined \$10,000,000. At the same time they strengthened their reserves by accumulating cash in their own vaults and by enlarging the amount of their funds on call in New York City. Canadian borrowers were treated with more consideration than those in foreign countries, as is shown by the reduction in current loans elsewhere from \$36,000,000 to \$23,000,000 between February 1 and July 1. The banks appear to have endeavored to convert their time loans outside of Canada into call loans, having in view an increase in the amount of funds available for immediate use.

Between January 1 and September 1 there was a decline in the demand deposits from \$192,000,000 to \$160,000,000 and an increase in time deposits from \$400,000,000 to \$425,000,000, so that the total of deposits suffered very little diminution. After the first of September, however, deposits steadily declined until the end of the year; time deposits from \$425,000,000 September 1 to \$400,000,000 December 31. Demand deposits remained practically unchanged during this period.

By the first of September Canadian bank managers were evidently quite alive to the necessity for caution. Thereafter all the changes in their statements indicated a conviction on their part that the situation was precarious and that the banker's first duty is to preserve the solvency of his bank and take care of its regular customers. They knew that large sums would be demanded of them for the movement of the crops and were disposed therefore to take every precaution against weakness. The season was late and it was known therefore that there would be difficulty getting the crops to market, for the Canadian railroads, like those in the United States, were embarrassed by lack of equipment.

Call Loans Reduced in New York

When the crash came in New York and the Knickerbocker Trust Company suspended on the 22d of October, Canadian banks immediately adopted measures of self-protection. During the next two months the total of their call loans outside of Canada declined from \$62,000,000 to \$40,000,000. There was also a small reduction of their call loans in Canada. Their cash reserve was increased by \$5,000,000. Their current loans in Canada, however, were \$10,000,000 less November 30 than on October 1, and in December they fell off \$15,000,000 more. These two months, November and December, were strenuous months in Canada as they were everywhere in the world. The western wheat crop was late and as a result there was a great clamor for funds for their movement. Currency was so scarce in the United States that Canadian bank notes disappeared over the border and performed their function as a medium of exchange in towns and country districts in the United States many miles distant from the Canadian line. Most of the banks found that their circulation was dangerously near the maximum and feared that they might be called upon to pay out legal tender. There was not the slightest suspicion of banks in Canada and no talk whatever of a run upon any bank. People did complain, however, that the banks were not doing their duty by the western farmers. Why should the banks be lending money on call in Wall street, when the farmers of Manitoba were unable to market their crops because buyers could not get funds from the banks?

Circulation Too Near The Limit

The banks, their deposits declining, their circulation near the maximum, the railroads unable to haul the crops promptly to market, dared not tie up funds in agricultural products which might later be called for by the commercial and industrial interests of the Dominion. If their capital had been larger so that they might have expanded their note circulation with impunity, the situation would have been less difficult. Yet something more than notes was wanted. For the first time in many years Canada felt the pinch of that want which is annually felt in the United States, namely, a sudden and great increase in the demand for both capital and currency. And for the first time they faced the risk of being

compelled to pay out legal tender money if they satisfied the demands of grain buyers. In other words, the Canadian banks and the agricultural interests of Canada during the last three months of 1907 had a taste of what the banks and farmers of the United States experience every year. The banks dared not make large advances to the buyers of grain lest the depletion of their reserves or an excessive issue of notes should result. The total circulation had climbed up to \$89,000,000, which was only about \$6,000,000 under the maximum, and no bank felt that it could authorize its branches to increase the issue of notes; the risk of being called upon to pay the penalty for excessive issue was too great.

To the Canadian banker and to his customer the situation was entirely new. Never before during this generation had the banks been obliged to restrict their loans merely because they feared that an excessive issue of notes might result. Serious and new as the situation was, and though it gave rise to many complaints in business circles, nevertheless there were no important business failures in Canada, and bankers in general felt confident that they would be able to bring the country safely through the crisis. In the last two months of the year the deposits declined \$30,000,000 and the current loans in Canada \$25,000,000. This shrinkage was inevitable. Many depositors having investments in the United States were obliged to protect them by the withdrawal of funds from Canada. The banks, on their side, were obliged to withdraw their assistance from such customers as needed it least. It is the boast of the banks, however, and is now generally admitted, that during these two months no man who actually deserved and needed a loan was refused it, and few borrowers were obliged to pay an unusual rate of interest.

The Government Tries to Help

Canadians are readers of the newspapers of the United States, and they know something about our habit of calling upon the government for aid whenever money is "tight." So the question was asked, Why should not the Dominion treasury come to our relief? The banks, it should be noted, did not ask this question. They did not believe that government aid was necessary. Nor was it evident how government aid could be afforded, for the Dominion treasury, unlike that of the United States, keeps all of its cash at

all times in the banks, and so has no reserve fund on hand on which to draw for the purpose of easing the money market. The government, however, was impressed by the popular demand and came forward with an offer of relief which involved a suspension of the Dominion legal tender act, similar to the suspension of the Peel bank act whereby the Bank of England has been permitted to issue notes unsecured by coin.

The issue was made upon the authority of the governor in council dated November 12, 1907, on a memorandum from the minister of finance, in which he described the effect of the worldwide monetary stringency upon Canada and declared that there was much anxiety in the West among farmers, traders, and bankers over "the prospect of insufficient financial accommodation to move the crop." He recommended that the minister be authorized to issue new Dominion notes and deposit them with the banks most largely interested in the grain business, and to accept from the banks high-class securities. In the second memorandum, dated November 26, he recommended that the advances be made through the Bank of Montreal, at such rates of interest, not less than four per cent per annum, as the Bank of Montreal might deem fair and reasonable. The advances were not to exceed \$10,000,000 and were to be protected by the deposit of securities satisfactory to the Bank of Montreal. These issues of Dominion notes were approved by act of Parliament July 20, 1908. Events proved that the bankers were right in their claim that they were fully able to take care of the western situation, for there was a call for only \$5,115,000 of this emergency issue of Dominion notes. The bankers understood the situation better than did the minister of finance.

The character of the year 1908 is shown by the bank returns. Current loans declined steadily from November 1, 1907, until March 1, 1909. Deposits, however, began to increase early in 1908, time deposits rising from \$395,000,000, March 1, to \$430,000,000, December 31. In the same period demand deposits increased from \$140,000,000 to \$210,000,000, while the cash reserve moved up from \$75,000,000 to \$100,000,000. The banks being unable to employ their idle funds in Canada during this year, put them out on call in the New York market. The item "call loans elsewhere" rose from \$41,000,000, December 1, 1907, to \$106,000,000, December 31, 1908, and by the end of May, 1909, had climbed to \$125,000,000. This

is a much larger sum of money than the Canadian banks care to employ in the call-loan market.

During 1907 the banks gradually reduced the amount of call loans in Canada by about \$11,000,000. The funds thus released were loaned to merchants, manufacturers, and the buyers of grain. In 1908 this item began to increase, the banks having more money than was needed by business interests. They adopted the same policy with current loans outside of Canada, reducing these during 1907 from \$36,000,000 to \$23,000,000. In 1908 this item began to increase.

Early in the year, 1907, in anticipation of a strain, the chartered banks began to increase the cash reserve, at the same time calling loans in New York and reducing foreign balances. Between May and October they loaned rather freely in the New York call-money market, but during October and November they reduced their outside call loans by \$20,000,000. Their credit balances and call loans outside of Canada both increased greatly in the first seven months of 1908, when the demand for money was small in Canada. In the last quarter of 1908 the decline in foreign credit balances explains the rapid increase in outside call loans. Throughout 1909 the banks had resources beyond the needs of Canada, and the outside call loans rose to \$138,000,000, an increase of nearly \$100,000,000 in two years. In the same two years the cash reserve rose from \$80,000,000 to \$105,000,000, and the amount of securities held from \$71,000,000 to \$86,000,000. It is interesting to note that the amount of securities varied but little during 1907. It was not a good year for bonds.

Two Interesting Bank Failures

The story of banking is not without its dramatic incidents in any country. Canada has probably had fewer such incidents in the last generation than most countries, yet there was a bank failure in 1906 which furnished unique details. On the evening of October 12, the bankers of Toronto and Montreal heard with surprise that the Bank of Ontario had gone beyond its depth and would not open its doors the next morning. Its capital was \$1,500,000 and its deposits \$12,000,000. The leading bankers in the Dominion dreaded the effect which the failure of such a bank might have. The Bank of Montreal agreed to take over the assets and pay all the

liabilities, provided a number of other banks would agree to share with it any losses. Its offer was accepted and a representative of the Bank of Montreal took the night train for Toronto. Going breakfastless to the office of the Bank of Ontario he found the directors at the end of an all-night session and laid before them resolutions officially transferring the business and accounts of the bank to the Bank of Montreal. They adopted the resolution before nine a. m. and the bank opened business for the day with the following notice over its door: "This is the Bank of Montreal."

Before one o'clock the same notice, painted on a board or penciled on brown wrapping paper, was over the door of the thirty-one branches in different parts of the Dominion. Its customers were astonished that day when they went to the bank, but none of them took alarm and many of them were well pleased with the change. The note holders and depositors were paid in full, and it is generally understood that the venture was a profitable one for the Bank of Montreal, although litigation is still pending over the double liability of the stockholders. The general manager of the Bank of Ontario, who had sunk its capital in Wall street, received a five years' sentence for making false statements with regard to the bank's affairs.

First Outbreak of High Finance

Only one other large bank has been in trouble since 1890. It was the Sovereign Bank, an institution having over eighty branches and \$16,000,000 in deposits. It was established in 1903 and was managed by an artist in "high finance," the only one of that class, it is claimed, who ever controlled a big Canadian bank. It is claimed that he was backed by large financial houses in New York and in Germany. He was reckless both in spending and in lending money, and early in 1907, when the assets amounted to over \$25,000,000, it became known that much of its paper was valueless. The capital stock was reduced and a new management was placed in charge, but in January, 1908, the bankers of Toronto and Montreal were informed that the Sovereign would be obliged to suspend unless it received assistance. On the 18th of January its business was taken over by twelve banks which guaranteed the creditors against loss. The branches of the bank were divided among these twelve institutions, and report has it that some of the general managers were for a time unable to find all the branches that had been allotted to

them. The manager of the Sovereign, in his search for communities needing branch banks, had gone ahead of both map makers and the post office department. The assets of the bank are not proving equal to the liabilities, but the guaranteeing banks are protected from loss by the double liability of the stockholders.

The circumstances attending the liquidation of these two large banks certainly strengthen the view advanced in this chapter with regard to the solidarity or unity of the Canadian system. Bankers still shake their heads ruefully over the havoc wrought by the Sovereign and over the changes it made in banking practices, whereby various minor profits were annihilated, and declare that if another specialist in "high finance" appears among them they will let him and his friends take their medicine. "The banks can not go on forever," they say, "standing between the people and a rotten bank." Like the directors of the Bank of England, the presidents and managers of the big banks in Canada deny that any responsibility rests upon them for the protection of the country's financial security, yet when the next pinch comes the situation itself will compel them in self-defense to act together both quickly and effectively.

Since 1889 six small banks have failed, but note holders have lost nothing and depositors very little. They were local institutions with few branches and their failures possess little significance in a study of the banking system as a whole.

CONCLUSION

The Canadian banking system possesses features of extraordinary merit, adapting it admirably to the needs of the country which it serves. It performs most efficiently the service for which banks are created, gathering up the country's idle capital and placing it in channels of useful employment. The assets of the banks are of high quality because of protection afforded by the law and because borrowers are prevented by custom from hawking their paper through brokers. The law leaves the banks such freedom in the use of their credit that business is never brought to a halt through lack of instruments of exchange; whether the need be for checks and drafts or for bank notes, the supply is always adequate. The redemption system insures perfect elasticity for both the note and deposit currency. The reserve seems to be abundant for the

protection of the liabilities and to be composed of elements sufficiently liquid and available. Finally, on account of the extent to which the larger banks are interested in the trade and industries of all parts of the Dominion because of the investments made through their branches, the system possesses a solidarity that makes possible united action in the face of a common peril.

THE STOCK EXCHANGE AND THE MONEY MARKET

BY HORACE WHITE,

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Commodities, 1909.

The relations of the stock exchange and the money market to each other are primarily those of the promoter and the investor, and secondarily those of the borrower and the lender.

The distinction between money and capital should first be noted. Capital consists of all the goods in the world that are subject to sale and transfer. Money is an instrument of exchange, the possession of which gives the owner command of capital at the prices prevailing at any given time. The supply of capital is, in the nature of things, limited. Both the production and the consumption of capital go on at all times. The excess of production over consumption forms new capital available for the creation of additional means of production, from which income may be derived. The owners of this excess may themselves apply it to this purpose, or transfer it to others. Ordinarily an easy money market means that the demand for capital is not in excess of the supply. Conversely a tight money market means that the demand has overtaken the supply and that men are bidding against each other for the possession of it; the competition of bidders causes general prices and the rate of interest to rise.

The function of the stock exchange as a promoter of new enterprises consists of its great clientage of buyers, of its facilities for advertising securities, and of its reputation for carefulness in scrutinizing applications for admission to its list. Its buyers are practically innumerable in both hemispheres. Its quotations are published free of cost in nearly all daily newspapers. No enterprise is admitted to its trading list without previous examination by a committee of experts. While the exchange does not guarantee the goodness of any security, or even the truthfulness of the statements filed by its managers, it requires the filing of such statements prior to admission, and at stated intervals thereafter, and it inflicts summary punishment for any breach of good faith therein. Thus, the fact of

admission to the list becomes *prima facie*, although not conclusive, evidence of the character of the investment.

The money market consists of all the loanable funds in the country. The money which people are using in their daily business, which passes from hand to hand in retail trade, is no part of the money market. Such money is not marketable because it cannot be recalled from the immediate service which it is rendering to society. The bulk of loanable funds of the country consists of bank credits which are bottomed on gold; and the magnitude of such credits is limited by the amount of "lawful money" held by the banks as reserves. Bank notes are not available as reserves of national banks, although they are such for state banks and trust companies. This is a slovenly and dangerous practice which ought to be corrected by the clearing houses of the country, if the state laws allow it to continue. Any attempt, however, to enlarge the loanable funds of the banks by "taking out" bank notes not needed for hand to hand circulation, would be defeated by their prompt return for redemption in lawful money.

A certain amount of loanable funds is always held by private persons, but since they usually keep their money deposited in banks the portion which they draw out lessens the amount which the banks can use in the loan market. The lending power of these institutions in the aggregate may be many times greater than the amount of the lawful money in their vaults, since ninety per cent or more of the trading which takes place in our large cities is done by means of bank credit and clearing house transactions.

The most common function of banks is the discount of commercial paper running for short periods of time and representing actual transfers of property in the business world. In this way the bank exchanges its well known credit for the less known credit of merchants and manufacturers. An ideal condition for a bank is one wherein the supply of good bills is sufficient to absorb all of its loanable credit and where the inflow of cash from maturing ones is equal to the outgo of new ones. There is always some difference, however, in the character and quality of bills offered for discount, and when the amount of acceptable paper is less than the amount of the bank's loanable funds, advances may be made on goods or securities that are readily salable in the market. In this way interest is earned on money that would otherwise remain idle. In

the event that securities of this character are not available at home the banker may place his surplus funds as deposits payable on demand in some other place where such securities are bought and sold. Usually a low rate of interest, say two per cent, is allowed on such deposits.

The piling up of these deposits in the banks of New York lowers the rate of interest on call money and incites speculation. If Union Pacific, for example, pays dividends of ten per cent and is selling at 170 or under, it yields 5.6 per cent on the purchase price. If the purchaser can borrow money on call at one and one-half per cent, as is the case now, he gains a profit of three and one-half to four per cent as long as such conditions continue. Speculation thus started may run a considerable time and draw in a large number of participants and extend sympathetically to the whole list. Speculators may bid up the price of stocks, and the rate of interest at the same time, until a climax is reached. Then a reaction will come, stocks will fall, margins will be exhausted, speculators will be sold out, banks may fail, liquidation will pursue its inexorable course, and a *tabula rasa* will be made, upon which a new cycle of inflation and collapse may take its start.

The essential difference between the two methods of employing a bank's resources is that discounted bills are always bringing in the means of payment of the banker's liabilities, while loans on collateral, whether payable on call or at a fixed time, depend on the sale of the securities, the selling of which may be restricted, or prevented altogether, by the lack of buyers in the market. This is an important difference. In Germany the Reichsbank is not allowed to *issue circulating notes* against collaterals, not even government bonds, while it may issue them to any extent against one-third cash and two-thirds bills discounted having not more than three months to run. Moreover, a higher rate of interest is charged on collateral securities than on bills. The aggregate amount of loans on collateral in the Reichsbank does not usually exceed fifteen per cent of the whole. An explanation of this practice is given by Dr. Koch, former president of the Reichsbank, in a paper reprinted among the documents of our National Monetary Commission, as follows:

For a bank of issue, the aggregate of whose investments must always be on a level with that of its obligations, it is not merely a question of safety, but fundamentally of the liquidity of the investments. No person who has any

acquaintance with such matters will believe that loans on securities can be compared with discounts, represented by bills carefully chosen according to sound principles of banking, with respect to the possibility of quick realization. Loans on securities are always lacking in the quality of transparency, it being often not easy to see what is behind them. They do not rest in all cases on a basis of substantial business dealings like commercial bills, and in particular bills drawn against the delivery of merchandise, which always presupposes the existence of the equivalent in commodities, or as the net proceeds of a sale. In general there are no indications as to how the credit sought is going to be used, while the probability of punctual payment depends upon just this factor. It is thus possible that the bank may be compelled in time of crisis, when its own customers are falling into arrears, to proceed to realize on securities in great quantities in order to protect its 2,000,000,000 marks, or more, of demand liabilities. There are times when it is impossible to realize on them, or at least not practicable without great losses.

The Reichsbank, although owned by private persons, is administered by the state. The profits of the shareholders are not the first consideration of the management. The public advantage takes precedence, and this is found to be best served by limiting advances on collaterals as aforesaid.

The stock exchange is a meeting place of the buyers and sellers of invested capital; that is, of incomes present or prospective. This is a comparatively modern institution because invested capital transferable by negotiable instruments is of modern origin. There were exchanges in the ancient world where traders met to deal in various kinds of movable goods. The Agora of Greece, and the Forum of Rome, and the Fairs of the Middle Ages were such exchanges, but negotiable incomes (stocks and bonds) did not then exist. At the present time no person of intelligence keeps surplus money uninvested. He buys some interest-bearing security, or puts it in a savings bank, in which case the savings bank buys an interest-bearing security, or employs it in such manner as to yield an income.

Capital is the result of saving. If not the parent of civilization, it is the indispensable promoter and handmaid of it, since capital gives mankind the leisure and the means to take new steps forward in solving the problems of human existence. It is desirable that there should be facilities for investing the savings of the people without serious delay. Such facilities promote saving. It is desirable also that investments should be reconvertible into cash without delay. The *raison d'être* of a stock exchange is to supply a place where money can be invested quickly, and recovered quickly, or

upon which the investor can borrow money immediately if he so desires. It is an incidental advantage that the stock exchange informs all investors, and intending investors, daily and without cost to themselves, of the prices at which they can buy or sell the securities on the active list of the exchange. These prices are made by the competition of buyers and sellers in the market, who are acting under the spur of self-interest. There is no other way in which true prices can be made. If the quotations so made are not precisely the truth in every case, they are the nearest approach to it that mankind has yet discovered.

The gross amount of negotiable securities admitted to the New York Stock Exchange is upwards of twenty-five billions of dollars, as shown in the following table as of the date of June 6, 1910:

Railroad bonds	\$7,181,949,250
Railroad stocks	7,205,766,185
Industrial bonds	632,446,350
Industrial stocks	3,011,885,300
Street railway bonds.....	633,206,000
Street railway stocks.....	475,659,900
Telegraph and telephone bonds.....	245,400,200
Telegraph and telephone stocks.....	530,994,700
Gas and electric light bonds.....	201,537,000
Gas and electric light stocks.....	267,366,000
Coal and iron bonds.....	84,810,500
Coal and iron stocks.....	140,781,800
Mining stocks	347,052,000
Miscellaneous stocks	233,532,700
Miscellaneous bonds	249,257,000
Banks and trust companies	134,592,800
Express companies	68,967,300
U. S. Government bonds.....	847,891,230
Foreign government bonds.....	2,293,859,300
State government bonds.....	85,403,943
New York City bonds	422,614,600
Other city bonds.....	19,455,000
	<hr/>
	\$25,314,429,058

The sales of securities on the exchange during the calendar year 1909 were upwards of twenty billions of dollars cash value. Such figures are like the distances of the fixed stars; the human mind fails to grasp them. They do not, however, tell the whole

story, for there are two other exchanges in New York which deal in negotiable securities and there are stock exchanges in Boston, Philadelphia, Pittsburgh, Chicago, San Francisco, Montreal and several other cities, which are accessible to investors and speculators on this continent.

Under the rules of the New York Stock Exchange every trade made on the floor must be settled and completed within twenty-four hours, unless otherwise specified; *i. e.*, the seller must deliver the thing sold, and the buyers must pay for it in full, at or before 2.15 p. m. of the day following the transaction. All but an insignificant part of the trading on the exchange is of this kind. If all the purchasers should pay in full with their own money there would be no resort to loanable funds. But probably nine-tenths of the transactions are speculative. In such cases a portion of the money, say ten or twenty per cent, is supplied by the buyer, and an equal sum by the broker who makes the purchase, and the latter borrows the remainder from a bank, giving the stock or bonds so bought as security for the loan. The amount advanced by the purchaser is called the margin, and there is always an agreement, express or implied, that the margin shall be kept good in case the market price of the securities declines. If the purchaser fails to respond when called upon for more margin, the broker may sell him out. The bank exercises the same privilege as against the broker. The bank may call upon the broker at any time and without assigning any reason. The percentage of the margin that may be required is a matter of bargain between the parties. If a stock is very active, *i. e.*, if there is always a large number of people trading in it, the variations, although frequent, are likely to be small, hence a small margin will suffice. If, however, the security is seldom bought or sold, a large margin is required, because a quantity may be offered suddenly to be sold for what it will bring, and there may be no bid for it at or near its customary quotation.

The making of bank loans to stock brokers is bottomed primarily on the confidence which the banker has in the broker as a person, and secondarily on the goodness of the securities offered. The *modus operandi* is substantially this: The broker, knowing from his clearing sheet of yesterday what payments he has to meet to-day, obtains from his bank in the morning authority to draw for this aggregate amount at an agreed rate of interest. As his

checks come in during the day the bank certifies them and the broker sends to the bank securities whose market value is greater by a certain margin than the amount borrowed.

These loans are usually payable on call. As national banks are forbidden by law to certify checks for a sum greater than the drawer of the checks has on deposit, the practice in such cases is for the broker to execute a promissory note, which note the banker discounts, putting the proceeds to the credit of the broker, and attaching the security to it as it comes in during the day. While this method exposes the banker to some danger of loss in the interval between the certification of checks and the receipt of the securities, such losses seldom occur. There is an unwritten rule of the stock exchange that the bank must be protected at all hazards, both as a matter of personal honor and because the stock brokerage business cannot be carried on otherwise.

But it happens sometimes that the broker himself is suddenly disabled. Such a case happened in the Columbus and Hocking Coal and Iron speculation a few months ago. Here the broker was confronted with a precipitate fall of fifty or sixty points in a stock that he and others were "manipulating," or at all events supporting, by purchases on the exchange. Three banks that had loaned their credit to him in the customary way sent hastily to the broker's office to demand security. The one whose messenger arrived first took all that the debtor could lay his hands on, but the amount was not sufficient. The others got nothing. The brokerage firm went into the hands of a receiver in bankruptcy, and the receiver made a demand upon the bank which had been so alert in collecting its claim, to surrender, as assets of the bankrupt estate, the securities so obtained. The national law forbids the giving of a preference to any creditor in case of impending failure: and thereby hangs a lawsuit which is still pending, and which may lead to radical changes in the business methods of the stock exchange and the money market. Doubtless the case will be carried to the highest court since it involves the question whether stock exchange securities pass by delivery in cases where bankruptcy is apprehended, and also what facts justify the presumption of approaching bankruptcy.

However these questions may be decided, the Columbus and Hocking example shows that it is not safe for bankers to rely upon the quotations of the ticker alone to assure them of the goodness

of stock exchange securities. If these can drop suddenly fifty points, no lenders on collateral are safe. They must have better knowledge of the character of the security they accept than the figures which the borrowers themselves may cause by bidding up prices. The ticker is not an infallible guide, nor is it the only guide which the stock exchange supplies. It requires all companies admitted to the stock list to file reports of their financial condition from time to time. If lenders do not avail themselves of this information, or if they misinterpret it, they have only themselves to blame.

The relations of the stock exchange and the money market are those of borrower and lender, but they are by no means as simple as they seem. The twain are gigantic bodies which act and react upon each other like planets revolving around a common center. It is a problem of great complexity to find the causes of the conditions prevailing at any time. Still more difficult is it to predict what conditions may prevail six months hence.

The state of the money market at the present time (August, 1910) aptly illustrates the complexity of the problem. The rate of interest for call money on stock collaterals is between one and two per cent—a very low rate. On short-term notes of good corporations, however, it is from five to six per cent, while first-class dividend-paying stocks can be bought at prices which yield the investor six to seven per cent. Money is flowing to New York from the interior, and the city banks are paying two per cent interest for country bank deposits. The surplus reserve of the city banks is upwards of fifty million dollars, the ratio of reserve to deposits being much above the legal requirement. Under such conditions a visitor from Mars would infer that money was very easy, but it is not so. The fact that it is otherwise is proved by the recent importation of gold from Europe, and also by the sudden movement of bankers to prepare for using the note-issuing privileges of the Aldrich-Vreeland act, which they have neglected during the past two years. In fact, money is tight for everybody except stock speculators. The explanation of the phenomenon is that the present is a period of distrust. The men who control the loanable funds of this country and of Europe as well, are not willing to let it go out of their hands except for short periods. Money is loaned at very low rates on call because it can be recovered quickly.

But how, it may be asked, can our city banks pay two per cent

for country deposits and lend the same money at one and one-half per cent? The answer is that it is sometimes better to lose half of one per cent than to lose a customer. Moreover, the city bank does not make all of its stock exchange loans at call. It makes some for fixed periods at rates varying from three per cent upwards, according to the time they run and the character of the borrower and his securities.

Periods of confidence and periods of depression come and go in undulations. The business world has had its ups and downs, not exactly with regularity but with something approaching it, during the past three centuries. The essential factor and prime cause of a commercial crisis is speculation leading to inflated prices and the piling up of debts based upon such inflation, which the debtors cannot pay. We had such a crisis—one of the first magnitude—in 1907. There is no evidence that the crisis was due in any special manner to stock speculation. Doubtless stock trading ran *pari passu* with other trading—it generally does. The inflation which prevailed generally did not avoid the precincts of the stock exchange, but that institution was not a sinner above others in bringing down punishment. It was the most conspicuous sufferer, however. More columns in the newspapers were given to it, more eyes were turned upon it, than upon any other. So when the rate of interest in the "loan crowd" went up momentarily to 125, there was a shock in the financial world. But the plight of the man who paid 125 per cent over night or for a few days, in order to avoid a greater loss, was not so bad as that of the merchant or manufacturer, who could not get his paper discounted at all. The benevolent usury law prevented him from paying more than six per cent and there was no money to be had at that rate on a commercial basis—none except as a matter of favor.

Banks find it for their interest to take care of their regular customers in times of panic, but they have the right to discriminate, and they exercise it. The temptation of 125, or even twenty-five, per cent is not easily resisted. Here the stock exchange exercises an influence on the money market. It can draw money from the banks that ought to be at the service of productive industry. Even banks which have no stock brokerage business of their own, sometimes turn money into the vaults of trust companies in order to reap the profit of high rates on the exchange. But this signifies

merely that water will seek its level, and that money tends to go to places where the highest reward is offered for it. This is the reason why city banks allow interest at two per cent on the balances of country banks subject to check. There is a borrower at hand who can usually pay more than two per cent for call money. The country banks must keep some balance in the city banks for the convenience of their customers. They are allowed to keep three-fifths of their legal reserve in a city bank. The law lends its influence to this extent to the piling up of money for the use of stock speculators. This system is sometimes fraught with danger, and the question has been under debate for half a century whether the payment of interest on deposits ought to be allowed at all.

How to prevent it is a question perhaps even more difficult of solution. If national banks were forbidden to pay interest on deposits, the prohibition would not extend to the state banks, trust companies and private bankers. These would pay interest for the surplus funds of the country banks; and the national banks would thus be at a disadvantage. If the country banks in the national system were not allowed to keep three-fifths of their reserves in the city banks, they would compete at a disadvantage with the state banks in their own localities. Thus the advocates of prohibition of interest on deposits always come to an *impasse*, and the old system continues. It continues because "there is money in it." It has an economic basis. I see no reason why the country banker should not make the most profitable use of the surplus funds in his charge. Self-interest prompts him to take care of his own customers first. If he does not do so, they will soon leave him. After he has done that he may properly place his surplus in a city bank of good repute and receive interest for the same. The fact that there may be a general crisis, say once in every ten years, and a spasmodic grab for bank deposits, is a problem by itself, which may be open to more than one solution. Any arrangement which should quiet the fears that lead to the grabbing of deposits would effect a cure of this disorder. This end is secured in most European countries by means of a central bank of issue.

In conclusion it may be said that the relations of the stock exchange to the money market as a borrower are of the same nature as those of the produce exchange and of the cotton exchange. The only difference is in the magnitude of the transactions. The stock

exchange is so large, its borrowings at times so colossal, that they affect the money supply of the world and are capable of absorbing the last dollar that can be tempted from the vaults of banks or the pockets of individuals in both hemispheres. This absorption may take place by the rise of prices of the securities traded in, or by the quantity offered, or both. Usually the demand for money is most imperative when the prices are highest and the quantities greatest. The question whether this condition is an evil, is in effect the same as asking whether speculation is an evil. Upon this point Governor Hughes's committee on speculation in securities and commodities last year, reached the conclusion that to some persons it is an evil, and to others not, and that there is no way to prevent it, without putting an end to trading altogether. In that view the writer concurs. It should be added that speculation has a steadying effect on the market prices of both securities and commodities. To banish it would be to banish nine-tenths of the business, in which event the fluctuations in prices would be much greater, and the work of the manipulator more facile and dangerous, than now.

THE INDEPENDENT TREASURY AND THE BANKS

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The relations which exist between our federal treasury and our banking system are in several respects unique. Our practice has been determined by political rather than commercial and financial exigencies, and in response to popular opinion molded by a vague dread of a money power. Strange to say, this public sentiment, so jealous of the safety and purity of the federal treasury administration, has not developed a consistently similar organization for any of our states or municipalities, nor can one find a precedent anywhere in modern Europe.

The normal relation between a public treasury and a bank or group of banks is exactly like the relation between any private firm or corporation and its banker. Such relation may be regarded normal since it persists throughout the United States with respect to the public funds of states and local organizations and throughout Europe with respect to national as well as local funds. Normally the bank is regarded as a place for deposit of revenue, and from it disbursements are made by check or draft. The deposited funds pass to the legal ownership of the bank and are used in any manner consistent with the prevailing rules and customs of banking, and the public usually holds in return the rights of a depositor and no more. With respect to the lending function of a bank the same analogy holds true. The properly authorized officials of the treasury may borrow in anticipation of revenue and pay interest proportioned to the nature of the loan, the character of the security and the state of the money market. The proceeds of the loan appear as a deposit subject to check and there is essentially no other effect upon the banker's assets, liabilities, reserves or lending power than would be felt in the event of similar transactions with a private corporation of equal magnitude.

For nearly three-quarters of a century the attitude of our gov-

ernment toward the banks has been one of distrust, and in the later decades this distrust has been associated with a peculiar paternalism. Not only are the banks regarded as incompetent to take care of the government business, but in a large sense they are regarded as unfit to attend to their own business, and they have been subjected to a system of regulation, both state and national, which grows more and more minute as the years pass. With this great mass of regulative law we are not concerned except where it involves the specific relation between the federal treasury and the banks. The significance of this suspicious and paternal attitude of the national government may develop in a discussion of the following propositions: First, the position of the treasury as contemplated in law and tradition is one of complete isolation. Second, the rigidity of this situation is in a measure relaxed by the practice of lending treasury funds to certain banks on collateral security. Third, the treasury undertakes to guarantee to a limited extent the current liabilities of national banks which own and are willing to hypothecate a special class of assets.

I. THE ISOLATION OF TREASURY FUNDS

It would be superfluous to review the history of the independent treasury further than to remind the reader that it is an inheritance from the Jacksonian era in American politics. It does not bear the hall mark of any eminent financier. It was forced upon the country as the only consistent alternative of the victorious party in the unfortunate contest which humbled the Second Bank of the United States and made it a scapegoat. For almost twenty years the ideal of independence was strictly adhered to. When in 1861 Congress permitted the deposit in banks of the proceeds of certain government loans, the secretary of the treasury regarding the permission as an emergency measure did not see fit to use it, announced his adherence to the principle of the independent treasury and so established it all the more firmly. When in 1863 the founding of a system of banks under federal control made the original arguments for maintaining an independent treasury no longer valid, popular prejudice was too strong to permit the national banking system to come into the full estate which reason and considerations of economy would accord it. During the half century that has supervened Congress has enlarged the use of the banks as custodians of public money, but in no case has this use been made mandatory. The discretion has rested with

the administration surrounded with abundant and, in cases, humiliating safeguards.

Besides the treasury at Washington there are nine sub-treasuries in as many of the larger cities and fourteen mints and assay offices. It is the theory of our system that all funds of the government, on hand at any time, shall be actually stored in the vaults of these twenty-four institutions in the form of "money," that is to say, in coin, bullion, notes and certificates, as in the treasure chest of some mediaeval war lord.

Since our federal revenue is so largely derived from indirect taxation the streams rise and fall with the course of certain lines of trade and rarely coincide with disbursements over any considerable period. Owing to this uncertainty in the rate of income, there is nearly always a surplus and, normally, the excess of income over outgo determines the magnitude of the treasury hoard and the amount of the circulating medium of the country condemned to idleness. In the year 1899 receipts from all sources exceeded disbursements by \$100,791,521, while in 1909 disbursements exceeded receipts by \$118,795,919.¹ This indicates a range between the greatest surplus and the greatest deficit in a single decade of more than \$219,000,000, and even in the year of greatest deficit there was at the close, exclusive of trust funds and the gold reserve, a balance of over \$65,000,000 in the treasury offices. The largest cash balance actually held in the offices of the treasury at the end of any fiscal year in the last decade was \$255,257,493 on June 30, 1907, and the smallest was \$214,206,233 on June 30, 1900. These sums include the gold reserve and in both instances represent approximately ten per cent of the entire money circulation in the country.²

These sums are significant from the point of view of their absolute magnitude and also from that of their variability. In all cases they consist of money capable of use as bank reserves. It is true that national banks may not count banknotes as part of their reserves, but since such notes are used as reserve by state and private banks, the distinction may be ignored. It may be said also that the cash reserve of banks is made up of the surplus circulation of the country. So long as there is a deficiency of money for the needs of trade it will not be deposited, or if deposited will not remain in the

¹Finance Report, 1909, p. 117.

²Finance Report, 1909, p. 233.

hands of the bank. It follows that this entire sum of over \$200,000,000, if not held by the treasury, would be added to the bank reserves, eliminating exports of gold, and would increase the cash holdings of all institutions doing a banking business by about seventeen per cent on the average. The effect of such an increase in cash reserves would depend on various circumstances. In the case of some banks it would further establish the convertibility of their demand liabilities without affecting the magnitude of these liabilities. In the case of others, by increasing the lending power it would tend to decrease the rate of discount and so the cost of conducting business in general. This diminution in the costs of competitive business, other factors remaining constant, would tend to lower prices of consumers' goods.

The first and most obvious objection to our practice is found in the social loss involved in the idleness of pecuniary capital. At a time when the country is agitated over rising prices and waste of resources, it may be worth while to consider this item of extravagance in our fiscal system.

Position of Bank Reserves in the Credit System

The significance of the segregation of treasury funds lies in the relation of money to bank credits and the analogous relation of these bank credits to the extent of industrial and commercial operations. The credit system of the country has been compared to an inverted pyramid resting on a relatively small volume of money and subject to alternate contraction and expansion with every variation in the volume of the money support. In so far as credit applies to the demand liabilities of the banks the illustration is apt enough, but as applied to credit as a whole it is not quite adequate. The deposit liabilities of the central reserve city banks approximate four times their stock of lawful money under ordinary commercial conditions. But these deposits in turn may represent half the reserves of reserve city banks where lawful money may legally and practically support a volume of deposit credit eight times its magnitude. But the deposits in reserve centers may constitute reserves for a much larger number of country banks and trust companies, in which a given volume of actual money may support liabilities varying from ten to twenty times its magnitude. When we include in our concept of a credit system the obligations of business men and firms whose

"cash" reserves consist entirely of deposits subject to check it will be apparent that the structure of such a system is rather like an inverted bell with widely flaring rim.

The banking business socially viewed is not an end in itself. It is essentially a device for liquidating private credit. The most important function of a bank is to exchange its own credit capable of ready circulation for private credit which lacks that quality. Indeed, if the notes and acceptances of individuals and firms could have the general acceptability of bank obligations no use would remain for the common commercial bank. Practically all the assets of a bank under the head of loans and discounts consist of these sound but relatively sluggish forms of credit and over against these stand its own deposit liabilities. Since many private credit transactions never get into bank, it follows that the total volume of commercial credits is greater by far than the aggregate loans and discounts or resulting deposits of the banks.

Even though many credit transactions may be settled without resort to cash funds, the fact remains that the safety of the debtor is measured by the certainty of his ability to convert his own goods or credit into bank credit at or before the maturity of his obligation. It follows that the great body of bank patrons are as vitally interested as the banker himself in any influence which affects the ability of the banker to perform his function. On the assumption that private obligations offered for discount are fully secured with respect to their ultimate discharge, the ability of the banker to serve his customer is only limited by the relation of his money supply to the volume of his own liabilities and the rate at which he may be called upon to discharge them. It appears, therefore, that the public is vitally concerned with all factors which bear upon the magnitude and stability of bank reserves, since every man's solvency depends on his ability to meet with reasonable promptness his maturing obligations. The safety of the merchant may be in jeopardy not only when the banker fails to pay his check, but just as truly when he is unable to discount his secured paper.

The waste involved in the idleness of public funds is less objectionable than the successive expansion and contraction of reserves which result from the receipt and disbursement of revenue. One phase of this movement may be illustrated by the simple case of a pension disbursement. On August 4th the treasury drew pension

checks amounting to \$14,970,000, and distributed them throughout the country. About half of this sum was drawn upon the assistant treasurer at New York. Coming into the hands of country banks, cashed or deposited, these checks are mailed to New York correspondent banks for credit. In a few days this mass of checks is presented to the New York sub-treasury through the clearing house and an equivalent amount of money is transferred from the sub-treasury to the banks whose combined reserves, in the absence of countervailing debits, are increased \$7,000,000. Without any alteration in the aggregate wealth of the country or even of New York City the lending power of New York banks is raised about \$28,000,000. In order that this new source of profit may be utilized, since nothing in the situation operates immediately to stimulate the demand from commercial sources, the competition of banks in an effort to place their funds lowers the call loan rate. This reduces the cost of carrying stocks and stimulates speculation for the rise in Wall Street.

To reverse the illustration let us suppose that the collection of duties at the port of New York in a given week reaches the not uncommon sum of \$10,000,000. This amount of money is drawn from local banks and trust companies and locked up in the sub-treasury. In as far as the effect on reserves and lending power is concerned, it might quite as well have been sunk in New York harbor. The rate for call loans rises, stocks fall or commercial paper which otherwise would have found a ready market remains unsold and the production and exchange of goods may be curtailed.

Unable to foresee these fluctuations in reserves and the consequent fluctuations in the lending power of his banker, the merchant is constrained to carry a much larger cash reserve (bank deposit) than would be carried otherwise, and the interest on this is the price he pays for this particular form of insurance, a charge that is ultimately shifted to the consumers of the goods he offers for sale or to the producer from whom he buys. By the same token, each banker in a system which presupposes independence and the absence of any joint responsibility, carries a large fund of capital devoted to no more productive purpose than as an insurance fund. This fund of ready money tends to be largest in times of stress when the needs of commerce are greatest. Witness the abnormally large reserves carried by country banks on the occasion of the report to the comp-

troller on December 3, 1907. This added cost to the banker's business is paid in higher discount rates and tends to shift to the price of commodities.

Disadvantages Culminate in New York

These movements of money from a state of vitality to one of inactivity take place in every locality provided with a sub-treasury, but they are most significant in New York. In the clearing house there the daily balances are settled in United States notes or gold certificates. The net result of these clearing operations in the month of November, 1907, was a loss for the banks of \$12,000,000, and in December it was \$4,000,000 more. That this movement of money tended to increase rather than allay the prevailing anxiety no one can doubt. During 1908, when business was depressed and loanable funds abundant, the net result of clearings was a gain to the banks in every month. The largest gain was in April, when \$40,000,000 was added to New York bank reserves, and the smallest was in September, when over \$16,000,000 was transferred from the treasury to the banks. The total gain of the New York banks from the treasury in this year of low revenue and large disbursement was over \$384,000,000. While the banks were gaining in New York they were often losing to the treasury at other points, but the net gain of banks in general was great and the effect in New York was seen in the remarkable bull movement in stocks which began in the spring and culminated just before the death of Harriman, in August, 1909.

The largest source of revenue is in the import duties, amounting in the fiscal year just closed to \$333,683,445.03. About two-thirds of these duties are paid into the sub-treasury at New York mainly from the banks of that city, and a correspondingly large part of the disbursements are made from that sub-treasury and pass to the local bank reserves. It happens that gold drawn for export is taken as a rule from the same group of banks. New York bank reserves stand in a peculiar relation therefore to our foreign trade. When imports of commodities are heavy, as they have been during the past fiscal year, the payment of duties tends to coincide with a rise in foreign exchange and threatened or actual gold exports causing a double drain of bank reserves. In this situation, it would be suicidal for New York bankers to purchase time paper with the same liberality as can be practiced by the bankers of Chicago or St. Louis. In

order to protect themselves against this double drain of funds they must lend a large portion of their credit on call or adopt the alternative policy of excessive reserves. That is to say, the ordinary stock exchange loan is utilized as an auxiliary reserve in New York much as the investment in New York exchange constitutes an auxiliary reserve for the country bank. Whatever may be thought of the expediency or morality of the stock exchange loans which represent more than a third of the credit assets of New York banks, the relation of our fiscal system to the case is obvious.

The arguments which led to the segregation of public funds before the Civil War have no force to-day. The most important purpose in establishing the independent treasury was to secure the safety of funds which, on the expiration of the charter of the Bank of the United States, were deposited in state banks. Over these institutions the government had only indirect control and the states exercised but little or none. Whether the state banks of that day were worthy of confidence need not be debated now. The situation was radically changed by the establishment of national banks, and has gradually improved as the banking business has been more fully understood and as comptrollers of the currency have developed an increasingly effective body of administrative regulations. During the last forty years the average loss to depositors in national banks has been but .0807 of one per cent a year. Had all government funds been included among these deposits with no more protection than was accorded general creditors the loss during the year of largest deposits would have been about \$205,000. While this is not a sum to be thrown away, it is less than half the annual salary budget of the treasurer's office. But when the government has intrusted any funds to the care of the banks it has assumed the rôle of a preferred creditor. Had the national banking system been treated from the outset as a fiscal agency with the government protected by a prior lien, losses from bank failures would have been negligible. The practice of the government, therefore, cannot commend itself to-day on the ground of either safety or economy.

Another reason for the isolation of public funds was the possible political corruption that might arise from an alliance between private corporations of great power and the fiscal establishment. Whatever ground there may be for such a fear must be in the memory of the political machinations of the Bank in Jackson's first

term, when the officers of that institution, put upon the defensive, unwisely accepted the challenge of the President. There was nothing in the history of the first bank to warrant such a fear, nothing in the first sixteen years of the second one. Every state and municipality in the country deposits its funds in banks and the aggregate of these public funds is great. The writer has never heard a charge of political corruption beyond such as grew out of the rivalry between institutions competing for the custody of funds. This situation would not arise where a bank or group of banks had been established with specially defined fiscal functions as is the case in Europe generally. A method may long survive its usefulness without objection if indeed it be harmless. From this point of view the independent treasury is open to attack. It is not harmless nor merely wasteful. It establishes an irreconcilable antagonism between the commercial interest and the fiscal interest in the circulating medium. We have been extremely zealous that Cæsar may get Cæsar's and forget that the money of the country has another and generally more important function than to serve as the material embodiment of the assets of one of our public treasuries.

II. THE LENDING OF PUBLIC FUNDS TO BANKS

The funds of the federal treasury arise from every nook and corner of the country, as one must realize by a thought of the ramifications of the postoffice alone. Notwithstanding the number of sub-treasuries, mints and assay offices, the convenient conduct of government business has necessitated other places of deposit and disbursement, and 418 national banks are now designated as regular public depositories. The Secretary of the Treasury selects these banks and indicates the sum which each may hold as determined by the fiscal operations on hand or contemplated in that locality. These banks, unless special arrangements are made, must transfer to the treasury all public money received by them in excess of the limit fixed by the secretary, and these transfers, together with any others made in the course of public business, must be made at the expense of the banks involved. While the banks must give acceptable security for the deposits so held, they do not pay interest upon them nor treat them in any other way as different from private deposits subject to check. At the end of the fiscal year just closed deposits of this character amounted to \$51,536,236.30, held to the credit of the

Treasurer of the United States and to that of the various disbursing officers, except postal funds, which are under control of the Postmaster-General. Until 1902 the security held by the government was in the form of its own bonds, but since that date other bonds, such as are legal investment for savings banks in New York, New Jersey, Massachusetts and Connecticut, are accepted as security.

The relation between the treasury and the depository banks may be regarded as normal and may need no comment. In so far as public funds are so held, our treasury policy is free from the criticisms that have been set forth above.

In addition to these regular depositories, 963 national banks are privileged to hold what are called "special deposits" of public funds, and it is these funds which are properly regarded as loans. They are solicited by the banks; they bear interest at the rate of one per cent per annum, since June 30, 1908; they are secured by collateral and they are made payable at a specified time, or on reasonable notice. These loans differ from true deposits in that they are exempt from the legal reserve requirements. These funds are equivalent to a temporary increase in banking capital and serve to augment reserves instead of constituting a burden upon reserves as is the case with deposits in the true sense.

The sums so held by banks are subject to wider variation than those held in the treasury offices. The largest sum loaned in this manner during the last decade was \$256,920,155, in December, 1907, while the smallest was in the year just closed, the amount of so-called special deposits on June 30, 1910, being but \$4,144,000.

The method employed in these operations may best appear from the words of the Treasurer in his report for 1909:³

The balance in banks to the credit of the general fund on October 31, 1908, was \$120,279,145.98. Owing to the large disbursements made from the treasury not equaled by income, the Secretary of the Treasury on November 18th issued a call to 839 special depository banks throughout the country for the return to the treasury by each on or before November 30th, of \$5,000 of the public moneys deposited therein. . . . The balance in banks to the credit of the general fund was reduced to \$113,578,810.64 by December 3d and decreased slowly thereafter until the close of December, when it became \$110,148,907.30. Early in January (1909) it became apparent from the large disbursements being made that it would be necessary to recall to the treasury additional deposits from banks, and accordingly the Secretary on January 11th

³Finance Report, 1909, p. 144.

issued a call to the depository banks throughout the country for a return to the treasury of a part of the public moneys deposited with them payable as follows: On or before January 23d, \$17,717,700; on or before February 10th, \$6,804,060.

The transfer of funds to and from the banks is made in lump sums roughly corresponding to the relation of income to disbursement, but at any particular moment at the arbitrary discretion of the Secretary. Since an ample working balance is kept in treasury offices, the public generally is unable to tell when these pseudo-deposits will be called or when they will be increased. The result is a speculative uncertainty which neutralizes in a great measure the benefit sought to be given by the distribution of otherwise sequestered funds. The scheme is not automatic in its operation and does not respond immediately either to fiscal or to commercial conditions. A characteristic sentence from the money market column during last winter ran as follows: "Stocks opened strong at fractional advances over last evening's close, but a persistent rumor that the treasury was about to make a call on the banks induced selling and the close was weak with losses of a point or more all over the board."

During the somewhat drastic liquidation running through the year 1907, repeated appeals were made to the treasury for funds, and these were interspersed with protests against withdrawals. The secretary seems to have accepted this new responsibility as a monitor of the money market, and responded to all such calls as the surplus revenue made possible. When the pressure on the banks reached the panic stage in November, the limit of public aid had been reached. Then followed that most remarkable proposition to sell \$100,000,000 in three per cent treasury notes for the express purpose of relieving the straitened situation into which the dealers in private credit had allowed themselves to drift.

Prior to the administration of Secretary Shaw the placing of special deposits had taken place with reference to the needs of the treasury, at least such was the common impression. But in 1906 the Secretary in his annual report announced the doctrine that his office should frankly accept the duty of regulating the money market by judicious distribution or withdrawal of public funds. He says:

If the Secretary of the Treasury were given \$100,000,000 to be deposited with banks or withdrawn as he might deem expedient, and if in addition he were clothed with authority over the reserves of the several banks, with power to contract the national bank circulation at pleasure, in my judgment no panic, as distinguished from industrial stagnation, could threaten either the United States or Europe that he could not avert. No central or government bank in the world can so readily influence financial conditions throughout the world as can the Secretary of the Treasury under the authority with which he is now clothed.*

This remarkable and ambitious program did not attract very wide attention at the time it was announced, but the events which immediately followed give it a place of historical importance along with the actions of Secretaries Boutwell and Richardson, and the pronouncements of Spaulding and Butler in the old greenback days. The report had hardly come from the bindery before one of those historic periods of liquidation had begun. "The authority with which the Secretary is now clothed" was appealed to with the result that public deposits were expanded to the extent of over \$200,000,000 to be followed by a "panic in distinction from industrial stagnation" of the most typical sort.

It is impossible to believe that any special powers of regulation or any special funds in the hands of the Secretary for that purpose could have affected the situation substantially. The policy of Secretary Cortelyou was in full accord with that of his predecessor. Public funds were unusually abundant and these were nearly exhausted by efforts at relief in the preliminary stages of liquidation, so that when the crash did come in October, little was left but a fiat, an instrument which fortunately has ceased to be invoked since the resumption of specie payments.

So long as we must adhere to the principle of the independent treasury and a policy of surplus financiering, it is doubtless well to permit the deposit of special public funds. The arbitrary doling of these funds to banks which bear no direct relation to the communities from which the funds arise must be regarded as a lame expedient. Moreover, it must be dangerous to business interests to place on the shoulders of a Secretary a responsibility for which his training and experience may have given but indifferent equipment and to accord him the power to stifle or stimulate the growth of

*Finance Report, 1906, p. 40.

private credit with which his official position has no direct connection. In the long list of able men who have held that responsible position, there are not many to whom the business interests would readily accord such power.

There is no more reason why the members of the banking profession should stand before the public treasury hat in hand than that any other group of business men should do so. It is only a few years ago that a considerable political party was demanding that the government lend capital to the farmers on mortgage. Would it be any more preposterous for the Secretary to have a special fund from which he would anticipate the foreclosures which follow a season of poor crops than that he have such a fund with which to soften the fall of a structure of bank credits which is toppling under its own weight? At any rate, it may be said in favor of the farmers' contention that they were willing to pay two per cent for the accommodation.

Of course farm credits are not like bank credits, and the provision of a special fund has not been made in either case. Moreover, it may be said that the evils involved in treasury loans are less than the evils in the alternative of segregated public funds. Our experience here simply emphasizes the vices of the original system and enforces the principle that credit expansion cannot be controlled except from within the credit system and should not be subject to unnecessary disturbance from without. Credit rises out of conditions in the market for commodities, and it is in that same market that mistakes in credit must be righted. Men who misjudge the market and so borrow or lend too much must suffer the process of correction as truly as must the farmer who realizes that he should have planted corn where he sowed his oats. The money market which is devised to perfect the operations of the commodity market is an extremely complicated and delicate machine and operates automatically. Those who buy and sell there and assume the responsibilities attending their own activity, in the absence of monopoly or fraud have a right to freedom from paternal manipulation, however well intended.

III. THE FEDERAL GUARANTY OF BANK NOTES

The third peculiar feature in the relation of the treasury to banks is found in the virtual guaranty of the banknote liability.

This guaranty is not expressed in terms by the law, but is accomplished no less effectively by being indirect. The law places a prohibitive tax upon all notes of banks except such notes of national banks as are furnished in blank by the Comptroller of the Currency. No such notes are furnished except upon application of a bank depositing with the treasurer, United States or other acceptable bonds or depositing other securities with a national currency association under conditions laid down in the act of June 30, 1908. Any of these notes when properly signed and issued by the bank are acceptable for all payments to the United States, and through such acceptance the government guaranty is affected.

The volume of notes outstanding on June 30, 1910, was \$713,430,733; all of these are secured by the deposit of United States bonds, since no banks have as yet availed themselves of privileges of further issue provided by the law of 1908.

The history of our national bank currency is too well known to be recounted here further than to say that like the independent treasury itself it grew out of conditions that are wholly passed away. These conditions were first a system of unrelated and poorly regulated banks on the one hand and the necessity for an extensive market for Civil War bonds on the other. In the absence of either of these conditions it is not likely that such a bank-note system as we have to-day ever would have been instituted. Once established the weight of inertia has been against a radical change. Moreover, the good features of the system—safety and uniformity in the currency—were so obvious and the evil effects so obscure that the public generally has shown but little response to the preaching of reform.

In a broad and general way the objections to our system of note issue are summed up in the term "inelasticity," and this inelasticity results from the measures which the government adopts to protect itself and justify its guaranty. Not only is it true that the volume of notes in the aggregate does not rise and fall with the varying need for a circulating medium in the country at large, but more important still the issues of a particular bank cannot be adapted to the needs of its particular patronage. Associated with this failure to respond to the needs of trade is another quality open to condemnation; that is the quality of expansion and contraction in response to the state of the bond market as distinct from that of the commercial credit market.

With respect to the note issues as a whole, it will be recalled that every national bank must own and deposit with the government a minimum portion of its capital in government bonds. Banks which have no real need for notes seldom fail to utilize this compulsory bond deposit for an issue of notes. For all purposes save as a reserve against deposits this minimum note issue is in effect a replacement of banking capital forced by the banking law to take the form of a relatively unprofitable investment.

Assuming that a bank is founded for the purpose of earning profits in the banking business and that the capital originally contributed corresponds to the banking needs of the particular patronage to be served, the effect of the law is to force an unnecessarily large capitalization. And this is coincident with an inflation of the circulating medium, to the extent that notes are issued against the enforced deposit.

Coordinate with this force which makes for inflation is the absence of any effective and automatic machinery for contraction. There is but one redemption agency and that is at Washington, well removed from the ordinary channels of trade. The great volume of circulation never reaches Washington save as it is withdrawn from the course of trade and expressed at considerable expense. No distant bank has any adequate motive for incurring that expense except when notes are worn and mutilated. The result is that this circulation has largely lost its character as a demand liability of the banks and amounts to a virtual exchange of government notes for government bonds. If the government should issue \$700,000,000 of legal tenders, put them out in the redemption of its own bonds, the situation with regard to the circulation of the country would be but slightly different from what we have. Such is the aspect which the note issues take when viewed as a whole.

With respect to particular banks and particular communities, the objections to our practice are even greater. It has been shown that the object of a bank is the purchase of private credit in forms unadapted to general circulation by giving in exchange its own credit in forms that are adapted to general circulation. These forms are the note and the checking account. If the bank is left to its choice it will use either the note or the deposit or both, as its customers demand. Since the aggregate of its liabilities is practically limited to the aggregate of private paper offered for discount, any limita-

tion on its power to contract obligations operates as a limit on its power to discount or afford accommodation.

Since there is in this country no legal limit to the deposit-liabilities, save in the reserve requirement, those communities which habitually use checks and have no use for notes find their banking facilities also unlimited except as by reserves. On the other hand, those communities accustomed to money payments find their banks shackled by the maximum limit to the note liability on the one hand and burdened by an unprofitable bond investment on the other. The significance of this may be clear by the experience of a country bank in the West with \$100,000 cash capital. If the community uses checks instead of money, this \$100,000 will support loans and consequent deposits of at least \$400,000. If, however, it is a money-using community, the bank must invest its money in bonds and extend its liabilities in the form of notes to a maximum of \$100,000. That is, in so far as the bank's patronage insists on using money rather than checks, to just that extent the bank's lending power is diminished by three-fourths. Putting the matter in another way, under our system of note issues, in so far as notes are actually demanded by the patrons of banks, we must devote four times the capital to the banking business that would otherwise be required. It is needless to comment on this waste of banking capital and its social significance. Fortunately the use of checks is gradually extending and the burden forced upon us by an unscientific system is growing less under normal business conditions. However, the inconvenience of tight money seasons and the high rates exacted of borrowers at such times are the price we pay for this survival of an ancient régime.

Reports of the comptroller frequently discuss the "profit on circulation" coming always to the conclusion that any such profit is small but real. Such a conclusion would seem to answer the arguments of those who object to the system on the ground that banks earn excessive profit on their notes, as well as of those who object because there is no profit in the notes. The merit of all such discussion turns on the meaning of profit. As against capital lying idle, of course there is a profit in using it as the basis of a national bank note issue. As against the same amount of capital used as a reserve against deposits there is a very real loss on all the capital used as the basis of a national bank-note issue.

As capital engaged in the separate departments of any business enterprise seldom earns the same returns, but is distributed to the departments in such manner as is supposed to yield the most on the whole, just so our national banks, except for the legal requirement of a minimum bond deposit, invest as little in the note issuing function as is consistent with the demands of patronage and as much in the extension of deposits as the same conditions justify. While in Europe to-day, as in America before the war, it is quite possible to conduct a safe and profitable banking business in which all liabilities take the form of notes; such an institution could not survive in this country at all under our national banking law.

That the note issue is generally on the margin of profitableness is evidenced by these facts. Many issues are at or near the minimum bond deposit. A few banks maintain their bond deposit and do not issue any notes at all. State banks without the right of issue compete successfully with national banks in the same communities and substantially the same class of business. As a result of the essential unprofitableness of note issues the total volume of notes rises with any fall in the market price of government bonds and falls with a rise in price of these securities. In the latter case banks retire circulation, retrieve the bonds and sell them for the premium.

One of the worst features of our present system is the fact that it beclouds public understanding of the banking business, especially of the note-issuing function. After forty years of this sort of paternalism it is not strange that a considerable body of persons take the next plausible step and demand that the government guarantee the convertibility of the deposit liability as well.

More recently, as so-called deposits of government funds have constituted a significant temporary addition to the banking capital, there has been a tendency for the note circulation to rise as the deposits decline. The bonds, having been held for security of special deposits, are often left in Washington as a security for new notes. In so far as the new notes are used as reserves by state banks, this change in the national bank liability from the form of public deposits to that of notes may serve to prevent the contraction of credit which would have resulted from the withdrawal of deposits alone.

The foregoing objections to the bonds as the basis of bank

note issues are not removed by the Aldrich-Vreeland Act of 1908. While the new law admits of circulation based on commercial paper, its issue is hedged about by such safeguards as would make it available only in the most acute emergencies. In the first place, no bank can issue notes on this plan except it have outstanding circulation based on bonds to the extent of forty per cent of its capital stock. The amount it may then issue against commercial paper must not exceed thirty per cent of its capital and surplus. The rate of taxation on such notes is so high as to preclude possibility of profit on the issue, and an issue under such circumstances would be an acknowledgment of difficulties which no particular bank would willingly make. Finally, any bank choosing to avail itself of the new privilege of issue must not only convince the currency association to which it belongs of the necessity of such action, but must convince the Secretary of the Treasury as well, for with him lies the final discretion as to the expediency of the proposed increase in circulation. Manifestly, the machinery provided is too cumbrous for use in a real emergency if the law is to be obeyed in its letter and spirit.

The general subject of currency reform is not within the scope of this paper, but it may be said that no solution of that problem will be adequate which ignores the relation of the treasury to the banks. Whether the outcome be a central bank modeled on any of the plans proposed or simply a modification of the constitution and relation of existing independent banks, the treasury board must be abolished, the fiscal operations must cease to disturb commercial operations, and the Secretary of the Treasury must be relieved of responsibility for the money market.

NATIONAL BANKING SYSTEM AND FEDERAL BOND ISSUES

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Years count in a country so new as the United States, and the national banking system may be regarded as one of our time-honored institutions. For nearly half a century, the national banks have been dominant among the banks of the United States, which as a whole measure more than one-third of the banking power of the world. Our present national banks, the result of the latest attempt to establish banking by direct authority of the federal government, have long survived the period allotted their predecessors, the First and Second Banks of the United States; and the existing federal system of banks bids fair, if its great prestige at this time and past record are indications, to continue indefinitely as the most important of the several groups or classes of banks operating in the field of credit and exchange.

From the earliest days of banking there has been close intimacy between that function and the needs of government; in fact, banks grew out of such necessities. The Bank of Venice, supposed to have been formed in 1171, was organized for the purpose of funding the public debt. The Bank of Genoa, 1407, had a similar origin; while the Bank of Amsterdam, 1609, was organized to handle more effectively the accumulations of light-weight coins brought into Holland through its great foreign trade of that time. A loan to the government of £1,200,000, its entire capital, was the beginning of the Bank of England, in 1694. The present Bank of France, which has served the people of that country so well since 1800, was founded by Napoleon to act both as a fiscal agent and an aid to commerce. In our own country, the Bank of Pennsylvania, 1780, was organized by patriotic citizens almost solely with a view to financing the war then in progress. The First and Second Banks of the United States were most intimately related to the fiscal requirements of the federal government; and, of all examples

history affords, none can match the tremendous necessities that led to the passage of the national currency act of February 25, 1863, from which dates the beginning of our national banking system.

A civil war, the costliest and most prodigious ever known, was then in progress. The existence of the United States as a nation was at stake. Wars mean expenditure. They are fought by the army, the navy and the treasury. Without the latter, the army could never be recruited and maintained and the navy would be helpless. Some of the greatest battles of the Civil War were fought in the United States Treasury; and Hugh McCulloch, who as the first Comptroller of the Currency, organized the national banking system, and later twice held the treasury portfolio, states, in his "Men and Measures of Half a Century," that, next to Lincoln himself, the man most entitled to the credit of saving the nation was Salmon P. Chase, Secretary of the Treasury. Without any previous financial experience, he was called upon to provide ways and means of financing the war, and the huge sums raised by the various expedients which he employed are appalling in their magnitude even in this day of gigantic figures. The public credit was at a very low state immediately preceding the outbreak of the war. At the close of the year 1860 the national debt was only \$65,000,000. With bills maturing January 1, 1861, requiring payment, the then Secretary of the Treasury offered \$5,000,000 of treasury notes for sale, and was able to dispose of them only after considerable effort at twelve per cent per annum. At the close of the war in 1865 the total ascertained indebtedness of the United States was \$2,807,951,000.

The federal charter of the Second Bank of the United States expired in 1836, and from that year until 1863 the field for the circulation of bank notes was occupied by the issues of state banks. These at the outbreak of the Civil War amounted to about \$202,000,000, and compared with specie were to a large extent at a discount of from one to five per centum. Lack of uniformity in the paper currency, long recognized as one of the evils growing out of state bank issues, became more troublesome as the war progressed; and one of the two principal reasons advanced in behalf of a national circulation was the desirability of securing a uniform bank currency. The other—and perhaps the determining one—was the necessity of making a broader market for government bonds.

As early as December, 1861, the treasury and all the banks in the United States suspended specie payments. Gold was at a premium and the government was obliged to resort to an issue of \$50,000,000 in demand notes. The first legal tender act, passed February 25, 1862, permitted the issue of \$150,000,000 so-called "greenbacks." Congress on July 11, 1862, authorized an additional \$150,000,000 in legal tenders. By the early autumn of that year the demand notes depreciated below specie by as much as eleven per cent. In the midst of these issues of legal tenders, and with the financial problems of the war becoming more and more difficult, the plan of a national banking system was taking shape. The first official suggestion relating to it is found in the annual report of Secretary Chase to Congress in December, 1861, at which time, however, he seems not to have favored the organization of new banks so much as the issuance of national notes to existing institutions, to be secured by the pledge of United States bonds. The absence of any suggestion in his report favoring the establishment of a banking system indicates clearly that the government was seeking, above everything else, a market for its bonds. Soon after the report was submitted to Congress, Hon. E. G. Spaulding, a member of a sub-committee of the committee on ways and means, entered into correspondence with the Secretary of the Treasury with a view to carrying out the suggestion contained in his report. Mr. Spaulding enlarged upon the idea by drafting a bill based in great part upon the free banking laws of several of the states. The bill was not presented until July, 1862, when it was referred to the committee on ways and means. In the meantime, the treasury was financed through issues of legal tender notes which were immediately available. Another cause of delay was the strong opposition of the state banks to the new measure. At the beginning of 1863, there were 1,466 banks in the United States, with an aggregate capital of \$405,000,000, and their circulation at that time had reached \$238,677,000. The time had arrived, however, when consideration of the national currency act could no longer be postponed. It was introduced in the house January 7, 1863, and referred to the committee on ways and means, by which, largely owing to the opposition of state banks, it was reported adversely. On January 26 it was introduced in the senate by Senator Sherman. It passed the senate February 12, 1863, the house agreed to it without amendment,

February 20, and it became a law February 25, 1863, by the signature of President Lincoln.

By this act, banks operating immediately under the supervision of the government were permitted to be established, and they were given power to issue circulating notes secured by the pledge of United States bonds and guaranteed by the government. Hugh McCulloch, who had long presided over the State Bank of Indiana, was appointed Comptroller of the Currency. No fitter selection could have been made. His long and successful experience as a banker and his familiarity with the subject, both in theory and practice, admirably equipped him for the responsible work of organizing the new system. In actual operation, the act of February 25, 1863, soon proved to be defective in several important particulars, chief of which was its failure to provide for the redemption of bank notes except at the counters of the issuing banks, for which purpose they were required to maintain a reserve of twenty-five per cent. One of the main objects of the act was to encourage the conversion of state banks into national institutions. It was found to be ineffective in this direction because the state banks were reluctant to abandon their old names in exchange for numerical titles, such as "First," "Second," "Third," etc. These objections and others of a minor character resulted in the repeal of the act of February 25, 1863. This was done by the act of June 3, 1864, which was substantially a re-enactment of the previous law with such corrections as the experience of a few months of actual operation demonstrated to be necessary.

Many legislative changes affecting national banks have been made since the organic acts were passed. Among the earlier, was the act of March 3, 1865, imposing a prohibitive tax of ten per cent on the circulating notes of state banks. This resulted in giving the national banks exclusive circulation privileges, which they enjoy to this day. The tendency of later laws has been to liberalize the system as it has developed strength. In 1874, the system was so far regarded as a fixture that Congress, in passing some amendatory legislation, saw fit to declare "that the act entitled 'An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof, approved June 3, 1864,' was hereafter to be known as 'The National Bank Act.'" A national bank redemption agency was authorized by the

act of June 20, 1874, and this resulted in the establishment of a redemption bureau in the Treasury Department at Washington, the expense of which is borne by the banks according to the amounts of circulating notes redeemed for each during the year. By the same act, the requirement that reserves be maintained against circulation was repealed.

All national banks are chartered for a period of twenty years. Congress passed an act, July 12, 1882, to enable national banking associations to extend their corporate existence for a further period of twenty years and, in 1902, a similar act was passed. The acts of 1863 and 1864 limited the aggregate amount of circulating notes which might be issued to \$300,000,000. This limit was subsequently raised to \$354,000,000 by the act of July 12, 1870, and was entirely removed by what is known as the "Resumption Act" of January 14, 1875.

It is hardly necessary to review step by step the legislation by which the national banking laws have been brought to their present satisfactory state. The Act of March 14, 1900, which gave finish to, and rounded out, the system, has had a greater influence upon national banking than all the legislation preceding it. Under this act the minimum capital was fixed at \$25,000 in any place the population of which does not exceed 3,000 inhabitants. The former minimum was \$50,000, and the object of the amendment was to encourage the organization of small banks in communities which were denied banking privileges because of inability to qualify with the larger capitalization. The provision was also intended as an inducement to the conversion into national institutions of state banks having a capitalization of less than \$50,000. The act repealed the former law which authorized banks to take out circulation only to the extent of ninety per cent of the market value and not exceeding the par value of the bonds deposited as security therefor, and provided that notes equal in amount to the par value of bonds deposited could afterwards be taken out. Banks were also permitted to take out circulation up to the full amount of their capital, whereas until the date of this act a bank could take out circulation only to the extent of ninety per cent of its capital. The tax upon circulation was reduced from the former rate of one per cent per annum to one-half of one per cent per annum when secured by two per cent

bonds which the act authorized to be exchanged for old issues bearing higher rates.

As the result of the passage of the Act of March 14, 1900, a remarkable development has taken place during the last ten years. In his report to Congress, December, 1909, the Comptroller of the Currency stated: "Since March 14, 1900, the date of the act authorizing the organization of banks with a capital of \$25,000, charters have been granted to 4,308 associations, with an aggregate capital of \$261,083,300, a number greater by 691 than the number of banks in existence on the date of the passage of the act in question." How great an effect the act has had upon circulation accounts is shown by the statement that on the day it became a law there was outstanding \$216,374,795 of notes secured by bonds, while on June 30, 1910, the aggregate was \$685,517,013. This increase of \$469,000,000 in circulating notes during the last ten years has no doubt had a marked effect upon prices in the United States. At times there has been evidence of redundancy. This is particularly noticeable in the redemptions of circulating notes, which, during the year 1909, reached the enormous total of \$489,923,468.

The number of national banks in operation June 30, 1910, was 7,145. Their combined capital was \$989,567,114, surplus \$644,857,482, undivided profits \$216,546,125 and their circulation \$675,632,565. Their individual deposits aggregated \$5,287,216,312, and their combined resources were \$9,896,624,696. The following table from the report of the Comptroller of the Currency shows for 1909 the banking power of the United States as indicated by the volume of capital stock, surplus, deposits and circulation:

	Number.	Capital.	Surplus, etc.
National banks	6,893	\$933,979,903	\$795,077,107
State, etc. banks.....	15,598	866,056,465	1,039,548,321
Non-reporting banks ¹	3,021	55,951,000	27,075,500
	25,512	\$1,855,987,368	\$1,826,600,928
	Deposits.	Circulation.	Total.
National banks	\$4,896,462,203	\$636,367,526	\$7,261,886,739
State, etc., banks.....	9,209,462,780	11,115,067,566
Non-reporting banks	389,700,000	473,626,500
	\$14,495,624,983	\$636,367,526	\$18,850,580,805

¹Number of banks and amounts estimated.

²Includes government deposits.

It will be observed from the foregoing that in resources state banks, trust companies, etc., combined, exceed the national banks. The tendency in this direction during late years has led to some agitation in favor of further liberalizing national bank laws so as to permit national banks to make loans on real estate and to accept some other classes of business which now fall naturally to trust companies. There have also been suggestions relating to a change in the law as to the reserves of national banks, in order to enable them to compete with trust companies in this respect. None of these suggestions has taken form as yet, but some of the large national banks of the country have affiliated themselves with trust companies in such manner as to accomplish rather effectively any object that might be attained by permission to engage in business which is now forbidden to national banks.

Although there were in operation, June 30, 1910, 7,145 national banks, 9,803 have been organized since the beginning of the system. Complete figures are not available for 1910, but on October 31, 1909, there had been 9,572 national banks organized, of which 484 were eliminated as the result of insolvency, and 2,063 placed in voluntary liquidation. At that time the affairs of 416 insolvent banks had been liquidated, creditors having received on the average 82.29 per cent of their claims. At the date of failure, circulating notes of these banks aggregated \$21,228,613, secured by bonds of the par value of \$23,917,150, from which was realized \$24,811,757, or \$3,583,144 in excess of the circulation for which the bonds were pledged.

From the beginning of the national system to June 30, 1909, taxes paid on circulation, capital and deposits have aggregated \$183,662,698.98. In the annual report of the Comptroller of the Currency for 1909, it was shown that the expenses of the currency bureau from 1863 to that date were approximately \$25,000,000. Thus the banks have paid to the government over and above the cost of operation of the currency bureau, more than \$158,000,000. The tax paid on circulation alone has averaged annually about four times the average annual expense incident to the operation of the currency bureau. This fact has led to the suggestion that the circulation taxes should be further reduced. Even under the liberal provisions of the Act of March 14, 1900, allowing circulation up to the par of the bonds pledged as security, there is still only a small

margin of profit to the banks in their circulation accounts. In his annual report for 1909, the comptroller shows that, with the market price of two per cent bonds at 101.052, the profit on national bank circulation is only 1.334 per cent. The profit on circulation secured by Panama bonds with a market value of 100.595 was only 1.384 per cent, while the profit on circulation secured by 4s of 1925 with a market value of 117.320 was 1.211 per cent.

A section of the Currency Act of June 3, 1864, authorized the use of national banks as depositories of public funds. This has been amended from time to time. At present any national bank may be designated by the Secretary of the Treasury as such depository. The banks chosen are required to secure public deposits by the pledge of United States bonds *and otherwise*. The phrase in italics was construed by Secretary of the Treasury Shaw to include state, municipal and railroad bonds. His construction was apparently confirmed by Congress in the Act of March 4, 1907, requiring the secretary to make public a statement before the first of January of each year of the securities required during that year for such deposits. The present Secretary of the Treasury announced last December that for the year 1910 he would accept United States, Philippine, Porto Rican and District of Columbia bonds at par, bonds of Hawaiian Territory at ninety per cent of par, and bonds of the Philippine Railway Company at ninety per cent of their market value, but not exceeding ninety per cent of par. June 30, 1910, there were 1,378 depository banks, of which 414 held regular accounts. These latter are utilized mainly in the collection of the revenues and in making disbursements. There were 964 temporary or special depositories with no other function than to hold the funds lodged with them. On all special and additional deposits, that is such as are not required by the treasury to be maintained for its own convenience, banks pay interest at the rate of not less than one per cent per annum on the average monthly balances. June 30, 1910, the depository banks held to the credit of the treasurer and disbursing officers a total of \$52,209,585.

With respect to the withdrawal of national bank circulation, the Act of May 30, 1909, provides that not more than \$9,000,000 lawful money shall be deposited in any one month for that purpose. The limit was formerly \$3,000,000. This restriction does not apply

to the additional circulation authorized by the Emergency Currency Law.

So far as reserve requirements are concerned, there are three classes of national banks. Those in the central reserve cities of New York, Chicago and St. Louis must maintain in their own vaults against deposits, exclusive of government funds, a reserve of twenty-five per cent in lawful money. Those in forty-six reserve cities must also keep twenty-five per cent against such deposits, but one-half of this may be kept with banks duly qualified as reserve agents in the central reserve cities. All other banks are required to have a reserve of fifteen per cent, of which three-fifths may be kept with banks in either reserve or central reserve cities.

The interest bearing debt of the United States on August 15, 1910, aggregated \$913,316,590, as follows: four per cent loan of 1925, \$118,489,000; three per cent bonds of 1908-18, \$63,945,460; two per cent consols of 1930, \$646,250,150; two per cent Panama bonds of 1936 and 1938, \$84,631,980. Roundly, eighty per cent of this entire debt is held by the national banks. They have deposited with the Treasurer of the United States \$689,123,510 to secure circulation and \$38,314,200 to secure deposits of public moneys. The Comptroller of the Currency estimated in his report for 1909 that on September 1st of that year, according to reports of condition of national banks, there was evidenced the ownership by the banks of other United States bonds to the additional amount of \$23,145,640. If the unpledged holdings of banks have not been decreased since then their present ownership, including bonds deposited as security for circulation and public moneys, would aggregate \$750,583,350, leaving only \$162,733,240 held otherwise than by the banks. It is probable, however, that some of the unpledged bonds then reported have found their way to circulation accounts during the year. This enormous holding of government bonds is largely the result of legislation contained in the Act of March 14, 1900. Among other things, that act provided for refunding the national debt, except that portion of it represented by the 4s of 1925, of which there are now outstanding \$118,489,000. There were refunded: 3s of 1908-18 to the amount of \$132,449,900, 4s of 1907 to the amount of \$441,728,950, and 5s of 1904 to the amount of \$72,071,300, making a total of \$646,250,150 bonds bearing three per cent, four per cent and five per cent interest, refunded into consols of 1930 bearing two per

cent interest. The exchange was effected at a net profit to the government of \$16,551,037.54. As the new consols were favored in circulation accounts by a reduction of the tax on circulation to one-half of one per cent per annum, as against the old rate of one per cent, they naturally found ready market with the banks. Out of a total issue of \$646,250,150 consols, they have lodged at the treasury either as security for circulation or public deposits, \$603,916,700. The Panama issues, which have the same circulation privilege, aggregate \$84,631,980, and these were sold at a premium of \$2,677,614.83. The banks have on deposit at the treasury \$82,321,020 of these bonds either as security for circulation or deposits. These figures show that the market for our low interest bearing bonds has been found almost exclusively with the banks. It was always an artificial market, resulting from special inducements, and was almost wholly unrelated to an investment basis. The 2s of 1930, during the period of surplus revenues, from 1903-1906, sold as high as 110 in the market, at which time British consols bearing two and three-quarter per cent were selling below 90. Many banks purchased bonds at high premiums in order to qualify as depositaries of public moneys, and it has been estimated that on the whole the average cost to the banks of their enormous holdings of the consols is in the neighborhood of 105. The deficient revenues in recent years have resulted in great withdrawals of public moneys from the banks. From as high as \$249,233,643 on December 27, 1907, deposits fell to \$33,764,569 on April 5, 1910, releasing among other securities many millions in government bonds. With an important avenue for their use thus closed, prices fell to points dangerously close to par. As a result of this decline it has been estimated that banks have suffered a depreciation in premiums on government bonds anywhere from \$25,000,000 to \$30,000,000.

Such was the state of affairs when the Tariff Act of August 5, 1909, was passed, which contained legislation authorizing an additional issue of \$290,569,000 bonds to complete the construction of the Panama Canal. These bonds are to bear interest at a rate not exceeding three per cent. The Act of June 28, 1902, authorized \$130,000,000 Panama bonds to bear interest at the rate of two per cent per annum, and of these \$84,631,980 have been issued. As shown above, with the exception of a little over \$2,000,000, they are all owned by national banks and were sold by the government

at prices ranging from 102.2778 to 104.036. Even before the passage of the Act of August 5, 1909, it had become apparent that the government could no longer market a bond bearing a rate as low as two per cent. The artificial market was exhausted; and, owing to the redundancy following the currency panic of 1907, the national banks were having great difficulty in keeping their notes in circulation. There had been a great increase in circulation during and immediately following the panic. October 1, 1907, the outstanding bond secured circulation was \$556,101,330. In three months it rose to \$643,459,898; and, notwithstanding the general decline in business which was the aftermath of the great disturbance in 1907, it never sought retirement. Thus with circulation accounts full and overflowing, the bank market for low interest bearing bonds practically disappeared. When, therefore, the tariff bill was introduced in the senate the chairman of the committee on finance of that body announced that legislation would be required in the pending bill to change the character of the bonds which may be issued. He admitted that the twos could only be purchased by or for the national banks, and that it would not be possible to sell to individual investors a considerable amount of bonds of this character at par.

The bond legislation contained in the Tariff Act of August 5, 1909, fixing three per cent as the maximum rate of interest which the bonds may bear, seems utterly to have disregarded the equities involved in the enormous bank holdings of the two per cent issues. Leaving the tax on circulation to be secured by the new bonds at one per cent, it discriminated against the 2s. The reduction in the circulation tax by the Act of March 14, 1900, was to make refunding attractive and to induce the banks to part with their holdings of three per cent, four per cent and five per cent bonds in exchange for the two per cents. An increase of one per cent in the interest rate would have required, in order to establish a parity between the new bonds and the 2s, that there be also an increase of one per cent in the tax on circulation secured by the 3s. In other words, to place the proposed new 3s on the same footing with the old 2s, the tax on circulation secured by the former must necessarily be one and one-half per cent, the tax on the latter being one-half of one per cent. An effort to introduce some such provision into the law failed, with the result that notwithstanding the treasury was in need of funds to meet canal expenditures, it has never been able to avail

itself of the bond authorization in the tariff act. The Secretary of the Treasury was compelled to announce that the Treasury Department would not issue any of the new Panama bonds before the next Congress had had the opportunity to change the circulation tax, and he declared that he felt it a duty of the government to see that the two per cent bonds have the protection of a parity. In the meantime if treasury conditions demanded it he proposed to sell only three per cent certificates of indebtedness with a term limited to one year. These latter were originally authorized by the War Revenue Act of 1898, and this authority was confirmed and enlarged by the Tariff Act of August 5, 1909. No occasion has since arisen for a resort to temporary certificates, but the general fund of the treasury, out of which Panama expenditures have been met, was entitled to reimbursement on August 15, 1910, in the sum of \$121,228,305.66. Congress has not yet seen fit to take any steps to relieve the situation, and the bond authority of the recent tariff act is still regarded as unavailable. The disinclination to make the necessary adjustment of the circulation taxes is understood to be due to the desire not to introduce any financial legislation into a situation which the National Monetary Commission, authorized by the Emergency Currency Act of May 30, 1908, and now engaged in a study of the currency, wishes to control.

Following the currency panic of 1907, great pressure was brought to bear upon Congress to amend the banking and currency laws in such manner as to prevent a recurrence of similar trouble. This led to the passage of "An act to amend the national banking laws, approved May 30, 1908," popularly known as "The Emergency Currency Law." It is to expire by limitation on June 30, 1914. Meantime should there be an emergency which in the opinion of the Secretary of the Treasury would justify additional bank circulation, it may be taken out in either of two methods prescribed by the act as follows:

1. National banks occupying contiguous territory may organize a national association. There must be at least ten national banks in each national currency association, and the aggregate capital and surplus of such national banks must be at least \$5,000,000. No national bank may join a national currency association unless it has an unimpaired capital, and surplus of not less than twenty per cent. After the formation of an association any national bank belonging thereto, whose outstanding circulating notes actually issued against

United States bonds amount to not less than forty per cent of its capital may obtain additional circulating notes by depositing with the association in trust for the United States any securities, including commercial paper. But additional notes will only be issued upon the recommendation of the Comptroller of the Currency and the approval of the Secretary of the Treasury, and then not exceeding seventy-five per cent of the cash value of the securities or commercial paper so deposited. There is a proviso also that no national bank association shall be authorized in any event to issue circulating notes based upon commercial paper in excess of thirty per cent of its unimpaired capital and surplus.

2. National banks possessing the same qualifications as to unimpaired capital and surplus required of banks joining a national currency association, and whose circulating notes outstanding and actually issued against United States bonds are equal to forty per cent of its capital stock, may obtain additional circulating notes not exceeding ninety per cent of the market value but not in excess of the par value of bonds or other interest bearing obligations of any state of the United States, or any legally authorized bonds issued by any city, town, county, or other legally constituted municipality or district in the United States which has been in existence for ten years and which for a period of ten years previous to such deposit has not defaulted in the payment of any part of either principal or interest of any funded debt authorized to be contracted by it, and whose net funded indebtedness does not exceed ten per cent of the valuation of its taxable property.

State, city, town, county and other municipal bonds of the character described above are also acceptable as security for additional circulation taken out through the medium of a national currency association, and will be received by the treasury at ninety per cent of the market value, but not exceeding par. The limit of such additional circulation is placed by the law at \$500,000,000. Additional circulation is subject to a tax of five per cent per annum for the first month, which is increased one per cent per annum each month thereafter until it reaches ten per cent. No occasion has yet arisen for the use of any of this circulation, but the treasury has made complete preparation for it by having \$500,000,000 printed which is held in stock ready for issuance in case conditions should require it.

The national banks of the District of Columbia were the first to organize a currency association. They formed one June 18, 1908, largely at the instance of the then Secretary of the Treasury, who desired that the capital should set an example for the rest of the country. No other associations were organized until the summer of 1910, when Secretary MacVeagh made an effort to induce other

sections of the country to provide and have ready a workable equipment so that there might not be any delay in the event of a necessity for issuing additional circulation. As the result of this effort there have been formed currency associations in New York, Boston, New Orleans, Philadelphia and Atlanta, Ga. As this is being written many other sections have under consideration the formation of associations.

The latest legislation having a bearing upon either national banks or government bonds is to be found in the Act of June 25, 1910, to establish postal saving banks. This law authorizes an issue of two and one-half per cent bonds, but they are not available as security for national bank circulation. In case postal deposits should reach any considerable figure some portion of them might be invested in these bonds, thus placing the treasury in funds and avoiding, for a time at least, any financing on account of the Panama Canal.

There is also a possibility that the proceeds of the two and one-half per cent bonds authorized by the postal savings bank law might be utilized in refunding the \$63,945,460 United States 3s of 1908-18 which are payable at the pleasure of the government at any time before August 1, 1918. If a central bank of issue shall ever be established, supplanting the national banks in their note issuing functions, a very great problem must be solved as to the disposition of the present enormous bank holdings of government bonds. It is thought by some that the postal savings bank law may afford relief in this respect; but, in order to do this, the growth in postal savings deposits would have to exceed anything that the most ardent advocates of that scheme have ever claimed for it. Postal saving banks have been in existence in England since 1861. In 1908, their deposits were in the neighborhood of \$782,000,000. It may not take so long in the United States to develop a postal savings bank system with that amount of deposits, but it will probably be many years before this figure is reached. Nothing less than such a sum would suffice to relieve the banks of their holdings of government bonds should the circulation privilege be transferred to a central institution.

It will be observed that the history of national banking is closely interwoven with that of government bonds. Forty-seven years ago the system was established to help make a market for them. The

banks rendered noteworthy service in refunding the war issues during the period from 1870 to 1879, and finally under the stimulus of the Refunding Act of March 14, 1900, they were induced to become the holders of a very large part of the national debt, their ownership now representing four-fifths of the whole.

In the main the national system has worked well. It has unquestionably furnished a perfectly secured and a uniform bank note circulation, but it has failed in one important respect. Circulation has never been responsive to the business requirements of the country. It has almost invariably expanded when it should have diminished, and contracted when it should have expanded. Related as note issues are to government bonds, circulation has followed the price of these securities in the market and not the volume of business. Lack of elasticity is the vital defect of our bank currency. Chambers of commerce, bankers' associations, congressional committees, comptrollers of the currency and secretaries of the treasury have for years sought the solution of this problem. The remedy is yet to be found. Perhaps the Monetary Commission will find it.

ENLARGEMENT OF CLEARING HOUSE FUNCTIONS

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Though clearing houses have long existed, the fact that these associations were established for one special purpose appears to have clouded the further fact that their existence creates an organization susceptible of uses other than those at first contemplated. Of late years, development has occurred in channels of much importance and it is interesting to note these as indications of possibilities of the future.

To Boston belongs the credit of the first step in enlarging the functions of a clearing house association through the installation of a system for the collection of country items. The example set by Boston has been followed by other clearing houses with results both satisfactory and economical. Under such a system of what may be termed the country clearing house the work of the transit department of each bank is materially reduced. Various rules have been or may be adopted by the individual clearing house, but the main principle is in all cases the same, viz., to effect collection through one channel, with the consequent advantages of saving in rate of exchange, in postage, and in labor; besides control is kept of the disturbing factor of exchange charges. Small items upon which a minimum collection charge would be made are thus collected as a part of a total letter at a large saving through pro rating the exchange charge, as well as through saving in office costs. It need not be pointed out that the power exercised by such an organization, and the pressure that may be brought to bear in lessening charges are great. In consequence strides have been made in the matter of economy in the collection department which would have been impossible for individual banks. In Boston costs have now been brought to a nominal figure and in other centers a large reduction has been made; in Kansas City the cost is now less than half that ruling at inception

of the system in 1905, and a further reduction is being constantly made. Costs are pro rated to each bank, so that each is accurately charged in proportion to the amount of its items. The system has worked admirably and its advantages are obvious, not only in the saving effected but in the control which can be exercised over all exchange questions through the organization now at the disposal of clearing house committee. There are few questions more troublesome than that of exchange and no apology is required for a system and organization which tends to lessen its difficulties.

A movement of greater consequence has been started through the installation of the office of clearing house examiner in many centers, and the credit for this movement belongs to Chicago. Much has been written with regard to the general work of clearing house examinations, but little has yet been said as to the possibility of further development through such an office, more especially with regard to the question of credit information. The original objects sought in the installation of the office were to detect instances of unsound banking in any direction, to note duplications of borrowings by the same client at different banks, and to enable the clearing house to take preventive rather than remedial measures by applying an earlier remedy than is possible for national or state officials, and by such early action to remove unwholesome conditions from any bank in the association. It has long been recognized that no bank can be in unsound condition without hurt to the whole local banking community; the supervision of the clearing house is therefore justifiable and if such supervision be sufficiently close and all irregularities be promptly checked, it becomes possible for the confidence of the public to be restored during any unwarranted run on an individual bank by the announcement of clearing house support; panic may be thus averted, and with the examiner's organization now existing it is practicable for the clearing house as a body to exercise such supervision of any weak bank as to amount to a virtual taking over of its management till it is again in sound condition.

Further possible developments are now becoming apparent. We are but at the beginning of the era of usefulness of such departments, and careful analysis tempts the belief that in the extension thereof may lie a partial solution of many grave difficulties that beset our banking system.

Consider the question of commercial credits. Were our system

such as obtains in countries where commercial paper takes the form of bills accepted by a strong bank, and where an ultimate market for the discounting of paper is found in a central bank, the position would be different, but we have to deal with conditions as they exist, and the extension of the scope of clearing house departments may develop a national system for disseminating credit information supplementary and superior to any afforded by mercantile agencies, or a bank's own research.

It has unfortunately been the case that banks have extended commercial credits largely upon the strength of the borrowers' own unsupported statements coupled with a certain general knowledge on the part of the bank. The fear of losing what has been profitable business may prevent the banker from insisting upon evidence which his own prudence suggests ought to be given. Every banker has at times extended credit beyond what his own judgment would warrant, fearing that his refusal might result in the loss of a valuable account. He decides to take a certain risk in order to retain what has been profitable business.

If, however, the demand for information be made through an examiner, that is, by the clearing house as a body and not by an individual bank, borrowers cannot refuse satisfaction. Time must elapse before the commercial community recognizes and grows accustomed to such requirements, but in the meantime steps can be taken to improve conditions. Copies of all borrowers' statements and other credit information can be filed with the examiner and all new lines of credit opened can be reported to him; comparison of statements with others listed in his files may lead to suspicion of misrepresentation; and there may be in his possession information showing that the borrower contemplated inadvisable loans. In such a case, the examiner may, with the sanction of his committee, instruct the borrower to reduce his operations. By thus eliminating unwholesome bidding for business by the extension of unwarranted credits, much can be done to improve the banking situation.

The experience of Kansas City shows that it is feasible to gather valuable credit data; all large borrowers are indexed and observed, and facts as to their total local obligations are quickly available upon request for any interested member of the association. This, however, is insufficient; the enormous extent of the floating of paper through brokers renders the obligations too widespread for

control by any one association. We must look to further methods, to more stringent demands through the examiner and to co-operation among clearing house associations.

There seems no reason why a clearing house official should not insist upon the evidence of a certificate of certified public accountants; unfortunately, the principle is not yet firmly established of requiring all borrowers to furnish such certificates though the desirability of this is becoming increasingly appreciated. It does not seem too much to hope that in future borrowers shall be required to file with the clearing house examiner such certified statements together with all further evidence of their responsibility, the whole information being confidential with the examiner, but to be imparted by him to any bank interested in the borrower; the examiner being careful to determine the rights of the bank seeking information before this is afforded. The chief point to observe is that insistence upon such evidence of merit in the extension of credit can be effected through a clearing house official with better grace and with more certain results than through an individual bank.

We must look also to co-operation among clearing house associations. Where independent audit has been made and a report is on file with one association, an interchange of courtesies would render this available for all financial centers. The advantages of clearing house examinations and credit bureaus are now so well realized that it seems not unlikely they may shortly be almost universal and the interchange of information with other associations should prove an important feature of the work.

Further, the suggestion has frequently been made that commercial paper be registered. Should this become the general practice, and be made a necessary step in floating paper, it would seem wise that the registrar should be the clearing house of the center in which the head office of the concern is located; and that confidential information be thence afforded to other clearing houses. It is obvious that the organization afforded by clearing house offices of this nature could enormously improve the knowledge of any borrower's standing; the gathering in one credit office of all local information, of all facts learned by other clearing house officers, of records as to registered paper outstanding, and of accountants' reports—these together would afford banks data beyond anything yet acquired through mercantile agencies or through individual

research. In this, exists the germ of a national credit bureau of high efficiency.

What is true of commercial paper is no less true of individual credits and of country-bank or rediscounted paper. Over-trading by a firm or a bank has long been regarded as a menace; the short experience of concerted action by clearing houses has already revealed methods of control.

No remarks upon extension of clearing house functions would be complete without reference to currency associations. Much has been written on the matter and it would be out of place to enter here upon full discussion of so large a subject. One serious objection to our present banking system is the fact that our commercial paper is not a liquid asset; and whilst this fact remains, constant occasions will arise wherein the clearing house must take action. It need only be asserted that it is the duty of our clearing houses to see (1) that steps are taken to insure that arrangements become operative during and not after an emergency; (2) that methods are adopted looking to what may be regarded as a general clearing house for the country as a whole. The pooling of reserves and conversion of paper into liquid assets are insufficient remedies unless made more than local; otherwise we merely have a selfish effort on the part of each center to fortify itself at the expense of other localities.

It would seem possible, by co-operation of clearing houses and the government, to solve this problem of converting commercial paper into liquid assets. The present bond-secured individual national bank currency might be replaced by a uniform currency, and this currency used under proper restrictions in emergencies under joint control of the government and clearing house association. By this means not only would there be a large saving to the government and the banks in the present costly process of the printing and redemption of individual bank currency; but the issuance of a familiar currency in place of an emergency issue of special design in times of stress would tend to preserve confidence. The control of such currency and its method of issue when effected through clearing houses would call for careful attention; but the principal fact to be insisted upon is that it is the duty of our clearing houses to see that so long as our present situation as regards assets and currency remains such as not to operate effectively in time of stress, we shall

at least have ready an emergency remedy. This is a function our clearing houses cannot afford to overlook.

The principle lying at the root of all future clearing house development is that of the unity of interest of all banks. So long as each bank regards all others only as competitors, and makes its own advancement and prosperity the one object to be attained, banking will not reach its highest development and efficiency. Banking is not and ought not to be an occupation merely for its profits. It should be placed on the same basis as other professions; the highest development in medicine or law is attained only when the competitive and money making features are to a certain extent eliminated, and when mutual confidence is shown between the members of the profession. The banking community is an organic whole, no member of which can suffer without detriment to the body. Our progress depends upon a realization of this truth.

THE GROWTH OF STATE BANKS AND TRUST COMPANIES¹

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One of the most remarkable features of the development of American banking during the past thirty years has been the rapid growth of state banks and trust companies. On May 31, 1882, the last date prior to April 28, 1909,² for which complete statistics of the banking institutions of the United States were collected, the number of state banks and trust companies together was less than one-half of the number of national banks, while on April 28, 1909, the number of state banks and trust companies was nearly double the number of national banks. The resources of the two classes of banking institutions have undergone a similar but less marked change in relative amount. On May 31, 1882, the capital of the state banks and trust companies was \$116,790,000, and their deposits, in round numbers, \$450,000,000, approximately one-fourth of the capital and two-fifths of the deposits of the national banks at the same date, while on April 28, 1909, the capital of the state banks and trust companies was nearly seven-eighths of that of the national banks, and their deposits were somewhat greater.

Even if we separate the state banks and the trust companies, it appears that each class has had a remarkable growth as compared with that of the national banks. State banks and trust companies are not separated in the statistics compiled by the Comptroller of the Currency from the returns made in 1882 by banking institutions to the Commissioner of Internal Revenue. In the same year, however, the Comptroller of the Currency received reports of thirty-

¹This paper is based on material collected by the writer for the National Monetary Commission, and which will be published more in detail in the publications of the Commission.

²The statistics concerning state banks, trust companies and private banks for May 31, 1882, were collected under an act of Congress imposing a tax on the capital and deposits of banks. This law was repealed on March 3, 1883. The statistics for April 28, 1909 were gathered for the National Monetary Commission by the Comptroller of the Currency and the state bank supervisors.

four trust companies with a capital of \$22,800,000 and deposits of \$165,400,000.

STATE BANKS AND TRUST COMPANIES

	Number.	Capital (in Millions).	Deposits (in Millions).
May 31, 1882, State banks and trust companies.....	1,012	116.79	452
April 28, 1909, State banks ...	11,319	416.06	2,392
April 28, 1909, Trust companies	1,079	362.76	2,812

NATIONAL BANKS

	Number.	Capital (in Millions).	Deposits (in Millions).
July 1, 1882	2,239	477.2	1,131.7
April 28, 1909	6,893	933.9	4,636.47

There is reason to believe that these reports covered practically all the trust companies then engaged in business. The number of state banks in operation in 1882 may therefore be put at 978 with a capital of \$94,000,000 and deposits of \$286,000,000. On April 28, 1909, there reported to the National Monetary Commission 11,319 state banks with a capital of \$416,000,000 and deposits of \$2,400,000,000—an increase since 1882 in number of some 10,400 banks, in capital of \$320,000,000, and in deposits of \$2,100,000,000. During the same period the increase of national banks in number was 4,654, in capital, \$460,000,000, and in deposits, \$3,500,000,000. It will be noted that the increase of the state banks in number was more than double that of the national banks, but the increase in capital and in deposits was only about two-thirds of that of the national banks. In all three respects, however, the percentage of increase was much greater for the state banks.

INCREASE FROM 1882 TO 1909

	State Banks.	Trust Companies.	National Banks.
Number	10,341	1,045	4,654
Capital	\$322,000,000	\$340,000,000	\$456,000,000
Deposits	2,114,000,000	2,647,000,000	3,505,000,000

The increase of the trust companies from 1882 to 1909 in number was 1,045, in capital, \$340,000,000, and in deposits, \$2,647,000,000. The increase of the trust companies in all three respects was less than that of the national banks, but in capital and deposits it was approximately three-fourths of that of the national banks.

The percentage of increase was enormously greater in all items than that of the national banks.

Both for the state banks and the trust companies, this increase has been by no means equally distributed over the whole period since 1882. The number of state banks showed little increase until 1886. From 1,207 in that year, it rose until in 1893 it amounted to 3,700. From 1893 until 1898, the increase was very small, the number standing at 4,062 in 1898. The period from 1898 to 1909 was marked by a prodigious increase in the number of state banks. From 4,062 in 1898 the number rose by 1909 to 11,319—an increase of over 7,000 banks and of 179 per cent. The capital of the 3,965 state banks—ninety-eight per cent of the total number in operation—whose reports were compiled by the Comptroller of the Currency in 1898 was \$233,600,000, and their deposits were \$900,000,000; while in 1909 the capital of the 11,319 state banks, whose reports were compiled by the National Monetary Commission, as has been noted above, was \$416,000,000, and their deposits \$2,392,000,000—an increase in capital of seventy-eight per cent, and in deposits of 166 per cent.

INCREASE FROM 1898 TO 1909.

	STATE BANKS.		TRUST COMPANIES.		NATIONAL BANKS.	
	Absolute Increase.	Percentage of Increase.	Absolute Increase.	Percentage of Increase.	Absolute Increase.	Percentage of Increase.
Number	7,157	179	670	170	3,799	92
Capital	\$182,400,000	78	\$202,000,000	196	\$304,000,000	48
Deposits	1,492,000,000	166	1,700,000,000	155	2,636,000,000	132

The period from 1898 to 1909 was also, without question, the period of greatest increase in the number and resources of the trust companies. The statistics of the trust companies cannot, however, be exactly ascertained for 1898. In that year, according to the report of the Comptroller of the Currency, there were 246 trust companies, with a capital of \$101,000,000 and with deposits exclusive of bankers' deposits, of \$662,000,000. The reports of trust companies in the Comptroller's report for 1898 were, however, incomplete, and it may be estimated from the unofficial reports in the bankers' directories that the number of trust companies was

about 400, and that their capital was \$160,000,000, and their deposits \$1,100,000,000. According to the reports made to the National Monetary Commission, on April 28, 1909, nearly 1,100 trust companies were actively engaged in business and, as has been noted above, these trust companies had a capital of \$362,000,000, and deposits of \$2,800,000,000, an increase of 170 per cent in number, 126 per cent in capital, and 155 per cent in deposits.

The national banks experienced also a rapid increase both in number and in resources during the same period. On February 18, 1898, the number of national banks was 3,594, with capital of \$629,000,000, and deposits, exclusive of bankers' deposits, of \$2,000,000,000. On April 28, 1909, the number of national banks was 6,893, with capital of \$933,000,000, and deposits, exclusive of bankers' deposits, of \$4,636,000,000, an increase in number of ninety-two per cent, in capital of forty-eight per cent, and in deposits of 132 per cent. It will be noted that in none of these respects was the rate of increase as great as in that for the state banks or the trust companies.

In considering the causes of the remarkable growth of state banks and trust companies outlined above, it will be desirable to consider separately the two classes of banking institutions, although, as will be pointed out in detail later, the state banks and trust companies are in certain important respects practically a single class.

State Banks.—Since private and national banks as well as state banks are banks of discount and deposit, the disproportionate increase of state banks noted above must be explained by their superior advantages over one or both of the classes competing with them. It must be noted, however, that the national and private banks have almost exclusive fields of operation, for very few private banks have a capital sufficiently large to enable them to organize under the national bank act.³ The state bank, on the contrary, is a rival of both the private and the national bank, since the amount of capital required in most of the states to incorporate

³The 1,497 private banks which reported to the National Monetary Commission on April 28, 1909, had a capital of \$27,000,000, or an average capital of \$18,036. Of the 385 private banks, whose capital for the year 1909 is reported in the official state reports, 232 had a capital of less than \$15,000 and only 72 had a capital of as much as \$25,000. Until the passage of the act of March 14, 1900 the smallest permissible capital for a national bank was \$50,000, and since then it has been \$25,000.

a bank under the state banking laws is small enough to make it possible for private banks to become incorporated if they desire to do so. The causes which have led to the increase of state banks may, therefore, be divided into two categories according as they have been influential in giving the state bank an advantage over the private or over the national bank.

Private banks fulfil in the American banking system two distinct functions,—first, as an adjunct of the brokerage business in the large cities, and second, as a means of furnishing credit in small communities chiefly in agricultural sections. It is in the latter of these capacities that the small state banks compete with the private banks.

The number of private banks increased very rapidly from 1877, the earliest date for which complete data are accessible, to 1888. In 1877 there were 2,432 private banks in the United States and by 1888 the number had increased to 4,064. Since 1888 the increase in the number of private banks has been very small. In 1909 only 4,407 such banks were reported by the bankers' directories. This check to the increase in the number of private banks has come about despite the constant increase in the number of brokers' banks. If the number of private banks in the states of New York, Massachusetts, Pennsylvania and Illinois, in which the great mass of private banks are brokers' banks, are deducted from the total number of private banks the remaining number is less in 1909 than it was in 1888. It appears probable that the number of private banks in the United States apart from the brokers' banks is not at the present time more than one-half of the number in 1888.

During the same period, the number of small state banks has increased with great rapidity. In 1888 the number of state banks with less than \$50,000 capital was 747, while in 1909 the number of state banks with a capital of less than \$50,000 was 8,980, and the number of state banks with a capital of less than \$25,000 was 5,878. Approximately one-half of the state banks in operation in 1909 had a smaller capital than that required for the organization of a bank under the national bank act.

This rapid increase in the number of small state banks is to be explained partly by the fact that depositors prefer to deal with incorporated banks. The development of the state banking laws since 1888 has given the state bank in most of the states superior

credit to that possessed by the private banks. In a few states, the lowering of the amount of capital required for the incorporation of state banks has been responsible for the greater relative growth of small state banks.

Another factor of importance in the displacement of the private bank by the small state bank has been the increasing number of laws regulating in one way or another the conduct of business by private banks. These provisions vary widely in the different states. In some private banks are forbidden to use a corporate name. In others they are required to use on their signs and advertising matter the words "private" or "unincorporated." In a third group of states, private banks may not use the word "bank" on their signs or advertisements. In a fourth group, an attempt has been made to subject the private bank to the same supervision and regulation as the state bank. This attempt has not on the whole met with great success. The essential feature in the regulation of banks, both under the national bank act and under the state banking laws, is the requirement that banks shall have a specified minimum capital. This capital is regarded as a buffer between the losses which the bank may suffer and the deposits of the bank. In a number of states private banks are required at present to have a capital stock, but this provision does not yield satisfactory results, since the banker may engage in other enterprises, and may thus incur an indebtedness which may fall upon the assets of the bank. In a few states an attempt has been made to meet this difficulty by providing that the depositors of the bank shall have a first lien on the assets in case of the insolvency of the owner. A half dozen states have gone even further and have prohibited individuals from carrying on the business of banking. The result of these provisions, taken as a whole, has been to induce or compel many persons about to engage in the business of banking to incorporate under the state banking laws rather than to engage in the business as an individual or as a firm.

Apparently the development of state banking regulation has given a great stimulus to the growth of small banks. The period from 1899 to 1909 was marked by a greater increase in the number of banks than any other period of similar length in the history of the United States. The number of national and state banks increased from 7,763 in 1899 to 18,212 in 1909. A very large part

of this increase, both of national and state banks, was of banks with less than \$50,000 capital. From 1899 to 1909, the number of state banks with a capital of less than \$50,000 increased from 2,529 to 8,980. Until 1900 national banks were not incorporated with a smaller capital than \$50,000. On September 1, 1909, there were in operation 2,197 national banks with a smaller capital than \$50,000. Of the total increase of 10,449 in the number of national and state banks from 1899 to 1909, 8,548 were banks of less than \$50,000. The period from 1899 to 1909 was marked, therefore, in the banking history of the United States pre-eminently by the increase in the number of small banks. In this development the national banking system has shared to some extent through the amendments made to the national bank act by the act of March 14, 1900, but a very large part of the increase in the number of small banks was of banks of less than \$25,000 capital.

The following table shows the number, in 1909, of state banks of less than \$25,000 capital classified according to capital:

Capital	Number
\$5,000 or less	414
Over \$5,000, less than \$10,000	240
\$10,000, less than \$15,000	3,029
\$15,000, less than \$20,000	1,420
\$20,000, less than \$25,000	775

These banks are by no means evenly distributed among the various states. The following table shows the number of banks of less than \$25,000 capital by groups of states:

New England	0
Eastern States	36
Southern States	1,786
Middle Western	1,596
Western States	2,255
Pacific States	205

It will be noted that such banks are numerous in the Southern, Middle Western, Western, and Pacific states. The entire absence of such banks in the New England states and the small number of them in the Eastern states is partly to be accounted for by the fact that, in some of these states, state banks are not chartered and in others the amount of capital required is large, but the chief

reason is that the economic conditions in these sections do not make such banks profitable. The greatest development of such banks is found in the more sparsely settled agricultural districts.

The growth of large state banks (*i. e.* banks with a capital sufficiently large to enable them to incorporate under the national bank act), while by no means so striking as that of the small state banks, presents, when compared with the growth of the national banks, significant and noteworthy features. In 1877 the number of state banks with a capital of \$50,000 and over was 634, and the number of national banks was 2,080.⁴ In 1909 there were in operation 2,610 state banks with a capital of \$50,000 and over and 4,773 national banks with the same amount of capital. The absolute increase in the number of the state banks of this class has been somewhat less than the increase in the number of national banks, but the percentage of increase has been very much greater; moreover, since 1888 the absolute increase in number of the state banks of this class has been practically the same as that of the national banks.

The more rapid growth of the state banks of this class than of the national banks—appears to be due chiefly to two advantages:

In the first place, the state banks in practically all of the states have the power to loan on real estate, and, as is well known, the national banks do not possess this power. All banks, however, are not equally desirous of having power to loan on real estate. The banks in the larger cities and towns do not ordinarily care to loan largely, if at all, on real estate, since they can occupy their funds fully in local commercial loans. Also the banks in the more newly settled parts of the country ordinarily prefer not to loan on real estate since the value of land in such sections is not stable. The desire to loan on real estate is greatest, therefore, among the banks located in the smaller places in those sections where the value of agricultural land is most stable.

Secondly, the reserve requirements in the state banking laws in one way or another are far more liberal than the requirements under the national bank act. In a large number of the states, banks either are not required to hold a reserve against savings and time deposits, or the reserve which must be held against such deposits is

⁴ Since the passage of the act of March 14, 1900, national banks may be incorporated with a capital of \$25,000. For the relative importance of state and national banks with a capital of \$25,000 and less than \$50,000, see p. 144.

very small. Also in those states which require the same reserve against all deposits the reserve is usually lower than that required by the national bank act. Such provisions are particularly advantageous to those banks which have a considerable amount of time and savings deposits, since the national banks are required to carry the same reserve against demand, time and savings deposits.

On the other hand, there are certain advantages in incorporation under the national bank act. The chief of these are the superior credit of the national bank and the profit to be made on note issue. For many years after the Civil War, the national banks were practically the only incorporated banks of discount and deposit in many of the states. It was well known that these banks were supervised and regulated. State banks, on the contrary, until quite recently in most of the states were under no supervision and were incorporated on practically the same terms as manufacturing, mining and other ordinary corporations. The national banks came, therefore, to have a much higher standing with depositors than the state banks. In recent years, with the development of the state banking systems, the state banks, in many of the states, have come to have almost, if not quite, as high a standing as the national banks. In so far, however, as the business of a bank is with persons or banks in other states, the national bank has an advantage over the state bank, since the residents of one state are ordinarily not acquainted with the provisions of the banking laws of another state, while they know the general character of the provisions of the national bank act.

This advantage is greater for the larger banks than for the small ones, since the smaller banks have relatively less business with persons or banks in other states. The wider credit of the national bank is a particularly important consideration to the promoters of banks in the newly settled states who wish to sell stock to residents of other states, since it is much easier to secure the investment by non-residents in the stock of a national bank than in the stock of a state bank.

The second chief advantage in incorporation under the national bank act is that a certain amount of profit may be obtained from note issue. It was the large profit to be obtained from the issue of notes which in 1865 and the years immediately succeeding induced the great mass of state banks to incorporate under the

national bank act. The increasing price of United States bonds led, however, by 1880 to a great reduction in the profit on bank note circulation and, as a consequence, from 1882 to 1891 the circulation fell off rapidly. A decline in the price of bonds caused a slow increase from 1891 to 1899. Since the passage of the act of March 14, 1900, the profit on note issue has been larger and a great increase in the circulation has resulted. The profit at present, however, is by no means equal to the great profits which caused the conversion of the state into national banks in the period from 1865 to 1870. As estimated by the Comptroller of the Currency the profit on note issues in October, 1909, was 1,334 per cent in excess of six per cent on the investment. A bank with a capital of \$100,000 may secure a maximum profit of \$1,334 from a note issue.

Some of the factors noted above vary in strength according to the size of the place in which the bank is located, according to the economic development of the section of the country, or, finally, according to the class of business which any particular bank wishes to do. But certain general conclusions as to their net result may be drawn.

In the first place, the net advantages of incorporation under the state banking laws are relatively greater for banks of small capital than for those of large capital. The following table shows the number of state and national banks in operation in 1909 with a capital of \$25,000 and over, classified according to capital:

Capitalization.	Number of National Banks.	Number of State Banks.
\$25,000, less than \$50,000	2,197	3,102
\$50,000, less than \$100,000	2,214	1,549
\$100,000 and over	2,559	1,061

It will be noted that the number of state banks with a capital of \$25,000, and less than \$50,000, is much larger than the number of national banks with the same capital; but that in the class of banks with a capital of \$50,000, and less than \$100,000, the national banks are the more numerous. The number of national banks with a capital of \$100,000 and over is two and a half times the number of state banks of the same capital. Only 203 of the state banks in operation in 1909 had a capital as large as \$200,000, while 652 of the national banks had a capital of \$250,000 and over.

In the second place, as is shown in the following table, the number of large state banks, i. e., state banks with a capital of \$25,000 and over, in operation in 1909, is much greater relatively to the number of national banks in some sections of the country than in others:

	Number of National Banks with a Capital of \$25,000 and over.	Number of State Banks with a Capital of \$25,000 and over.
New England States	484	19
Eastern States	1,567	410
Southern States	1,406	1,822
Middle Western States	1,997	2,154
Western States	1,121	616
Pacific States	395	681

It will be noted that the number of state banks of this class is larger than the number of national banks in the Southern, Middle Western, and Pacific states, and that the number of state banks of this class is very small in the New England states and much less than the number of national banks in the Eastern and Western states.

Trust Companies.—In any consideration of the causes responsible for the great growth of trust companies in recent years, it must be borne in mind that a very large number of the so-called trust companies either entirely lack the power to engage in a trust business or have not cared to use this power. In Massachusetts, for example, a state in which a notable development of trust companies has occurred within the past twenty years, no state banks have been incorporated for many years, and a very large number of the trust companies do only a banking business. In fact, a trust company in Massachusetts, before it may act as a trustee, must be specially authorized by certain state officials. Of the forty-eight trust companies in business in Massachusetts on November 16, 1909, only twenty-six had trust departments. Similarly in Maine and Vermont no state banks have been incorporated in recent years and many of the so-called trust companies are state banks in all except name.

Even in several of those states where both state banks and trust companies are incorporated the preference for organization under the trust company law is not due chiefly or largely to the desire

to carry on a banking and trust business in combination, but to the greater liberality of the trust company law in its regulation of the banking business. Despite the fact that there has been for some years a gradual assimilation of the regulations relating to the two classes of institutions, in many of the states the regulations relating to the banking business of the trust companies are less restrictive than those relating to the state banks. In New York, for example, where the increase of trust companies in number and resources in the past ten years has been much larger than that of either the national or state banks, there is no doubt that the more liberal reserve requirement for the trust companies has been a factor of considerable importance in their growth. It is noteworthy that the great increase in the number of trust companies has occurred in comparatively few states, notably in the New England states, New York, Pennsylvania and Indiana. In some of these states, state banks, as has been noted, are not incorporated, and in others there are significant differences in the regulations to which state banks and trust companies are subjected.

It cannot be doubted, however, that there is for many banking institutions a distinct advantage in combining the trust and the banking business and that this has been a factor of great importance in the growth of trust companies. The growth of the various forms of trust business will be the chief factor in the future increase of these companies since, as has been noted above, in practically all the states there is a growing disposition to assimilate the regulations of the banking business whether carried on by a trust company or a bank.

Since many so-called trust companies are state banks except in name, and since in many of the states the trust companies are to all intents and purposes not a distinctive class of banking institution but merely state banks which may engage also in a trust business, in order to measure fully the growth of state banking, it may be worth while to combine the numbers of the two classes of institutions. Since, however, the trust companies are usually of large capital, it will be sufficient to consider the result obtained by combining the number of state banks and trust companies with a capital of \$100,000 and over.

There were in the United States in 1909, 1,781 state banks and trust companies with a capital of \$100,000 and over, and 2,559

national banks of the same capital. The trust companies and the state banks of this class are more numerous than the national banks only in the Pacific Group. In the Eastern states, however, the disparity in numbers is not great. The smallest number of state banks and trust companies compared with the national banks in this class is found in the New England and Western states. In neither of these groups is the number of state banks and trust companies with a capital of \$100,000, and over more than one-third of the number of national banks of the same class.

BRANCH BANKING AMONG THE STATE BANKS

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Saranac Lake, N. Y.

At the 1910 convention of the Alabama Bankers' Association, held in Birmingham in May, one of the speakers, whose topic was "State Banks and Their Branches," closed a condemnatory address with the words: "We believe the days of the branch bank are numbered." Two months later, at Cooperstown, Hon. E. B. Vreeland told the bankers of New York State, at their convention: "No one will ever live to see the day when the branch banking system which prevails in Canada and in Germany and in England and in France will be tolerated by the people of the United States."

I am sure that there are a considerable number of people in the various states whose opinions differ from those of the authorities I have quoted. Those who have closely followed the course of banking affairs must have noticed that the branch bank idea has made respectable progress. As is always the case when a reform struggles with hostile laws and against the opposition of established interests, it finds expression in a variety of ways. Thus, some bankers who desired to bring a number of banking institutions into cohesion have sought to attain their ends through purchasing the stock of other banks and controlling them through stock ownership. There are some cases wherein a practical banker has had himself elected or appointed to the presidency or management of a group of banks in a certain state or territory without his owning a majority of the shares of the several units. Then, the holding company method has been employed in some instances; and in a number of states small branch banks are operated under a sort of grudging toleration from the legislatures. It can be said that nowhere in the country are the branch institutions suffered to develop all the functions which they should exercise in order to attain their highest usefulness; nowhere is a branch bank allowed to develop to the dimensions that would fit it for taking care of a large part of the commerce and industry of a state or geographical division.

In his address to the New York State bankers, from which I

have already quoted, Hon. Mr. Vreeland said further: "The economies of the branch banking system are such that no other system can live beside it. It is just as sure as the sun will rise to-morrow that the branch banking system, if taken up in the United States, would in the end drive out of existence all the banks in every city and town in the country outside of the great financial centers. That is the experience of the world."

If this statement means anything it is a confession that the system of local single-office banks is wasteful in operation, and it seems to me that it sets forth one reason why branch banks are inevitable. When a banking system is wasteful it is the stockholders, borrowers and depositors who suffer from the circumstance, and as soon as they realize the fact its doom is sealed.

It should be said here that it is not their economical operation alone that has enabled the branch banks to displace the small local banks in England, Germany and France. The branch institutions are cleaner, more efficient, and they provide better opportunities for the clerks and officers; they give a better and more complete service to the localities in which they work. To illustrate this latter statement, I give the following comparison: In the United States at the present time it is not difficult to find cases like the following: There will be a town of say 2,500 or 3,000 people which has a little national bank or perhaps two of them. Surrounding this town at distances ranging from three to twenty miles are seven or eight small villages, the largest of which may have 1,000 or 1,200 population. Not one of these small places has a bank. The banks in the larger place at the center draw deposits from them all and perhaps do some discounting for a few of the principal business men in the outlying villages. Also, in the large town are a few manufacturing concerns which cannot get all the accommodation they need from the two local banks because the banks are too small. Consequently they are forced to borrow in New York or Boston.

If that locality were served by branch banks of the Canadian pattern there would be in the central town branches of perhaps three large institutions; and five or six of the outlying villages would be provided with branches or sub-branches. The manufacturers would borrow at home; they would not be compelled to go to New York or Boston. Everybody in any of these places, and the prosperous farmers in the tributary districts who possessed good char-

acter and a respectable standing, could borrow for legitimate needs. The country people would have excellent facilities for depositing in banks that had their confidence.

So it is because of the combination of economical operation and the provision of superior facilities, that the branch banks have crowded out the local banks in other countries. Another reason is found in their stability during crises. The stage coach has been superseded by the steam railway in America; and it is quite likely that for the very same reasons the local banks will in the course of time be obliged to give place to branch institutions. When the bankers get a clearer idea of the advantages that will accrue to them through the conversion of their single-office banks into branches, and when the people get a better conception of what properly constituted branch banks would do for them it is to be expected that progress in that direction will be accelerated.

In the meantime it is worth while to take note of the progress that has been made. Now it should be observed that mere size counts for much in the operation of branch banks. Large figures give prestige, and a widely spread system of branches makes for stability when the central administration is good. The different industries which the banks finance are not confined within the borders of particular states; and branch banking will never give the best account of itself while the operations of each bank are circumscribed by the boundaries of a particular state, no matter how large and populous the state may be.

However, we find that the federal laws are almost prohibitive. A newly organized national bank may not establish branches. In his article which appeared in the "Financier" of May 28th, 1910, Mr. W. J. Fowler, Deputy Comptroller of the Currency, says: "The operation of a branch by a national bank of primary organization, while not prohibited in expressed terms, is prohibited by implication, and the courts have held that what is implied is as effective as that which is expressed." When a state bank which operates branches is converted into a national bank it may continue to operate its branches under the national system, but presumably it may not open new branches or extend itself further in that manner. Mr. Fowler states that up to and including July 23d, 1908, there were but four instances of state banks with branches converting themselves into national banks and continuing to operate the branches.

The first conversion was on March 14th, 1907. It was that of a bank in Mississippi with \$75,000 capital and one branch. The second state bank to convert also belonged to Mississippi. It had \$50,000 capital and one branch. Conversion took place on May 31st, 1907; the branch was discontinued on February 6th, 1909, and the concern was placed in voluntary liquidation on April 1st, 1910. A third Mississippi state bank with \$50,000 capital and one branch was converted on February 21st, 1908. The fourth conversion was that of an Oregon institution with capital of \$50,000 and one branch. It occurred on July 23d, 1908.

On February 5th, 1910, the Bank of California, with capital of \$4,000,000 and four branches, was converted into a national bank. This is the first instance of a branch bank of real importance operating under the national laws; and its course will be watched with great interest. Its capital and resources are large enough to give it prestige throughout the whole Pacific coast. If it and other banks were but permitted to open branches where they pleased and were suffered to operate them without being subjected to harassing taxes, prohibitions and restrictions, it is practically certain that they would rapidly enlarge their capitals and extend into hundreds of small places. The business men and small borrowers in those places might then expect to get accommodation at rates perhaps two-thirds as high as they at present pay to private banks and other small local institutions.

Among the state banks operating branches the Corn Exchange of New York occupies a prominent place. The New York State laws are not favorable to branch banking. Taxation is high and the stipulation that \$100,000 capital shall be allotted to each branch is irksome. In other countries where the branch system is authorized and supported by the laws it is not attempted to regulate the capitalization of the branches. It would be impossible to do so. The balance due by the branch to the parent bank, or that due by the parent bank to the branch, fluctuates constantly in response to the operations of the bank's customers. Thus an important borrower at the branch may discount \$300,000 worth of paper, and upon completing the advance the branch will owe head-office on balance \$250,000. Then in due course the loan is paid off and some special deposits are received, with the result of throwing the balance on the other side—head-office may owe the branch \$200,000. There

are many quiet localities where there is practically no demand for loans on discounts and where deposits constitute almost the whole business of the bank. For example, in a rich Eastern agricultural district a branch might have \$600,000 or more deposits, and it may not be able to lend more than \$50,000, no matter how earnestly the manager seeks for good borrowers. To force the parent bank to provide \$100,000 capital for a branch of this type is an economic blunder. The branch already has over half a million of capital which it cannot use at home. When legislators pass laws of this kind they have in their minds the idea that the branch banks are merely contrivances for drawing the resources of the interior localities to the financial centers. So they create a set of conditions under which it is next to impossible for the banks to give good facilities to small places. It would be a wiser policy to encourage the establishment of sound banks in very small places and to supervise their head-offices so as to ensure that they provide properly and satisfactorily for the financial needs of the localities served by their branches. There are no means, other than through branch banks, of providing satisfactory facilities for small places. Doubtless because of the uncongeniality of the laws the Corn Exchange Bank has not spread its branches into the country districts. Its score of offices are found in the various districts of New York city.

Considerable interest attaches to the chain of one hundred or more state banks in Georgia which are combined under the one presidency. Apparently these institutions are held together merely by the fact that they have a common president. They represent what might be styled a banking federation. Each unit preserves its separate identity; and if the president were to resign or die presumably the federation might break up. There is in this arrangement a certain degree of cohesion between the parts, and it should be possible to transpose or transfer surplus funds from one part of the system to another when the occasion for doing so arose, just as the funds of a branch bank are thrown from one end of the system to the other in response to the demands of the industries and trades financed by the bank. But the tie in the Georgia case is personal. It is an instance of the one-man-power which is far too common in United States banking. In Canada it is the bank, and not the local manager, the general manager, or the president, that commands the fealty of the men. The bank has its history and traditions extending

back for fifty, sixty, or eighty years. The managers and presidents succeed each other while the bank grows and develops, spreading itself gradually into all the provinces and abroad into foreign countries. This great impersonal thing—the bank—is what the men serve. The best of them watch its progress from month to month and glory in its greatness.

So the Georgia aggregation can hardly be regarded as a branch bank. It is interesting, however, as an illustration of one method by which the branch bank idea is finding expression under discouraging laws. Last year in his annual report the Wisconsin Bank Commissioner registered a vigorous protest against the operations of a holding company in Minneapolis which had, he said, acquired control of more than forty banks in Wisconsin, Minnesota, and the Dakotas. One ground of objection was that these controlled banks proceeded to lend their funds to parties outside the state in which they were located. Of course there are serious objections to this method of doing business. But it is merely another illustration of how an irresistible force will break through or circumvent hostile laws. In the railroad and industrial worlds, capital has been allowed to concentrate itself and then, by means of agencies and branches, to diffuse its operations over huge territories. In time banking must be suffered to take the same course if the customers of the banks in the United States are to have the same advantages that bank customers in other countries enjoy.

Though it is objectionable in some respects, the Minneapolis holding company plan is preferable to that wherein one individual proceeds to acquire control over a number of banking institutions through purchasing a majority of the stock. There are two sets or cliques of great financiers in New York City credited with possessing control of chains of important banks in their own city and outside. When practised by financiers of a different grade, this method of concentrating banking capital may do considerable damage. Thus the activities of the Heinze-Morse group of financiers in acquiring control of other banks had something to do in precipitating the 1907 panic. Chains of banks formed after this fashion have no resemblance to properly constituted branch banks. Sometimes the financiers who form them do so with the object of enlarging the scope of their own borrowings. While the separate entity of each institution is preserved, there is no economy of administration and

operation such as is secured under the branch system. It merely means the extension of the domination of an individual or a set of individuals over a number of institutions, and the influence in question may often enough be of an undesirable or evil character.

In studying the banking development of the Western states one meets several phases of this process of individuals acquiring chains of banks. But in the West they call them strings rather than chains. Thus a news item may state that so and so of Blankville has bought a string of banks in the northern part of the state. This gives the idea that the transaction was somewhat similar to one involving the purchase of a drove of cattle or a number of barns and stables. Needless to say, such an aggregation of banks would not bear the slightest resemblance to the great branch banks of Canada, England, France, or Germany; and their operations cannot properly be regarded as branch banking among the state banks.

We now come to the consideration of the small branch institutions operating in a number of the states, which have very moderate capitals and only a few branches. In many cases these should be designated as local banks rather than branch banks; but, speaking technically, if a little concern of this description operates but one branch, it becomes a branch bank. Some of them appear to have been weak, struggling affairs which established one or two branches in near-by towns in the hope that the branches might be able to supply the parent bank with enough new deposit money to permit it to meet its obligations. Sometimes these so-called branch banks fail, and ruin and disaster come upon the hapless creditors who trusted them. These accidents also serve to bring branch banking into disrepute. The State of Alabama recently had some unpleasant experiences which led the president of the Bankers' Association to say:

It is with regret that I report that, growing out of the failure to carry out and enact into law the resolutions passed at Mobile, we have had a chain of bank failures in Alabama. Several Alabama communities have lost the savings of a lifetime . . . and all the banks have come more or less under suspicion. Your able ex-president, W. P. G. Harding, in his annual address at Mobile, said in substance: "While we have in this state some notable examples of the successful operation of branch banks, it appears that their success has been due entirely to the excellent character of the

management, and it seems imperative that we should have a law in Alabama regulating the establishment of branch banks in the future."

For all those who are interested in this subject of branch banking among the state banks, the report of proceedings of the Alabama bankers' 1910 meeting, as given in the New York "Financier," contains valuable data. I have not seen the question so exhaustively discussed in any other convention report. Although the Birmingham convention recorded itself in a condemnatory manner towards branch banking—probably for the reason that many of the examples of branch operation coming under the immediate observation of the members had not been calculated to win their admiration or respect—the arguments were not all turned in the one direction. Mr. S. S. Broadus, President of the Tennessee Valley Bank, gave a comprehensive and instructive description of the evolution of a single-office bank into a branch concern operating twelve offices. He related how he spent the year 1891 in the office of the Louisville Banking Company "studying how a great city bank is managed." Graduating from this school, he opened, in 1892, in Florence under the name of the Merchants Bank, and conducted the institution as a single-office bank for five years. In 1897 a branch was established at Tuscumbia, a county seat; then at Scottsboro, another county seat, and at intervals of a little over a year successive new branches were added to the system until in 1910 there were twelve branches besides the head or parent office. In 1908, the name of the bank was changed to Tennessee Valley Bank. The head office had been transferred from Florence to Decatur in 1904. The capital is \$200,000. The following is said to have been the policy adopted in establishing branches:

In locating our branch points I have never gone to places already having sufficient banking facilities, but generally to smaller points entirely lacking such. As a matter of fact, of our thirteen points not half of them could permanently sustain a small independent bank, while a branch of our large strong bank can take excellent care of the banking needs of a small community, which at the same time is a desirable part of the business as a whole.

Mr. Broadus' characterization of his \$200,000 institution as "a large, strong bank" will perhaps bring a smile to the faces of bankers and others accustomed to the Canadian branch banks with capitals ranging from \$2,000,000 to \$14,000,000 and branch systems com-

prising from fifty to two hundred offices. But he means doubtless that his bank is large in comparison with the local institutions which it meets competitively in the small places of the Tennessee Valley.

In regard to stockholding, the management has aimed at having desirable business men at each branch point purchase a small interest in the institution; but a large holding by any one interest is not encouraged. To quote the president: "There is but the one corporation with stock in it owned by selected persons at our various points, some owning only one or two shares and seldom any more than ten. Then, at each point it is endeavored to have, from among the local shareholders, not less than one director." This latter policy would not be practicable in the case of a bank with numerous branches. For either the directors would be so merely in name, or the benefits attendant upon concentration of management would be largely lost.

One of the differences between branch banking and local banking is seen at once when the question of an office building comes up. Mr. Broadus says: "In opening a small branch bank I have always borne in mind that the influence of the local shareholders will naturally tend towards an expensive building 'to help the town.' For instance, they always urge a two-story building at least." If the bank is to be a commercial success its managers must fight against extravagance and waste just as the managers of other commercial ventures are obliged to do. The commercial and industrial development of a small locality is not usually permanently promoted by the erection there of a bank building more expensive than the bank can afford.

The staff is selected from country villages and no young men are employed who ever worked in a bank, because of the president's wish that they shall get their methods and inspiration from him. It is worth while noting here that the large Canadian branch banks draw their recruits to a large extent from country villages. They enter the bank at the age of seventeen or thereabouts and are trained in the bank's system and methods. The Canadian banks also import many youths from Scotland and England, because they cannot get enough juniors in Canada. They bring over juniors who are started at say \$250 per year, and ledger men and clerks, not over twenty-three or twenty-four, with experience in bank work, and give them

\$600 or \$700. Both classes get regular increase of salary every year.

In the case of a small branch of a state bank it appears that the office will probably be started with but one man, and he perhaps taking charge fresh from his duties as clerk in a country store. In Canada no branches are started with less than two men, as the banks consider it absolutely necessary to have present in the office an employee other than the manager to serve as a check upon him.

The following account tells something of the method of reporting to head office used by the branches of the Tennessee Valley Bank, and it can perhaps be taken as applying to other well-conducted branch banks operating in country districts under state control:

With the exception of a journal at each point, our books of original entry are put up in impression copy pads or in penwriter form. For instance, after the daily check and deposit record has been written up in full, the individual entries posted to the individual ledger, and the totals to the general ledger, the original sheets are carefully copied into an impression book, and then mailed to me at Decatur, reaching my desk next morning. Similarly as to a discount sheet at each branch point, this sheet showing any loans made during the day. A penwriter sheet sent daily to Decatur gives the items of all exchange drawn and all remittances made, and a daily balance with the branch.

An experienced banker will read between the lines here that these branches do not enjoy an extensive scope or freedom of action. The system would be in a better way of becoming popular throughout the country if the branch managers were trained men and possessed a larger degree of independence. It is one of the peculiarities of banking in the United States that a large numbr of bankers believe that a store clerk may be just as efficient as a branch manager as a trained professional would be and that a successful storekeeper, merchant, or manufacturer can undertake the active management of a bank as well as any other. Those ideas do not hold in the Dominion. There, banking is treated as a profession, and everybody who practises must pass through the various stages of a thorough education.

Under the Canadian system the branch managers are all trained men; also the local manager has a more dignified status in regard

to the matter of lending the bank's money. This is one of the most interesting parts of the whole subject. It is commonly urged by the opponents of branch banking that it is obnoxious to the business men of any locality to have their applications for loans passed upon by a far-away authority; and that the branch banks take the deposit money of the locality and send it away for use at other points, refusing to lend freely to local borrowers. In view of this argument it is interesting to observe what Mr. Broadus says about the practice of his bank. Under the heading "Making Loans," he remarks: "At first there is not much lending at our branch points, and at first it is all passed on by me. Later on small loans for less than \$100 are made at our branch points without consulting me, such of course generally having more than one good signature or endorsement. In addition to small loans our branches make somewhat larger loans, but only along lines and to persons carefully considered and understood between our Decatur office and the branches. All of the more important lending is passed upon by me beforehand, the notes being run through at Decatur, even if it be but for \$10 and only until pay day. . . . Our re-discounting during the summer time is altogether handled by our Decatur office, and is of course facilitated by our having the more important notes run through at Decatur as stated."

There is a wide difference between the operations of a branch of this kind and those of a newly opened office of a large Canadian bank. The Canadian manager starts to lend and discount at once. In fact that is the main part of his business except in the little towns and villages in quiet agricultural districts in Eastern Canada. The matter of the bank's having funds to lend for the regular business of local borrowers does not trouble him at all, scarcely even during periods of stringency. The only things he concerns himself about are the solvency and reliability of the borrower and the legitimacy of the transaction in which the bank's money is to be embarked. Provided the term of the loan is short, the manager of a good bank in a small place acts on his own responsibility in lending up to say \$1,000. At a larger branch he would lend up to a higher figure. A credit of \$1,000 covers fairly well all the requirements of the less important traders at a country village. For amounts exceeding that sum credits are applied for; and if the applicant is in a satisfactory position head-office will authorize the local manager

to take his paper up to an agreed-upon maximum, subject to certain rules and stipulations. Then the discounted paper is invariably held by the branch itself—if it is payable locally, and the Canadian banks do not rediscount. So if a borrower in a Canadian village goes to his bank with \$500 to pay off his note a month ahead of its maturity the manager can always produce the note on the instant from the bill case. He does not have to ask the man to wait till he can get it back from head-office.

Deposits are a secondary consideration. Of course all branches strive to build up their deposit balances, as the deposits constitute the main source whence the funds for lending are derived. But the energies of the branch manager are mainly directed towards the acquisition of desirable discount accounts; and the bulk of the correspondence with head-office pertains to that department of the bank's business. It is found also that a policy of this kind results incidentally in the quickest development and growth of deposits. That is to say a branch that provides fully for the borrowing needs of the community in which it is located, at moderate rates, will usually be much more successful in building up its deposits than it would be if it starved the local borrowers and tried to develop the deposit department only.

In times of great stringency the regular customers of the branch get their credits from head-office very much as usual, but they are required to keep their borrowings within as small a compass as possible, and are discouraged from embarking in new ventures or extensions necessitating borrowed money. Also the branch manager is asked to refrain from canvassing or campaigning for important new discount accounts until the money situation relaxes.

From these remarks, it can be seen that branch banking as practised among the state banks is on a different basis from that prevailing in the Dominion. Except for one or two isolated examples it might almost be said that in the United States branch banking as it is understood in other countries is as yet scarcely existent. Under more favorable laws it would develop with surpassing rapidity; and it is quite probable that under the existing laws those branch banks which are now carefully and wisely developing themselves will evolve into institutions that will compare satisfactorily, in point of efficiency and usefulness, with the best branch banks of other countries.

There is no doubt that the small branch institutions in Alabama, Georgia, Tennessee, Florida, in the West and in the Eastern states, are providing valuable facilities. There is positively no method, other than branch banking, of giving the people who live in small villages and in remote country districts the banking facilities to which they are entitled and which they possess in other countries. The postal banks cannot provide them, since they are merely to accept limited balances on deposit and they are not to discount or lend. Where there is a private bank or small local bank in a little place of the kind to which I have referred it too often charges high rates of interest, especially in the West, and it may act the part of a money-lending shark.

Honorable Mr. Murray, the present Comptroller of the Currency, has done much during his tenure of office to improve the position of the national banks. He has stiffened up the bank examiners and caused the bank directors to take a closer interest in the affairs of their respective institutions. According to newspaper dispatches he is said to be engaged now in an effort to eliminate weak banks from the national system. His plans are thus outlined by the Washington correspondent of the Boston "Transcript:" "A bank," says the comptroller, "should go into voluntary liquidation as soon as it is demonstrated to a reasonable certainty that it cannot be continued successfully, or as soon as the examiner ascertains that the officers and directors cannot or will not manage its affairs in accordance with safe banking practice."

So, when a bank is found to be in this position, the bank comptroller directs that it be immediately placed in a satisfactory condition by the officers and directors then in charge; or that, if these officers and directors are unable to do so, a new element of strength must be brought into the bank, or, in other words, it must be placed under new management. Failing either of these developments, the officers and directors are urged to liquidate.

Few will dispute that for the comptroller to aim at the elimination of weak and unsafe banks is eminently laudable and proper. These banks are a menace to the whole country, and every year they inflict loss upon the people. But it is to be remembered that in many small places these weak banks constitute all that the community has in the way of banking facilities. If they are wiped out there will be nothing—at least nothing respectable—in the banking

line to take their places. Also it should be clear that under the present system there must always be hundreds and perhaps thousands of banks operating with inexpert management. An institution starting in a small place cannot usually command the services of a skilled manager, and the directors in most cases know nothing of banking. Under a good system in which branch banking was really encouraged excellent facilities would be provided for thousands of small places which now have none whatever and at the same time the management and direction at these small places would be of a high character.

THE OPERATION OF THE MUTUAL SAVINGS BANK SYSTEM IN THE UNITED STATES, AND THE TREATMENT OF SAVINGS DEPOSITS

BY **FREDERIC C. NICHOLS,**
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Probably comparatively few of the readers of this paper realize the immense amount of money deposited in the savings banks of the United States. In addition to the institutions which are known as savings banks, a vast amount is undoubtedly held by national and state banks in states where mutual savings banks are unknown.

The popular impression is that in 1810, or exactly one hundred years ago, the first savings bank was started in Ruthwell, Scotland, by Rev. Henry Duncan. There is considerable doubt about the date that savings banks were actually started. The writer believes that the statement made elsewhere in this paper that they were first founded in Hamburg, Germany, in 1765, is correct. The "Encyclopedia Britannica" states that savings banks were one of the "many excellent projects of Daniel Defoe in 1697;" but there seems to be no special authority for this statement.

From the best information available, it appears there are but thirteen states which authorize non-stock savings banks with restricted investments, as follows: Connecticut, Indiana, Maine, Massachusetts, Minnesota, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, West Virginia, and Wisconsin. With the exceptions of Indiana, Minnesota, and Wisconsin, these banks are all on the North Atlantic seaboard. Other states authorize stock banks for savings only with restricted investments, and these are California, Colorado, Florida, Idaho, Iowa, Michigan, Missouri, Montana, Nebraska, Nevada, Ohio, Texas, and Wyoming.

This paper, however, is to deal rather with the banks generally known as savings banks, and will have to do with the purely mutual savings banks, the first of which was founded in Germany, in 1765. From this small beginning, grew the great system which has done so much to help the small depositor and investor of the United States.

In the State of Massachusetts alone, October 30, 1909, there was on deposit in the mutual savings banks, of which there are one hundred and eighty-nine, the immense sum of \$743,101,481. These represented 2,040,894 depositors with an average account of \$364. The total cost of the management which had to do with the handling of this vast sum of money was \$1,929,012, or about twenty-six one hundredths of one per cent. In the national banks and trust companies of Massachusetts on the same date, there was undoubtedly a tremendous sum of money which was made up of savings deposits, but which could not be so classified, as they were subject to check.

Using, then, the thrifty old Bay State as an example, it is the purpose of this paper, instead of giving a mass of statistics and figures, to give first an idea of the scope of the work done by the purely mutual savings banks. These, as many do not understand, are agencies authorized and sanctioned by the state to collect and receive savings deposits, which must be invested or loaned as the state laws prescribe, and the profits of which must be returned to the depositors in dividends.

Trustee savings banks were started originally by a philanthropist; and they must, of course, continue to be started, if started they are, and managed by philanthropists in the future. Still using our ideal Massachusetts savings banks as an illustration, say fifty men are the incorporators of a bank. Of these, not more than three-fifths may be trustees, and the trustees must elect a number, ordinarily five, who shall be the board of investment, who exercise the same functions as the directors of a national bank should in its management. Then there is a president, treasurer, and a vice or assistant treasurer. Ordinarily but two of these officials are paid large salaries; and the use of the word "large" here is qualified, as the salaries paid in savings banks as a rule are much less than those in national banks or trust companies of the same size. The trustees must meet quarterly, and sometimes oftener, and serve absolutely without compensation. The board of investment ordinarily receive pay for each time they attend meetings; and the members of the board who actually do work in the inspection of loans, or otherwise, are paid a small fee for each service rendered.

Now, the money making spirit of the age causes the average banker to deplore the fact that all the profits accumulated must be returned to the depositors in dividends. He feels, while he does

not admit it, that if it were not for the savings bank, his national bank, trust company, or state bank, could get the deposits, pay a lower interest rate to the depositor than the savings banks pay, and pile up a handsome dividend for the stockholders. For this and other reasons, the writer of this paper doubts whether many more purely mutual savings banks are started or can be successfully operated in states that are not entirely familiar with their splendid usefulness.

The function and efficiency of Massachusetts savings banks cannot be misunderstood or questioned; whether or not the policy of the banks is sufficiently aggressive is seriously doubted. Among bank officials in the smaller communities, there has been a feeling of reluctance to advertise, and in the large cities, the banks, many of them, do not seem to care to grow. Many of the big banks, are somewhat overawing to the average depositor, and it takes too long to make a deposit or withdrawal. On the loaning and investment end of the business, it is, of course, easier in a very large bank to buy bonds which are perfectly safe but which pay a very low rate of interest and to make immense loans on city property, also at a very low rate of interest, than it is to loan to the small borrower. Unquestionably—this is not intended as a criticism of any in particular—the attitude of the large city banks has had a tendency to make the savings banks unpopular.

The limiting of the amounts received from each depositor by the mutual savings bank is a very potent factor in the strength of these truly remarkable institutions. In New York the limit is three thousand dollars from any one depositor; but it is believed that the Massachusetts law, which restricts the amount received to one thousand dollars and allows the money to remain in the bank until it doubles, is safer.

In the Massachusetts savings banks, the average amount to each depositor's credit in 1909, as previously stated, was three hundred and sixty-four dollars. Among the best conducted banks the constant aim of the officials is to reduce the average of deposits, that is, to increase the number of depositors without increasing the deposits proportionally. While this makes a great deal more work in a clerical way for the bank, it is, as is obvious, of great advantage to the bank should there be a run or at a time when the withdrawals exceed the deposits.

While the function of the savings banks, when properly organized, is really educational rather than economic, one phase of their affairs is worth speaking of. Here in Massachusetts, the depositor has no tax to pay on his money in the savings bank, but the banks themselves must pay a tax of one-half of one per cent on their deposits. In Massachusetts in 1908 the running expenses of the state were over twelve million dollars, and of this, the savings banks paid in taxes one million nine hundred thousand dollars, or practically fifteen and one-half per cent of the total expenses. Few people know that savings banks must pay the tax on their deposits, and the reader must realize what a tremendous help financially it is to the good old Bay State that it has so many savings banks in it.

The savings banks should furnish a safe place for the deposit of wages and small earnings, paying a fair interest to its depositors; but its chief object should be to teach the art of saving. In that sense it is educational, as stated in a previous paragraph, and there can be nothing compulsory in its methods as there is in co-operative banks. It must in every way make an effort to have its banking rooms, its clerical force, and its business, conducted with as little red tape, and made as attractive, as possible.

There is a great deal of popular misapprehension about unclaimed accounts, and many people think these unclaimed deposits are absorbed by the bank with an actual loss to the heirs or to those who originally made the deposits. This is a fallacy, for in most states, as in Massachusetts, every fifth year a return of these accounts must be made to the bank commissioner. In 1907 there were 1,921 accounts in the 189 Massachusetts savings banks, aggregating \$567,932.85 on which no deposit or withdrawal had been made for twenty years, and these were duly advertised as required by law and the money will ultimately go to the state, who will return it to the rightful owners, should they appear.

It may be well to quote the Massachusetts statute covering this point, as there is so much misunderstanding about it. The law quoted is absolutely fair, and one which any state may well follow:

The probate court shall, upon the application of the attorney general and after public notice, order and decree that all amounts of money heretofore or hereafter deposited with any savings bank or trust company to the credit of depositors who have not made a deposit on said account or withdrawn any part thereof or the interest, or on whose pass books the interest has not been

added, which shall have remained unclaimed for more than thirty years after the date of such last deposit, withdrawal of any part of principal or interest, or adding of interest on the pass book, and for which no claimant is known or the depositor of it cannot be found, shall, with the increase and proceeds thereof, be paid to the treasurer and receiver general, to be held and used by him according to law, subject to be repaid to the person having and establishing a lawful right thereto, with interest at the rate of three per cent per annum from the time when it was so paid to said treasurer to the time when it is paid over by him to such persons.

Much of the legislation aimed at savings banks, particularly in Massachusetts, is most unwise and represents some misguided enthusiast or some one who has a personal grudge against some bank or some bank officer. However, there is occasionally a bill presented which has desirable features; but it seems almost as if the old conservative banker wanted to do things just as he has always done them. Hence, at a hearing before a legislative committee, a savings bank official frequently appears, sometimes properly authorized by an association or bank, but ordinarily entirely on his own responsibility, opposing blindly something which may have many desirable features.

The writer firmly believes that there are several innovations that savings banks could adopt which would not only tend to popularize them, but actually to make them more useful in their various communities. Every savings bank should be open at least one evening a week for the benefit of the very people it is trying to help, the working classes who cannot go to the bank during the usual hours without losing time. Many do this, but the majority do not.

The active officers and clerical force of a saving bank should be selected with great care, much more so than the same people holding positions in a commercial bank; this for the reason that the average savings bank depositor does not understand, at first, just what he is expected to do, and oftentimes in honesty does many provoking and annoying things. Tact and patience are required to explain the various steps; and these, I regret to say, are not always in evidence in the savings banks.

Right along this line, there is another and a very practical way savings bank officials could greatly increase the scope of the work their banks now do, and this is particularly true of manufacturing

cities. The officials should at any time, when invited, be free to talk before schools, woman's clubs, labor unions, young people's religious or other organizations, not to advertise the particular bank with which they are connected, but to explain in a large sense the work, usefulness, and earning power of the savings bank accounts. In any audience there are always some who can be enlightened, and there is practically no limit to the opportunities in this direction.

Savings banks should advertise, I firmly believe, and may receive as direct benefits in increased deposits as would a store in advertising a bargain sale.

Another feature which would probably vastly help the smaller communities where there are no banks of any kind, would be branch savings banks. While the postal savings banks will undoubtedly take care of a great deal of this business, yet, on account of the lower rate of interest they will pay, these branches should be successful. The Massachusetts law says that a bank may, with the written permission and under regulations approved by the bank commissioner, maintain and establish one or more branch offices, for the receipt of deposits only, in the city or town in which its bank is located, or in towns not more than fifteen miles distant therefrom, in which there is no savings bank at the time when such permission is given. While but one bank, I believe, has taken advantage of this, there is undoubtedly a great need for these branches, and the trustees of savings banks should consider them seriously.

Another way in which the mutual savings bank may be of inestimable benefit to the working man, is in the savings bank life insurance plan. In Massachusetts, savings banks have been permitted to enter into it for the past few years and two banks have tried the experiment. There is an entirely natural reluctance among the trustees of the ordinary savings bank to go into anything so radical as the savings bank insurance, which, as may not be generally known, is practically industrial insurance at cost. Should this be taken up by the banks of Massachusetts generally, and receive any support from the working classes, it would undoubtedly operate as a substitute for the old-age pensions of Germany and England and be much more desirable. Some of the most level-headed business men of Massachusetts are strongly in favor of all savings banks opening an insurance department, but as yet it is an experiment and cannot be said positively from experience to be of benefit to

the banks or to their depositors. The real question to decide is, granting that involuntary insurance is bad in principle, can voluntary insurance ever be popular enough to be successful?

Another way in which the savings bank could be much more useful is to work more in co-operation with the advocates of the school stamp savings. There are many of these in several of the Eastern states which do good work and are of unquestioned benefit to the children in teaching them to be thrifty, even if the money is not deposited in a bank. It would be better, however, if the stamps which the children buy were redeemable only at a bank rather than at the office of the associated charities, or some similar organization, as is ordinarily the case. There should be no opportunity for the child's confusing in his mind the saving of his pennies with any charitable or even religious organization. While these small accounts cause more or less bother to the teller at a bank, this should be more than offset by the ideas of thrift that would be inculcated in the mind of the child.

The school savings were first adopted in 1834 in a school in Le Mans, France. In 1846, the system was adopted in Würtemberg, and in Budapest, in 1866. The same year, in Belgium, one of the professors of the University of Ghent traveled about the kingdom explaining the advantages of the school system; and, by 1891, nearly \$800,000 had been saved in the banks by the children of that country alone. France now leads the world in this educational and thrifty work, and the system has been introduced in most of the countries of Europe. The writer believes that this work should be talked by savings bank officials with the idea that the banks cheerfully do the clerical work, if the teachers, who ordinarily collect the money, would make special efforts to see that the child be directed to put in the bank at least part of his money.

The vital question is, do these savings banks invest their deposits safely? There can be no question about it whatever. The mutual savings banks of New York and the New England states, for instance, have as small proportion of losses as any banking institutions in the world. As previously stated in this paper, the managing board of trustees is a body of men who have no other motive in giving their services than their devotion to the cause, and they receive no pecuniary reward. This greatly reduces the chances of dishonesty or of a betrayal of the trust; and while there are, and

probably always will be, instances of dishonesty in savings banks, the record is wonderful considering the volume of business done.

The chief feature in the assets of a savings bank is its mortgage loan. This is ordinarily the largest item as well as the most important; for in its policy and care-taking of its loans on real estate lies the real success of the bank. While it is easier to make the large loans on the city block, which bear a low rate of interest, it is true that the bank which confines its energies to this line alone does not perform its real work in the community. A mutual savings bank should always be glad to loan on real estate to the small borrower and to the man who is helping a city to grow by building homes for its mill employees. Such loans as these are really more remunerative to the bank, as they yield a larger interest return; but they do, of course, make a great deal of work for the bank's force.

Among the best conducted banks of the writer's personal acquaintance, it is now the custom to vote loans with the understanding that the principal will be reduced not less than so much each year, fixing the amount by the opinion of the bank's inspectors as to what the property would depreciate in value each year. As a matter of fact, a reinspection of all mortgage loans is now required by the Massachusetts law, which demands that after a loan has been held by a bank for five years, not less than two members of the board of investment shall certify in writing according to their best judgment the value of the premises mortgaged, and the premises shall be revalued in the same manner every five years as long as they are mortgaged to the bank. Unfortunately, it has been the custom of some banks to make excessive loans, and of other banks to make a loan and never look at it again until their attention was called to it by a default in interest payment or taxes, when they find a run-down piece of property on their hands. Thus, as I have said, the real estate loans are really the most important feature in a bank's statement.

Then the bonds; and here, of course, we have assets that should be absolutely gilt-edged, as the ordinary savings bank buys only railroad or municipal bonds of whose validity and security there can be no question. As has been hinted in this paper, however, a bank may very easily have too many bonds which pay a small interest return but which are easier for its officers to handle; and, therefore, while very strong financially, such banks are really earn-

ing less than they should and therefore are not fair to the depositors. In the panic of 1907, some of the savings banks found out that bonds were not so fluid an asset as they had thought.

There is a great difference in the amount of personal loans held by savings banks; and there should be, as there is a great difference in the capacity of different boards of investment to pass on a personal loan. The writer is using the term "personal loan" in the sense of any loan that is made on names alone or on collateral security. Many banks have boards on which are national bank directors or officers who are entirely competent to pass on paper. Other banks, generally in the smaller communities, know nothing about such things at all, and should confine their energies to other lines. As a matter of fact, very few losses have ever been made by Massachusetts savings banks on strictly personal loans, that is, loans without collateral. These are ordinarily looked over with great care, while a collateral loan may be given less attention. These personal loans yield a higher rate of interest, generally, than even mortgage loans, are much more fluid; and, properly made, a certain amount of them are very desirable in a bank's assets. In Massachusetts a bank may lend not exceeding one-third of its assets in such securities.

October 24, 1907, Mr. Charles A. Conant published, in the New York "Evening Post," an article which has a direct bearing on the matter we are now discussing; and while it was written as an abstract proposition, certain phases of it seem to apply to the desirability of savings banks carrying some personal loans, otherwise and commonly known as commercial paper. He stated that

The piling up of loans upon pyramids of inflated stocks and bonds is due in a large degree to the great development of industrial securities in recent years. Such securities do not represent circulating capital but fixed capital. They are simply obligations or shares in mill, railway, or mine, which represent a permanent investment. . . . Securities circulate, but the property they represent is fixed. They are not, therefore, in any proper economic sense circulating capital and are not the best basis for the investment of deposits payable on demand. Commercial paper represents circulating capital. In other words, it is the product of purchases on raw material which are converted in a short time into finished products whose sale for consumption affords the means to pay off the paper and thereby closes the transaction. When money is borrowed on securities, no transaction of this character takes place and there is no natural and normal date for closing the transaction. Managers of banks seek to give the character of circulating capital to securities by advancing

money on them subject to repayment at call. This system works admirably in periods of prosperity, but it causes convulsion in times of adversity. The owner of a part of a mill, railroad, or mine cannot convert the property into circulating capital. In his efforts to get rid of his share of it, when he finds that the banks are curtailing their loans, he is compelled to make great sacrifices or shoulder the loss upon the banks by failing to make good his margin. . . . Nothing of this kind occurs in dealing with commercial paper and the losses thereon are calculable and, as a matter of fact, are a fraction less than one per cent per annum.

I believe this to be sound reasoning and, from experience, one bank, of which I have personal knowledge, which has been in successful operation for sixty-four years, absolutely bears out the contention of Mr. Conant.

Going back to the statement made early in this discussion, the writer, for a variety of reasons, doubts whether many more purely mutual savings banks will be started, but this does not imply that the people will be any less saving. It would be ridiculous for a bank man in New York, for instance, to go to Illinois and try to get the legislature there to pass laws similar to that of New York or any of the New England states in regard to savings banks; this for the reason that the present Illinois law seems to work absolutely satisfactorily and with entire safety to the depositor where the banks are allowed to do practically all kinds of business. It works against the depositors in one way, of course, that they receive a lower interest return than they would in a bank in one of the Northern Atlantic seaboard states. But that is not so essential, so long as their deposits are safe.

Michigan has excellent laws, due, in a large degree, as the writer believes, to the efforts and activities of Mr. J. H. Johnson, president of the Peninsular Savings Bank of Detroit, Michigan.

Assuming for the sake of argument that the states that do not now have a mutual savings bank law will not pass one, would it not be vastly better if the institutions which do receive savings bank deposits were compelled to segregate them and invest their savings bank deposits along the lines that the mutual savings banks are now compelled to, or as a probate judge in the various states would allow trust funds to be invested? The writer has given this subject much thought and is firmly convinced that, ultimately, all savings deposits must be segregated.

In Massachusetts, a few years ago, a bank was looted by an

official who juggled the securities of a national bank and savings bank with which he was connected in such a way as to deceive the examiners. United States Senator W. Murray Crane, one of the shrewdest, most far-sighted and kindest of men, then governor of the state, put a law through the legislature absolutely separating national and savings banks and not allowing one man to serve as an officer of both kinds of banks. In spite of the active opposition of the banks, this law was passed practically unanimously, and it has proven to be most wise legislation. However, trust companies sprang up everywhere and these began to do exactly what national banks and savings banks were not allowed to do, that is, all kinds of business under one roof. So, very recently, the Massachusetts legislature passed a law compelling trust companies to segregate their savings deposits. The writer trusts their officials are having no difficulty in defining what of their deposits are actually savings.

Suppose there should be in the city of Chicago, for instance, a failure of one of the big national banks or trust companies and it should develop that a vast number of poor people who had entrusted their savings to the savings department had been hit, the legislature would pass a bill compelling segregation and division of the banks just as quickly as they did in Massachusetts, whose legislature is proverbially conservative and careful.

Segregation is, and probably will be for a long time, unpopular with the trust company or national bank man, the great majority of them looking upon it with distrust. I feel, however, had they viewed it rightly five years ago, that they would not have had the postal savings bank forced upon them. I firmly believe, as was expressed in a recommendation of the law committee of the savings bank section of the American Bankers' Association, of which the writer is a member, "Savings deposits in all banking institutions should be segregated from commercial and other deposits and invested in such classes of loans and securities as experience has shown to be amply safe, and that such investments should be held for the special benefit of the savings depositors."

In the states, then, which have no mutual savings bank law, I look forward to seeing tremendous savings deposits in the national banks, trust companies, and state banks. The mutual savings bank deposits will grow proportionately, as they always have, while in the West and South, with their magnificent futures, these other

banks should get the deposits. I firmly believe that the postal savings banks will get the bulk of their deposits in the West and South because there are no mutual savings banks and because the depositor realizes that his money is placed in a bank operated for private profit, where, if disaster comes, he must lose as would the ordinary commercial depositor.

While it will be slow in coming, I hope to see savings deposits, wherever held, segregated. Even if my work were not in a conservative New England savings bank, I would as strongly advocate as I do now the segregation of deposits. I can conceive of no better advertisement for a trust company, being operated, for instance, in a large city in New Jersey, than to advertise for savings deposits and to say that *there* such deposits are *segregated* and that the poor people's money is safe anyway regardless of what might happen to the bank.

As the postal savings banks will be in operation next year, a word or two of them may be of interest here. There is no question but that savings banks first came under legislative control in Great Britain, and peculiarly enough, it was also there that the postal savings bank was first started.

While this paper is supposed to deal with savings banks alone, so many of the officials of not only savings banks, but trust companies and national banks as well, opposed the passing of the postal savings bank bill that it is fair for the writer to state here that since he has made a study of the question and visited the West and South, he has become a staunch advocate of the postal savings bank. I believe that they will be a good thing for the government of the United States and a splendid thing for the people, especially the newcomer, who has more confidence in the government than in the banks. I believe that in any locality, even in the New England states, there is a certain class of people who will deposit money now concealed in old teapots and other equally desirable places, which has never, and would never, get into any existing banking institution. I believe it is the function of a bank official, and especially of a savings bank official, to aid in every way he can the wage earner, and especially the very poor, to be thrifty. Whether or not they happen to deposit in the bank or class of banks that he represents should not be considered; but the banker should look at it, as congress evidently did, in the largest sense. This matter, more-

over, is one in which politics should not be permitted to enter one particle.

The English postal savings bank went into operation first, in 1861, in England alone; but in 1862 it was extended to Scotland and Ireland. The following classification of patrons taken from a recent annual report is interesting and shows that the banks are doing good work:

Professional	1.55
Official	2.81
Educational	1.01
Commercial	3.88
Agricultural and fishing.....	1.33
Industrial	18.43
Railway, etc.	2.96
Tradesmen and other assistants.....	8.14
Domestics	8.61
Miscellaneous	0.37
Married women, widows and children.....	50.41

Postal savings banks have spread rapidly, particularly among progressive countries. Canada adopted them in 1868, Belgium in 1870, Italy in 1876, The Netherlands in 1881, France and Sweden in 1882, Austria in 1883, Hungary in 1886, and still later they were adopted by Finland, Russia and a number of the British colonies in Australia and Africa, and finally by Japan. In all these countries, the postal savings bank has proved of inestimable value to the government and the people. If in the United States, politics can be kept out of the management of the banks, there is no question whatever in the writer's mind that they will be, inside of ten years, a wonderful factor in the welfare of the United States. The trustee or mutual savings bank cannot be relied upon to reach into the small communities nor to cover a wide territory. As earlier hinted in this article, it is best adapted to that community where the inhabitants are naturally conservative and philanthropic. Hence the remarkable success of these institutions in the New England States.

The postal savings bank affords a depository in every hamlet large enough to have a postoffice. If when the places are large enough for national banks or trust companies, the officials find that the true savings deposits are all going to the postal savings banks,

they should increase their interest rates and segregate their deposits and advertise the fact.

Savings deposits will continue to abound and grow, and the public, and the bank directors, must insist that the savings of the poor, of the man, woman and child who work to earn what they deposit in the bank, be kept safely. If it is too much to ask for mutual savings banks, then let us, in an educational and not pugnacious way, work for the segregation principle.

To summarize: It is obvious that the people of the United States are naturally the thriftiest in the world. The children of the immigrant who comes here unable to read or write, get at least a common school education and go to work. They earn money and they save it; and they become, as a whole, as the history of every New England manufacturing city proves, better citizens than their fathers. Such is the civilizing influence of America.

THE USE OF CREDIT CURRENCY BY COUNTRY BANKS

BY J. P. HUSTON,

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The country merchant was, in primitive days, the leading financial agent in his little community. He was the legitimate precursor of the country banker of to-day. His shop or "store" was the clearing house of the community for surplus farm products. He naturally became at times the custodian of a portion at least of the surplus means of the community. He opened book credits, which were usually redeemable in trade; that is to say in goods from his shelves. He sometimes issued in exchange for produce so-called "scrip" which was legitimate asset currency, issued for value, and redeemable—in goods of course—on demand. This scrip had the advantage over a book credit of negotiability in petty transactions between neighbors, and served as primitive currency.

The country bank came next, authorized by state law to issue bank notes against its own credit to a limited amount, and with the legitimate requirement that a specie reserve be kept on hand for the redemption of the notes issued. The bank note issues of those early days were very loosely supervised by the various states, and we have heard much of the abuses which occurred under a system of practically free note issue by the banks. We have heard too little, however, of the remarkable assistance rendered by these pioneer banks in the development of the country. Deposit banking as known by us was but in its infancy, and the bank note was the instrument which enabled the banker of the period to extend necessary credit to the merchant and planter, so that commerce might thrive and agriculture prosper. Of metal money there was no sufficient hoard, and but for the advent of the bank note, the rapid development of the middle West would have been impossible.

The scrip issued by the country merchant served its purpose only in an isolated community, having but little connection with the outside world. The state bank note issue had a wider circulation, but its field of usefulness was still local and provincial, as the notes were usually subject to an exasperating discount when presented at

any distance from the point of issue. The notes issued under the "Suffolk Bank" system were, it is true, redeemable at par in Boston. The genesis of the national bank note issue may yet be found in the Suffolk Bank system. It was a vast improvement over the previous experiments made by our banks of issue. It was being perfected and proven by the acid test of experience, and but for the complete demoralization wrought in our financial system by the exigencies of the Civil War, the perfect bank note might have been wrought out through gradual evolution. The principles of redemption at money centers, together with the maintenance of adequate specie reserves, might have been developed by the banks, while public sentiment might have been educated into a proper understanding of the currency question, and correct systems of state or governmental examination and regulation gradually established. Distracting elements, producing great confusion of thought concerning currency matters, were introduced by the government issues of fiat money, and the suppression of the state bank note issues, which was a war measure enacted to make way for the national bank note secured by government bonds.

It is idle to dream of building again upon a foundation that has been destroyed. If we have lost sight of the true function of the bank note since we have adopted fiat money and the bond secured bank note, we have also developed to a higher degree of efficiency than any other race or people the use of deposit banking, and of the bank check. We have also become accustomed to the use of paper money of uniform design and of uniform value, acceptable alike in the largest money centers and in the most remote hamlets. We have gradually become accustomed to a system of governmental regulation and supervision of our currency which in the mind of the average citizen is equivalent to government guarantee. No sane mind will seriously propose at this late day the issue of any currency not equally uniform in design and of equally universal acceptability. Our paper currency henceforth must be maintained at par at all hazards. It must never again be circulated at a discount as in 1867, nor should it ever again be quoted at a premium as in 1907.

The note issue function was the most profitable feature of banking in the period preceding the civil war. With the development of our present extended system of deposit banking, our banking liabilities have become expanded almost to the limit of safety, when

we consider the deposit liabilities in proportion to the total volume of actual money of redemption. Indeed, it is probable that the expansion of bank credits through deposit liabilities, stimulated as it is by active competition among the banks, and fostered by the optimistic feeling so common to the American public, has already increased bank liabilities to such an extent as will render it unwise ever again to permit the banks to enter upon an era of general bank note issues as a source of profit. We are now working under a practically rigid system of paper money issues, with the profits of note issue a negligible quantity. To permit further bank note issues in ordinary times would only incite unwise inflation of our currency and undue expansion of bank liabilities as related to coin reserves. In point of fact, our issues of paper money are already redundant. We have some \$356,000,000 of greenbacks encysted in our circulation. We prefer to permit it to remain rather than submit to the severe surgical operation necessary to its removal.

Our issue of bank notes seems to be limited only by the volume of United States bonds available for deposit to secure circulation. Any further issues of bond-secured bank notes would only induce unwise inflation. We have already in circulation as much bank note currency as the country can assimilate in normal times, and any increase in its volume would only serve to displace an equal volume of gold coin. This is a situation to be avoided, not invited. It should be our policy to strengthen our gold reserves, not to weaken them. To invite further exports of gold would only tend to further dilute a currency system which already rests upon a coin reserve sufficiently slender. It should be our policy, as it is the policy of European countries, to protect our gold reserves rather than to make the United States an open market for gold, from which all countries may draw freely at will. Our entire credit system rests upon a coin reserve sufficiently small and it is the part of prudence to strengthen our gold holdings rather than weaken them.

While we have a sufficient volume of currency to meet our requirements in normal times, unusual demands for currency, whether caused by abnormal business demands or by private hoarding proceeding from a feeling of distrust, result in conditions under which our currency supplies prove deficient. Perhaps this period of acute demand for currency has been preceded by a period of inactive demand, which resulted in the accumulation in money

centers of a plethora of currency. So much the worse for us, for this period of plenty has probably caused a loss of gold by export, for as we have no automatic way of retiring superfluous bank notes or greenbacks, we have usually contrived to ship gold as a superfluous commodity. Then when an abnormal demand for currency sets in, and we desire to recover some of the gold which has been exported, we sometimes find foreign supplies of gold more closely guarded than our own, so that we cannot bring the tide of importation of gold in our direction without making costly concessions which result in lower prices of commodities and securities, and a disturbed condition of business.

It is not a larger volume of currency which we need, but rather do we need a system which admits of some expansion and contraction other than is offered by the crude method of actual export and import of gold. The constant shifting of large sums of gold from one side of the Atlantic to the other is not only expensive, but is disturbing to the business of Europe as well as to the business of the United States. If our currency system had any measure of elasticity, we would provide for the minor changes in the demand of currency without having recourse to actual gold exports or imports. When an excess of currency accumulates in the reserve cities, a portion of our bank notes should be retired. When a demand for more notes to satisfy the demands of the crop-moving period appeared, we should be able to issue bank notes for temporary use. Thus, automatically, our hold on our stock of gold would be strengthened, and we would maintain our own reserves within control, and less often call upon the foreign money markets for aid in financing our own business requirements. Foreign money centers have complained that we too readily apply to their markets for financial assistance, and insist that we should arrange to settle our financial difficulties at home.

There is nothing automatic in the workings of our present currency laws. There must be something automatic in their operation if we wish to avoid a repetition of the currency famine of 1907. Some authority must be lodged somewhere for the issuance of an additional volume of currency when the demand for currency becomes so acute as to threaten the suspension of cash payments. This addition to the volume of money should be based upon liquid commercial assets, and should have an adequate coin reserve behind it. The banks of the country are the custodians of the best of all

liquid assets, as their credits are based upon advances covering transactions which are certain of liquidation within short periods. The sales of grain, meats, provisions, and manufactured articles in daily use liquidate credits rapidly, if time is only given for distribution from the producer to the consumer.

The banks also can acquire the coin necessary to maintain reserves against note issues, if the burden of maintaining coin reserves against bank note issues is placed upon the banks, and actual redemption of bank notes is provided for, instead of the present system of forced circulation of notes. We may not find a way at once for the retirement of the present volume of bond-secured bank notes, and they may remain with us indefinitely, always hampering our control of our own gold supplies, and rendering it all the more necessary that our reserves of gold be fully maintained. We can at least put a stop to further mischief of the same character, by avoiding the issue of any additional bonds bearing circulation privileges. Any further issues of government bonds should be issued with a view to finding a market with private investors among the people. They should not be issued with the avowed purpose of serving as a medium for the further permanent inflation of our currency, by placing them with the national banks as a basis for the permanent issue of an equal volume of practically unredeemable paper money.

The banks have both the credit and the resources necessary to provide all the currency needed for protection against such an emergency as the panic of 1907, or a much greater crisis even, if the banks are only permitted to use the undoubted resources and the credit with which we know them to be endowed.

Should the banks of the country be permitted to issue an additional volume of currency at crucial periods, and if so in what manner?

Congress by legislative action directly following the panic of 1907, has recognized that our financial difficulties of 1907 were aggravated by the non-elastic feature of our currency system. The Aldrich-Vreeland bill was enacted providing for the issue under sundry restrictions of so-called "emergency circulation" either by individual banks or by groups of banks to be organized as "National Currency Associations." The issue by individual banks still bore the time-honored requirement for the deposit of bonds to secure the

circulation thus issued. The provision for the organization of "National Currency Associations" contemplated a forced association of banks for the purpose, and did not make provision for the voluntary retirement of any bank from the association, after it had once attained membership.

Congress has also appointed a currency commission, which has investigated in an exhaustive manner the principal monetary systems of the world. It has prepared for publication various books and pamphlets bringing a study of the leading financial systems within the reach of all students of finance, but it has not yet vouchsafed any report of its deliberations. In the meantime discussions of the proposed issue of additional circulation by the banks have been general among the banking fraternity, and three several agencies have been suggested for its issuance:

First.—By the individual banks, as at present.

Second.—By clearing house associations, as through a modification of the "National Currency Association" authorized by the Aldrich-Vreeland bill.

Third.—By the organization of a Central Bank of Issue.

The question of the need for additional currency is primarily a question of cash reserves. It cannot be too often or too plainly stated that balances due from one bank to another bank are not cash reserves. Many country bankers who would have flatly denied this simple proposition in 1906 are now open to argument on the subject. The plain fact is, the country bankers do not carry cash reserves of any consequence at all. They only carry what an English banker would call "till money," and their real reserve is deposited with their city correspondent. Too often this city correspondent has redeposited the greater portion of the balance with a correspondent in a larger city, and this correspondent in turn has passed the bulk of the balance on to a yet greater financial center, until the actual cash reserve held against these duplicated deposits becomes attenuated indeed.

If the country bankers do not trouble themselves to carry an actual cash reserve of sufficient consequence to be of any avail in an emergency, but rather choose to rely upon their reserve agents in time of need, it seems that, in justice, the additional note issuing power should be given where it is most needed, to the banks which have by custom assumed the obligation to carry the country's reserves. Nor is the country banker, on the whole, inclined to be

jealous of his prerogative in the matter. The profit attendant upon note issue has already become so small that with a small volume of bank notes outstanding the country banker does not realize a profit sufficient to reconcile him to the accumulation of red-tape and detail work connected with the issue. It is recognized also that the additional circulation authorized will be so heavily taxed that it will be speedily redeemed and its issue will be more a matter of patriotism than of profit.

The banks of the reserve centers are the first to note any unusual pressure for currency. The country banker orders currency as occasion arises, from his nearest reserve correspondent, and when he has an excess of currency beyond his immediate needs, he ships the excess currency by express or registered mail to his city correspondent. Thus, in normal times, the country banker knows nothing of either a condition of scarcity of currency or of an excess of currency. He may have a surplus of loanable capital, or he may have a demand for loanable funds beyond his ability to meet these calls. When the country banker informs you that money is scarce in his section, he only means that loanable capital is scarce. If, at this juncture, a deposit of \$10,000 in currency was made at his counter, he would in all likelihood at once express the entire amount to his city correspondent. Under ordinary conditions of so-called "tight money" what he desires is the use of a bank credit against which he may draw, not actual currency or coin.

The country banker never realizes that there is any scarcity of actual money until he calls upon his reserve correspondent for a shipment of currency, and does not get it. On the other hand, the banks of the reserve centers feel at once any unusual demand for currency or coin. When their cash reserves begin to fall, they are compelled to begin to contract their loans. We are compelled at times to throw overboard valuable cargo, in order to lighten the ship so that she may ride the waves. Sometimes the cargo thrown overboard is stocks, bonds and other securities, sometimes it is grain, live stock or cotton. Is not such valuable cargo worth saving, and had we not better build a better ship, more capable of carrying the load, rather than again suffer such unprecedented losses as were occasioned by the drastic and enforced liquidation which took place in 1903, and again in 1907?

The privilege of issuing uncovered notes is evidently one which

Congress is very unwilling to grant to individual banks, and the sentiment of the people in general is in accord with Congress in this particular instance. Indeed, the privilege of issuing uncovered notes is now recognized as having such a powerful influence on the control of reserves, and even of the money market itself, that countries, like England, France and Germany, restrict the power of issue to semi-governmental banks. In our own country there is a strong disposition on the part of the minority party to insist that the government itself should issue paper money to cover special requirements of crop-moving periods, or of periods of financial stress. There is also a spirit of unwillingness to grant this power of issue to individual banks, because of the fear that some failures might occasion losses which would impair confidence in the remaining issue, notwithstanding the safety fund requirement which all advocates of this form of issue have agreed upon as necessary to provide for the redemption of the notes. There is also a feeling of unwillingness to permit the banks any additional note-issuing functions, because the people are unwilling to grant to the banks by legislation any new sources of profit. The argument that the people would share the benefits which might occur if the lending powers of the banks were enlarged, is lost upon the opponents of the so-called asset-currency idea. If it is contended that an increase in the ability of the banks to extend accommodation will through competition result in lower and less variable interest rates, it is hinted in reply that the banks would be the chief, and in fact the only, beneficiaries. We have a large number of citizens who insist that the right to issue a token of any nature intended to pass as "money" is an exclusively governmental function. This minority has always opposed on principle the note-issue privilege of the national bank act, as so-called "favoritism" of the banks. They would most strenuously oppose any extension of the privilege in new directions, as a matter of general policy. They may only become reconciled to a proposed change of this character, if strictly limited in volume, issued under most rigid governmental supervision, and with the expectation that its provisions would be of occasional application only, with the hint of an emergency requirement as a justification for its being.

Very general opposition has recently developed to the further issue of government bonds to be used as a basis for bank note circulation. One of the most important currency reforms confronting

us is the necessity for breaking away from our old traditions of the bond-secured bank note. We have followed the practice of issuing bank notes to the practical limit of the government debt until we have reached the danger point. The government must have the power to borrow, but its requirements bear no relation to the needed volume of money. The government should find a market for its bonds among the people, and the sooner this is accomplished the sooner we will have taken one proper step on the way to a proper rehabilitation of our finances.

If we contemplate a departure from the bond-secured note issue, we must make some provision to take its place. Bond security is not necessary as a basis for an absolutely safe issue of bank notes. Such issue, however, must be under strict limitations of volume, with assured facilities for redemption. A proper forethought for the future development of our banking and currency administration along sound lines would also suggest a requirement for the maintenance of adequate reserves of coin against future bank note issues.

If the banks are to be permitted to issue notes secured by their general assets only, or upon the pledge of other securities that the government bonds issues to which we have become accustomed, there seems to be a popular demand that the banks shall collectively assume the responsibility for the redemption of the notes issued. The bank guarantee plan incorporated by one of the great political parties in its last national platform, and adopted by several of the states in the Middle West, is but an echo of this feeling.

There is also a fear in the minds of many that any provision permitting the issue by the individual banks of uncovered notes, or notes secured by the general credit of the banks only, and not by the pledge of any specific collateral, would result in very general over-issue, and consequent inflation. The temptation to issue notes to the maximum amount permitted by law would be very strong to all banks in new communities where capital is yet limited, and interest rates high. Banks located where such conditions prevail would no doubt issue notes to the full limit permissible, under the act, and send such notes away from home for circulation, as there would be no real demand for the notes at home. As these notes were presented for redemption, new notes would at once be taken out in their stead. As country banks and even state banks and trust companies located

in the larger cities do not make any distinction between legal tenders and bank notes in counting their cash reserves, the bank vaults of the state banks and trust companies would soon contain only bank notes as their actual reserve. This condition would be perilous in the extreme.

But, it may be asked, would not an issue of uncovered bank notes by a group of banks be open to the same objections as an issue by the individual banks?

In answer, it may be said that a limited issue of notes only is proposed, and it is easier to exercise admonitory control of a few institutions than over a large number. If the proposed currency should be issued by clearing house groups only, we have the combined wisdom and caution of the entire clearing house as a check against over issue. The rates of interest prevailing in any clearing house center are never so high that a tax of five per cent or even four per cent would not prove a deterrent against over issue, and provide for speedy redemption, while a tax of five per cent or even six per cent would not avail against a continuous issue by banks in some newly developed sections. If the banks of any clearing house located in any reserve center may be permitted to form their own group of banks, and adopt their own regulations for the conduct of the association after it has been formed, there is no reason why all the banks of the group should not become jointly and severally liable for the notes issued. Such association, of course, would be under the control and approval of the Treasury Department but should be a voluntary association, not such an involuntary association as was provided for by the provisions of the Aldrich-Vreeland bill.

The point of attack should be made the point of defense. The calls for currency concentrate upon the banks of the reserve cities, and the weapon of defense should be placed in their hands. When currency becomes redundant, the excess accumulates in the vaults of the banks of the reserve centers. As nearly all the large banks of the reserve centers are national banks, and are compelled to keep their reserves in coin or legal tenders, the bank notes will not be held in their vaults, as in the vaults of the country banks, as so-called "reserve," but must be paid out or held as a non-productive asset. There should be provision for redemption at any sub-treasury, and the reserve banks would under such provision promptly present for redemption all bank notes which came into their possession, when

the calls for currency from the interior had been succeeded by a return flow of currency beyond immediate needs.

There are many arguments against the mutual guarantee of deposits by the banks. There are no essential objections however to the mutual guarantee of bank notes by the associated banks of any large clearing house center, provided the banks are permitted to form a voluntary organization, admitting only banks of their own selection, and framing their own rules for the government of the association. There are cogent reasons for the safeguarding of the bank note which do not apply to the protection of the ordinary depositor. The holder of the bank note should not be asked to scrutinize the credit of the issuing bank. The security should be so absolute that no such scrutiny should be required. The bank depositor occupies a different relation to the banking world. The deposit of money in a bank is a voluntary matter. The depositor does not make deposits with a number of banks at random. He selects some single bank with which he opens an account. He should examine the character of the management, and advise himself of its manner of doing business. Intelligent criticism of this character is one of the very best safeguards of sound banking. The acceptance of a bank note is a different matter. The holder of the bank note has no opportunity to select the notes of any particular bank. He must accept or refuse the notes as offered him. He is an involuntary creditor. By usage he is called upon to accept in trade any bank notes offered without regard to the credit of the issuing bank. His responsibility is limited to the ability to distinguish a genuine bill from a counterfeit issue. The government has come to his aid in this particular by undertaking the printing of all bills issued, and by a highly organized secret service force has practically eliminated counterfeit issues.

The guarantee of bank notes differs from the proposed guarantee of bank deposits in another vital particular. The total liabilities assumed by the banks in jointly guaranteeing the bank notes issued by their respective clearing house associations would be limited in amount, and the liability would extend only to banks of their own locality, with whom they had entered a voluntary association, and with whose management they were duly conversant. The mutual guarantee of deposits would represent the involuntary assumption of liabilities, the possible volume of which staggers the

imagination. In the guarantee of bank notes, the issue is proposed to be made in limited volume and by selected banks. The guarantee of deposits represents the assumption of an illimitable liability, with no privilege on the part of the banks of making any selection of risks.

We cannot provide a proper bank note system and get entirely away from the human equation. We cannot construct a system absolutely automatic. Some final power, vested with final responsibility, subject to human judgment, must be available somewhere, or the system will break down at times. This final power we have found in the past in the United States Treasury. It was not designed to control the banking system. It was organized with an opposite purpose in view, of getting the government out of the banking business, and the fathers of the independent sub-treasury system little conceived that an emergency might ever arise under which the Treasury Department might be called upon to assume even a moral responsibility for the protection of the banking situation.

In practice, however, the Treasury Department has never been able to maintain an attitude of non-interference. The treasury, at times, acquires such excess of revenues that the withdrawal from circulation of the treasury holdings would prove a serious menace to business. On the other hand, in times of unreasonable and unreasoning financial disturbance, the pressure of public opinion has always prompted the Secretary of the Treasury to use the utmost resources of the government to assist in restoring financial order. The United States is the largest holder of cash in the world. It has larger cash revenues than any corporation in the United States. These possessions entail grave responsibilities, which cannot be ignored.

Thus, in practice, the Treasury Department and the banks have been compelled to co-operate in times of panic, and work hand in hand for the restoration of confidence. They co-operate clumsily for there is no statute law to assist them. The Treasury Department is not recognized by law to have any banking functions, yet at times it holds vast sums of government revenue, unused funds awaiting disbursement, in no wise differing from the deposit liabilities of the commercial banks, save that they are withdrawn from the channels of trade, and the commercial interests of the country are hampered by the withdrawal of hoarded money to the extent of the treasury holdings. The one appealing argument urged in favor of the Postal Savings Bank bill has been that the postal savings bank would bring

out of hiding considerable sums of money which is now being hoarded by timid people. The government has been the chief sinner in the matter of forcible and violent withdrawals of sums of actual cash from the channels of trade, and it may well set a good example to the nation by a change in its manner of handling its own revenues.

The Treasury Department is also charged with the responsibility of maintaining the redemption in coin of a vast volume of paper money. In fact the protection and maintenance of our gold holdings, a matter intimately connected with the questions of bank reserves and of the settlement of our foreign trade balances, is with us a distinctly treasury action. In all European countries these problems are assumed by the semi-governmental banks.

If the burden of the maintenance of cash payments is to be placed upon the banks, then the banks of the reserve cities, at least, being the banks which really carry the cash reserves of the country, should be given the liberty of using their undoubted credit and resources as a basis for the issue of a sufficient volume of notes, secured by clearing house certificates, to protect the nation from a currency famine. This was attempted in the Aldrich-Vreeland bill, but if this measure is to be permanently adopted, it should be revised in such manner that the banks may be permitted greater freedom of action.

If Congress or the people are unwilling to grant to the banks such note issuing power as may enable them to control the currency situation in time of panic, because of insistence that the power to coin money and to regulate the value thereof make it incumbent upon the government to furnish a supply of money adequate to the needs of the nation, then, our last resource is a semi-governmental bank of issue. The central bank idea has many advocates and many opponents. If the central bank is called into being, it will be compelled to exercise control not only over the available supply of cash reserves of the banks, but will be compelled to act as the final arbiter in the extension of credits, both in a banking sense and a commercial sense. When credits become greatly extended, the position of the central bank would not only be one of great responsibility, but also one of great power, both financial and moral. The chief objection which has been urged by the opponents of the central bank is that so great power over the money market should not be vested in any institution. The fear is expressed that the management

might at some time fall under the control of a single group of individuals, either of financial or political brotherhood, who might administer its affairs for their own personal aggrandizement.

The history of the first two banks of the United States has been pointed out as proof that any central bank organization in our country is a predestined failure. The comparison is unfortunate, but there is in fact no analogy between the United States banks of the earlier period and the proposed central bank of to-day. The first banks of the United States were direct and active competitors of the commercial banks of the period. The proposed central bank of this day would not be a competitor with the existing banks for commercial business. It would be a bank of banks, its ownership and control in the hands of the existing banks, but under quasi-governmental control. It would be the custodian of the final reserves of the banks, and would have in its control the reserve note issue power of the banks. It would have large responsibilities. The same responsibilities already exist, but rest upon the large aggregate number of existing banks. Each individual bank is apt, however, to treat his responsibility lightly, feeling perhaps that his small efforts to check a rising flood of speculation would have but little effect on the whole situation. Free banking advances personal aims only. We need some consolidation of existing banking responsibilities, in such manner as to recognize the claims of public duty.

The power to issue uncovered notes should be the last and final link in the line of reserves built up by the banks. The country banks make no attempt to carry the actual cash reserves necessary to be held against the enormous and growing mass of our bank book credits. Our reserves are concentrated at the money centers. Perhaps it is as well it should be so. There should be a gradual refining of credits from the small community on the outskirts of our commercial territory, through larger and larger centers of banking activity, until we come to the city whose wealth and banking power constitute it the financial center of the country. Here we expect to find credits more fluid and mobile, with a power of assimilation of all that is best of the financial offerings which, wherever they may originate, tend to draw upon this common center whenever the enterprise calls for the employment of other than local means.

The concentration of reserves has taken place as a natural evolution of banking. As the reserves have by common consent become

lodged in the larger money centers, the note issue power, which should be the last line in our defences, should be lodged in the banks of the large money centers. Being thus disposed, our reserves acquire greater mobility, for they may be promptly marshalled thence for the defence of any point which may for the time demand the use of unusual resources. Upon these money centers concentrates the demand for coin for export in payment of our foreign balances, for legal tenders to pay custom duties, for cash to move the cotton crop of the South, the wheat of the Middle West and the Northwest, and for any unusual call which may be occasioned at any time by any one of our manifold activities.

The maintenance of our banking reserves thus rests upon the banks of our larger money centers. The maintenance of reserves in banking is a vital matter. It has long been so understood by Congress, which requires the banks of the central reserve cities to maintain minimum reserves of actual cash in their vaults of twenty-five per cent of their deposits. No arbitrary rule will suffice however, to represent an adequate reserve. The demands upon it vary with the seasons, are strangely affected by foreign market conditions, by crop conditions, by frosts, floods, and earthquakes; by matters political, by labor conditions, and most of all by that mercurial and unmeasurable thing, public confidence or trust. The conservative banker must decide for himself, almost from day to day, revising constantly his views on the financial outlook, what minimum reserve is required. Even then his position is jeopardized, if the action of his neighbor is not governed by a policy equally sane and conservative. Competition is so strong among our banks, and the demand for a showing of earnings is so pressing upon our bank managers, that it would prove a real relief to many of them to relinquish in part the great responsibilities which the care of this reserve entails. With a central bank organized for the purpose, relieved by its charter from the strain for profits, and charged with an acknowledged responsibility for the management of our reserves, the maintenance of cash payments, and the redemption in gold of our paper money, our banking system would present a solidarity of organization, and an efficiency of action, which in the minds of many students of finance has been hitherto lacking.

STATE AND NATIONAL EXAMINATIONS OF BANKS

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Much unjust criticism has been made by bankers and bank examiners against each other, and the general public has frequently condemned both. When a trusted bank officer or clerk decamps with the bank's money the popular cry is heard to the effect that all bank men should be watched closer; and there is also heard the oft repeated demand, "Where was the bank examiner?" In the mutual effort to serve the public well and faithfully, cordial co-operation and perfect understanding between the banker and examiner should take the place of suspicion and distrust. Criticism is unjust when entertained before due consideration of all of the facts has been given.

As an examiner, I ought to believe that every bank officer and clerk is absolutely honest and conscientious, and my investigations should be directed to the proving of my theory; and as a bank officer, director or clerk, I ought to feel that the examinations have been instituted and conducted for my benefit as well as for those who have placed their trust in me. It frequently happens that unnecessary friction is allowed to creep in and destroy the best results that might otherwise be derived from the visits of the examiner. Constant contact with the many phases of the banking business in many banks enables the thoughtful examiner to see some of the relations between facts and uncertainties in a clearer light than is possible for some strictly local bank officers; and the friendly discussion with the examiner of such matters as arise in the course of his business would be of greater benefit to the banker than he could realize until he has experienced it. On the other hand, the trained banker can, if he will, impart to the examiner a knowledge of specific acts and circumstances surrounding specific transactions, to be learned in no other way.

The best examination results from the joint efforts of the banker and examiner working together, each possessing good judgment and tact, and each having an earnest desire that the bank

be searched through for an untoward act or transaction that ought to be uprooted before it has fastened its ugly tentacles. A bank official expressed the idea of value to be obtained from contact with the examiner in the following language:

We bank officers are so close to the scene of action, that we do not look upon it in the same way as an outsider and the opinion of another is often refreshing and helpful.

In the consideration of the subject of an examination of state and national banks, we should keep in mind the immense task imposed upon those responsible for such labors. The Monetary Commission reports that in April, 1909, there were 22,491 banks of all classes doing business in the United States. These banks handle assets amounting to the vast aggregate of \$19,583,410,393, which in total and in detail must be accounted for, and, with few exceptions, examined one or more times each year by the state or national examiners. The number of examinations required by the laws of the states varies from one examination to five annually. The national bank examiners visit the bank as nearly twice each year as possible.

The examiner has to contend with a great many difficulties not ordinarily known to the public. One of the obstacles consists in the attitude of the directors and officers when violations of the law are called to their attention. This, of course, is more particularly true in some country banks, where the directors have had very little general experience outside of the small trades or occupations in which they are engaged, many of them being farmers.

Requirements of the States

With but few exceptions all of the states have provisions for examinations of banks, although some of the laws regulating the control of banking have been but recently enacted. In Arkansas, the state auditor says, there are no banking laws and no examinations of banks, and so late as 1909 the Superintendent of Banking in Ohio states that none of the banks of the state had ever been examined before.

From Arkansas, where no examinations of any kind are required, it is a long cry to Rhode Island, where provision is made not only for two examinations annually by the bank commission,

but in addition private examinations are required by law. So far as I have been able to learn, no state in our union has gone the lengths of Rhode Island in directing how examinations, other than official, shall be made. A letter dated June 10, 1910, addressed to the banks, signed by the bank commissioner, calls attention in the following language to the law recently passed: "Heretofore the law laid this duty directly upon a committee of the trustees, but now this duty must be performed by a certified public accountant of this state, whose examinations and reports must cover subjects and be in a form satisfactory to the bank commissioner." At the end of the letter are given the names and addresses of the certified public accountants of Rhode Island.

Between these two extremes the other state banking departments are operating under laws of varying force and scope.

National Banking Supervision

The Comptroller of the Currency is the superintendent of the national banks. In his last report dated December 6, 1909, he states that on September 1, 1909, there were 6,977 national banks in operation grouped as to capital into the following divisions:

Capital	Number
\$25,000	1,815
Over 25,000 less than \$50,000	384
Over 50,000 less than 100,000	2,217
Over 100,000 less than 250,000	1,009
Over 250,000 less than 1,000,000	492
Over 1,000,000 less than 5,000,000	149
5,000,000 and over	11
Total	6,977

The national act from which the Comptroller of the Currency derives his power was originally passed as a currency measure. The government desired to place the issue of bank currency in banks operating under a national charter and at the same time provide a means for marketing its bonds. The original scope of the examiner's duties seems to have limited the examinations somewhat to such inspection as would assure the comptroller that the notes issued by the bank would be paid upon presentation at the bank, and thus prevent the necessity of sale of the bonds deposited in Washington as collateral security for the notes. A few hours'

work in each bank seemed to be all that was considered necessary for such purposes as were originally in contemplation; and the fee was, in 1862, deemed ample compensation. In some cases more than one bank examination could be completed in a day's work; thus a comfortable income resulted to the examiner. The act of Congress governing the scope of the duties of the examiners has not been changed in this respect from that day to this, but the rulings of the several comptrollers have gradually increased the labor of the examiners to such an extent that with few exceptions they are to-day very poorly paid for the amount of work they are required to do.

Part of the enlargement in the scope of the examination is attributable to the accumulation of experience which each successive comptroller has found at hand, partly to recommendations of bank officers; but the bulk of the work now done by the national bank examiner may fairly be attributed to the zeal on the part of all officials inspired by the pressure of public opinion. Each embezzlement of bank funds by officers or clerks and each failure of national banks has created in the minds of the general public a feeling that greater efficiency in the comptroller's office would have prevented the loss. Thus, the comptrollers stimulated to increased endeavor, have added from time to time things necessary for the examiner to do to safeguard the funds of the depositors, until, at present, instead of a cursory inspection of the available assets of a bank for the purpose of determining that the national bank currency would be honored, the examiner must go into, and report upon, a multitude of details, originally scarcely contemplated as necessary or desirable.

The most recently reported order of the comptroller will illustrate as well as any other the difference in the present and former requirements. The examiners will now be required to exercise judgment as to whether a weak bank should be allowed to continue in business; and for the purpose of coming to some conclusion in the matter without waiting to file their reports, they should call the directors to a meeting to consider the financial condition of the bank with a view of liquidation. Think of it! A man who may possibly receive the mere pittance of \$20.00 for an examination of a bank must be of such caliber that dependence may be placed upon his judgment as to whether that bank should be closed up or

nursed along. This disproportion between brains required and the compensation allowed should be adjusted without delay.

While there is some adverse criticism of the present Comptroller of the Currency in his exacting demands upon the directors and officers of the national banks for a better performance of their duties, it seems to be pretty generally conceded that such steps are well considered; that the comptroller should enforce the law as he finds it, and that this will result in great improvements in the national banking business. If the law is unjust in any way, the quickest means by which it can be changed is for him to enforce it. That many of the points on which he insists are considered good is shown in the reports of many state bank commissioners. His example is being followed by numerous state officials, while others express the regret that they have not the power to adopt some of the requirements of his office.

One of the greatest difficulties confronting all banking departments is the tendency on the part of banks to loan money to their customers in excess of the amount declared by law to be the limit to which loans can be made. The comptroller states that, in spite of his watchfulness, caution, and remonstrances, over fifteen per cent of the total number of banks doing business report excessive loans.

The amount that can be loaned to any individual, firm, or corporation is an amount equal to ten per cent of the bank's capital and surplus, providing that the total of such loan does not exceed an amount equal to thirty per cent of the capital stock of the bank. The penalty for violation of this law is so severe that it has rarely been imposed, and many banks openly violate the law on the ground that it is unjust and that it interferes with their business. A bank with a capital and surplus of \$1,000,000 could accommodate a wealthy and desirable customer with only \$100,000 if the law were strictly obeyed, yet the bank might have many millions of deposits available for loans. For the bank to make a larger loan, there must be an increase in capital or a change in the law. That the banks do not consider the law one to be obeyed to the letter is shown in the fact that over one thousand banks voluntarily reported excessive loans in September, 1909.

A new feature adopted by the present comptroller consists in the organization of the examiners in the field. There are now

between 95 and 100 national bank examiners who have been grouped or classified into eleven or twelve territorial districts by the comptroller. It is intended that these groups of examiners shall meet twice a year for the exchange of information regarding borrowers in their district, and a discussion of any suggested improvements in the examinations that may be made under existing conditions.

Each group is presided over by a chairman, who assigns to each examiner the task of writing a paper to be read at the meeting. The chairman himself also writes a paper, and the meetings are intended to be of great use to the examiners in tending to perfect them in their work. This organization of examiners into these associations, if properly handled and maintained, will bring about much, although in the hands of immature men there is grave danger of indiscreet treatment of the confidential knowledge entrusted to them. This must be carefully guarded against.

Qualifications Required of Examiners by State and National Authorities

Unfortunately, at least in the past, political influence more than ability has assisted candidates to obtain the position of examiner. Perhaps the following is an extreme illustration: A newly appointed examiner was sent to an old and experienced examiner for training. In a conversation with the appointee, it was learned that he knew nothing about the business, possessed no experience whatever in banking and had, in fact, neither applied for, nor desired, the position of examiner. He was, however, a supporter of certain political influences in his state and was filled with a laudable desire to become a United States marshal or assistant United States district attorney. His benefactors did not happen to have just such a job handy so they asked the comptroller to appoint him bank examiner. He frankly told the comptroller, he said, that he knew nothing about a bank. The comptroller, it is said, told him that he could learn and he was thereupon sent to the old examiner for instructions. Extremes meet among the examiners, as well as in other classes. Some examiners have served years of useful employment in a bank, after which they have been taken to Washington, where they were thoroughly drilled in the analysis of reports of examina-

tions. After all this training, they were allowed to go out in the field.

It is very fortunate indeed that the comptrollers have to a large extent disregarded political pressure and that very few examiners have been removed because of their politics; the examiners appointed purely for political reasons are being carefully weeded out, and to-day it may be said that the examiners are as a class equal, if not superior, to any other body in the national or state service.

In some states the examiners are required to have had certain qualifications, including a definite number of years of active bank experience, while in other states the matter is left to the discretion of the bank commissioners. In Texas, for example, every examiner must have been an "expert bookkeeper and bank accountant" and must have had practical experience in the banking business for at least five years. This expert receives a salary of \$2,000 per annum and must furnish a bond of \$10,000. In West Virginia the candidate must be "skilled in the science of bookkeeping and banking" and must have had at least "two years'" experience as cashier or assistant cashier in a bank, or shall have served at least two years as assistant commissioner of banking, banking examiner, or as an accounting officer of the state."

A curious condition was discovered in Georgia by the state treasurer, who in that state is also bank examiner. In his report for the year 1909 he says:

In this department I found that bank examiners were in business for their health and each had resigned positions to accept service in the department because it afforded them outdoor work, although at a less salary. Up to the present time the salaries range from \$1,200 to \$2,000 per annum, the same being paid out of fees received from the banks examined, and, be it said to the credit of the banks throughout the state, that they are willing to pay a larger fee for a more thorough examination such as will keep in the service accountants of ability at salaries commensurate with the service rendered.

In discussing the qualifications of the bank examiner the commissioner of Kansas in his report for the year 1908 says:

In short, judgment is the best asset of a bank examiner and the person who has found judgment supplemented with experience as an examiner is the one whose services become invaluable to the state, and such a bank examiner should be retained regardless of political affiliation.

In an address by Hon. H. M. Zimmerman before the Michigan State Bankers' Association in 1907, he took occasion to observe:

The experience of the department shows that it takes years to make a thoroughly competent examiner even when his previous experience has been along the line of bank work, and each succeeding year's work in the service adds greatly to his efficiency.

It is the belief of the superintendent of the banking department of Ohio that

The work of the department should be so quietly done as to be unnoticed, and that the better its work, the less will be heard from it.

The commissioner of the State of Idaho well describes a certain phase of the work of an examiner in the following language:

The duties of an examiner are of such a nature as to require men of ability and fitness. Because the duties of an examiner are of a confidential nature and he cannot submit himself to newspapers' interviews, the general public knows very little of his work unless there is a failure in his state, the whole community is then ready to tell how the examiner was incompetent and that the bank should have been closed long before. They do not know of the many special reports and efforts that have been put forth to save the institution, nor do they ever hear of the numerous banks that are saved in this way from failure.

The state examiner of the State of Washington says that

The state banking department here is conducted along as rigid rules as we know how at the present time, and that we regard our examiners in the same class as the national examiners of this state, and that the examiners here are equal to the best. We are working in perfect harmony with the national department so that all information gained by one department of interest to the other is exchanged.

Compensation of Examiners

The state examiners as a rule receive salaries in addition to their actual traveling expenses, while the national bank examiners receive a graded fee for the examination of each bank, out of which they must pay for such assistants as they require and also all traveling and other expenses.

The salaries of the state bank examiners, with few exceptions, range from \$1,200 to \$4,800 per annum, many of them working hard all the year, and nearly every day in the year, for the small annual sum of \$2,000.

The total amount collected from national banks and paid to the examiners for the last year was \$510,928.07, or an average of about \$5,000 to each, but by far the larger number receive less than this average. The Deputy Comptroller submitted to the Monetary Commission the following table of amounts paid:

GROSS INCOME OF NATIONAL BANK EXAMINERS.

14	receive over	\$2,000	but less than	\$3,000
18	receive over	3,000	but less than	4,000
30	receive over	4,000	but less than	5,000
13	receive over	5,000	but less than	6,000
6	receive over	6,000	but less than	7,000
2	receive over	7,000	but less than	8,000
2	receive over	8,000	but less than	9,000

The New York and Chicago examiners not included in this table receive between \$18,000 and \$19,000 each. Out of their gross income all examiners must pay their own traveling expenses, assistants and other expenses, amounting to about one-third of the total compensation, so that the net income in most cases is very small in proportion to the responsibility assumed.

Character of Examiners

Fully appreciating the honesty and strength of character possessed by bank officers and clerks as a class, it is to be most deeply regretted that exceptions to the general rule exist among them. While the thoroughly efficient examiner preserves an attitude of belief in the honesty of all the bank men met during the performance of his duties, he must be ever alert to detect the acts of the unfortunate and misguided man who has fallen a prey to temptation. Such men are constantly studying ways and means of covering their embezzlement, becoming in some instances experts in concealing traces of their guilt.

An examiner can spend usually not more than a few days each in the examination of a large bank and rarely more than one day each in the banks in smaller cities and towns. Much routine work must be done in this short time to cover the requirements of the state or national regulations, and some examiners unwisely yield to the impulse to fall into ruts of clerical performances not conducive to unearthing well-covered stealings.

The bank man whose accounts are crooked watches the exam-

iner closely, studying every move, that he may know wherein the least danger of discovery lies. He knows exactly where the needle in the haystack is, while the examiner does not even know that there is a needle in the haystack at all. If the examiner paws over the surface of the stack with regular motions at each visit, the guilty possessor of the secret knows where the needle may be buried with least danger of discovery.

The examiner must keep in mind that, while by far the greatest majority of bank men are thoroughly honest in word and act, there may be some men among them guilty of as yet undiscovered fraud. The examiner should study the general subject of fraud in banking thoroughly. One bank cashier says that his experience shows that "*the most usual causes (of fraud) are the following: First, one-man banking; second, corrupt politics; third, excessive loans to directors.*"

The examiners who understand their duties and perform them faithfully are well respected by the bank officers. A vice-president of a large national bank says:

In a banking experience of forty odd years in a New York City national bank I have been present at every examination except three made by national bank examiners and committees from the board of directors. I think I know all the tricks and possibilities of the business and for the life of me I could not improve on the examinations I have witnessed.

Some examiners go more deeply into the affairs of the bank than others, but none of them pretend that their examinations are as thorough and searching as they would be if the conditions under which such examinations are made were different, and they were afforded more time and assistance. The present comptroller is making earnest efforts to improve the efficiency of his staff of examiners; and, so far as can be learned from the reports of the various state banking commissioners seen, they all realize the need for improvement and are striving to purge the service of weak examiners and at the same time increase the ability of the good man.

The success of an examination depends so much upon the good judgment of the examiner that it is absolutely impossible for the state or national authorities to formulate rules for the conduct of an examination to the extent that mere following of the rules will produce good work. Each good examiner works along his own line of investigation in digging under the surface of things as they

appear, while following a general plan laid down by his superiors framed to verify so far as possible in a short time the existence of the assets and liabilities of the bank as shown by its books.

While some of the bank examiners are men of training and good judgment, and are persistently faithful in their work, others have fallen into a routine performance of their duties calculated to enable them to finish an examination and make a complete report to their superiors in what they think is a reasonable time. It is to be regretted that such work results in a superficial view of things too often expressed in stereotyped language in the reports. As one experienced state banker expresses it, "The principal weakness in the present system of state bank examination appears to me to be a lack of thoroughness and a disposition to only examine surface conditions." He goes on to say that he thinks this "is caused not by the incompetency or unwillingness of the examiners themselves, but by the fact that they have so many institutions to examine that it is really impossible for them to furnish anything but a tentative examination."

Much thought and inquiry outside of the actual work in the bank is undertaken by all good examiners. As an example of the industry and effort on the part of some examiners and the extent to which their labors lead them, the Philadelphia National Bank Examiner, an able man, has taken a step in the obtaining of information which places at his disposal very valuable data. He has inaugurated a credit ledger in his office which contains the names of about 800 of the larger mercantile and manufacturing concerns in the Philadelphia district. It is intended that a letter will be mailed each month to all of the banks in his district, requesting them to furnish the amount of the loans to each and all of the 800 concerns on a given day. This information is to be written in his credit ledger and he can at any time turn to this ledger and ascertain the borrowing of any one concern in all the banks in the district, and any bank in his district can obtain the information by inquiry of the examiner. In a very comprehensive way, he has thus started what may eventually become extended into a very comprehensive credit bureau.

Improvements in Existing Laws Suggested

There is hardly a bank commissioner in any of the states who does not in his reports recommend changes in the laws governing the business of banking and its supervision by the state authorities. There is a general tendency in the state legislatures to adopt the suggestions of the commissioners to the effect that restrictions may be placed on certain banking practices, particularly upon the limit of the loans. In Idaho, for example, it is proposed to pass an act reducing the amount that may be loaned to any corporation or person from fifty per cent to twenty-five per cent. The state bank examiner of South Carolina recommends that he be given authority to direct the charging off of worthless paper stating that

There are a number of banks perfectly sound and solvent, that are carrying varying amounts of worthless paper, publishing same as good, live assets. They have ample profits to take care of these worthless notes and should be compelled to do so and discontinue the making of misleading reports to the public.

The various comptrollers of the currency, the national supervisors, have suggested improvements in the national bank acts. Perhaps one of the most interesting documents relating to examinations is one published this year, No. 404 of the National Monetary Commission, containing "Suggested Changes in the Administration Features of the National Banking Laws." Recommendations are made by national bank examiners, clearing house associations and state banking officials throughout the United States. There are also the statements made at the hearings of the commission by the Secretary of the Treasury, Comptroller and Deputy Comptroller of the Currency, and the presidents of several national banks. Many different views are expressed in these suggestions regarding certain features of the laws pertaining to the examinations of national banks.

The following is a list of some of the questions propounded by the commission together with a summary of what appears to be the preponderance of opinion in the answers to each:

1. Section 5240 of the Revised Statutes authorizes the Comptroller of the Currency, with the approval of the Secretary of the Treasury, to appoint suitable persons to make examinations of national bank associations.

Should, in your judgment, the method of appointing examiners be continued as at present or be made subject to civil service rules?

Is it desirable to apply civil service regulations to the tenure in office of bank examiners?

Examiners should be appointed by the comptroller without regard to politics, but with regard to special fitness, the comptroller to take the advantages of the civil service examination if it would be of assistance in selecting a candidate. The examiner should be kept in service during faithful performance of his duty, but should be removable by the comptroller.

2. The same section of the Revised Statutes, 5240, provides the method for paying examiners, basing it on the fee system.

In your judgment is it desirable to change this to a salary or per diem basis, to which there should be added the necessary expenses incurred in making examinations, it being understood that banks shall be assessed to pay salaries and expenses in a similar manner as now provided for by the existing law?

The examiners should be placed on a graded salary basis with allowance for actual expenses. The fee system tends to produce superficial work, creates routine performance and, in an effort to save expense, the country bank examiner pursues the same route and can easily be traced by banks in the localities in which he is working; thus banks are able to calculate about when the examiner will arrive.

3. In making assessments to provide a fund to pay examiners and other expenses, do you think the law should be changed so as to base the amount of this assessment on capital and gross assets rather than on capital alone, as the law now provides?

Fees for examination should be based upon gross assets as the fairest method of indicating the amount of labor performed.

4. Do you think it would be desirable to provide a force of assistant examiners to work in co-operation with examiners in large places, and, in future, when vacancies occur, to recruit the force of examiners from these assistants?

This would be a wise provision in order to train examiners, but the comptroller should not be required to select solely from this class in filling vacancies in the position of examiner.

5. As examiners are frequently in charge of failed banks, acting as temporary receivers, do you think it would be desirable to require them to give

a sufficient bond for the protection of the government and the bank when such contingencies occur?

Few seem to think that bonding of examiners is necessary, but most were inclined to agree to the proposition, if desired by the comptroller for any reason.

11. Under Section 5211 of the Revised Statutes, which provides for bank reports, banks are not required to make them in duplicate, and in several instances the examiner has been furnished by the officers of the bank with a report entirely dissimilar from the one on file at the department in Washington, and, in using the imperfect report, he has found that the bank's books correspond to it. This permits of deliberate falsification of accounts.

Would it, in your judgment, be wise to require that reports be made in duplicate, both reports being sent to the Comptroller of the Currency, and one copy furnished to the examiner by the comptroller when about to undertake the examination of the bank?

While some views were expressed dissenting from the thought that the banks be required to issue duplicate reports for the convenience of the examiner, most of them seem to acquiesce in the evident desire on the part of the comptroller that duplicate reports should be sent to him, one of which could be used for the purpose of examination by the examiner.

14. Section 5209 of the Revised Statutes makes it a misdemeanor for an officer or an employee of a bank to make false entries with intention to deceive, but the courts have decided that this does not apply to reports made to the Comptroller of the Currency, as he is not mentioned in the law.

Should not the law be extended to apply to false reports made to the comptroller?

There seemed no doubt whatever that the false entries made in reports to the comptroller should be subject to the same penalty as though made to deceive any other person.

19. Have you any suggestions to make relative to changes in the organization of the comptroller's office? There are many other minor changes which it is apparent should be made in the administrative features of national bank laws, some of which may occur to you, and the commission will be gratified if you, in answer to the above questions, will make any recommendations which seem to you wise, giving your reasons for urging such changes.

There did not seem to be any dissenting voice against the placing of more power in the hands of the comptroller in the enforcement

of the national bank act by penalties not now provided. Under this heading some suggestions are offered regarding the appointment of a supervisor and commissioner in different districts to supervise the work of the examiners. Some recommended the changing of the examiners frequently, and others opposed the view on the ground that an examiner can do better work in banks where he handles the assets several times per annum.

Suggestions for Improving Official Examinations Under Present Conditions

The able examiners are not waiting for changes in the laws to give them more opportunities for better work. The good men are making the most of conditions as they find them. Anything short of unstinted praise in appreciation of the good work such examiners are doing would argue ignorance on the part of the critic. The points brought out in the following paragraphs are not intended as indicative of any shortcomings on those who are doing the best they can under the very trying circumstances in which all examiners are placed. The discussion is intended, first, to state a few of the defects existing in some banks, the presence of which the banks themselves ought to guard against; and, second, to make some kindly suggestions to the less experienced examiners who may desire to improve their efficiency.

There are very few cash items that have any proper place in the settlement of the cash at the end of the day. Too often, however, the "Cash Item" list is used for careless and slovenly banking. At the settlement hour, every check, note or draft should have been disposed of in the regular routine of the business. It sometimes happens that a check will come into the bank too late to put through the day's work. Such an item constitutes a permissible "hold over," but these items should be closely watched and it should be insisted that the amount be reduced to the absolute minimum.

While speaking of cash items, I am reminded of another fruitful source of temptation to the teller in some banks where protested notes and checks are allowed to remain in the control of the tellers. In one case a bundle of such was discovered, some of the protested checks bearing dates for days, months and even years prior to the date of examination.

The examiner frequently meets with a settlement of cash to a penny and is apt to consider the teller very accurate in his work. Sometimes the teller will say that he has "settled" for over a year. The wary examiner will look around for an "over and short" box before giving the teller full credit for what may be justly his due.

Unless examiners have been experienced tellers prior to their appointment the actual work of counting the currency and coin will be necessarily slow. The embarrassment created by the awkward handling of the cash by the examiner in the presence of the skilled teller operates sometimes to prevent a thorough proof of the cash, especially when the hour is getting late and the tellers and clerks are gathered around the examiner watching him with scarcely concealed contempt and sometimes audible sarcasm. Quick handling of the cash comes only after years of practice, and constitutes the chief difficulty that a bank examiner, otherwise brilliant, has to overcome.

Occasionally large loans in the form of checks are carried as cash items. As a rule such loans are intended to remain in the bank over night only, they being taken up or put in some other form the next day. Sometimes they are carried indefinitely, a new check being made out to take the place of an old one when the bank examiner comes around. This is one of the most easily misunderstood things that an examiner has to examine, and he may be of help in keeping the cash clear of such items by explaining to the directors and officers the undesirable features of the bad practice.

Dishonest cashiers and tellers sometimes carry their own borrowings as cash items, until the examiner comes around, when the amount of such items is charged up to various depositors' accounts, until the examiner leaves. The amounts then are either left as fraudulent charges in the depositors' accounts, or returned to the cash items. This can be easily accomplished unless the examiner is alert to locate the cash items at once on beginning his examination. He should very carefully scrutinize all the entries in the check and deposit "scratchers" for at least several days back and endeavor to verify the correctness of the charges and credits by comparison of the entries with the checks paid and deposit slips.

In examining the deposit ledger, he should keep in mind the possibility of entries in the accounts placed there temporarily to

straighten out the cash items or other shortage. In one case, an examiner in taking off a trial balance of the deposit ledger noticed an overdraft of \$1,700 apparently made good by a deposit several days prior to the date of his examination. He called for the deposit slip, but it could not be found; and the examiner, after a little more inspection, confronted the cashier with his suspicion that the credit entry was a false one and had been made in the account since the beginning of the examination. While the examiner was in the bank, the cashier had slipped out and exchanged his \$2,000 promissory note for that of a friend, which note he placed to the credit of the depositor whose account showed a false overdraft.

Holding back credits for remittances and deposits is a method adopted by some erring bank tellers to cover speculations. Special care on the part of the examiner should be exercised to prevent such practices because when once started, the risk of detection by the ordinary examiner is very small. He will, if careful, watch deposits being made until he has settled the cash and try to keep track of them to the extent that while he is in the bank the entries for these credits will not be omitted from the proper books or records. Otherwise he may count cash, the amount of which has not been entered into the day's business, the cash being handed to him to cover a shortage.

In cities where there are clearing houses, the national banks will have at the end of each day large amounts of checks received during the day to go to the clearing house the next morning. These are, so to speak, "legitimate" cash items, but they should be carefully scrutinized in order to detect false items.

Trust companies usually send all of the checks received by them during the course of the day to their depository, usually a nearby national bank. The pass book of the national bank showing the account with the trust company should, of course, be balanced at the close of the day on which the examination is made.

The general tendency among bank men to-day is toward the desire for ever increasing efficiency on the part of the examiner. With but few exceptions, they urge careful, conscientious work and recommend that nothing be taken by the examiners for granted. "All obscure or irregular matters should be verified or traced to their original sources," is a suggestion made by one of my friends. It expresses a thought that ought not to be lightly treated by an

examiner. Of course it is one that is carried out earnestly by the good examiners.

Another suggestion offered by the same friend is not usually thought of as feasible in the official examinations of state or national banks: "All assets," says he, "should be appraised by competent and expert appraisers and the attention of the management called to doubtful or unknown values." The examiner should endeavor to ascertain the value of every kind of asset, owned by the bank or held as collateral, and very little difficulty is presented in the readily marketable securities constantly quoted. While it may not be feasible at the present time for the national or state examiners to actually put values on all assets, it can be accomplished in the unofficial independent examinations by certified public accountants whose time limit for the examination can be arranged according to the necessities of the case.

One of the most important departments of a bank or trust company consists of its deposits. The verification of the accuracy of the books of the bank in this particular can only be accomplished upon a comparison of the bank's books with the depositors' pass books. It is usually so difficult to obtain the pass books during a short examination that this verification is rarely undertaken in the official examinations. This can be attended to by the clearing house examiner. I know of one at least, who deems the matter of great importance and who calls for a large percentage of all the pass books in each bank. Fears of a run on the bank by excited depositors has in the past operated to create great but natural stubbornness in bank officials against the attempt by examiners or accountants to get in pass books. In an experience including several sad cases of trouble the author has found that the bulk of the amount of the embezzlement was revealed when the depositors' pass books were examined.

One bank cashier states the matter very clearly in the following suggestion:

Examiners are particularly careful with the correspondent banks, why not with the individual? I have always thought it would be wise for an examiner—he is always with a bank several days—to send for such pass books as he may think advisable in scanning the ledgers and settle them while at the bank, having the balance checked up afterwards with the depositors in the same manner as he checks up with the banks. If the dishonest teller or bookkeeper knew this to be a general practice, he would

be very loath to manipulate figures, either in deposit slips or posting. The examiner may argue that he has not the time for exhaustive examinations, but the moral effect of even a slight effort in this direction, would, I think, be very beneficial.

The suggestion is put in another way by another bank cashier:

There appears to be abundant room for fraud by collusion between a teller and a bookkeeper in making false charges to cover shortages in cash. For this reason we can see that the accounts of the individual depositors ought to be verified by direct communication of the auditor or examiner with the depositor.

A trust company's treasurer goes a step further and recommends that the

Department should require its institutions to adopt a system whereby their pass books are settled periodically, a receipt containing a clause to the effect that the pass book has been received and verified, obtained from each depositor, or the settlement of pass books eliminated and a system of rendering accounts at stated periods adopted.

Here again is evidence of a dividing line between what the official examiner believes is the limit of his duties and what in his opinion ought to be attended to by the bank itself with or without the assistance of certified public accountants, who may, if employed, easily obtain the proper verification, providing the banks want a thorough examination and if the way in which the examination is carried out is tactful and persistent. Honest and entirely trustworthy bank men commend acts of precaution as evidences of that care upon which they in many cases rely as a safeguard against the embezzlement by their clerks.

One of my friends expressed himself very strongly on the subject. It is to be hoped that the suggestion applies only to some exceptionally careless examiner: "In all examinations and until the assets have been verified, the officers of the institution should have access to the assets only when accompanied by the examiner. This practice which is customary with certified accountants is neglected by the authorities of this state, and this oversight could easily be used by unscrupulous or dishonest officials to their own advantage."

Perhaps all of my readers know that the trust funds of a trust company are not included in its statement of final condition. If mentioned at all, the notation is usually made at the bottom of such

statement and is confined to the amount of trust funds invested and uninvested. The suggestion is that there should be:

An appreciation of the necessity of better examinations of the enormous assets and liabilities held by the trust companies in fiduciary capacities. This neglect has probably arisen from the fact that most of the older institutions to-day conduct this department of their business by single entry system of bookkeeping. Such make lapsed and complete audits almost impossible.

These trust assets and liabilities in many cases far exceed the total resources of the company and should be subject to careful and rigid verification.

The official examiner in some cases perhaps works too exclusively with the bank's own statement of its financial condition for his guide. There are many assets in a bank besides those appearing in the statement. Two of this character, the examination of which would operate as a safeguard against stealing, are expressed by the vice-president of a large city bank who recommends:

(1) The more careful auditing and verification of stocks, securities and valuable papers left with the bank for safekeeping; and

(2) Also a more thorough system of recording and verifying loans made on account of out-of-town correspondents. These are two weak points and should be carefully guarded by all of the banks handling this class of business.

From the official examiner's standpoint, such matters ought to be safeguarded by the banks themselves. He has his hands full in the verification of the assets and liabilities as shown by the bank's statement. If he can satisfy himself that the bank is in good condition and is not badly violating the law, he considers that he should not be required to try to find any other assets of the sort referred to. There is no doubt that the points raised by this bank official are highly important and they should be provided for in some way or another. The good examiner is fully aware of the possibility for manipulation in that kind of assets and he has not only the knowledge that the securities might be easily stolen by the dishonest clerk or official in charge of them, but he knows also of the opportunity for making these securities do the duty of taking the place of the bank's own missing securities and collateral.

That fictitious promissory notes have been prepared to deceive the examiners is a fact known to many examiners, and to bank men as well. One cashier has urged the importance of verification

of these notes in the following words: "All the discounted paper of the bank of any large amount (which is of course counted in the assets) should be known to be genuine."

The official examiner will say on this point that it is absolutely impossible for him to know the signatures of even the large borrowers in the banks. He can overcome part of the difficulty by calling in a committee of the directors of the bank to assist him in his scrutiny of the signatures, but in many instances the bank directors would not know as much about the signatures as the examiner himself, although a stranger to the borrowers. Perhaps the best way of verifying the genuineness of notes is by correspondence with the borrowers. The bank examiner has the right and power so to do, and some of them partially exercise that power. If a borrower admits directly to the examiner his liability, it is the best evidence that his note for the amount is at least genuine.

In large banks and trust companies a daily statement of the resources and liabilities is usually prepared each morning for the information of the officers and directors and is usually found in the possession of one of the officers of the bank or trust company, as the case may be. The treasurer of a large trust company makes a pertinent suggestion on this point:

I have noticed that the city and state examiners as well as C. P. A's. all uniformly seem to ask the first thing on an examination for a copy of the daily sheet as it appears, each morning, on the president's desk. This copy may be made up by the general ledger bookkeeper, and I have never seen but one man compare it with the actual figures on the president's desk, which are of course made up by some one other than the general ledger bookkeeper. There seems to be a chance for the general ledger bookkeeper to make up a false copy of the president's sheet to agree with a falsified account of the general ledger.

A trust company treasurer with full knowledge of the handicapping conditions under which the examiner labors, says he believes that if the examiners

Were instructed to thoroughly examine one feature of an institution at each examination, choosing a different feature each time, that the present system would be much more efficacious. So many examinations merely consist of counting the cash, not very thoroughly, checking off securities, mortgages and other assets with the general balance sheet and taking a balance sheet from the individual ledgers. How much more effective it would be if a part of the time so spent were devoted to thorough analysis of the

institution's accounts with other institutions, or the verification of a large number of pass books or in the checking and verification of earnings received or due.

In many bank statements important items consist of accrued interest on investments and loans, considered as assets, and of accrued interest on deposits considered as liability. A large number of banks, both state and national, ignore these figures in their statements on the ground that the labor of keeping the amount calculated up to date is greater than the advantage to be obtained in setting them out in the statement. The treasurer of an active young trust company said the other day:

I believe that the system of accruing interest would be an important help to the examiner in making a quick verification of earnings as a whole. It is a simple matter to at least approximate the proper amount of earnings accruing, say each month. On the other hand, should this system not be used, an examiner cannot even approximate earnings, but must perforce check the entire sources of earnings in detail, which very few of them would have time to do.

The verification of the various income accounts to ascertain that all of the income from the assets of the bank, and from its services rendered in various forms, have been properly accounted for should surely be undertaken by some one. That some test at least along these lines should be made by the official examiner, there seems to be no doubt. One bank cashier expresses this thought as follows:

As to the income, very serious leakages sometimes occur if the items of interest, discount, etc., are not properly double checked, and a sort of verification of the work done in this department should be required in every thorough bank examination.

Another bank official, urging that the income be checked, says: "It is doubtful if the safe deposit departments of most institutions are ever subject by state authorities to verification with general books."

Examinations by Certified Public Accountants

It has been shown that with few exceptions, most state banks, trust companies, saving banks and national banks are examined at least once a year. In many states two examinations are required, in some states the number of official examinations is even larger. The

national bank examiners make, as a rule, about two examinations each year. It has also been shown, I think, that the bank examiners, and bank men realize that while some improvements can be made, even under existing conditions, the scope of the official general examination is more or less limited.

In my opinion, the best results could be obtained from official examinations if all the examiners were placed upon a salary and expense basis and a plan worked out by which frequent visits could be made to the banks during the year, at which time some one or more departments of the bank could be thoroughly examined, to the end that during each year the entire ground will have been covered more thoroughly than is possible under the present arrangement. To bring about this change in the methods, a change in the national bank law and in those of many states would first be necessary. In the meantime, and until some such plan is put into effect, I think that the banks generally ought to exercise more general supervision over their own institutions, and employ certified public accountants as far as needed to make the supervision effective.

One form of self-examination has been adopted by several of the clearing house associations in the large cities. Under this arrangement a special examiner is appointed to examine thoroughly the banks in the association. The examiner receives a fixed salary and his assistants are paid directly by the association, so that he has no handicap in the matter of compensation and is free to spend as much time in each bank as he desires, the only limitation being that he must examine each bank once during each year. His reports are made in duplicate, one going to the bank examined, and the other being filed by him in the clearing house vault. The copy of his report on file is not accessible to any person whatever, except the clearing house committee and then only in such cases as he deems are of enough importance to call to the committee's attention.

The present examiner for the Philadelphia Clearing House, was, until recently, a national bank examiner of high character and enviable reputation. He finds time now to go into many details of importance that were obliged to be omitted in the official examinations. More than one matter of consequence has been discovered by him in his capacity as special examiner that could not reasonably be expected to be unearthed by the regular examiner for the government. In speaking of his examinations one of the cashiers said:

The most complete and effective examinations ever made of this bank were inaugurated by Mr. W. M. Hardt, the examiner for the Philadelphia Clearing House Association, who with his assistants (five competent ex-bank clerks) will take charge of any bank in the association about the closing hour, three o'clock P. M., make the settlements complete of both tellers' desks, seal the vaults with all bills receivable and securities; and the next day prove by going over all bills separately, and taking each of the collateral loans for separate examination and market value of said collateral; putting his assistants on the individual ledgers, sending for pass books and proving at least fifty per cent of all accounts and likewise of the general ledger accounts, with all correspondents; including the postings of said ledger for numerous back dates or taking all postings for the pending month. *In fact, to supervise the running of the bank for at least eight or ten days.*

Banks are now having enough official general examinations of the kind possible to be made under existing laws. While some examiners are fully, conscientiously and ably performing their duties there are others whose performance is too clerical in character. Taking the best work of the best examiner as a standard, there is yet room for useful service by certified public accountants in the supervision of the operation of many banks. No arbitrary plan for the examination of all banks can be prepared. The services of outside experts should in each case be arranged to fit the particular requirements of each bank, taking into account the amount and quality of the supervision made by the bank itself.

The frequent visits that can be planned with the opportunity of close study of the bookkeeping transactions and the verification of many things not easily overhauled by the official examiner under present conditions, would be of benefit to all banks excepting, perhaps, those banks which are conducting thorough self-examinations. The visit to a bank at least once each month by a trained expert whose mind is set upon the performance of his duties in such a manner as to be most helpful to the clerks, officers and directors, can scarcely fail to be of benefit to the bank.

STATE AND FEDERAL CONTROL OF BANKS

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It is of inestimable value to the public to have good laws regulating the banking business and providing, among other things, for examination of all banks by duly appointed competent examiners to see that the laws are complied with. Notwithstanding this there is an apparently honest minority who prefer entire freedom in their banking methods. Let us very briefly diagnose the case to see if free banking is really an open question.

It would seem that a few summarizations from the best authorities would suffice. John J. Knox in his "History of American Currency" refers pointedly to the smaller losses to depositors in states having good banking laws, as against states without such laws. His references referred to the days when free banking predominated. I have been engaged in the banking business for nearly fifty years, and the calamitous results to the people in the wildcat days of a free banking system were so impressive that death alone can obliterate their abominations from my mind. The history of banking in all nations is full of facts which seem to cry out for laws requiring stringent examinations.

It is well known to all students that previous to 1900 most of the states had either no laws or indifferent ones regulating state banks. Some states, especially some among the older eastern ones, have long had good laws; and, in those states, the losses to depositors have been proportionately much smaller than in the other states with lax laws or no laws at all.

Results 1863 to 1896

A compilation of the general results of the examination and regulation of banks in the United States is found in the 1896 report of the Comptroller of the Currency, which compares results under the national banking system with those under the several state banking systems. From 1863 to 1896, 330 national banks and 1,234

state banks failed in the United States. The claims filed, dividends paid to depositors and amounts unpaid, were as follows:

	Claims filed.	Per cent paid depositors.	Still due to creditors.
National banks	\$98,322,170	63 8/10	\$35,556,026
State banks	220,629,988	45 4/10	120,541,262

As further dividends were afterwards paid by banks *not entirely closed*, Ex-Comptroller Ridgely, in 1903, referring to the above report, made this significant comment: "It will be seen that while only six and one-half per cent of national banks in existence failed during this time, seventeen and six-tenths per cent of the other banks in existence failed. And while the national banks which had failed up to 1896 (and were entirely closed) *paid seventy-five per cent* in dividends, the state and other banks *paid only forty-five per cent.*"

Comptroller Murray, in summing up his report for 1909, as to national banks and Bradstreet's report as to state banks from 1863 to 1909, states that 508 national as against 2,014 state banks failed. The percentage of total failures of national banks, 6.5 per cent up to 1896, was reduced to 5.04 per cent in 1909. The per cent of the state bank failures was not stated, but his figures clearly indicate an increase over those up to 1896. Comptroller Murray's 1909 report also shows an increased total percentage paid to depositors of national banks, which indicates greater efficiency in the jurisdiction of the comptroller's office and more conservatism on the part of bankers.

World Comparisons

Supervision of banks, state or national, is very limited in the other progressive nations of the earth. However, the world's bank failures and losses to depositors show conclusively that the national banking system of the United States has proved to be the safest for depositors. Its only material defect is its inelastic methods of issuing currency. Some good men still hold up as better models for us to follow the old state banks of Indiana, Louisiana and others which, although they proved safe, died a natural death largely because of over rigid regulations, under which progress was stifled instead of encouraged. This fact may readily be shown.

State Bank of Indiana

On all applications for loans above \$500 a majority vote of five-sevenths of the board was necessary, and the vote had to be entered on the minutes, with the names of the directors voting. Directors were individually liable for losses resulting from infraction of the law, unless they had voted against the same and caused their vote to be entered on the minutes, and had notified the governor of the state of such infraction forthwith, and had published their dissent in the nearest newspaper. Any absent director was deemed to have concurred in the action of the board, unless he should make his dissent known in like manner within six months.

Louisiana Bank Act of 1842

First. One-third of all liabilities must be in specie.

Second. The other two-thirds in not over ninety-day paper.

Third. All commercial paper to be paid at maturity and if not paid, or if an extension were asked for, the account of the party to be closed and his name sent to the other banks as a delinquent.

With such ridiculous methods our present progress would be palsied. To require to-day for all banks in the United States 33 $\frac{1}{3}$ per cent of all liabilities in coin, as against individual deposits alone of 14,000 millions of dollars, would lock up 4,600 millions of dollars in specie; whereas banks now hold about 1,100 millions of dollars in specie.

The free coinage of silver is out of the question, and the world's stock of gold is in active demand. Where would the gold come from to carry out the provisions of the Louisiana bank act?

European Experiences

Owing undoubtedly to a single bank of issue in each nation, standing like a great water reservoir to quench a general conflagration, the banks generally there hold about one-half the coin reserves held by the banks in the United States; yet the institutions of Europe have not suspended cash payments for fifty years, as we did to our great dishonor in 1907 and not quite so generally in 1873 and 1893. To provide a currency system which will prevent suspension of cash payments by banks generally in the United States, and which will tend to prevent calamitous results therefrom, is the paramount question for us to solve; but, in Europe, the failure to adequately regu-

late banks by law and properly to supervise them by competent authority has thrown an unnecessary burden upon stockholders and depositors of banks during the past fifty years. This is well illustrated by the City of Glasgow Bank.

Glasgow Failure

The City of Glasgow Bank with 131 branches, under freedom of banking, failed in 1878 for \$70,000,000. Its losses were \$35,000,000, which sum is, about equal to the total losses to all the depositors of the vast regulated national banking system of the United States from its inception in 1863 to the present date. That loss was shouldered by the large list of stockholders of the Glasgow bank, under the then "unlimited liability act." This act cost one stockholder, holding but £1,000 of stock, his whole fortune of £1,000,000. The American Encyclopedia says "because of the widespread holdings of the stock of the bank, the failure amounted to almost a national disaster." This failure seems to show that it is sometimes better, as under our independent banking system, "to hang separately than to hang together" under the branch banking system.

The "unlimited liability" act has in consequence of the terrible results been suspended, and now holds good only in voluntary cases. To avoid unlimited liability, the word "limited" must follow any corporate name. I might cite other calamitous conditions which occurred in 1836, 1847, 1857, 1866, 1878, and 1890, in Great Britain, and the failure of "The Credit Mobilier" in France; but it seems superfluous. I have no doubt that such distressful conditions would have been greatly ameliorated if good laws and examinations had been in force.

In view of the fact that most of the states, up to ten years ago, permitted entire freedom in banking methods, it is cause for congratulation that great progress in regulation has been made in many states. This fact is clearly shown in the late report of a special committee on banking in Wisconsin. The report shows that state laws require that

- (1) Directors must examine banks in twenty-one states.
- (2) There is special bank supervision in thirty-five states.
- (3) Some state or other official shall examine banks in thirteen states.

This report states that nearly every state in the United States now has some kind of laws regulating the banking business, and, that many of the state banks are subjected to examinations. Our defective currency system caused many bank suspensions in 1907; yet, because of the marked improvement in banking laws, and in supervision, most of the suspensions were temporary. The losses to depositors also were far less than in the past under free banking. The fact that more than one hundred millions of dollars was locked up, in 1907, in suspended banks in New York State, and that not a dollar was lost to a depositor, is evidence that New York State now has good banking laws. Some state laws are still too lax, and all should be so modified as to comply with the best laws regulating eastern savings banks and trust companies. The state banks doing largely a commercial business should be compelled to follow closely the requirements of our most beneficent national bank act. The Wisconsin law is a good model for state banks, as not a dollar has been lost to a depositor since the law was enacted about six years ago. This law is modeled largely upon the national bank act; but is more liberal as to the percentage of loans to any person or firm. This provision, owing probably to excellent supervision, has produced no ill results. To my mind, however, the national law is the better of the two.

It is the clear duty of the legislators of Europe to the people as a whole to regulate reasonably the great banking systems there, that losses to innocent depositors may be limited to the lowest point compatible with the fact that perfection is impossible and that the millennium will never be attained on earth.

The meat of the whole matter lies in passing good banking laws and enforcing them by strict examinations, in closing up the insolvent banks and not allowing them to dissipate good assets for years after becoming insolvent under incompetent or dishonest mismanagement. The banking power of the United States is about two-thirds that of the rest of the world. We should give the twenty-five million depositors having 14,000 millions of dollars on deposit—both growing constantly—all the protection wholesome laws can give. By limiting bank failures, panic conditions and general commercial distress will be ameliorated. Good banks generally court investigation, and the people should insist on rigid control of all banks for the purpose of weeding out those which are insolvent.

BOOK DEPARTMENT

NOTES

Alston, L. *Education and Citizenship in India.* Pp. ix, 222. Price, \$1.25. New York: Longmans, Green & Co., 1910.

Balch, E. G. *Our Slavic Fellow Citizens.* Pp. xix, 536. Price, \$2.50. New York: Charities Publication Committee, 1910.

Crosby, O. T. *Strikes.* Pp. vi, 202. Price, \$1.25. New York: G. P. Putnam's Sons, 1910.

The author aims to deal with labor problems in an impartial manner. After analyzing the various forms of strikes, the author insists that strikes are only justified in the case of corporations with large earnings apparently overlooking the fact that corporation accounting is an art as well as a science. The philosophy underlying the book is that of a contented man. Strikes should occur only when arbitration has been found to be impossible; and the unions should hold their leaders to a policy of wise and conservative action. The desire of the author is the commendable one of trying to convince both employers and employees of the wisdom of more deliberate and rational action in dealing with labor disputes.

Davis, C. G. *The Philosophy of Life.* Pp. 128. Price, \$1.00. Chicago: D. D. Publishing Company, 1910.

The world is still earnestly seeking an effective life philosophy and the author has made one more attempt to supply the deficiency. It is both unusual and encouraging to read from the pen of a doctor of medicine such cordial commendations of New Thought. The author presents nothing unusual in his book but restates in a brief and popular way the principles arising out of the concept that civilization consists in an evolution from the physical to the psychic and that while it is at present impossible to eliminate the physical, the ideal end of existence is psychic.

Dawbarn, C. Y. C. *The Social Contract.* Pp. xii, 152. Price, \$1.25. New York: Longmans, Green & Co., 1910.

Dewe, J. A. *Psychology of Politics and History.* Pp. 269. Price, \$1.55. New York: Longmans, Green & Co., 1910.

There is no well worked out plan in this book. The claims are in turn too small and too great. It is a surprise to read that Christianity was the consistent foe of slavery and class distinctions; that as Christianity spreads "we find everywhere rising the peasant proprietor;" that Christianity has brought about "the partnership of capital and labor;" that local government and all free government are due to Christianity, and that the Church should

be "an independent spiritual power" "capable of restraining the actions of government." On the other hand the author gives no intimation that the Church has had any influence in the development of our ideas of sovereignty and there is not a line to show its influence on our constitutional development through Calvinism. These comments on the discussion of the influence of the Church upon the state show the character of the work. It is uncritical, unsystematic and inaccurate.

Dock, Lavinia L. *Hygiene and Morality.* Pp. v, 200. Price, \$1.25. New York: G. P. Putnam's Sons, 1910.

For years the problem of social disease has been whispered about in dark places; the time has apparently come when it will be cried out from the house tops. "Hygiene and Morality" is a painstaking discussion of venereal disease as a social problem. The author, a nurse by profession, has based her work on thorough study, but has nevertheless succeeded in presenting her material in a form easily accessible to the lay mind. The first part of the book deals with the medical aspects of venereal disease, the second with prostitution as the chief means of spreading and perpetuating venereal disease, and the third part with the methods of prevention. Publicly licensed prostitution is described as a menace while at the same time ineffective as a social reform. The true remedy lies in a thorough-going education in sex morality and hygiene beginning in the home and continued through the elementary and secondary schools. The book stands alone in filling a long-felt need and should commend itself to the attention of parents and educational authorities everywhere.

Ficklen, J. R. *History of Reconstruction in Louisiana.* Pp. lx, 234. Baltimore: Johns Hopkins Press, 1910.

Pierce Butler of Tulane University states that "For more than a decade before his death Professor Ficklen had been carefully collecting and digesting the materials for a history of the reconstruction period in Louisiana." Professor Ficklen performed his task well. It is clear and concise in statement without the color of partisanship, although the author in his preface states that he does not expect nor wish to produce a "colorless narrative." In eleven chapters he discusses: Ante-Bellum History in Louisiana, Butler's Administration, Bank's Administration—1862—Reconstruction under the Presidential Plan, The Convention of 1864, Government during the War, Reconstruction in Louisiana under President Johnson, the So-called Riot of July 30, 1866, The Reconstruction Acts, 1866, 1867, Restoration of Louisiana to the Union, Party Organization, Massacre of 1868, and the Presidential Elections. The references in the footnotes are voluminous and comprehensive.

Greene, M. Louise. *Among School Gardens.* Pp. xv, 388. Price, \$1.25. New York: Charities Publication Committee, 1910.

The primary object of the book is a discussion of the place of gardening in a school curriculum. The author describes in detail the evolution of the school garden, the various kinds of gardens, the cost of equipment, planning and planting, care of the garden and the harvesting of crops. She also includes an excellent chapter on soil fertility. While the book is of peculiar

value to those interested in school gardens, it contains material of interest for any amateur gardener, for the discussions of weeds and insects are able, the material which they contain is the best, and the illustrations throughout are excellent. The work is thorough and painstaking, and should commend itself to the careful consideration of school authorities everywhere.

Hamilton, John J. *The Dethronement of the City Boss.* Pp. 285. Price, \$1.20. New York: Funk and Wagnalls Company, 1910.

Its timeliness assures this book a wide reading. It includes an explanation of the benefits of commission government by one familiar with its workings in Des Moines, a discussion of the modifications in force in other American cities and a set of valuable appendices of documents showing the forms of charters used in the recent advanced provisions adopted and the decisions of the courts as to the constitutionality of the "plan." The discussion deals primarily with Des Moines. Mr. Hamilton is an enthusiast. It must be admitted that his arguments occasionally prompt the reader to think that he looks upon commission government as a panacea which will destroy partisanship, make city elections turn on issues and in general prepare the municipal millennium.

Hazen, C. D. *Europe since 1815.* Pp. xxv, 830. Price, \$3.00. New York: Henry Holt & Co., 1910.

Hicks, R. D. *Stoic and Epicurean.* Pp. xix, 412. Price, \$1.50. New York: Charles Scribner's Sons, 1910.

The literature of general philosophy, is much to be enriched by the series of which this volume is the first to appear. There is no attempt to present all that is known about the schools treated but the emphasis is placed upon the characteristic contributions made by each. Mr. Hicks brings out instructive contrasts and even more interesting similarities between the two apparently antagonistic schools which he discusses. Both sought the same goal, both emphasized practice rather than theory, both were reactions against a too refined intellectualism. Their vogue was assured by the events which placed Rome rather than Greece as the leader of the world. Mr. Hicks has relied mainly on the sources, and remembering the scantiness of the material it must be said that he has been able to piece together a most satisfactory exposition. An excellent chronological table and a select bibliography are appended.

Irvine, A. *From the Bottom Up.* Pp. x, 304. Price, \$1.50. New York: Doubleday, Page & Co., 1910.

From the moment when Alexander Irvine begins life in a dilapidated mud-floor Irish cabin until he steps into the Church of the Ascension in New York, as a lay reader, his story is full of the most compelling interest. Mr. Irvine started at the bottom. As his family was poor, so were his neighbors, and from earliest youth he sold papers, ran errands and eked out the family income as he could. Later as a soldier, laborer, miner, magazine writer, preacher, lecturer and author, he has gradually developed the fund of Irish humor and native intellect which have proven so great an asset in his work.

The autobiography is well written. The incidents of his life are told concisely and in a most impressive manner. The whole story would seem to be an indictment of freedom and liberty as found in America to-day. From the book it would appear that Mr. Irvine has been driven from the Church, because he believed and said that he believed in the application of the theory of human brotherhood to American life. His story is certainly the story of a brave man, inspiring to a degree and full of hope for the coming generation.

Jenks, J. W. *Governmental Action for Social Welfare.* Pp. xvi, 226. Price, \$1.00. New York: Macmillan Company, 1910.

Johnson, R. *The Story of the Constitution of the United States.* Pp. 284. Price, \$1.00. New York: Wessels and Bissell Company, 1910.

About one-third of this volume is composed of quotations or summary of historical documents. About one-sixth is an appendix. The remaining pages are given to a narrative based entirely on secondary sources. The statement of fact is clear and generally exact, but in arrangement of material much improvement could be made. The discussion of the sources of the constitution, for example, is placed just before the conclusion. In matters of criticism, however, Mr. Johnson shows lack of familiarity with political philosophy and with the actual workings of government. Most of us would probably dissent when it is declared that "the veto power is a remnant of kingly prerogative for which there is no logical excuse in a republic," but whatever the opinion on this point there is even less room for doubt when we see it declared that "the truth is for every instance in which our . . . executives have used the veto wisely, there are a dozen in which it has been wielded dishonestly."

Johnston, A. *History of American Politics.* Pp. xiv, 445. Price, 90 cents. New York: Henry Holt & Co., 1910.

A new edition of Johnston's "History of American Politics" has just appeared and brings this invaluable summary of our national policy up to March 4, 1909. The impartiality and succinct statement which have always characterized this little book are still its chief features, and Professor Daniels who has continued the compilation, is to be congratulated upon his success in keeping up that high standard which has rendered the booklet well nigh indispensable in its field.

Lafargue, Paul. *Evolution of Property.* Pp. 160. Chicago: Charles H. Kerr & Co., 1910.

Writing in a concise, popular vein, Paul Lafargue has most effectively presented his concept of the evolution of property from primitive communism through family collectivism and feudal property to modern capitalism. He shows conclusively that capitalism is a new concept and that capitalistic property as such has been a reality only during the nineteenth century. While some of the statements in the book are extreme, and ill-considered, no more interesting and attractive statement of the subject could be desired.

Lloyd, H. D. *Men, the Workers*. Pp. viii, 280. Price, \$1.50. New York: Doubleday, Page & Co., 1909.

"The workmen are often wrong, but theirs is always the right side." Such is the simple judgment of the ethics of the industrial struggle that runs through this collection of addresses made by Mr. Lloyd at various times from 1889 to 1903. Those who knew the author will not expect to find here the calm statement of scientific fact, but rather the impassioned pleading of the advocate whose heart is in his cause. The book accordingly has almost no value to the student who merely collects facts; its worth is to him who would understand the ideals of the labor movement as set forth by one of its most clear-sighted leaders. Declamation and rhetoric in large measure there is indeed, but animated throughout by unwavering faith in the ultimate reasonableness of the workingman and the justice of his cause. The speech at the Debs reception in 1895 and the argument before the Anthracite Coal Strike Commission in 1903 are among the most interesting addresses in the volume.

MacClintock, S. *Aliens under the Federal Laws of the United States*. Pp. 108. Price, 40 cents. Chicago: Northwestern University Law Publishing Association, 1909.

An excellent legal study of the federal legislation touching alienage, citizenship, patents, trademarks, copyrights, public lands, real estate in the territories and the rights of resident aliens.

MacLean, Annie Marlon. *Wage-Earning Women*. Pp. xv, 202. Price, \$1.25. New York: Macmillan Company, 1910.

The Young Women's Christian Association, in furtherance of its work, maintained for some time a group of investigators who were engaged in a study of women's work, and twenty-nine of whom secured the material for the present volume. Many interesting facts are presented, some valuable statistics are given and several striking word pictures of women at work are presented. Like most compilations, the present work is not correlated nor is there any uniformity in the conclusions reached. Such of the work as is devoted to conclusions and remedies reminds the reader of a plaintive wail such as the settler caught in the grip of a forest fire might raise to a half mythical god. The philosophy of the book, where philosophy exists, is fatalistic and hopeless, because the remedies dealt with, which are wholly superficial, entirely miss the main point in the problem of women at work, namely, that it is the high speed and long hours of modern working women which create and maintain the conditions against which the Young Women's Christian Association makes this most ineffective protest.

Macphail, Andrew. *Essays in Fallacy*. Pp. vi, 359. Price, \$1.80. New York: Longmans, Green & Co., 1910.

Mr. Macphail has here endeavored to explain and criticize the fallacy of modern ideas concerning women, education, and theology. His plea is essentially against formalism, without the inspiration which gives it life. There are, however, curious discrepancies to be found in the three essays. The bitterest of sarcasm and scorn are heaped upon the modern American

woman. "Self reliance," he says, "is the most deadly gift which the females of this race can possess," and to this quality he ascribes the tremendous increase in the divorce rate. The women of Turkey, he claims, are in a far more enviable position. Yet he proceeds in his supplement to defend the psychology of the suffragette. Modern technical education calls forth his denunciation, while the mere existence of a theology is held to involve a fallacy destructive of the real religion underlying it. The author's style is good, his reasoning is either exceedingly involved or else incoherent, and the result of his efforts is a book unworthy of serious consideration.

Marriott, J. A. R. *Second Chambers; An Inductive Study in Political Science.* Pp. viii, 312. Price, \$1.75. New York: Oxford University Press, 1910.

Mr. Marriott publishes this fragment of a larger work in the hope that it may aid in the solving of the great political problem now before the English people. The authorities used are almost exclusively secondary and in the case of the United States at least, there is a decided reliance on classical rather than contemporary discussions. Needless to say the stately phrases of the Federalist are often hardly descriptive of the present day senate. The comparative discussion is, however, in general well done. Of course there is no field of politics where absolute accuracy is so hard to obtain as in discussions in comparative government. Thus it need not surprise us to learn that the two-thirds vote of the senate is necessary in appointments, nor that "elections to the state legislatures are made largely, if not primarily, with a view to the election of federal senators." The book is not exhaustive but gives a generally fair view of the chief second chambers of the world in a convenient compass.

McPherson, L. G. *Transportation in Europe.* Pp. iv, 285. Price, \$1.50. New York; Henry Holt & Co., 1910.

Miller, T. S. *The American Cotton System.* Pp. xi, 294. Price, \$1.50. Austin, Tex.: Austin Printing Company, 1909.

Mundy, F. W. *The Earning Power of Railroads, 1910.* Pp. 461. Price, \$2.00. New York: J. H. Oliphant & Co., 1910.

The 1910 edition of Mundy's *Earning Power of Railroads* is larger than its predecessors, but it follows the same plan of treatment. The changes in the form of the Interstate Commerce Commission's statistics of railroads, and the more detailed requirements of the commission as to railway accounts, have somewhat altered Mr. Mundy's little book, but, "as a whole, the integrity of the discussion on the analysis of railroad reports will remain virtually without change."

Münsterberg, Hugo. *American Problems.* Pp. 220. Price, \$1.60. New York: Moffatt, Yard & Co., 1910.

Professor Münsterberg has brought together in book form eleven essays previously published in magazines. The essays bear slight relation to each other and some of them have little connection with American problems. Each paper is written in Professor Münsterberg's characteristic style, which

is often more brilliant than convincing. The papers contained in the volume are *The Fear of Nerves*; *The Choice of a Vocation*; *The Standing of Scholarship*; *Prohibition and Temperance*; *The Intemperance of Women*; *My Friends, the Spiritualists*; *The Market and Psychology*; *Books and Bookstores*; and *The World Language*.

The two papers upon *Prohibition and Temperance* and the *Intemperance of Women* have provoked much controversial discussion and are doubtless the weakest of the eleven contained in the volume. The discussion of the *Choice of a Vocation* and *Books and Bookstores* is particularly suggestive, and the two essays upon those subjects are possibly the best.

Myers, G. *History of the Great American Fortunes*. Vol. III. Pp. 413. Price, \$1.50. Chicago: Charles H. Kerr & Co., 1910.

In this volume the author concludes his study of the Gould fortune, and in addition presents material, much of which is now published for the first time, dealing with other great railroad fortunes, such as those of Blair, Hopkins, Stanford, Elkins, Sage, Huntington, Morgan and others. This volume, like the two which have preceded it, is strongly socialistic in its presentation of matters discussed, is bitter in tone, and lacks scholarly finish.

Paddock, W. *Fruit Growing in Arid Regions*. Pp. xx, 395. Price, \$1.50. New York: Macmillan Company, 1910.

Pease, C. S. *Freight Transportation on Trolley Lines*. Pp. 62. Price, \$1.00. New York: McGraw-Hill Book Company, 1909.

Seager, H. R. *Social Insurance: A Program of Social Reform*. Pp. v, 175. Price, \$1.00. New York: Macmillan Company, 1910.

The Statesman's Year-Book. Pp. civ, 1404. Price, \$3.00. New York: Macmillan Company, 1910.

The *Statesman's Year-Book* becomes increasingly indispensable year by year. The edition for 1910 contains numerous changes and additions. As stated in the preface, "Various events during the past twelve months have involved important changes, not the least of them being the lamented death of His Majesty, King Edward VII, and the accession of King George V." In this volume occurs for the first time an account of the union of South Africa; this volume also contains the map of the new federal district and capital of the Commonwealth of Australia; special attention is also given to the Belgian Congo, the account being accompanied by a map showing the development of the Congo. It is but a comparatively few years since the *Statesman's Year-Book* began giving very much space to the United States. Now, however, Part II of the book, including pages 351 to 562, is devoted to an account of the United States and of each of the states and outlying territories. This makes the volume almost as useful to Americans as to Britons.

Tenement House Administration. Pp. 175. Price, 50 cents. New York: Bureau of Municipal Research, 1909.

In 1908 a study of the violations of the New York tenement law was undertaken to determine to what extent the law was unenforced and to what extent no action was taken by the law department in those cases brought to

its attention. This report details the steps taken to locate and to solve the problems of enforcing the provisions of the statute.

Watkins, E. *Shippers and Carriers of Interstate Freight.* Pp. 578. Chicago: T. H. Flood & Co., 1909.

The laws of the United States and the States to 1909 upon transportation are very well annotated and summarized by Mr. Watkins. His treatment is systematic and concise, and the volume is one that busy lawyers will find useful. It is a difficult task to deal with the laws of interstate freight in a single volume, and the author is to be congratulated upon his success. The many changes in the law of railway regulation, made by the Mann-Elkins Act of 1910, necessitate a prompt revision of Mr. Watkins' treatise. When the volume is amended and enlarged to cover the legislation of 1910, it will doubtless be a standard text for some years to come.

Weeden, William B. *Early Rhode Island.* Pp. x, 381. Price, \$2.50. New York: Grafton Press, 1910.

The story of the early settlement of Rhode Island resolves itself naturally into an account of the settlement of its constituent parts. These were (1) Providence, not the city, but the colony or town of Providence, including what is now the city and most of the county of Providence, settled by Roger Williams and his associates in 1636. (2) Rhode Island proper, i. e., the island of Newport or Aquidneck, settled in 1637 and 1638. (3) The Narragansett country, now Washington county, familiarly known as South county, the home of the Narragansett Indians on the west side of Narragansett Bay and extending to the Connecticut settlement. (4) The eastern strip, including Little Compton, Bristol, part of Pawtucket and the Attleboro Gore, so called, all formerly a part of Plymouth Colony. Mr. Weeden treats instructively and entertainingly of the first three settlements. He has gone to the early town records and the recorded inventories and the settlements in the probate courts of the estates of the early settlers, paying particular attention to the books of these settlers as set forth in these inventories, extracting from the whole accurate information of the first historical value.

It is to be regretted that this valuable study of the social condition of early Rhode Island should be marred by signs of hurried compilation. There are occasional repetitions, lapses in style and incomplete sentences that suggest rather the scholars' note book than the historian's finished production. The proof reading is also deficient.

Welgall, A. E. P. *A Guide to the Antiquities of Upper Egypt.* Pp. xxiii, 594. Price, \$2.50. New York: Macmillan Company, 1910.

Wilbur, Mary A. *Every-Day Business for Women.* Pp. xiii, 276. Price, \$1.25. Boston: Houghton, Mifflin Company, 1910.

Williams, N. B. *The American Post Office.* Pp. 49. Washington: Government Printing Office, 1910.

This document contains a scholarly discussion of the history and development of the American post-office. The author closes with a plea for "the restoration of the constitutional American post-office to the lines of its

founders and as conducted during the early history of this country—a beneficent monopoly, honestly conducted to the comfort and profit of the whole people." This he maintains requires a cessation of surrendering "any of the rights, powers, or obligations of the post-office to the express or to any other trust. . . . The post-office belongs to the people; they may do with what they will."

Williams, S. C. *The Economics of Railway Transport*. Pp. x, 308. Price, \$1.25. New York: Macmillan Company, 1909.

Mr. Williams has attempted in a small book to explain the main problems connected with railway operation and to discuss the principles underlying rate making. The subject was too large for a single book and the treatment, particularly of the problems of construction and operation, is so superficial as to be practically valueless. Moreover, the author has often mistaken words for ideas and has wasted space. The following paragraph which opens the chapter upon the analysis of operation will indicate the character of the treatment:

"The gauge of a line and the dimensions of the carriages and wagons give what may be called the physical capacity of the line as determined by the operations of construction and equipment. But the dimensions are of no interest or significance in themselves but only when the wagons fulfil their destiny by being moved from one place to another. The wagon-load is therefore a most important unit. And since wagons must be hauled by locomotives in trains, the number of wagons in a train is also of great importance, for this number, multiplied by the average capacity, gives the capacity of the train. Railway rolling stock, however, is not exhausted by one journey, but is used for many journeys in either direction. The nature of the return journey is therefore a matter of interest. And the rapidity of the journeys in both directions, or the number made in a given time, which when also used as another multiplier gives the real working capacity of the line, is a further matter of primary importance."

The analysis of the theory of rate making is clear and correct, but it adds little to what has previously been stated. It is an attempt to apply Professor Marshall's economic theories to a discussion of the basis of railway rates. Strange to say, the author holds to the old idea that competitive forces are economic while those of monopoly are something else.

Wright, C. W. *Wool Growing and the Tariff*. Pp. xiii, 362. Price, \$2.00. Boston: Houghton, Mifflin Company, 1910.

REVIEWS.

Chailley, Joseph. *Administrative Problems of British India*. Translated by Wm. Meyer. Pp. xv, 590. Price, \$3.25. New York: Macmillan Company, 1910.

Mr. Chailley's work takes rank with those of Strachey, Nisbet and Ilbert. Though its discussions are more general than those of any of these authors there is the same broad viewpoint combined with scholarly criticism.

The first part of the book is a review of the racial, social, economic and political conditions of the empire. The great sub-continent is beginning to be affected by other civilizations. Interprovincial migrations are affecting, slowly but surely, the uneven distribution of population. Hindus are crowding the Burmans, child marriages though still prevalent are not in as high favor as formerly, religions are beginning to break up. Caste imposes a less rigorous rule than formerly, the land law is feeling the pressure of modern conditions—in fact throughout the whole nation new forces are bringing new ideals and new social adjustments. It is interesting to note the opinion of the author—an outsider—as to the character of the political unrest. He believes that the movement is as yet confined to "arm chair politicians," erratic and not capable of formulating much less executing a plan of national reorganization. It is a party of privilege, undemocratic and caste bound. On the other hand the English government is to be criticized for its lack of sympathy. It waits till it *must* grant reforms rather than initiate them. The credit for improvement thus passes to the radicals.

After this general review the author discusses the English administrative policy. He has unstinted praise for the English efforts to develop the resources of the country and feels that the policy of sustaining the princelings in the native states, was in general justified. There can, however, be no excuse for the lack of accountability allowed in the native states, especially in financial affairs. English improvements in law making and the courts are the greatest monument to the efficiency of English colonial administration. An historical review is given showing the efforts made to introduce under English control a system of personal law such as was used by the Mohammedans. With the manifest failure of this plan the "government regulations" were introduced which have grown into the system of territorial law now embraced in the various codes. The principle of this legislation has been "uniformity when possible, variety when this is necessary, but in any case certainty." Elasticity has thus been kept—a prime essential in any progressive or varied civilization.

English education in India is subjected to a lengthy criticism. The training has been too academic. Even the so-called universities have given only mediocre instruction. Primary education has until recently been neglected and there is practically no training offered for women. The concluding chapters are given to a discussion of the natives' share in administration. It is shown that the natives have a monopoly of the lower offices, and under Morley and Minto have held some positions in the government itself both in

Calcutta and London. This foreshadows what the author believes will be an increasing practice.

CHESTER LLOYD JONES.

University of Wisconsin.

Clark, John W. *Standards of Reasonableness in Local Freight Discriminations*. Pp. 155. Price, \$1.25. New York: Columbia University, 1910.

Dr. Clark states that the fundamental purpose of this book was "to gather from scientific and popular discussions alike the various ideas as to what constitutes reasonableness as between different localities in the adjustment of freight rates, and to reduce them by analysis to that definiteness which many of them so sadly lack." It was the author's hope that this might help the public to a clearer conception of what reasonableness in freight rates really is, but he states that had he "realized from the start the full nature of the problem he was approaching, it is probable he would have turned aside."

Every student of transportation will be glad that Dr. Clark did not turn aside from his attempt to analyze and explain the standards of reasonableness in freight rate discriminations. The monograph shows the author to have a thorough grasp of economic literature and to have covered the German and French as well as the English authorities dealing with the subject of the theory of freight rates. The author's final word is that "scientifically constructed distance tariffs are being tried in the United States which justify the prediction that they have here a useful future before them." The factors other than distance to be given weight in determining the reasonableness of freight rates are carefully considered by Dr. Clark, and he favors distance tariffs "flexible enough in use to allow for all the other necessary considerations." The author's general conclusions are as sound as his reasoning is clear and suggestive.

EMORY R. JOHNSON.

University of Pennsylvania.

Cole, William M. *The American Hope*. Pp. xii, 259. Price, \$1.50. New York: D. Appleton & Co., 1910.

"The fundamental ground of American hope is the prevailing idealism of American character." This first sentence of the first chapter is the key to the book. In the introduction the author disclaims any attempt to solve specific problems, but seeks rather an acceptable philosophy which underlies all the problems of American life. This he finds in the fact that even in what seems to be our gross materialisms men glory in human qualities of achievement rather than in tangible things. He denies absolutely the freedom of the will and the doctrine of moral responsibility in the orthodox sense and conditions choice upon the point of view at the moment when choice is

made. He thus lays a heavy burden upon society in the matter of the proper education for citizenship. This is the strong and optimistic argument of the book. The chapter on The Marriage Tie is visionary, but in such chapters as The Training of Powers, The Will of the Community, Economic Freedom and The Training for Life, the doctrine of social responsibility is developed in an interesting and convincing manner.

It is refreshing in the midst of so many treatises purely scientific to read one consistently philosophical. Its message is helpful.

J. P. LICHTENBERGER.

University of Pennsylvania

Dawbarn, C. Y. C. *Liberty and Progress*. Pp. xvi, 339. Price, \$3.00. New York: Longmans, Green & Co., 1909.

This book would more appropriately bear date 1859 than 1909. The author's state of mind may be inferred from his statement concerning Bentham, his chief authority, "As the father of modern thought and liberty, it seemed sacrilege to give his views in any words but his own." Other references are chiefly to Professor Fawcett and General Walker. Apparently the economic world has not moved in twenty-five years.

On its theoretical side the book is an exposition of such parts of classical English economics as interest Mr. Dawbarn. The wage fund he wisely throws overboard. The theory of rent he dismisses in a page, because land rent forsooth is of small and lessening importance in English life. But the classical doctrines of capital and population are uncompromisingly set forth. The rich owe their wealth solely to thrift, and aside from the slight enjoyment they get out of it, most of its benefits go to the poor, who have either themselves or their parents to blame for their poverty. Let them but save their three pence a day beer money, and in three generations they will have £20,000. As regards the poor, Mr. Dawbarn is a thoroughgoing Malthusian, and he makes Malthusianism responsible for most of their woes.

Individualism he defines as payment for services rendered, and he is of the opinion that a century of individualism has not brought us appreciably nearer the abolition of poverty. That is the fault of the poor themselves, however, and the remedy is more, not less individualism. Let society do nothing for anyone except in return for services rendered. Do not make life easier for the poor, for they will only multiply and thereby increase your difficulty. Increase the security of property, lay no new and wicked taxes, encourage the wealthy to accumulate as much capital as possible, in order that competition may bring down the rate of interest. Such is Mr. Dawbarn's recipe for social improvement. Perhaps liberty and progress lie in that direction, but one may be pardoned some doubts. Be that as it may, the book presents a clear-cut ultra-individualistic point of view, and the author does not shrink from the logic of his own position.

HENRY R. MUSSEY.

Columbia University.

Downey, E. H. *History of Labor Legislation in Iowa*. Pp. x, 283. Iowa City: State Historical Society, 1910.

Once more the Carnegie Institution has aided in the publication of a monograph on labor legislation, this time in the Iowa Economic History Series. The volume is well planned and ably executed. There are separate chapters—each a model of condensation—on wages, convict labor, mines, factories, child labor, and employers' liability, together with a chapter of scarcely less importance on blacklisting, boycotting, employment agencies, arbitration, etc., and one on the Iowa Bureau of Labor Statistics, which (unlike those of some states) "enjoys the confidence and support of organized labor and receives a considerable measure of co-operation from employers."

In an appendix the author notes that great gains were made at the last legislative session, when the period of compulsory school attendance was lengthened, proof of age required for the issuance of a work certificate, an advanced type of employers' liability law enacted, and a slight addition made to the inadequate force of factory inspectors. These gains—which bring Iowa well up with older industrial states—and all other legislation enacted in the interest of the wage-earner during the last thirty years, are ascribed mainly to labor organizations, with the co-operation of women's clubs.

The author takes advanced ground as to the relation of the state to labor, whenever he thinks best to let his personal views appear in the narrative.

J. LYNN BARNARD.

Philadelphia.

Evans, Howard. *Sir Randal Cremer, His Life and Works*. Pp. 356. Boston: Ginn & Co., 1910.

This very readable book is, as its preface informs us, "written with the double purpose of telling the life-story of a man who devoted himself to the service of humanity, and of giving a succinct history of one of the most notable movements [International Arbitration] of modern times." Cremer had intended writing an autobiography but the memoranda left at his death were of a most fragmentary character. It is, therefore, most fortunate that Howard Evans who had been closely associated with him for thirty years was selected.

The book tells us how Sir Randal obliged to work for his living from the age of twelve succeeded in educating himself. He quickly took a prominent part in labor organizations. He realized early the importance of international arbitration and founded the International Arbitration League. He was besides a leading spirit of the Interparliamentary Union. His services to humanity were fittingly recognized by the award to him in 1903 of the Nobel Peace Prize, which he generously turned over to the International Arbitration League.

Sir Randal Cremer has deserved well of his fellowmen and this account of his life will help to keep vividly before us the association of his name with the great international arbitration movement.

ELLERY C. STOWELL

University of Pennsylvania.

Garner, James Willford. *Introduction to Political Science*. Pp. 616. Price, \$2.50. New York: American Book Company, 1910.

Professor Garner gives us a uniformly excellent book. The field covered is broad, the discussion does not attempt to be exhaustive and the exposition is clear. These should be the characteristics of every book giving an introduction to a branch of study. One of the most valuable features, aside from the character of the text is the well selected bibliography which heads each chapter, and the excellent footnote references through the work. These cover the leading works in French, German and English. Especial emphasis is, of course, placed on American discussions, those most easily available to the student for whom the book is intended.

The subject matter covers six hundred pages, divided as follows: Preliminary definitions and discussions of political science, fifty pages; characteristics, origin and forms of the state, one hundred pages; forms of government, eighty pages; sovereignty, thirty pages; state functions, sixty pages; citizenship, thirty pages; constitutions, thirty pages; governmental departments, one hundred and sixty pages; the electorate, thirty pages.

This enumeration shows the scope of the discussion and the emphasis given different subjects. The space given to the phases of political science, which are a part of the student's experience, is to be commended. Citizenship, nationality, constitutions, division of the powers, the legislative, executive and judiciary, the electorate, these are subjects which can be discussed concretely, but are too often given summary, or purely theoretical treatment in introductory texts. In actual importance for the student they claim the chief place and can well be emphasized even if thereby the study of sovereignty, the true sphere of the state and kindred abstract subjects be assigned less space and left to the student of political theory. Professor Garner has placed college students, college professors and the general reader, much in his debt. As a college text and as a guidebook to the general literature of political science, the book is sure to win favor.

CHESTER LLOYD JONES.

University of Wisconsin.

O'Donnell, F. Hugh. *A History of the Irish Parliamentary Party*. Two volumes. Pp. xxi, 1002. Price, \$5.00. New York: Longmans, Green & Co., 1910.

A straightforward description of the Irish Parliamentary Party, whether from the standpoint of a supporter of methods employed, or as viewed by a dissenter, is sure to be welcomed by students of Irish politics. Mr. O'Donnell's participation in the Home Rule agitation in the earlier, or Butt period of the discussion, and his later exclusion from it, due to differences with Parnell and his following, fit him particularly for this work, and assure him a hearing. It is inevitable that the personal element should be much in evidence, so much so, indeed, as at times to cloud the real issues of the struggle. Yet it is exactly in this intimate revelation of the personal rela-

tions of Irish leaders that the book is of value to American readers who already know the general course of the agitation and its fluctuations, but who are ignorant of the inner motives of men and the suppressed courses of events. The author gives his own explanation of these things—an explanation that is argumentative and logical, but which is really the testimony of one who was at times an actor and at times a witness, but always a partisan. He was decidedly opposed to the policy and methods of Parnell, and is to-day equally opposed to the leadership of Redmond. Parnell in particular is depicted as a man of limited intellectual power and horizon. Isaac Butt was the great and sane leader of the party, and when that party forsook the principles of action prescribed by him, it entered upon a dangerous career. A great debasing influence in Irish politics was the contribution of money from America, and the introduction of American political methods of the Tammany stamp. Home Rule has become a mere shibboleth without a real constructive principle. Redmond's part in aiding the Liberal attack on the House of Lords has never received the support of the Irish people, and never has Ireland thought of a parliament of its own, save in terms of two houses.

These are a few of the assertions of Mr. O'Donnell, and indicate his non-content attitude with the present situation of Irish politics. He is an easy and attractive writer, a trifle discursive, but entertaining in matter and form. His two volumes contain rather a series of essays than a direct and orderly historical account. They at least furnish new and valuable evidence on Irish politics and on the relations of men during the period from 1870 to the present time.

EPHRAIM D. ADAMS.

Leland Stanford Jr. University.

Willcox, Delos F. *Municipal Franchises*. Pp. xix, 710. Price, \$5.00. Rochester: Gervaise Press, 1910.

If the city is the battleground of democracy there can be no more fruitful field of study than the conditions under which our municipal property is managed. The use of our streets involves our closest contact with our governments. Those who enjoy special privileges in our highways undertake duties at once private and public, and their relation to the people at large is an index of the mental vigor of our citizenship. Too often our college classes are confined to fine-spun theories. Teachers and pupils alike shrink from the technical terms of franchises. The publication of such books as this will at least do away with the lame excuse that the subject matter is unattainable or beyond the ability of college classes. Two volumes are contemplated. The discussions are straightforward.

Analyses are given of the modes of acquiring franchise rights, of the value of franchises and the means of restricting public utility monopolies under private operation. Limitations of space confine the discussion to the United States. After this preliminary material the classes of franchises are taken up in order. Descriptions of typical franchises in actual operation are

given. This first volume covers electric light, telegraph, electrical signals, electrical conduits, water supply, sewerage, central heating, refrigeration, pneumatic tubes, oil pipelines and gas supply. This is a book excellent at every point. It is theory and experience combined. Every man who would know American city services from their physical side should have it .

CHESTER LLOYD JONES.

University of Wisconsin.

INDEX OF NAMES

ABBREVIATIONS—In the index the following abbreviations have been used: *pap.*, principal paper by the person named; *b.*, review of book of which the person named is the author; *r.*, reviewed by the person named.

- Aberdeen, G. H. G., 453
 Acland, F. A., 419-437, *pap.*
 Adams, C. F., 499
 Adams, E. D., 453, *b.*, 713, *r.*
 Adams, J., 140
 Adams, T. S., 249, 349
 Adams, W., 474
 Allen, M. E., 592-606, *pap.*
 Alfred I., 10
 Allison, W. B., 247
 Aiston, I., 699
 Ames, H. V., 454
 Andrew, A. P., 479-491, *pap.*
 Andrews, J. B., 463, *b.*
 Ashley, R. L., 239
 Austin, J., 139

 Bailey, L. H., 229 *b.*
 Baker, H. H., 80-84, *pap.*
 Baker, W. F., 9-10, *pap.*
 Balch, E. G., 699
 Baldwin, W. H., 68
 Banfield, E. J., 229, *b.*
 Bardolph, 127
 Barnard, J. L., 711, *r.*
 Barnett, G. E., 321, 613-25, *pap.*
 de la Barra, F. L., 223
 Bateson, W., 229 *b.*
 Batten, S. Z., 453 *b.*
 Beard, C. A., 453, *b.*
 Benjamin, M., 463, *b.*
 Bentham, J., 710
 Bergh, H., 65, 66
 Bingham, T. A., 11-15, *pap.*
 Bishop, A. L., 139
 Blackstone, W., 139
 Blair, H. W., 247
 Blair, J. L., 705
 Blakeslee, G. H., 230, *b.*
 Bonaparte, Napoleon, 407, 454, 455
 Boone, D., 454
 Booth, W. R., 225, 226
 Bostwick, A. E., 463, *b.*
 Boutwell, G. S., 585
 Boyce, R., 244, *b.*
 Braddock, E., 454
 Bradley, G. B., 146
 Bramwell, Lord, 128
 Brewer, D. J., 111, 131
 von Brissen, A., 207-211, *pap.*, 212, 222
 Belncard, Baron, 527
 Broadus, S. S., 633, *et seq.*
 Brooks, J. G., 313
 Brown, F. E., 463, *b.*
 Brown, J. M., 68
 Bruce, H. A., 454, *b.*
 Bryan, J. W., 288-301, *pap.*
 Buckingham, C. O., 258, 261
 Burgoyne, J., 241
 Burke, E., 90, 474
 Butler, P., 585, 700
 Butt, L., 713

 Caldwell, H. C., 100
 Calhoun, J. C., 246, 453
 Camden, Lord, 147
 Carnegie, A., 313
 Carpenter, W. H., 395
 Carré, H., 454, *b.*
 Carson, W. E., 230, *b.*
 Casson, H. N., 230, *b.*
 van Casteel, G., 463, *b.*
 Chaddock, R. E., 253, *r.*
 Chadwick, F. L., 245, *b.*
 Challey, J., 708, *b.*
 Chance, W., 231, *b.*
 Chase, S. P., 593, 594
 Cheyney, E. P., 461, 477, *r.*
 Choiseul, E. F., 454
 Clabough, H. M., 258
 Clark, J. B., 465, 467
 Clark, J. M., 706, *b.*
 Clark, V. S., 411, 418, 432, 439
 Clarke, W., 454
 Clay, H., 247
 Clayton, P., 224
 Cleveland, G., 247
 Clinton, G., 241
 Coke, Lord, 215
 Colby, F. M., 231, *b.*
 Cole, W. M., 709, *b.*
 Coleman, Nannie McC., 231, *b.*
 Comenius, J. A., 236
 Commons, J. R., 232, 328, 330, 465, *b.*
 Conant, C. A., 648, 649
 Cooper, S. R., 258, 261
 Cortelyou, G. B., 585
 Cory, G. E., 232, 464, *b.*
 Crane, W. M., 650
 Cremer, R., 711
 Cromer, Earl of, 232, *b.*
 Crosby, O. T., 609, *b.*
 Cross, I., 349
 Cullen, A., 232, *b.*
 Curtin, J., 245, *b.*
 Custer, G. A., 476
 Cutting, R. F., 466

 Daniels, W. M., 702
 Davenport, E., 232, *b.*
 David, T. W., 250
 Davis, C. G., 609, *b.*
 Davis, Katharine R., 37-42, *pap.*
 Dawbarn, C. Y. C., 609, 710, *b.*
 Day, 384
 Dayton, A. G., 117
 Debs, F. V., 111, 135
 Defoe, D., 640
 De Lacy, W. H., 61-63, *pap.*, 68
 Delbruck, 445, 449
 Dewe, J. A., 609, *b.*
 Diaz, P., 244
 Hill, J. R., 220
 Desk Lovinia L., 700, *b.*
 Dole, C. F., 233, *b.*

Index of Names

- Dougherty, 434
 Douglass, W. L., 408
 Downey, E. H., 711, b.
 Boyle, C. J., 302-310, *pap.*
 Draper, A. S., 233, b., 455, b.
 Drew, D., 461
 Drugo, J. H., 406
 Duhring, H. L., 73
 Duncan, H., 640
 Duncan, J., 258, 261
 Dyer, H., 470, b.
- Earle, G. H., Jr., 395
 Eastman, C., 455
 Eaton, Amey B., 475, r.
 Eckardt, H. M. P., 626-639, *pap.*
 Edward VII, 705
 Eldon, Lord, 50, 51
 Elliot, C. W., 313, 411, 415
 Elkin, J. P., 3-8, *pap.*, 220
 Elkins, W. L., 705
 Elliott, E. E., 246, b.
 Ellison, E., 349
 Ely, R. T., 465
 Emery, J. A., 127-136, *pap.*
 Evans, H., 711, b.
- Fairlie, J. A., 247, r.
 Falconer, Martha P., 77-79, *pap.*
 Farrington, F. E., 455, b.
 Fawcett, H., 710
 Ficklen, J. R., 700, b.
 Fite, E. D., 247, b.
 de Fleury, A. H., 454
 Flexner, B., 49-56, *pap.*
 Folks, Homer, 20-26, *pap.*
 Forsyth, R. K., 349-365, *pap.*
 Foster, G. B., 250, b.
 Fowler, W. J., 628
 Fox, C. J., 474
 Frame, A. J., 693-697, *pap.*
 Frey, J. P., 328, 330
 Froebel, F. W., 236
 Fuller, T. E., 455, b.
 Furuseth, A., 137-141, *pap.*
- Gage, H. T., 359
 Galton, F., 457
 Garner, J. W., 712, b.
 George V, 705
 George, H., 240
 Georges, 456
 Gerry, E. T., 66
 Gillett, J. N., 447
 Gilmore E. A., 465, b.
 von Glasenapp, Dr., 530
 Godfrey, H., 456, b.
 Godoy, J. F., 248, b.
 Gompers, S., 88, 255-264, *pap.*, 274, 277,
et seq., 456
 Gould, A. M., 256, 257, *et seq.*, 277
 Gould, J., 705
 Gray, J. C., 234, 471, b.
 Greeley, H., 322, 324
 Greene, M. Louise, 700, b.
 Gregory, H. E., 234
 Grenfell, W. T., 234, b.
 Grenville, G., 474
- Hagar, G. J., 463, b.
 Halifax, Lord, 147
 Hall, G. S., 66, 234, b.
 Hall, T. C., 248, b.
 Hall, W. E., 235, b.
 Halsbury, Earl of, 100
 Hamilton, A., 246
 Hamilton, J. J., 701, b.
 Haney, L. H., 456
 Harding, W. P. G., 632
- Hardt, W. M., 692
 Harlan, J. M., 247
 Harriman, E. H., 580
 Harrison, Mrs. C. C., 219
 Hart, H. H., 57-60, *pap.*, 61, 71, 221
 Hayes, C. H., 235, b.
 Hayes, D. A., 258, 261
 Hazen, C. D., 701
 Heggel, G. W. F., 242
 Henry I., 16
 Herbart, J. F., 236
 Hickman, E. L., 258, 261
 Hicks, R. D., 456, 701, b.
 Hilgard, E. W., 235, b.
 Hoar, R., 102
 Holdrich, T., 456
 Holmes, O. W., 100, 133
 Holt, Grace, 549
 Holt, H., 236, b.
 Hopkins, C. G., 236
 Hopkins, J., 705
 Houston, S. F., 219
 Howe, F. C., 236, b.
 Howe, F. C., 236, b.
 Hoyt, C. O., 236, b.
 Huber, W. D., 258, 261
 Hughes, C. E., 472, b.
 Hughes, E. H., 237, 472, b.
 Hugo, G. B., 416
 Huntington, C., 705
 Hurd, H. B., 57, 71
 Huston, J. P., 654-668, *pap.*
- Ilbert, C. P., 708
 Irvine, A., 701, b.
 Ito, Marquis, 231
- Jackson, A., 246, 581
 Jacobs, L. M., 511-522, *pap.*
 Jameson, J. F., 456, b.
 Jay, J., 196
 Jefferson, T., 245, 246, 264
 Jenks, J. W., 702
 Jerome, W. T., 21
 John, King, 177
 Johnson, A., 700
 Johnson, A., 456, 457
 Johnson, E. R., 464, r., 470, r., 709, r.
 Johnson, J. A., 205
 Johnson, J. F., 538-562, *pap.*
 Johnson, J. H., 649
 Johnson, R., 702, b.
 Johnston, A., 702, b.
 Jones, C. L., 245, r., 465, r., 471, r., 472,
 r., 709, r., 712, r., 714, r.
 Justinian I, 207
- Kauffman, R. W., 237, b.
 Kautsky, K., 457, b.
 Keefe, D. J., 258, 261
 Keeling, F., 237, b.
 Keller, A. G., 234
 Kelley, W. G., 223
 Kelly, E., 457
 Kelsey, C., 252, r., 474, r., 477, r.
 Kennaday, F., 438-444, *pap.*
 Kent, F. L., 492-501, *pap.*
 King, H. C., 238
 King, I., 238, 473, b.
 King, W. L. M., 410, 417, 421, *et seq.*
 Kirchwey, O. W., 212-217, *pap.*, 224,
 226
 Knapp, M. A., 402
 Knox, J. J., 693
 Koch, R., 595
 Krauskopf, J., 311-320, *pap.*
- Lafargue, P., 702, b.
 La Monte, R. R., 258, b.

Index of Names

- Lane, C. B., 238, b.
 Laprade, W. T., 238, 474, b.
 Lavisse, E., 454
 Lavitt, J. B., 161-168, *pap.*
 Leland, A., 457
 Lemieux, R., 424
 Lennon, J. B., 258, 261
 Leupp, F. R., 457
 Lewis, T. L., 333-339, *pap.*
 Lichtenberger, J. P., 249, *r.*, 253, *r.*, 476, *r.*, 710, *r.*
 Lincoln, A., 211, 246, 319, 593, 595
 Lindsey, H. R., 71, 238, b.
 Lingsbach, W. E., 475, *r.*
 Littlefield, C. E., 104-136, *pap.*, 137
 Lloyd, H. D., 703, b.
 Lock, R. H., 457, b.
 Loewe, 267, *et seq.*
 Lombroso, C., 37
 Loughborough, A. E., 474
 Louis XV, 454
 Luce, R., 407-418, *pap.*
 Lundrygan, J., 397-406, *pap.*
 Luzzatti, 483
- Macarthur, W., 349
 MacClintock, E., 703, b.
 Mack, J. W., 56, 71
 MacLean, Annie M., 703, b.
 Macphail, A., 703, b.
 Macveagh, F., 604
 Macy, V. E., 466
 Madison, J., 246
 Magurie, J. G., 356
 Mallery, O. C., 219
 Mankiewitz, P., 530
 Mann, H., 236
 Maria Theresa, 454
 Marqua, A. N., 462
 Marriott, C., 239, b.
 Marriott, J. A. R., 704, b.
 Marshall, J., 246
 Marx, K., 237, 240, 242, 457
 Mathews, S., 457, b.
 Mayer, J. M., 169-174, *pap.*
 McConnell, R. M., 475, b.
 McCormick, C. H., 230
 McCormick, S., 466
 McCulloch, H., 593, 595
 McLaughlin, J., 476, b.
 McNichol, J. P., 395
 McPherson, I. G., 704
 McRoberts, S., 502-510, *pap.*
 Mellisch, G., 448
 Mencken, H. L., 238, b.
 Merritt, W. G., 265-276, *pap.*
 Meyer, W., 708
 Mill, J. S., 239, b.
 Miller, T. S., 704
 Miner, Maude E., 27-36, *pap.*
 Minto, G. E., 708
 Mitchell, J., 88, 256, *et seq.*, 277, *et seq.*, 312
 Moffitt, 269, 270
 Monroe, J., 245
 Moore, J. H., 239, b.
 Moran, J. P., 705
 Morley, J., 708
 Morris, M., 258, 261
 Morrison, 384, *et seq.*
 Morrison, F., 88, 256, *et seq.*, 277, *et seq.*
 Motley, J. M., 349
 Mundy, F. W., 458, 704
 Münsterberg, H., 704, b.
 Murray, I. O., 638, 694
 Mussey, H. R., 710, b.
 Myers, G., 458, b., 705, b.
- Nearing, R., 234, 243
 Neill, C. P., 87-89, *pap.*, 221, 462
 Nibesker, F. H., 43-46, *pap.*, 63
 Nicholls, T. D., 266-272, *pap.*
 Nichols, F. C., 640-652, *pap.*
 Nietzsche, F., 239
 Nisbet, 709
 Nott, C. C., Jr., 21, *et seq.*
- O'Connell, J., 258, 261
 O'Donnell, F. H., 458, 712, b.
 Odum, H. W., 476, b.
 O'Higgins, H. J., 238, b.
 O'Neill, C., 223
 O'Shea, M. V., 240, 458, b.
 Osterhout, W. J. V., 235, b.
 Otis, J., 146
 Overlock, M. G., 458, b.
 Owen, E. T., 304
 Owen, R., 232
- Paddock, W., 705
 Pallain, 527
 Palmer, F., 240, 459, b.
 Parker, C. W., 100
 Parker, R. W., 124
 Parnell, C. R., 712, 713
 Parsons, F., 237
 Pearson, K., 457
 Pease, C. S., 705
 Peel, R., 487
 Pestalozzi, J. H., 236
 Phelan, R. V., 249, *r.*
 Philipp, E. L., 459, b.
 Phillips, J. B., 240
 Phillips, U. R., 463, b.
 Pitt, W., 474
 Platt, J. P., 275
 Plunkett, H., 459
 Polk, J. K., 453
 Pompadour, Madame, 454
 Poppe, H. C., 258, 261
 Portland, W. C., 474
 Post, L. F., 240, b.
 Powell, T. R., 471, *r.*
 Pratt, C. O., 391-396, *pap.*
 Prince, T., 456
 Pulltzer, J., 177
- Quick, H., 240
- Ralston, J. H., 88, 89-103, *pap.*, 112, *et seq.*
 Randall, B. J., 223
 Redmond, J. E., 713
 Reeves, A. G., 453
 Reeves, W. P., 439
 Reid, D. C., 459, b.
 Reinsch, P., 454
 Reyburn, J. E., 395
 Rhodes, C. J., 455, 456
 Richardson, Bertha J., 459, b.
 Richardson, W. A., 585
 Ridgely, W. R., 694
 Ritchie, J. W., 240, b.
 Roberts, G. E., 523-537, *pap.*
 Robertson, 454
 Roe, A. E., 460, b.
 Roney, 252
 Roosevelt, T., 246, 247, 344, 366, 402, 432
 Rousseau, A., 236
 Rowe, I. S., 193, 197, 220, 221, 248, *r.*
- Sage, R., 705
 Saint Leger, 241
 Schaffner, Margaret A., 277-287, *pap.*
 Scholefield, G. H., 460, b.
 Schroeder, T., 461

Index of Names

- Seager, H. R., 705
 Seddon, R., 439
 Seidel, E., 378
 Seligman, E. R. A., 249, b.
 Sevier, J., 454
 Shackleton, E. H., 249, b.
 Shaw, L., 95, 100, 468
 Shaw, L. M., 554, 599
 Shepard, S., 262, 277, *et seq.*
 Sherman, J., 594
 Sherman, J. S., 193-206, *pap.*, 221, *et seq.*
 Shortt, A., 431
 Silburn, P. A., 241, b.
 Smith, S. G., 250, b.
 Smoot, R., 225, 226
 Smyth, E., 466
 Smyth, N. A., 176
 Solon, 16
 Spaulding, E. G., 585, 594
 Spears, J. R., 241, b.
 Staake, W. H., 71-76, *pap.*
 Stanford, L., 705
 Stelzie, C., 461, b.
 Stern, Jannette, 473, r.
 Stevens, F. C., 198, 199-206, *pap.*, 221, 222
 Stevens, T., 246, 247
 Stewart, E., 321-332, *pap.*
 Stockwell, H. G., 669-692, *pap.*
 Stoddard, H. L., 349
 Stopes, Marie C., 461
 Stowell, E. C., 711, r.
 Strachey, E., 708
 Stuart, E. S., 221
 Sullivan, J. J., 241, b.
 Sumner, Helen L., 465, b.
 Sylvester, R., 16-19, *pap.*
- Taft, W. H., 280
 Talbert, F. L., 242, b.
 Taylor, Edith M., 462
 Thlxton, R. L., 258, 261
 Thomas, D. Y., 247, r.
 Thurlow, E., 474
 Thurlow, Lord, 50
 Tower, W. S., 245, r., 246, r., 250, r.
 Train, A. C., 175-184, *pap.*
 Trenholme, N. M., 461, b.
 Trumbull, L., 111
 Tulev, M. F., 282
 Tuttle, 71
 Tyler, J., 453
- Ullman, 529
 Underwood, H. G., 242
 Untermyer, S., 145-160, *pap.*
- Valentine, 257
 Valentine, J. F., 258, 261
 Vance, T. S., 381-390, *pap.*
 Van Cleave, J. W., 250, *et seq.*, 373-380, *pap.*
 Van Dyke, H., 252, b.
 Van Orsdel, J. A., 262, 293
 Veiller, L., 242, b.
 de Villiers, J., 436
 Vreeland, E. B., 626, 627
- Walker, T., 710
 Warne, F. J., 340-348, *pap.*
 Warren, G. F., 243, b.
 Watkins, E., 706, b.
 Webster, D., 246
 Weeden, W. B., 706, b.
 Weigall, A. E. P., 706
 Welnsstock, H., 410, 434, 445-452, *pap.*
 Wellesley, Duke of, 51
 Welsford, J. W., 243, 477, b.
 Weyler, Genl., 245
 Wheeler, E. F., 185-189, *pap.*
 White, B., 461, b.
 White, H., 563-573, *pap.*
 White, W. A., 461, b.
 Whitman, C. S., 21
 Wicksteed, P. H., 243
 Wilbur, Mary A., 706
 Willcox, D. F., 462, 713, b.
 Wilder, Elizabeth, 462
 Wildman, M. S., 574-591, *pap.*
 Wilkes, J., 147
 Wilkin, R. J., 64-70, *pap.*
 Wilkinson, M., 462, b.
 Williams, A. J., 258, 261
 Williams, N. B., 706, b.
 Williams, R., 706
 Williams, S. C., 243, 707, b.
 Williams, T., 226
 Willis, J. C., 243, b.
 Wilson, J., 246, 247
 Windham, W., 474
 Wines, F. H., 253, b.
 Woods, W. A., 135
 Wright, C. D., 312
 Wright, C. W., 707
 Wright, D. T., 260, 261, *et seq.*
 Young, S., 607-612, *pap.*
 Zimmerman, H. M., 676

Index of Subjects

INDEX OF SUBJECTS

[Titles of articles are printed in small caps.]

- ACCUSED, TREATMENT OF THE, 16-19.** Ancient severity of criminal law, 16; description of "sweat box," 17; third degree, 18; confessions not secured by rough usage, 19; beneficial effect of the International Police Association, 19.
- Africa.** "The Right Honorable Cecil John Rhodes," by T. E. Fuller, note, 455.
"The Rise of South Africa," by G. E. Cory, review, 404.
- Agriculture.** "Agriculture for Schools of the Pacific Slope," by E. W. Hildgard, and W. J. V. Osterhout, note, 235.
"Agriculture in the Tropics," by J. C. Willis, note, 243.
"Business of Dairying," by C. B. Lane, note, 238.
"Elements of Agriculture," by G. F. Warren, note, 243.
"Manual of Gardening," by L. H. Bailey, note, 229.
"Principles of Breeding," by E. Davenport, note, 233.
- "Allens under the Federal Laws of the United States,"** by S. MacClintock, note, 703.
- ANTHRACITE BOARD OF CONCILIATION, THE, 366-372.** Establishment of the board in 1902, 366; causes of friction, 367; claim of miners regarding weighing of coal, 368; price of powder, 369; organization of laborers, 369; difficulties of the Board, 370; reference of certain disagreements to umpire, 372; good results obtained, 372.
- ARBITRATION, COMPULSORY, IN THE UNITED STATES, 302-310.** Development of labor legislation, 302; working of compulsory arbitration in New Zealand and Australia, 303; difficulties, 304; "Industrial Agreements," replacing awards of arbitration courts, 304-305; membership in union required by New Zealand law, 305; no demand for compulsory arbitration laws in United States, 306; compulsory laws of Illinois, 307; Canadian law works well, 309; conclusions against adoption of compulsory arbitration, 310.
- ARBITRATION, NECESSITY OF INDUSTRIAL, 311-320.** State of war existing between capital and labor, 311; miseries of the poor, 312; succession of struggles between labor and capital, 313; point of view of laborer, 315; change wrought in modern labor conditions, 317; only lawless methods employed by laborers must be punished, 318; boycott unlawful, 319; hope of future laws in arbitration, 320.
- Banking. AMERICAN BANKING, THE EXTENSION OF, IN FOREIGN COUNTRIES, 502-510.** Awakening interest in foreign commerce, 502; America forced to seek foreign markets, 503; American banks would be powerful aids to American trade, 504; disadvantage which American imports are under, 505; American banks abroad would help
- American merchants, 505; restraints upon establishment of American banks, 507; branches of state banks converted into national banks, 508; extension of American banking system almost necessary, 509; methods of preventing abuses, 510.
- ENGLISH METHODS OF LENDING AS CONTRASTED WITH AMERICAN, 511-522.** Margins of profit in United States and abroad, 511; responsibility of foreign banks in maintaining money rates, 512; advantages of bills of exchange as unilateral, 513; transference of bills of exchange between banks, 514; evil effects of requiring large cash reserve, 515; reasons for London prestige, 515; English banks lend through credit, 516; great waste of bankers' credit in United States, 517; enormous total of capital and surplus in American banks, 517; laws involved in American system, 518; bank bills and trade bills, 518; law responsible for restricting discounts to commercial paper, 519; adoption of substitution of bills of exchange for promissory notes that did not involve complications, 520; advantage of adopting certain foreign methods of lending, 521.
- NATIONAL BANKING SYSTEM AND FEDERAL BOND ISSUES, 592-606.** Banks evolved from necessities of government, 592; our national banks organized to meet necessities of Civil War, 593; suspension of specie payment in December 1861, 594; National Bank Act, 595; act of March 14, 1900, 596; comparison of national banks and other banks, 597; increase of national banks to October 31, 1909, 598; bonds accepted as basis for currency, 599; various issues of bonds, 600; issue of Panama Canal bonds, 601; injustice of rate of interest on bonds of 1909, 602; Emergency Currency Law, 603; currency law put in operation in District of Columbia, 604; national system has worked well, 606.
- BANK RESERVES, UTILIZATION OF IN THE UNITED STATES AND IN FOREIGN COUNTRIES, 523-537.** Mass of note issues abroad, 523; reserve requirements under our system, 524; provisions relating to reserve cities, 526; system of the Bank of France, 527; system of the German banks, 529; resources kept by the Bank of England, 530; deposits in United States banks, 531; proportion of reserves retained by national banks, 532; knowledge of central reserve necessary to avert panics, 533; proposals for organizing institutions in United States, 534; not desirable to retire bond-secured currency, 536.

Index of Subjects

- BANKS, CONTROL OF, STATE AND FEDERAL,** 693-697. Results 1863 to 1896, 693; world comparisons, 694; state bank of Indiana, 695; Louisiana Bank Act of 1842, 695; European experiences, 695; Glasgow failure, 696.
- EXAMINATIONS OF BANKS, STATE AND NATIONAL,** 669-692; Attitude of examiner, 669; requirements of states, 670; national banking supervision, 671; enlargement of scope of bank examination, 672; amount of individual loans, 673; qualifications required of examiners by state and national authorities, 674; compensation of examiners, 676; character of examiners, 677; Improvements in existing laws suggested, 680; suggestions for improving official examinations under present conditions, 683; examinations by certified public accountants, 690.
- INDEPENDENT TREASURY AND THE BANKS, THE,** 574-591. Relation of banks to treasury similar to that of individuals to banks, 574; isolation of treasury funds, 575; position of bank reserves in credit system, 577; disadvantages culminate in New York, 580; lending of public funds to banks, 582; special deposits, 583; arbitrary decision of Secretary, 584; policy of Secretary Cortelyou, 585; federal guaranty of bank notes, 586; inelasticity of our system, 587; basis of automatic machinery for contraction, 588; profit on circulation of notes, 589; our system beclouds public understanding of banking business, 590; currency reform must consider relation of treasury to banks, 591.
- Biography.** "Sir Randal Cremer, His Life and Works," by H. Evans, review, 711.
- "Porfirio Diaz, President of Mexico," by J. F. Godoy, review, 248.
- "The Book of Daniel Drew," by B. White, note, 461.
- "From the Bottom Up," by A. Irvine, note, 701.
- "Cyrus Hall McCormick, His Life and Work," by H. N. Casson, note, 230.
- "Who's Who in America," A. N. Marquis, Ed., note, 462.
- BOYCOTT DECISIONS, EFFECT OF THE RECENT,** 277-287. Protests against, 277; circulation of court's decision considered contempt, 278; opinion of Chief Justice Shepard, 278; evolution of boycott decisions, 280; intention of unionists not malicious, 281; truthful though injurious statements may be made, 282; decisions of state courts regarding boycotts, 283; decisions authorizing employers to combine against unionists, 285; trade unions likely to seek political influence, 286; American unionists seeking rights enjoyed abroad, 287.
- BRANCH BANKING AMONG THE STATE BANKS,** 626-630. Restricted development of, 626; branch institutions abroad, 627; federal laws prohibitive of branch banks, 628; transformation of state banks with branches, 630; chain of state banks in Georgia, 630; Minneapolis plan, 631; local banks, 632; report of proceedings of Alabama bankers, 1910 meeting, 633; Tennessee Valley Bank, 633; opening branch banks, 634; limited scope of action of branch banks, 635; branch of a Canadian bank, 636; improvements in position of national banks, 638; facilities should be provided for many small places, 639.
- CANADIAN BANKING SYSTEM AND ITS OPERATION UNDER STRESS, THE,** 538-562. Financial relation of Canada to United States, 538; evolution of Canadian system, 539; monetary system of Canada, 540; essentials of the Canadian banking system, 541; process of incorporation, 541; security and redemption of notes, 543; importance of redemption, 544; circulation redemption fund, 545; two negative qualities, 546; management of failed banks, 547; monthly returns to government, 547; Canadian Bankers' Association, 548; system in time of stress, 548; strong because elastic, 549; solidarity or unity of system, 550; importance of banker, 552; panic of 1907, 553; Canadian banks were prepared, 554; gradual contraction of loans, 554; call loans reduced in New York, 556; circulation too near limit, 556; government tries to help, 557; two interesting bank failures, 559; first outbreak of high finance, 560; conclusion, 561.
- "Central America and Its Problems," by F. Palmer, note, 459.
- China. "China and the Far East," by G. H. Blakeslee, Ed., note, 230.
- "China As I Saw It," by A. S. Roe, note, 460.
- Citizenship. "The Teaching of Citizenship," by E. H. Hughes, review, 472.
- Civil War. "Social and Industrial Conditions in the North During the Civil War," by E. D. Fite, review, 247.
- CLEARING HOUSE FUNCTIONS, ENLARGEMENT OF,** 607-612. Boston inaugurates collection of country items, 607; credit of banks closely related, 608; advantage of information obtained by examiner, 609; advantages of clearing house examination, 610; conversion of commercial paper into liquid assets, 611; immunity of interest of banks, 612.
- COAL INDUSTRY, THE TRADE AGREEMENT IN THE,** 340-348. Object of trade unionism, 340; principles underlying trade agreements, 341; operators recognize rights of mine workers to organize, 342; necessity for equalizing conditions in different regions, 343; decision of Anthracite Coal Strike Commission, 344; board of conciliation established, 345; rules of procedure adopted, 346; reduction in wages as well as increase by trade agreement, 347; strikes and lockouts prevented by trade agreement, 348.
- CREDIT CURRENCY, THE USE OF, BY COUNTRY BANKS,** 654-668. Function of the bank note, 654; situation in the United States, 655; bank notes limited only by volume of bonds available, 656; expansion and contraction of currency needed, 657; banks would be able to meet emergency such as 1907,

Index of Subjects

- 658; additional circulation by banks, 659; banks at reserve centers first feel currency pressure, 660; opposition to issue of government bonds for bank note circulation, 661; fear of their issue for unsecured notes, 662; situation of banks in reserve cities, 663; guaranty of bank notes, 664; treasury department compelled to co-operate with banks, 665; banks in reserve cities should have power to issue uncovered notes, 667; maintenance of banking reserves rests upon money centers, 668.
- CRIMINAL LAW, ADMINISTRATION OF, IN THE INFERIOR COURTS, 160-174.** Great number of minor evidences in New York, 169; evil effect of neglecting inferior courts, 170; problem of drunkenness, 171; too many arrests, 172; proposed reforms, 173.
- CRIMINAL LAW, ADMINISTRATION OF.—THIRD DEGREE SYSTEM, 11-15.** Reason for disrespect for law, 11; necessity for better police magistrates, 12; criminal laws written in unintelligible language, 13; false ideas about "third degree," 13; theories as to nature of crime, 14; force necessary to protect society, 15.
- CRIMINAL LAW, EVILS AND REMEDIES IN THE ADMINISTRATION OF, 145-160.** Constitution principal difficulty in administration of justice, 145; historical development of constitutional provisions, 147; criticism of the acts of Royd vs. United States, 148; Supreme Court distinguishes the Boyd case, 149; fining of corporations ineffectual, 150; necessity for changing provisions of Constitution, 150; prevalence of perjury and remedy therefor, 153; evil effects exercised by the press, 154; use of press made by prosecuting officers, 155; proposals to curtail evils of press, 156; legal delays, 157; undue haste in requiring defendants to undergo sentence, 157; proposals to prevent unjust delays and punishments, 157; necessity for a public defender, 158; disadvantages of the poor in securing justice, 159.
- CRIMINAL PROCEDURE, REFORM IN, 185-189.** Importance of promptness and certainty of administration, 185; technical errors in procedure, 186; guilt of the insane, 189.
- Criminology.** "Punishment and Reformation," by F. H. Wines, review, 253.
- Cuba.** "The Rescue of Cuba," by A. S. Draper, note, 455.
- Cyclopaedia.** "Appleton's New Practical Cyclopaedia," review, 463.
- DANBURY HATTERS' CASE, THE LAW OF THE, 265-276.** Three most important labor cases, 265; the Loewe Case, 266; questions at issue, 268; what constitutes violation of Sherman Anti-Trust Law, 268; Mr. Loewe threatened with force, 270; liability of individual members of union, 270; members of unions responsible for acts, 272; necessity of boycotts recognized by American Federation of Labor, 273; individual members paid dues to support boycotts, 275; damage of employer commensurate with force of the attack, 276.
- DELINQUENCY AMONG GIRLS, CAUSES OF, 77-79.** More difficult to deal with girls, 77; cases of delinquency, 78; inadvisable to give delinquent girls immediate freedom, 79.
- Democracy.** "The Old Order Changeth," by W. A. White, note, 491.
- Diplomacy.** "The Relations of the United States with Spain," by F. E. Chadwick, review, 345.
- Economics.** "Evolution of Property," by P. Lafargue, note, 702.
- "Liberty and Progress," by C. Y. C. Dawson, review, 710.
- "Principles of Political Economy," by J. S. Mill, note, 230.
- Education.** "American Education," by A. S. Draper, note, 223.
- "Among School Gardens," by M. Louise Grossen, note, 700.
- "French Secondary Schools," by F. E. Farrington, note, 455.
- "Social Development and Education," by M. V. O'Shea, note 464.
- "Studies in the History of Modern Education," by C. O. Hoyt, note, 236.
- "Youth, Its Education, Religion, and Hygiene," by G. S. Hall, note, 234.
- EMPLOYERS' ASSOCIATION IN THE REGULATION OF LABOR DISPUTES, THE WORK OF, 373-380.** National Association of Manufacturers, 373; employers join in favor of unions that will respect their contract, 374; irresponsibility of labor unionism, 375; appeal of Hook's Shoe and Hane Company to Supreme Court of District of Columbia, 375; employers glad to meet employees half way, 376; industrial peace made more necessary by close competition, 377; importance of subject shown by large number of legislative enactments, 378; important measure introduced in Massachusetts legislature, 378; necessity for establishment and maintenance of open shop, 379; purpose of the Association, 380.
- Ethics.** "The Duty of Altruism," by R. M. McConnell, review, 475.
- "The New Ethics," by J. H. Moore, note, 239.
- "Social Solutions in the Light of Christian Ethics," by T. C. Hall, review, 248.
- FOREIGN TRADE, FINANCING OUR, 492-501.** Great development of our foreign trade, 492; principal demands in, 492; nature of the commercial law of credit, 493; reasons why London exchange is more marketable than New York, 493; different methods of financing exports, 496; method used for cotton exports, 497; cotton bill of lading in spring, 1910, 498; old cotton bill of lading cannot be authenticated, 499; guaranteeing of cotton bill of lading recognized by foreign bankers as wrong in principle, 499; money to finance imports and exports furnished by foreign bankers, 500; America pays Europe interest for use of its money, 501.
- France.** "The Latest Plans of the League in Provence, 1888-1898," by M. Wilkinson, note, 462.

Index of Subjects

- Geography. "The Heart of the Antarctic," by E. H. Shackleton, review, 249.
- GERMAN COURTS FOR THE ARBITRATION OF INDUSTRIAL DISPUTES, THE, 445-452. REASONS why German government is not in favor of compulsory arbitration, 445; strength of German trade unions, 445; law of 1890, regarding arbitration for collective disputes, 446; effect of organized labor in Germany to secure recognition, 447; function of arbitration courts for trade disputes, 447; cases dealt with by industrial courts confined to small employers and workers, 448; "Chambers of Labor" to serve as courts of arbitration, 449; contrast between German and English attitude toward organized labor, 450; necessity for organized labor, 451; German employers must soon recognize organized labor, 452.
- Government. "Conditions of Progress in Democratic Government," by C. E. Hughes, review, 472.
- "The Constitution and Its Framers," by Nannie McC. Coleman, note, 231.
- "How Americans Are Governed in Nation, State and City," by C. Marriot, note, 239.
- Health. "The Health of the City," by H. Godfrey, note, 456.
- "Hygiene and Morality," by Lavinia L. Dock, note, 700.
- "Mosquito or Man," by R. Boyce, review, 244.
- "Primer of Sanitation," by J. W. Ritchie, note, 240.
- History, American. "The Biographical Story of the Constitution," by E. G. Elliott, review, 246.
- "The Colonies and the Imperial Defence," by P. A. Silburn, note, 241.
- "Daniel Boone and the Wilderness Road," by H. A. Bruce, note, 454.
- "History of Reconstruction in Louisiana," by J. R. Ficklen, note, 700.
- "Johnson's Wonder-Working Providence, 1628-1651," by J. F. Jameson, Ed., note, 456.
- "The Story of the Constitution of the United States," by R. Johnson, note 702.
- "British Interests and Activities in Texas, 1838-1846," by E. D. Adams, note, 453.
- History, English. "England and the French Revolution, 1789-1797," by W. T. Laprade, review, 474.
- "An Outline of English History," by N. M. Trenthome, note, 461.
- "The Strength of England," by J. W. Welsford, review, 477.
- History, French. "Histoire de France," by H. Carré, note, 454.
- History, German. "Sources Relating to the Germanic Invasions," by C. H. Hayes, note, 235.
- History, General. "The New International Year Book," by F. M. Colby, Ed., note, 231.
- "Housing Reform," by L. Veller, note, 242.
- Imperialism. "Ancient and Modern Imperialism," by Earl of Cromer, note, 232.
- India. "Administrative Problems of British India," by J. Chailley, review, 708.
- Indian. "My Friend the Indian," by J. McLaughlin, review, 476.
- INDUSTRIAL DISPUTES, THE GERMAN COURTS FOR THE ARBITRATION OF. See *German Courts*.
- INDUSTRIAL DISPUTES IN MASSACHUSETTS, THE NEXT LEGISLATURE ON, 407-418. Number of strikes in Massachusetts and elsewhere, 407; establishment of arbitration boards, 408; adoption of compulsory arbitration unlawful in United States, 409; public constitutes third party to labor disputes, 409; operation of Canadian law, 411; remarkable results obtained by compulsory investigation, 412; report of Dominion Trades and Labor Congress, 412; points of other organizations, 414; Canadian Minister of Labour advised the drafting of the bill for Massachusetts, 415; experience in applying principle of Canadian law in Massachusetts, 416; objections of laborers and employers to law, 417; advantages to be obtained by introduction of a statute similar to Canadian law, 418.
- INDUSTRIAL DISPUTES IN NEW ZEALAND, SETTLEMENT AND PREVENTION OF, 438-444. Conditions and development in New Zealand, 438; plan of Mr. Reeves, 439; industrial conciliation and arbitration act, 1908, 439; provisions of act, 440; litigants appear before referees of their own selection, 441; decision of the court may favor unions, 441; effect of certain conditions peculiar to New Zealand, 442; New Zealand fortunate in having no large body of unemployed, 443; remarkable industrial disputes in New Zealand, 443; features of New Zealand laws applicable in United States, 444.
- Industry. "A Documentary History of American Industrial Society," review, 465.
- INJUNCTION IN TRADE DISPUTES, USE AND ABUSE OF. Emery, J. A., 127-136. Antiquity of writ of injunction, 127; rights of property, 128; property value of reputation or good-will, 129; importance of injunction in restraining Illinois from polluting drinking water of Missouri, 131; injunction should apply to labor disputes as much as other controversies, 132; consideration of motive important in issuing of injunctions, 133; rights of property not restricted to pecuniary interests, 134; equity court punishes only to enforce its order, 135; end of boycotts, 136.
- Furness, A., 137-141. What is meant by judicial power, 137; modern use of injunction destructive of popular government, 138; nature of property, 139; nature of labor, 140; what labor seeks, 141.
- Littlefield, C. E., 104-118. Purpose of equity jurisdiction, 104; only courts of equity will act, 105; liberty of speech and of press re-

Index of Subjects

- strained only in case of criminal conspiracy, 100; definition of irreparable injury, 107; necessity of restraint upon unconstitutional legislation, 108; legislation cannot limit judicial power of injunction, 109; refusal of equity jurisdiction, when entitled, would be depriving citizen of his rights, 110; right of Federal court to issue temporary restraining order, *ex parte*, 113; Congress cannot limit injunction to any time, 112; omissions in paper by Mr. Ralston, 114; contract of service in the case of public service corporations, 115; additional portions of English statute referring to boycott, 116; no case of abuse by federal judge in not granting a speedy hearing on motion to dissolve temporary restraining order, 117.
- Ralston, J. B., 118.
- Littlefield, C. E., 119-126. Comparative summary provisions of English Statutes of 1875, concerning conspiracy and protection of property, and, 1906, regulating Trades Unions and Trades Disputes, 119-123.
- Neill, C. P., 87-88.
- Ralston, J. B., 89-103. What property will be protected by injunction, 89; injunction should not be applied in case of libel or slander, 90; attitude of courts toward rights of laborers, 91; courts of equity will not deal with criminal cases, 93; opinion of Chief Justice Shaw, 95; difference between boycotts and conspiracies, 96; British Trades Dispute Act, 101; attempts to change legislation in Congress, 102; law adopted by California, 102.
- INJUNCTION ORDER, FREE SPEECH AND THE, 255-264.** Purpose of labor movement, 255; principle involved in case of Buck's Store and Range Company, 256; "We Don't Patronize" list, 257; contents of injunction, 258; contempt proceedings instituted, 259; reasons for, 260; modification of original contention by Court of Appeals, 261; limits of obedience due order of judge, 263.
- INJUNCTION, PROPER BOUNDS OF THE USE OF THE, IN LABOR DISPUTES, 288-301.** Protests of labor leaders against injunction, 288; arbitrary power lodged with equity judge, 289; acts permitted to strikers, 290; decisions against secondary boycotts, 291; damage inflicted by boycott not in nature of legal wrong, 292; unions may control benefits due to their patronage, 293; acts lawful to individuals also lawful to combination of persons, 294; distinction to be made between boycotts, 295; "probable cause" in the case of malicious prosecution, 296; case of Iron Moulders' Union *vs.* Ailla-Chalmers Company, and Willcutt and Sons *vs.* Driscoll, 297; labor not protected against "blacklisting," 298; principles of the laws of war may be applied to industrial warfare, 299; criticism of present attitude of American courts, 300.
- INSANE PERSONS, TO WHAT EXTENT SHOULD BE AMENABLE TO CRIMINAL LAW, 161-168.** Appropriateness of the idea of a physical heir, 161; remedy to plea of temporary insanity and exorcism, 162; means of securing release of criminals committed for insanity, 163; guilt of the insane, 164; suggestions to abolishing defense of insanity, 164.
- INTERNATIONAL LAW, "A TREATISE ON INTERNATIONAL LAW,"** by W. E. Hall, note, 235.
- INVESTIGATION ACT, THE CANADIAN INDUSTRIAL DISPUTES, 419-457.** System of government in Canada, 419; reason why Canada has been able to enact a federal measure, 420; reasons leading up to enactment of the Industrial Disputes Investigation Act, 421; classification of labor disputes as to whether average citizen is directly affected or not, 442; extract from report of Mr. Mackenzie King, 423; theory of the Lemieux Act, 424; representative members of the board, 426; penalties prescribed by the act, 427; advantage of the publicity obtained by investigation, 428; cases in which strikes have occurred in spite of investigation, 430; interest of foreign countries in the working of the act, 431; Dr. Clark's opinion as to the application of the act to conditions in United States, 432; endorsement of the act in report of Mr. Weinstock to the government of California, 434; introduction of similar acts in other states and countries, 435; bearing recognition for unions one of the most difficult questions, 436; success of the act must depend upon enforcement of penal clause, 437.
- "Japan in World Politics," by H. Dyer, review, 470.
- JOURNALISM, "Commercialism and Journalism,"** by Hamilton Hall, note, 226.
- JURY SYSTEM, THE, DEFECTS AND PROPOSED REMEDIES, 172-184.** General sense of average jury, 176; provisions of Magna Charta, 177; jury generally conscientious body of men, 178; reason for small percentage of convictions in murder cases, 179; juror preferable to citizens who will not serve on juries, 181; number of jurors, 182; evils of the press, 183.
- JUSTICE, ADMINISTRATION OF, GENERAL PROBLEMS CONNECTED WITH THE, 3-8.** Nature of tribunals, 3; conditions in colonial times, 4; place of judges under constitution, 5; importance of doctrine of *stare decisis*, 6; wholesome restraint exercised by courts, 7; respect for law, 7; delays in trial of cases, 7.
- JUVENILE COURT, THE—ITS LEGAL ASPECT, 40-58.** Child, ward of the state, 40; right to take children from parents, 40; English jurisdiction regarding wards in chancery, 50; state ultimate parent of child, 51; age of criminal responsibility, 52; procedure in juvenile court, 53; criticism of classification of defence, 55; social organization of juvenile courts, 56.
- JUVENILE COURT, DISTINCTIVE FEATURES OF THE, 57-60.** Difference between ju-

Index of Subjects

- venile courts of Illinois and those of Massachusetts and New York, 57; method of bringing child before court, 57; method of procedure and of taking evidence, 58; reason for allowing hearsay evidence, 59.
- JUVENILE COURT, FUNCTIONS OF THE,** 61-63. Assistance of probation officers, 61; saving of money affected by juvenile courts, 62; enforcement of parental obligation, 63.
- JUVENILE COURTS AND PROBATION IN PHILADELPHIA,** 71-76. Establishment of juvenile courts in Pennsylvania, 71; salaries of probation officers, 73; appeals suspended sentences, 75; importance of playgrounds to prevent crime, 75.
- Labor.** "The Church and Labor," by C. Steidle, note, 461.
- "History of Labor Legislation in Iowa," by E. H. Downey, review, 711.
- "The Labour Exchange in Relation to Boy and Girl Labour," by F. Keeling, note, 237.
- "Men, the Workers," by H. D. Lloyd, note, 703.
- STATE AGENCIES FOR DEALING WITH LABOR DISPUTES, THE EXPERIENCE OF NEW YORK,** 397-406. Elimination of state lines of industrial interest, 397; interests of general public, 398; necessity for co-operation between separate state boards and federal departments, 399; difficult position of public officials intervening in labor disputes, 400; in industrial disputes alone, government does not compel adjustment, 401; importance of Erdman Act, 402; importance of preventing strikes, 403; extract from report to New York State Legislature, 404; efforts to preserve industrial peace, 405.
- "Strikes," by O. T. Crosby, note, 699.
- "The Working People," by M. G. Overlock, note, 458.
- "Labrador, the Country and the People," by W. T. Grenfell, and Others, note, 234.
- Law.** "American Business Law," by J. J. Sullivan, note, 241.
- "The Nature and Sources of the law," by J. C. Gray, review, 471.
- LAW, RESPECT FOR, IN THE UNITED STATES.**
- von Briesen, A., 207-211. Difficulty of knowing what the law is, 207; laws should be skillfully framed, 208; instances of ridiculous laws, 209; "blue laws" should be repealed, 210; improvement in education necessary, 211.
- Kirchwey, G. W., 212-217. Introductory remarks, 212-214; distinction between law and justice, 214; development of legal precedents, 215; equity system has lost its flexibility, 216; courts should be the interpreters of the popular sense of morality, 217.
- Sherman, J. S., 193-198. Introductory remarks, 193; great respect for law in United States, 195; law, development of, in United States, 196-197.
- Stevens, F. C., 190-206. Law expression of will of the people, 199; classes of malefactors, 200; evils of the public press, 200; recent violation of rules of the House of Representatives, 202; lack of respect for authority in the young, 203; too many ill-considered laws passed, 204; dearth of public leaders, 204.
- MARTIME UNIONS, THE WAGE SCALE AGREEMENTS OF THE,** 349-365. Conditions of shipping on Pacific coast, 349; agreements of Sailors' Union of the Pacific taken as a basis, 350; fate of The Seamen's Friendly Union and Protective Society in 1866, 351; transition from individual to collective bargaining in 1885, 352; first efforts to protect sailors from crimps, 353; establishment of shipping office a failure, 354; severe stipulations of law formerly affecting seamen, 355; seamen prevented from striking by law against desertion, 355; allotment feature of law, 355; severe features of law repealed in 1895, 356; Magurle act of 1895, enlarged by White act of 1898, 356; Shipowners' Association of the Pacific coast, 356-357; seamen's union recognized by shipowners in 1901, 358; strike of 1901, 358; agreements entered into, 359; extracts from agreements, 362; relations at present transitory, 363; shipowners object to sign agreement with the union, 364; reasons why unions control supply of seamen of Pacific coast but not on the Atlantic, 364; position held by ship's delegate, 365; tacit agreements issued, 365.
- "Mexico," by W. E. Carson, note, 230.
- MINE WORKERS, THE SETTLEMENT OF DISPUTES AMONG THE,** 333-339. Mineral resources basis of our industrial greatness, 333; combination of laborers necessary to secure fair share of results of labor, 334; recognition of community of interest between employers and employees, 335; organization of joint conference method, 335; questions at issue submitted to "joint scale committee," 336; basis of system, 337; weakness of system, 337-338; what is required for solution of labor problem, 339.
- MONETARY COMMISSION, THE PROBLEM BEFORE THE NATIONAL,** 479-491. Conditions during panic of 1907, 479; reasons for tightness of money, 480; such crisis does not occur in Europe, 481; investigation being made of foreign systems, 482; banks of European countries form parts of a coherent system, 483; their primary object to support public credit, 484; operation of clearing house associations during panic similar to functions of foreign central banks, 485; requirement of cash reserves illogical, 486; tendency of note issue in other parts of the world differs from that in this country, 487; relative importance of note issue has declined, 487; criticism of history of currency legislation, 489; composition of the National Monetary Commission, 490; provisions of the Aldrich-Vreeland act, 491.

Index of Subjects

- Municipal Government.** "The Beast," by B. B. Lindsey, and H. J. O'Higgins, note, 238.
 "Municipal Franchises," by D. F. Wilcox, review, 713.
- Navigation.** "The Story of the American Merchant Marine," by J. R. Spears, note, 241.
- Negro.** "Social and Mental Traits of the Negro," by H. W. Odum, review, 476.
- "New Zealand in Evolution," by G. H. Scholefield, note, 460.
- OFFENDER, THE TREATMENT OF THE, 20-26.** Faults in our system of treatment of offenders, 20-21; purpose of punishment, 21; value of indeterminate sentence, 22; need for salaries for probation officers, 23; lack of comparative statistics, 24; public criticism of courts necessary, 25-26.
- OFFENDERS, FALLACIES IN THE TREATMENT OF, 43-46.** Administration of justice for protection of society, 43; deterrent effect of punishment, 44; effect of punishment in reduction of crime, 45.
- PARENTHOOD, THE RESPONSIBILITY OF, 64-70.** Law regards property rights only of infants, 64; legislation to protect children, 65; work of the Society for the Prevention of Cruelty to Children, 66; responsibility of the state for the care of children, 67; law of the District of Columbia requiring parents to support children, 68; legislation in New York, 69.
- Philosophy.** "Essays in Fallacy," by A. Macphail, note, 703.
 "Philosophy of Life," by C. G. Davis, note, 699.
 "Stoic and Epicurean," by R. D. Hicks, note, 701.
- Political Science.** "Introduction to Political Science," by J. W. Garner, review, 712.
 "Second Chambers: An Inductive Study in Political Science," by J. A. R. Marriott, note, 704.
- Politics.** "American Government and Politics," by C. A. Beard, note, 453.
 "The Dethronement of the City Boss," by J. J. Hamilton, note, 701.
 "History of American Politics," by A. Johnston, note, 702.
 "A History of the Irish Parliamentary Party," by F. H. O'Donnell, review, 712.
 "Political Reform in Wisconsin," by E. L. Philipp, note, 459.
 "Poor Law Reform," by W. Chance, note, 231.
- Post Office.** "The American Post Office," by N. B. Williams, note, 706.
- PRIVATE HEARINGS: THEIR ADVANTAGES AND DISADVANTAGES, 80-84.** Advantage of private hearings, 80; objection to private hearings, 83; introduction of private hearings advised, 84.
- PROBATION WORK FOR WOMEN, 27-36.** Number of women offenders in New York City, 27; fines imposed upon offending women ineffective, 28; work done by Waverley House, 29; system of identification essential, 30; what constitutes adequate supervision of probationers, 31; working of the probation system, 33; instances of girls on probation, 33-34; 1110 Crest Farm maintained by New York Probation Association, 35; importance of personality of probation officers, 36.
- "Psychology of Politics and History," by J. A. Dewe, note, 689.
- Railroads.** "The Earning Power of Railroads, 1910," by F. W. Moody, note, 704.
 "The Economics of Railway Transport," by S. C. Williams, note, 707.
 "Standards of Reasonableness in Local Freight Discriminations," by J. M. Clark, review, 709.
- REFORMATION OF WOMEN—MONEY METHODS OF HEALING WITH OFFENDERS, 27-42.** Change of views in regard to women offenders, 27; responsibility of society, 28; work done by institutions established in Massachusetts, Indiana, and New York, 39; necessity for system of classification of women offenders, 40; parole system, 41.
- Religion.** "The Christian State," by S. Z. Hatten, note, 455.
 "The Development of Religion," by I. King, review, 473.
 "The Function of Religion in Man's Struggle for Existence," by G. H. Foster, review, 259.
 "Religion in the Making," by S. G. Smith, review, 250.
- Rhode Island.** "Early Rhode Island," by W. B. Weedon, note, 708.
- SAVINGS BANK SYSTEM IN THE UNITED STATES, THE OPERATION OF THE MUTUAL, AND THE TREATMENT OF SAVINGS DEPOSITS, 640-653.** States authorizing non-stock savings banks, 640; efficiency of Massachusetts savings banks, 642; purpose of savings banks, 643; unwise legislation, 644; savings banks life insurance plan, 645; school savings, 646; investment in bonds, 647; loans upon inflated stocks, 648; banking loans in the various states, 649; segregation of savings deposits, 650; effect of postal savings banks, 651; classification of depositors in savings banks, 652; thriftiness of Americans, 653.
- Siberia.** "A Journey to Southern Siberia," by J. Curtin, review, 245.
- Single Tax.** "Privilege and Democracy in America," by F. C. Howe, note, 234.
- Socialism.** "Adventures in Socialism," by A. Cullen, note, 232.
 "The Class Struggle," by K. Kaatsky, note, 457.
 "Effective Industrial Reform," by D. C. Reid, note, 459.
 "Men vs. the Men," by R. R. La Monte, and H. J. Mucken, note, 234.
 "What is Socialism?" by R. W. Kaufman, note, 237.
- Sociology.** "The American Hope," by W. M. Cole, review, 709.
 "American Problems," by H. Munsterberg, note, 704.
 "Confessions of a Heacombner," by R. J. Banfield, note, 239.
 "The Dualism of Fact and Idea in Its Social Implications," by E. L. Talbert, note, 242.

Index of Subjects

- "The Ethics of Progress," by C. F. Dole, note, 233.
- "The Methods and Scope of Genetics," by W. Bateson, note, 229.
- "Recent Progress in the Study of Variation, Heredity and Evolution," by R. H. Lock, note, 457.
- "The Social Gospel," by S. Mathews, note, 457.
- "Social Service," by L. F. Post, note, 240.
- "The Spirit of America," by H. Van Dyke, review, 252.
- STATE BANKS AND TRUST COMPANIES, THE GROWTH OF, 613-625.** Rapid growth, 613; growth of various classes of banks compared, 614; state banks, 616; functions performed by private banks, 617; small state bank replaces private bank, 618; table of state banks, 619; growth of large state banks, 620-621; advantages of incorporation under National Bank Act, 621; advantages of incorporation under state banking laws relatively greater for small banks, 622-623; comparison of number of state and national banks with less than twenty-five thousand dollars capital, 623; trust companies, 623; geographical description of different classes of banks, 625.
- "The Statesman's Year-Book," note, 705.
- STOCK EXCHANGE AND THE MONEY MARKET, THE, 563-573.** Function of stock exchange promoter of new enterprises, 563; what constitutes money market and loanable funds, 564; distinction between discounted bills and loans on collateral, 565; function of Reichsbank, 566; list of negotiable securities admitted to New York Stock Exchange, 567; stock exchange transaction must be settled, within twenty-four hours, 568; unwritten rule of stock exchange requiring protection of banks, 569; complexity or relations between stock exchange and money market, 570; alternations of periods of depression and confidence, 571; discussion of means of prevention, 572; difficulty of preventing speculation without injury to trade, 573.
- SWEATING OR THIRD DEGREE SYSTEM, THE, 9-10.** No physical or mental torture employed, 9; prisoner informed of his rights under the law before examination, 10.
- SYMPATHETIC STRIKE, THE, 391-396.** Street car strike in Philadelphia, 391; conflict between interests of laborers and politicians, 391; high-handed proceedings of political authorities, 392; success of general strike in aid of car men, 393; immense loss of life, 395; advantage of a thorough organization of labor, 396.
- Taxation. "The Shifting and Incidence of Taxation" (3d Ed.), by E. R. A. Seligman, review, 249.**
- "Tenement House Administration," note, 705.
- THIRD DEGREE, ADMINISTRATION OF CRIMINAL LAW SYSTEM. See Criminal Law.**
- THIRD DEGREE. See Sweating System.**
- TRADE AGREEMENTS, 321-332.** Early history, 321; gradual extension and variations, 322; sliding scale, 322; restrictions on output, 325; sympathetic strike, 326; open-shop trade agreements, 327; first agreements usually crude, 328; beneficent effects, 329; little opposition to mutual control, 330; edicts by employers cannot replace mutual trade agreements, 331.
- Transportation. "Shippers and Carriers of Interstate Freight," by E. Watkins, note, 706.**
- Wealth. "History of Great American Fortunes," Vol. II and III, by G. Myers, note, 458, 705.**
- WELFARE WORK AS A WAY TO PREVENT LABOR DISPUTES, 381-390.** Nature of welfare work, 381; necessities of, 382; its effect in preventing a strike, 382; mine run on a co-operative basis refuses to strike, 383; work done by the Y. M. C. A., 384; extracts regarding work at Pontis, 385; application of the Golden Rule, 390.
- Women. "Wage-Earning Women," by Annie M. MacLean, note, 703.**
- "The Woman who Spends," by Bertha J. Richardson, note, 459.
- WOMEN. See Reformation of Women.**

SUPPLEMENT TO
THE ANNALS OF THE AMERICAN ACADEMY OF POLITICAL
AND SOCIAL SCIENCE
JULY, 1910

Commercial Relations Between the United States and Japan

Addresses by the Honorary Commissioners representing the
Chambers of Commerce of Japan

BARON EIICHI SHIBUSAWA
BARON NAIBU KANDA
HON. KOKICHI MIDZUNO
MR. MOTOSADO ZUMOTO

The Significance of the Awakening of China

Introductory Remarks

DR. L. S. ROWE

Professor of Political Science, University of Pennsylvania

Address by

DR. WU TING-FANG

Envoy Extraordinary and Minister Plenipotentiary of China to the
United States

Address by

MR. CHARLES R. FLINT

New York City

Proceedings of Academy Sessions Thursday evening, October 28,
and Friday evening, December 14, 1909

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SESSION IN HONOR OF THE
JAPANESE COMMISSION REPRESENTING THE CHAM-
BERS OF COMMERCE OF JAPAN

THURSDAY EVENING, OCTOBER 28, 1909.

On Thursday evening, October 28, 1909, the Academy held a session in honor of the Japanese Commercial Commission, representing the Chambers of Commerce of Japan. The Commission whose members are men of high standing in their country, statesmen, lawyers, journalists and merchants, visited the larger industrial and commercial cities in different parts of the United States. They were entertained while in this country by the Chambers of Commerce of our Pacific Coast States. Representatives of the United States Government also accompanied the Commission on its entire trip through the country.

The Chairman of the Commission was Baron Eiichi Shibusawa, President of the Dai-ichi Bank, Tokyo. The other members of the Commission and the cities from which they came were as follows:

TOKYO.—BUEI NAKANO, President Tokyo Chamber of Commerce; HEIZAEMON HIBIYA, Vice-President Chamber of Commerce; SAKUTARO SATAKE, Member of House of Representatives; KENZO IWAHARA, Director of Mitsui & Co.; KAICHIRO NEDZU, President Tobu Railway Company; ZENJURO HORIKOSHI, Exporter; KUNIZO KOIKE, Broker; RINNOBUKE HARA, Engineering Contractor; TOKUNOSUKE MACHIDA, Trustee of Chamber of Commerce; NARAZO TAKATSUJI, Director of Kanegafuchi Spinning Company; TORAJIRO WATASE, President Agricultural Association; SUEO IWAYA, Member of Hakubunkan Publishing Company; BARON NAIBU KANDA, Professor Peer's School; TAIZO KUMAGAI, Physician; TAKAJIRO MINAMI, Professor Tohoku University; MOTOSADO ZUMOTO, Proprietor of "Japan Mail."

OSAKA.—MICHIO DOI, President Osaka Chamber of Commerce; TOKUGORO NAKAHASHI, President Osaka Mercantile Steamship Company; BOKUSHIN OI, Member of House of Representatives; TOSHIO MATSUMURA, Assistant Mayor of Osaka; TAMEN-

OSUKE ISHIBASHI, Member of House of Representatives; EINOSUKE IWAMOTO, Broker; HEIBEI SAKAGUCHI, Silk Weaver.

KYOTO.—JIHEI NISHIMURA, President Kyoto Chamber of Commerce; NARIYOSHI NISHI-IKE, Secretary Kyoto Chamber of Commerce.

YOKOHAMA.—KAHEI OTANI, President Yokohama Chamber of Commerce; KINSAKU SODA, Member Chamber of Commerce; AKIRA SHITO, President Silk Conditioning House.

KOBE.—KOJIRO MATSUKATA, President Kobe Chamber of Commerce; KUMEJIRO TAKI, Manufacturer of Fertilizers; SHINKICHI TAMURA, Exporter.

NAGOYA.—KINOSUKE KANNO, Member Chamber of Commerce; TOMINOSUKE KADONO, Vice-President Nagoya Chamber of Commerce; MORIMATSU ITO, Banker.

At the session of the Academy at which the Commission was received, addresses were made by four members.

Baron Shibusawa, the Chairman.

Baron Kanda, Professor in the Peer's School, Tokyo.

Mr. Midzuno, Consul-General of Japan at New York.

Mr. Zumoto, proprietor of the "Japan Mail."

The Chairman of the meeting, Professor Emory R. Johnson, who presided because of the unavoidable absence of Professor L. S. Rowe, President of the American Academy of Political and Social Science, after welcoming the members of the Commission, in the name of the Academy, and pointing out the significance of their visit, said:

During the last ten years we have heard much about the awakening of the Far East. There is every indication that the time has now arrived for another awakening, namely, the awakening of the West to this stirring of the East. I know of nothing that can contribute so much to this purpose as the visit of this distinguished group of statesmen, educators, merchants and journalists of Japan. It is the kind of an embassy of which Japan and the United States may well be proud. The personal ties here formed will mean much to the future relations between the two countries, for it is the lack of such personal relations that gives rise to misunderstandings and misconceptions and leads to the perpetuation of prejudices.

Our welcome to the members of the Commission is coupled with a keen appreciation of the great service which they are doing in bringing home to us the significance of modern Japan. The people of the United States have quite as much to learn from this Commission as its members have to learn from us. A nation that has accomplished so much as has Japan during the past fifty years must possess a civilization and a culture which all nations may well study. One of the great needs of western nations at the present time is a better understanding of the eastern countries and peoples. Nothing can contribute more than this to the progress of the world in peace and international unity.

THE JAPANESE COMMERCIAL COMMISSION

BY BARON EIICHI SHIBUSAWA,
Chairman Commission representing Chambers of Commerce of Japan,
President Dai-Ichi Bank, Tokyo.

Mr. Chairman, Ladies and Gentlemen: You have done me a great honor by inviting me to address a distinguished and intelligent audience like this. A relic of an old and defunct system of education, I hardly feel myself qualified to address a learned audience such as I am now facing. I, therefore, feel the honor all the more.

I wish, in the first place, to say a word about the origin of the present visit of the Japanese Commercial Commission. With a view to a better and closer understanding of each other, and to the promotion of neighborly relations between the two nations, the Chambers of Commerce of Tokyo, Osaka, Kyoto, Yokohama and Kobe last year invited your Pacific Coast chambers of commerce to send over a commission to Japan. The invitation was accepted, and a representative body of business men from the Pacific Coast paid us a visit about the same time that your fleet visited us, also at our invitation. Pleased with the welcome their representatives met with in Japan, the chambers of commerce in the Pacific Coast States invited us this year, and the result is that we are now touring through this country as their guests.

Japan, as you know, was first introduced to the Western world by Commodore Perry, a little over half a century ago. Until that time Japan had followed a policy of seclusion which had been forced upon her by a train of events which it would be impossible for me to narrate within the time at my disposal. I shall content myself with saying that that policy of seclusion was quite foreign to the spirit of the Japanese people and that its adoption was against their will.

It was fortunate for Japan and America that our introduction to the ways of the Occidental world was performed by men of liberal sympathy and breadth of view, like Commodore Perry and Townsend Harris. Were it not for the patient and considerate

manner in which the delicate task was undertaken by those distinguished men, it might not have been possible to effect the opening of Japan without bloodshed. It is, therefore, only natural that the memory of these men is cherished with a feeling of deep gratitude by all intelligent Japanese.

Inaugurated under these auspicious circumstances, the friendly relations between the United States and Japan have since been steadily strengthened, until to-day those relations are beyond the power of mischief-makers seriously to disturb. The unfailing friendliness of America toward us may almost be said to be an article of faith with our people. How greatly they value your friendship and how strongly they desire to retain it, you can easily imagine when I tell you that our present trip excited an unprecedentedly lively interest among all classes of the Japanese people, from His Majesty the Emperor down to the man in the street.

His Imperial Majesty was so pleased with our trip that on the eve of our departure he gave us a banquet at one of his detached palaces in Tokyo, when he honored us with a most gracious message through the minister of his household.

Since our arrival at Seattle on the first of September we have been amongst your people for nearly two months, everywhere receiving the most gratifying evidences of courtesy and friendliness. Such has, indeed, been the uniform kindness of the people we have met that I am at times inclined to believe that the whole nation has turned into a reception committee. We are sincerely glad to know that our friendly sentiments are fully reciprocated by the people of this great republic.

It is quite natural that two nations, bound together by such strong ties of friendship as unite Japan and America, should have an extensive and growing trade between them. To increase that trade as much as possible is the desire of the Japanese people, and it is with this in view that we are utilizing this trip for the inspection of your industrial plants and the study of your financial and business methods.

It is sometimes remarked by superficial observers with an air of reproach that the Japanese buy less from America than they sell to her. It is true, but they fail to notice that this is largely the result of the indifference of the American business man to the cultivation of foreign markets. In any case, I can safely assure

you that the object constantly kept in our minds in prosecuting our investigations is to find out what produce or manufactures we may profitably buy from you, as well as to find out what we can sell to you.

We come to you on a mission of peace and commerce, and, unlike our important political embassies which visited the United States in 1860 and 1871, we are not charged with any official message. We come from our people accredited to the people of America, and, as such, we are everywhere accorded the most cordial welcome. From the warmth of the welcome we meet with we are encouraged to hope that our mission will be crowned with complete success.

EDUCATION IN JAPAN

BY BARON NAIBU KANDA,
Professor Peer's School, Tokyo.

Ladies and Gentlemen: In the short time at my disposal I can hope to give you but a glimpse of the subject before us, and must refer you to the reports of the Department of Education and other similar publications for more detailed information.

I have in my possession a watch bearing a fine portrait engraving of President Buchanan, presented to the Taicoon, who was supposed to be the Emperor, at the time the first embassy was dispatched to the United States in 1860. The embassy consisted of three chief ambassadors, twelve subordinates and some sixty attendants in train—all in full native costume, wearing swords, top-knots and all. A leaf of Frank Leslie's illustrated paper represents the presentation scene, at which were present gentlemen with an abundance of linen and scarfs, and ladies in the monstrous crinoline of those days. The watch is described as a fine specimen of American workmanship, presented to the Mikado, as the Taicoon was supposed to be, in view of the prospective trade and commerce between the two countries.

The late Mr. Stevens, whose unfortunate end at the hand of an assassin was as much a blow to the people of Japan as it was to his own, once told me that he remembered as a boy, six years old, being led by his father to join the crowd that thronged to witness the procession of the daimios as they marched up to the White House, and how when one of them dropped a fan the crowd rushed upon it and tore it into bits for a souvenir. When I hear such reminiscences from the lips of living men and look upon the present, I feel like exclaiming, with the great Roman orator, *O tempora, O mores!* but with quite a different spirit from that in which those memorable words were uttered.

What changes have taken place in both Japan and America since those days! Both have undergone the terrible ordeals of civil and foreign struggles which have stirred the nation's lifeblood to its very depth. Both have been tested in the crucible and been proven to be of sound metal. But greater far than those

events, memorable and historical as they are, are the results of those material, intellectual and social upheavals which have been going on in both countries for the last half a century.

Japan has emerged from the darkness of Oriental seclusion into the sisterhood of the world's enlightened nations. To America is due her first introduction to the West. Japan is not the nation to forget this debt of gratitude, and the magnificent monument on the white beach at Kurihama, where Commodore Perry first landed, attests this sense of the nation's gratitude.

People are apt to speak of the recent progress of Japan as something marvelous as it is unprecedented in the world's history, but they forget she had simply shut herself up for three hundred years in order to preserve her national integrity from foreign aggression. When in history did two civilizations ever come into sudden and close contact, as the Eastern and the Western did in Japan, except as a result of conquest? War and bloodshed do not foster the cumulative development of human society. Civilization only thrives under the genial rays of the sun of peace.

Long before King Alfred founded his schools, or Charlemagne gave patronage to men of learning, away back in the reign of the Emperor Mommu (A. D. 697), the subject of education had received much attention in Japan, the Chinese classics, including "Yeki," the book of divination, "Rongo," the Confucian analects, etc., having been introduced from Korea after the invasion of that country by the Empress Jingo, A. D. 284. The doctrines of Confucius, inculcating the virtues of loyalty, filial piety, humanity and justice, once introduced amongst a people naturally entertaining profound reverence for their deities and their ancestors, found a congenial soil in the national feelings and customs, and were easily propagated throughout the country. In 701 A. D. regulations relating to education were established, providing for the organization of a university in the capital, with courses in history, classics, laws and mathematics. A similar school was established in each province and endowed with extensive tracts of public land. Powerful nobles established schools in their own domains for the training of the children belonging to the ruling classes. Education in those ancient times was the monopoly of the upper classes, the masses being, as a rule, excluded from the privilege.

Buddhism, introduced from China in the sixth century, widely spread among all classes, counted among its converts some members of the imperial family, and exercised a great influence on the literary, social and religious institutions of those times. Then followed a long period of struggles for supremacy amongst the powerful nobles, causing profound disturbances and throwing education into a state of decline. During this period culture and learning owed their preservation largely to Buddhist priests and temples, as did learning in Europe to the monasteries during the Dark Ages when it was undergoing a similar experience.

The beginning of the seventeenth century may be said to mark the renaissance, when Tokugawa Iyeyasu established his seat of government at Yedo (present Tokyo). After the restoration of peace throughout the country he directed his attention to the promotion of arts and sciences. Scholars were invited from all over the country and given every encouragement to carry on their studies, several libraries being established for their benefit. Toward the close of the eighteenth century a great college for the teaching of Chinese philosophy was established in Yedo, with a permanent endowment, and all the students were educated at government expense. Men of learning were invited from all over the country, and every feudal lord was encouraged to send a certain number of picked men up to the capital to attend the lectures. This, naturally, brought the best blood, the best brains, of the land into close contact with one another and facilitated the exchange of views and opinions which slowly paved the way for the final overthrow of feudalism and the unification of the country under the imperial rule.

In the meantime each feudal lord had established schools in his own province, according to the plan adopted by the Shogun's government, and was educating the children of his retainers. But education in those days was still calculated to impart such knowledge as was deemed needful for the hereditary ruling classes, and consisted of the study of Chinese philosophy, history and literature, Japanese literature, law and mathematics. As to physical education, archery, horsemanship, spear practice and fencing were the chief exercises, to which may be added the judo, swimming, etc.

During the latter part of the administration of the Tokugawa Shoguns, arts and sciences emerged from the narrow sphere of Chinese philosophy, to be gradually permeated with the influences

of Western civilization. Scholars had long been studying Western science from Dutch books, medical science particularly. The Dutch were the only people allowed to trade with Japan during the period of her seclusion.

It was at this juncture that Commodore Perry knocked at the gate of Japan and caused her to abandon her policy of seclusion. No wonder America found a ready pupil in a nation that had enjoyed the culture and refinement of over three hundred years of peaceful administration under the Shogunate. Then came one of the most remarkable events in modern history—the abolition of the dual government of the rightful Emperor, the Mikado, and the Generalissimo, the Shogun—the voluntary surrender of the feudal lords of all their hereditary rights and possessions, thus placing the unified nation under the direct imperial rule.

This ushered in the glorious new era of the present time, the era of progress and reform under the benign rule of our illustrious Emperor. In 1872 our present Government sent the first embassy to the United States. The chief ambassador was Prince Iwakura, father of the present Minister of the Imperial Household. In his suite were men whose names will go down to posterity as the makers of New Japan, among whom was the late Prince Ito himself, whose sudden death has thrown the whole country into deepest gloom and will be profoundly felt in the international relations of eastern Asia. Jo Niishima, the late founder of Doshisha College, had finished his course at Amherst and was studying at Andover Theological School. The choice fell upon him to accompany the late Viscount Tanaka as the head of the Educational Commission on his tour through America and Europe. Jo Niishima, no doubt, made wise use of the opportunities thus afforded him, which he turned to good account in subsequently founding his own school, Doshisha. In the same year the new code of education was promulgated. The purport of the imperial rescript then issued was as follows:

“The acquirement of knowledge is essential to success in life. All knowledge, from that necessary for daily existence to that necessary to officials, farmers, merchants, artisans, physicians, etc., for their respective vocations, is acquired by learning. A long time has elapsed since schools were first established. But for farmers, artisans and merchants, and also for women, learning, owing to

a grave misapprehension, was regarded as beyond their sphere. Even among the higher classes much time was spent in the useless occupation of writing poetry and composing maxims, instead of learning what would be for their own benefit as well as for that of the state. Now an educational system has been established and the schedules of study remodeled. It is designed henceforth that education shall be so diffused that there may not be a village with an ignorant family nor a family with an ignorant member. Persons who have hitherto applied themselves to study have almost always looked to the Government for their support. This is an erroneous notion proceeding from long abuse, and every person should henceforth endeavor to acquire knowledge by his own exertion."

The educational system thus promulgated, after repeated modifications to meet the exigencies of the time, is practically what we have to-day.

I can hope to give you but the merest outline of this system. To begin at the top, there are the three universities of Tokyo, Kyoto and the Northeast, the Sapporo Agricultural College, organized by the late President Clark, of Amherst Agricultural College, forming the only existing faculty of the latter; the College of Science of that university will be opened next year. Besides these there are several non-governmental institutions, which, in number of undergraduates, are even larger than some of the governmental universities. Among them are the Waseda University, founded by Count Okuma, one of the most prominent statesmen of Japan, and the Keiogijuku University, founded before the Meiji era by Mr. Fukuzawa, one of the pioneers of Western civilization in Japan, who has repeatedly declined the Emperor's overtures to recognize his services by raising him to the peerage.

The candidates for admission to the government universities must have passed through the government higher schools, which correspond to American colleges in the breadth and depth of the training given. There are eight such schools scattered throughout the country. There are courses in these schools fitting for the Colleges of Law and Literature, for the Colleges of Science, Engineering and Agriculture, and for the College of Medicine, in which latter course German is studied more than English. Until quite recently a university education was looked upon as a *sine qua non* for all ambitious young men wishing to rise in the world.

Thus, to trace a boy's career: after finishing six years' training in a primary school, where he is admitted at six, and which, by the way, forms the period of compulsory education, he passes into the middle school, where he receives, say from thirteen to eighteen, a training similar to that in American high schools. He then enters a higher school, just described, and takes a course of three years, preparatory to one of the university colleges. There are 27,000 elementary schools and 300 secondary, or middle, schools. You can imagine, then, how the eight higher schools must be congested by the number of applicants. Such, indeed, is the case even to-day when university education has ceased to be regarded as the only gateway to success in life, when schools for technical, commercial and other special education have come to play such an important part in national education. The higher schools have seven or eight times more applicants than they can admit. The question as to what becomes of the enormous majority of disappointed candidates is a very serious one. Most of them wait year after year, swelling the number of pupils at private preparatory schools; many enter the private universities, above mentioned, where the standard of admission is not so high as in the government institutions, while not a few turn their thoughts to America and American colleges. Within the last ten or fifteen years, in order to enhance the development of national resources, both the central and local governments have done much toward encouraging technical, agricultural and commercial education.

Technical Education.—There are four higher technical schools, located respectively in Tokyo, Osakā, Kyoto and Kumamoto, admitting students who have passed through middle schools. The instruction given is in dyeing and weaving, ceramics, applied chemistry, mechanical technology, electrical technology, industrial designing, brewing, metallurgy, shipbuilding, etc. There are, besides, about two hundred technical schools of an intermediate grade scattered in the different provinces, receiving more or less subsidy from the national treasury, while there are over five thousand schools of a lower grade, each school having more applicants every year than it can admit.

Commercial Education.—As to commercial education, the schools are divided into lower, middle and higher commercial schools. There are four higher commercial schools, candidates applying for

admission to which must have passed through the middle-school course. The Tokyo Higher Commercial School was founded by the late Viscount Mori and Baron Shibusawa, in 1875, as a private institution. It was subsequently brought under the control of the Government, and at present enjoys the reputation and standing of a university college.

Its courses are divided into a one-year preparatory course, a three-year principal course and two-year post-graduate course. The subjects taught are: (1) Commercial Morality; (2) Commercial Correspondence; (3) Commercial Arithmetic; (4) Commercial Geography and History; (5) Bookkeeping; (6) Mechanical Engineering; (7) Merchandise; (8) Political Economy; (9) Finance; (10) Statistics; (11) Private Law; (12) Bankruptcy Law; (13) Commercial Administrative Law; (14) International Law; (15) English and one other foreign language, French, German, Russian, Chinese, Korean, Italian or Spanish; (16) Theory of Commerce; (17) Practice in Commerce; (18) Gymnastics. In the post-graduate course are taught the following subjects: (1) Political Economy; (2) Civil Law; (3) Commercial Law and Comparative Commercial Law; (4) International Law; (5) Constitutional Law; (6) Economic Conditions of Eastern Countries; (7) History of Modern Diplomacy; (8) Criminal Law; (9) Foreign Languages, to which are added the elective courses: (1) Trade; (2) Banking; (3) Speculation; (4) Communication; (5) Insurance; (6) Management of Commercial Business; (7) Consular Service.

Of the commercial schools of secondary grade there are sixty-one in number, and of the lower grade over two hundred scattered all over the country. The tendency among the youths to seek higher education culminating in the university is slowly on the decrease, and the number of technical and business schools is gradually increasing.

Agricultural Education.—The agricultural history of Japan is most closely connected with the history of our national prosperity, and at present the majority of the people are engaged in farming. It is especially noticeable that, from the olden time to the present, wise sovereigns and ministers have fostered and encouraged this industry, regarding it as "the backbone of the nation." But previous to the restoration everything connected with agriculture was far from being satisfactory, and it was not until quite recently

that the system of agricultural education was thoroughly organized. Of the agricultural schools of various grades and description there are over five hundred. The highest institutions of the kind are the Agricultural College of the Tokyo Imperial University and that of the Northeastern University, the latter represented by Dr. Minami, of the present mission.

Normal Schools.—There are two higher normal schools for men in Tokyo and Hiroshima, training teachers for ordinary normal schools and for middle schools, and over seventy ordinary normal schools, training teachers for elementary schools. There are two higher normal schools for women in Tokyo and Nara, training women teachers for ordinary normal schools, there being in each a department for women teachers.

Other Special Schools.—Besides the schools thus far mentioned, there are other special schools, such as medical schools, the Tokyo School of Foreign Languages, where instruction is given in English, German, French, Russian, Chinese, Korean, Italian, Spanish, Hindustani, Malay and Tamil; the Tokyo Academy of Music; the Tokyo Fine Art School; the Deaf and Dumb School, etc., etc.

I have spoken, in spite of all I have said, only of the schools coming under the control of the Department of Education. Nothing has been said of the schools under other departments, such as the Army and Navy Departments, the Department of Communications and the Department of Agriculture and Commerce. But if I have succeeded in giving you the merest outline, I shall feel highly rewarded. What I have said will at least suffice to show with what eagerness modern Japan is seeking after knowledge and with what eagerness both the government and enterprising public men are striving to satisfy this popular demand.

RELATIONS OF THE EAST TO THE WEST

By M. ZUMOTO,

Part owner of the "Japan Times," of Tokyo; Director of the Oriental Information Agency in New York.

Mr. President, Members of the Academy, Ladies and Gentlemen: I consider it a great honor to be allowed to address the members of this important society to-night. I am the more grateful for this favor because the subject I am to discuss, "The Relations of the East to the West," is of peculiar interest to me.

The question has often been asked, and is still asked: Are the East and the West to remain separate and aloof from each other, mutually distrustful and unknowable? Unfortunately, the question has been answered in the affirmative by not a few writers of distinction, both here and in Europe. To those Orientals who have considered the question at all, and to those rare Occidentals who have been able to make a close and personal study of the Oriental mind, this question presents no difficulty. To them it is quite obvious that there is no inherent, insuperable difficulty for the West to understand the East, or vice versa. The Oriental and Occidental minds are essentially alike; the heart of the Asiatic is warmed by the same sentiments of love and sympathy that touch the heart of an American.

As a matter of fact, the East has long since succeeded in solving this problem to its entire satisfaction. The Japanese, at least, have done so. There were times when we, too, thought of the Occidentals as monsters, thinking and feeling quite differently from us. But that was half a century ago, and once our eyes were rudely opened we applied all our energies to the study of the Occidental mind and all the wonderful things and institutions which it has produced. The result is that we now know the West nearly as well as the West knows itself. We know, for instance, enough of the history and character of the American people, of their phenomenal capacity for growth and development, and of their lofty national aims and aspirations, to fill our minds with profound admiration for them, and to perceive that as friends they would be, we Japanese know

them to be, lovable and valuable, while as enemies they would be more formidable and dreadful than any other people on earth.

Now, if the East can understand the West, there is no reason whatever why the West should not be able to understand the East. The West, it seems to me, is just beginning to feel that the East is not incomprehensible; the West is beginning, at least, to feel the necessity of understanding the East, and I heartily welcome this awakening of the West as to the existence of a vast domain of mind in Asia, which it can no longer ignore without serious injury and danger to itself. Japan made the same discovery with respect to the West fifty years ago. You are half a century behind us in this respect. But, better late than never, and I sincerely congratulate you upon your tardy but auspicious awakening.

In studying the East you will have to pursue the same method which we have pursued in studying you. In other words, you must study the East through its language and literature. You must talk to it and feel with it, mind to mind, heart to heart. In no other way can one people be understood by another.

It is often said that the Oriental mind is inscrutable. If by that it is meant that we Orientals are less frank and direct in expression of our feelings than Occidentals, I am bound to say that there is some truth in it. But let me tell you that that indirectness and reserve is only a superficial and, with the Japanese at least, an acquired characteristic. Furthermore, this characteristic is only in operation in personal and direct relations between man and man, where the innate politeness and refinement of sentiment prevents the Japanese from telling the bare truth, whenever so doing may seem rude or unpleasant to him with whom he may be conversing. Then, again, according to our moral code, to show anger or grief, pain or pleasure, is a mark of weakness of will, unworthy of a gentleman.

No such unnatural restraint, however, is observed when the Japanese commits his or her thoughts to writing. There, save for some special and exceptional reasons, the Japanese, like men of every other race, vents his views or sentiments without any restraint or reserve.

It may be interesting to illustrate this point by referring to the first political embassy ever sent to this country by Japan. I mean the embassy headed by Lord Shimmi, which visited this country

in 1860. It is not difficult to imagine how dignified and polite these high officials from the Shogunate court of Yedo must have been in their relations with the people of this country. Yet it is interesting to note that the head of the embassy, Lord Shimmi, has left a diary of the visit, in which he faithfully and frankly recorded his impressions of what he saw in America—impressions which, in most instances, look quaint to the Japanese of to-day, and which are not always favorable to the Americans.

Let me quote one or two instances. At San Francisco, the first port the Japanese visitors touched in America, they were given a big dinner by the Mayor. In his diary Lord Shimmi says: "True friendliness was observable at to-night's function, but, if one might be permitted to speak badly of it, it suggested to one's mind a carousal such as might be gotten up by workmen in a cheap drinking-shop of Yedo." The frank and unconventional joviality of the jolly citizens of San Francisco of those days seems to have been too much for the staid and quiet ministers of the Shogun, accustomed to rigid conventional rules of conduct.

To quote another passage: Referring to his experience at the Senate in Washington, this noble chronicler remarks that "the men in tight trousers and narrow sleeves, gesticulating in a frantic manner in front of the Vice-President, perched on an elevated seat, strongly reminded me of the familiar daily scene at the fish market of Nihon Bashi." The writer little dreamed that sixty years later his own descendants, and the descendants of his colleagues, would be actors in exactly similar scenes at a similar hall of legislation at Tokyo.

If the Japanese of those days were so outspoken, you can easily imagine how unreserved the Japanese of to-day can be. I dare say that sixty years hence the diaries of some of the members of the commercial party now visiting you will be as curious and interesting as the diary of Lord Shimmi.

In one thing I may be permitted to anticipate what might be revealed by the diaries of my friends of the party. We have discovered many things in the course of this trip, and not the least important or surprising is the ignorance of the American people concerning Japan and things Japanese—an ignorance which for its degree and extent can only be described as stupendous. Questions are constantly asked, not in remote interior cities alone, but every-

where, even in national centers of intelligence like New York, or Boston, or Chicago—questions which show that we are still a sealed book to you. I do not mean to blame Americans for that, but I must say that the prevalence of such dense ignorance among this people about the Japanese and things Japanese is a source of serious danger to the permanence of those close ties of friendship which it is the desire of both nations may bind them forever. This ignorance on their part cannot but make American people easy victims of mischief-mongers who see profit in excitement and trouble.

The same may be said of the relations between your country and China, or any other Asiatic nation, or, in fact, between the West and the East in general. It is now high time that the West should seriously set about studying the East. The negligence of this obvious lesson of contemporary history may be fraught with dire consequences to the civilization and welfare of the world.

JAPAN'S NATIONAL IDEAL

BY HON. K. MIZUNO,
Consul-General of Japan at New York.

Ladies and Gentlemen: It will be necessary, because of the lateness of the hour, for me to pass over the stretch of history covering the centuries of Japan's past previous to the time when the American fleet, under the command of your gallant sailor-diplomat, knocked at the door of the Island Empire of the East. That empire was then still a *terra incognita* to most of the Western nations, when Commodore Perry invited its secluded people to enter into relations of comity with the nations of the world.

Since that time Japan has occupied a place abreast of the foremost nations of the world by adopting what we call Western civilization. From that time to the present the most cordial relations have existed between the United States and Japan, and, in spite of incidental troubles and of the untiring efforts of the jingoistic papers and professional alarmists, such cordial friendship is bound to be everlasting.

What Japan has done in the last half-century has been very ably presented by the preceding speakers. But, while we express our satisfaction at what has been accomplished during the past forty years, we must not overlook the beneficial results of our seclusion of several centuries. We would have been unable to adopt and digest the Western civilization if our forefathers had not been nurtured in the school of Oriental civilization. Built upon the foundation of the singular taste which the East has for the finer things of life, and inspired by the modern sciences of the West, the new Japan is striving for the goal of refinement. In this struggle the Japanese people have looked, and will continue to look, to the United States for brotherly guidance and friendly assistance.

In this international race toward the goal of refinement Japan is handicapped by her late start, and must close the gaps by leaps and bounds to overtake the European and American people.

What is Japan's national aim and her highest ideal? This is a question often asked not only by foreign critics of Japan, but also

by the Japanese people themselves. If the answer to this question is clearly understood by the Western mind there will be no more talk about the "yellow peril" or probable Japanese aggression. I think I am voicing the opinion of the majority of intelligent and thinking classes of the Japanese people when I say that our national aim is to digest and assimilate the two vast streams of Oriental and Occidental civilization, to adopt those things which, in our judgment, we think are best for the welfare and happiness of the human race at large, and thus to contribute Japan's share toward promoting the comity of nations.

Now, let me say a few words regarding the relations between Japan and the United States. The Pacific Ocean will be the future center of the world's commerce. The Pacific is common to our two countries. The ocean that divides us makes us neighbors.

I rejoice with you that the recent exchange of diplomatic declarations between the United States and Japan was so heartily welcomed not only by the people of both countries, but by the whole world. At the present time, moreover, commerce and trade play a more important part than the honeyed phrases of diplomacy in bringing together the people of different countries. The international relations of to-day no longer consist merely in the exchange of envoys and dispatches; they are founded upon mutual understanding and intercourse, and upon commercial and industrial interdependence. The benefits accruing from recent expressions of friendly sentiment between our two peoples will be greatly discounted if they are not supported and followed by increasing trade and commercial relations.

There was a time in the history of the Anglo-Saxon, a very few centuries ago, when the relations between a good gentleman and his neighbor, who was the same kind of a good gentleman, consisted in either open war or guarded and suspicious truce. When we read of the times of King Arthur's court, or of the barons of King John's reign in England, we are forced to remark that the animosity and misunderstanding between them was due entirely to their ignorance of each other's motives, true thoughts and character.

Gradually they learned that the hearts of all their countrymen were much the same, and that they could trust and love their neighbors, as their own family. So, to-day, you, their descendants, no longer send heralds with ultimatums to the adjoining country, but, instead, with never a thought of trouble, you send your

boys and girls there to attend school, and your eggs there to be marketed. You trust your neighbor because you know him.

This principle applies to all human affairs and relations. It is as true in the intercourse of nations as it is in the intercourse of individuals. So it is with this country and Japan. Those in America, I think they are few, who entertain ill-feelings or doubt about my people are ignorant—ignorant of the character and thoughts and motives of the Japanese. For if the veil of false report and prejudice were lifted, we should find that the hearts of all men, of every country and shore, are much the same.

Complete understanding between this country and Japan, which it is our duty to foster, will inevitably lead to the upbuilding of much greater prosperity and well-being in both countries. It has been my constant experience since my arrival in America to be surprised at the lack of knowledge about Japan and her people. Of course, the intelligent people of this country, those who have read something about Japan, know how beautiful our landscapes are and how picturesque our costumes are. But I wonder if the great mass of the American people know anything definite and concrete about our modern progress.

If this commercial commission were to go home after three months' journeying in this country and tell my countrymen that America is only a country of skyscrapers, ice water and huge bonnets, it would be gross injustice to the people of this great republic. Equal injustice will be done to Japan and her people, if you think it is the land only of "Madame Butterfly," paper fans, and incense sticks to destroy mosquitoes. There's the sting, ladies and gentlemen.

It is human nature to study most closely those things in which one's financial interests are involved, or which may affect one's business interests. Commerce demands more intimate knowledge of other people's affairs. Better information stimulates trade. Prosperous trade brings closer friendship. Now, what is the status of trade between our two countries? Japan's trade with the United States, which amounted to only \$6,500,000 in 1881, was about \$106,000,000 in 1907—an increase of sixteen times in a quarter-century. According to the trade returns for 1908, the United States has forged ahead of all foreign countries in trade with Japan.

The most important item of the trade between the United States and Japan is silk—raw silk—and I am glad to say that 61

per cent. (in 1907) of the silk worn by you, ladies, came from Japan and was woven and dyed here. You are the best customers of Parisian dressmakers, and France also imports large quantities of our silk.

The export of raw silk from Japan to the United States amounted to 9,789,955 pounds in 1908, against 7,918,839 pounds in the previous year, 1907—an increase of 1,871,116 pounds. Although the amount has increased, yet the total value of this raw silk has decreased by \$2,888,895. I am not a bit sorry for the decrease in the value of silk for the past year. There is no wind that blows nobody good. You American ladies have had Japanese silk of the better or same grade at \$1.21 cheaper per pound. Thin and fine as they are, the threads of silk are the most important factors that bind us and strengthen and promote the friendly ties uniting our two countries. In this respect, the silk threads are much stronger than the anchor cables of the battleships.

Japan is ninth in the list of Uncle Sam's customers. The Japanese buy more of your products and merchandise than do the Russians, the Spaniards, the Danes, the Austro-Hungarians, the Swiss, the Norwegians, the Portuguese, the Turks or the Greeks. But at the present time, the trade relations between the United States and Japan are rather unbalanced. You buy more from us than we buy from you. In other words, you import more raw materials from Japan than you export manufactured goods to Japan. This balance amounts to \$25,000,000. On the other hand, Japan's trade with European countries shows a balance against her to the amount of \$42,000,000. We buy more manufactured goods from European countries than we sell goods to them.

The kinds of manufactured goods imported into Japan in such enormous quantities from Europe are manufactured in America, and it is equally true that Japan eagerly buys such American products as are sent there. It is astonishing to me how comparatively little the enterprising American has developed the new and fertile markets of the East.

The adjustment of the present uneven trade relations can be accomplished only by Americans gaining a better knowledge of the Japanese market and by the closer study by the Japanese people of American goods. When the American people understand Japan and her people half as well as you do your British cousins, then your trade with Japan will be increased tenfold.

SESSION OF FRIDAY EVENING
DECEMBER 14, 1909

REMARKS OF THE PRESIDENT OF THE ACADEMY,
DR. L. S. ROWE, IN INTRODUCING HIS EXCEL-
LENCY THE CHINESE MINISTER,
DR. WU TING-FANG

In an address delivered in 1853 by William H. Seward, then a Senator of the United States, we find these prophetic words: "The Pacific Ocean, its shores, its islands and the vast regions beyond, will become the chief theater of events in the world's great hereafter." This clear vision of our leading statesman at a comparatively early period in our history is to be explained by the fact that our relations with the countries of Asia started out in a blaze of glory, and it looked for a time as if, both commercially and politically, we would place ourselves in closer touch with China and Japan than any of the nations of Europe.

Through a curious combination of circumstances, our position in the Far East suffered a partial eclipse immediately after the Civil War. The American flag, which up to that time had been an important factor in the Pacific, almost disappeared, and it was not until the outbreak of the Chinese-Japanese War that the interest of the American people and the policy of our government were again attracted to the Far East. The results of the Spanish-American War served to make this interest more definite and to give it a clearly defined purpose. With the acquisition of the Philippine Islands, the United States became the immediate neighbor both of China and Japan, which served to impress upon the American people the fact that the great and fundamental forces of world politics have shifted from the Atlantic to the Pacific, and that it is among the nations of the Great Ocean that the future of human progress is to be determined.

Up to the present time our policy in the Far East has been determined by high and lofty purposes. With the new and complex situation which has arisen, the public opinion of our country stands bewildered, earnestly seeking guidance. Any new light

on the present situation means a real service to our country. We must all, therefore, feel a special sense of gratitude that during these, the last days of his stay in the United States, His Excellency the Chinese Minister, Dr. Wu Ting-fang, has made the sacrifice to come to Philadelphia to speak to us on "The Significance of the Awakening of China."

THE SIGNIFICANCE OF THE AWAKENING OF CHINA

ADDRESS BY DR. WU TING-FANG,
Envoy Extraordinary and Minister Plenipotentiary of China to the United
States.

China, as is well known, is an ancient and conservative nation. She has existed for many thousands of years. She has seen the rise and fall of many ancient empires and republics. She saw Egypt ascend to the zenith of her power, and later she witnessed Rome extending her dominions and becoming the greatest power of the earth. She was a spectator when those nations and others, one by one, either fell or disappeared. All this time China stood intact, and she still remains a nation, practically without dismemberment.

It will be interesting to inquire why such an old nation has existed undivided while her contemporaries, one by one, have crumbled to pieces. Many causes have been given from time to time for this, but, in my opinion, the most important factor was the fact that she had shut herself up for many centuries and did not interfere with the affairs of other nations. Her people applied themselves wholly to the internal affairs of the nation. They did not bother about the affairs of foreign countries, but devoted themselves to literature, philosophy, ethics and agriculture. The people were dependent upon the resources of the country and were contented. They were home loving and patriotic, and disliked to leave their home. It was considered a dangerous thing to travel abroad, hence the people of China, up to a recent period, were most reluctant to leave their country.

It may be asked, What led the people to be contented with their native land and to dislike to go abroad? It was due to the universal love of the Chinese for their homestead. The place where their ancestors were born and had lived and died, where their parents were born, and where they themselves had been brought up, they dearly loved. The soil of their land was fertile and rich, and they could produce all they wanted, so there was no necessity for them to leave their fatherland. Thus the people had every inducement to remain in their own country. Their system of ethics taught them to be loyal to the emperor, filial to their parents, affec-

tionate to their brothers and sisters and faithful to their friends. With these teachings they were brought up, and, as there were practically no strangers in their land they did not know any other system of morals superior to their own. In course of time they became patriotic, honest and hard-working people. If their nation had not been disturbed by outside influences they would have remained to this day in the same condition. They were, however, not allowed to do so. The door of their country was opened by force of circumstances, and aliens and foreigners from different parts of the world had to be admitted.

The importance of this step was not at first realized, and for several decades the Government pursued its traditional policy without any change. It was thought that what had been good for the country for several thousands of years was surely good and would last for all time; but after numerous sad experiences the officials and others began to find out that though their ancient systems of government and civilization were in many respects equal, if not superior, to those of the West, yet in view of the altered conditions they were obliged to change their policy and learn something from the people of the West. Especially within the last few years the whole nation, high and low, has been awakened and aroused. Many important changes and reforms have been made in different directions, and what was deemed efficient and excellent has been found to be inadequate to meet the needs of the present.

Take, for instance, our old system of literary examinations for official appointments, which had existed for many centuries. It has recently been entirely remodeled, new regulations have been drawn up and are now in force. The candidates, many of whom have received foreign education, are now examined on modern subjects. I feel sure that in course of time the officials of China, recruited from such men, will be entirely different from those of a few years ago; and will compare favorably with the statesmen of other countries in ability and in knowledge not only of their own country, but of foreign affairs, also.

The army in China has within the last few years been reorganized. The men have been instructed and drilled under competent tutors. The national curse of opium smoking is being handled in a most energetic way. The conscience of the public has been aroused on this subject, and the people, high and low, are determined to get rid of this pernicious habit. There are many other

salutary reforms, too numerous for me to mention here, but I feel confident that in a few years China will no longer be dubbed the "sick man of the Far East," but will become a modern nation like her great neighbor, Japan.

It may be noted in passing that if China should become a strong power in the world it would never be a source of trouble to other nations, or be a "yellow peril," as some people seem to fear. Those who think otherwise are greatly mistaken. They do not understand our people. The Chinese are by nature and education a peace-loving people. The essence of the Confucian system is that right, and not might, is king; not the strong and the powerful, but the just and the virtuous ruler or people must prevail. They have all been taught to reverence righteousness and peace, and to denounce injustice and force.

Their past and present conduct at home and abroad will confirm what I say. What has been done within the past few years to put our army on a proper footing, and the intention of our Government to take steps for reorganizing our navy, should not in the least create suspicion in other nations. The aim of our Government is solely for defensive purposes and to preserve peace in our territory. This is testified to by many facts. In any movement having for its object the preservation of peace China has gladly joined; and in many cases where international questions arose our Government willingly offered to submit them to arbitration by disinterested parties or by a tribunal; though without success.

We are now in the twentieth century, and people of different nations take more interest in the affairs of each other. It looks like a family of nations. China, having been forced to open her doors to international trade and commerce, aliens, irrespective of their nationalities, are freely admitted to China to reside and trade. She was given to understand that her people could go abroad to trade as freely as the foreigners could come to China. We have students now studying in this country and in Europe, and it is a source of gratification to me to hear that they are afforded all facilities and are treated with courtesy and kindness. Our merchants and tradesmen have not come to this country, nor gone to Europe, in such large numbers as have the people of other nations; but I hope the time is not far distant when this will change. It is good for our people to go abroad, either to study or to trade, so that we can understand better your institutions and the

systems of your trade. In the same way it is open to you to come to our country and study our wants and requirements for the purpose of mutual commerce. Our people—students and merchants—in foreign countries should be treated in the same manner as are other foreigners, and I feel sure that your people, who are endowed with a sense of justice, will willingly accord us just treatment.

It is to be admitted that in the field of human activity the Occident surpasses the Orient. The manner in which the Western nations have unlocked the secrets of nature and harnessed her forces must excite the admiration of the East. But, while our people have a great deal to learn from the Western nations, the people of the West should not disdain to gain a little from the East. An old nation like China, which has stood for thousands of years, must possess some good quality to account for her stability. The keystone to our arch of morality has been the virtue of filial piety, and it has not been inaptly expressed by some writers that it is due to our faithful observance of the fifth commandment of the Christian religion that our days have been long in the land which Heaven has given to us. Another moral character of our people is their probity and honesty. If our moral character and habits and institutions were studied by the people of the West, just as much as we study theirs, much benefit would accrue to both sides.

Since the opening of China her trade with foreign nations has increased by leaps and bounds from year to year. This is not to be wondered at, because with such a large population and with such immense natural resources, foreign trade and commerce must increase. To those people who study and cater to the needs of our people naturally comes the larger share of trade. With the opening of the Panama Canal in a few years, the exports from this country will undoubtedly increase. With your possession of the Hawaiian Islands and the Philippines, which are practically neighbors to China, the trade between the two countries should be expanded.

As I am now on the eve of my departure from this country, I avail myself of this opportunity to express my grateful thanks for the courtesies and uniform kindnesses shown to me by the officials and people of America. I appreciate the honor and the privilege of coming here the second time as the representative of my government, and it is with sincere regret that I say good-bye to the many

friends I have in this country. There is, however, one consolation. I leave the United States in the most cordial relations with my own country. I do not take credit to myself. It is mainly due to the just policy of the successive administrations at Washington toward China, and it is also the result of many tokens of kindness shown China by your officials and people. We are a grateful people and we appreciate favors.

It is true that there is one blot which somewhat mars our otherwise most cordial relations; I refer to the subject of Chinese exclusion. This question, I regret to say, has not been properly handled, and hence it is not properly understood. We do not want favors or special privileges. All we want is to be justly treated in this matter—in fact, if not in the same manner as Europeans, at least as are the Japanese and other Asiatics. All fair-minded men will admit that this is reasonable and just. However, I am inclined to believe that this question will be satisfactorily settled as soon as the people of this country understand us better. So, I say again, and say with confidence, that the relations between this great country and mine will always continue to be as cordial and friendly as they have been in the past.

INTRODUCTORY REMARKS OF DR. L. S. ROWE, PRESIDENT OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE, IN PRESENTING MR. CHARLES R. FLINT, OF NEW YORK CITY

We have just listened to one of the great statesmen of diplomacy, and we are now to hear from one of the statesmen of commerce. Probably no other man in this country has been more closely identified with international commercial relations than Mr. Charles R. Flint, whom we have the pleasure of having with us this evening. He will speak to us on "The Commercial Significance of China's Awakening."

THE COMMERCIAL SIGNIFICANCE OF CHINA'S AWAKENING

ADDRESS BY MR. CHARLES R. FLINT, OF NEW YORK CITY.

In contemplating the departure of Minister Wu for China, our feelings are in conflict. We shall miss his genial presence and ready wit, but while Minister Wu has been an Excellency in the broadest sense in representing China in Washington, and President Taft "feels a sense of personal loss in his recall," he has, in my opinion, a far more important field of usefulness in giving his countrymen in China the benefit of the knowledge of our industrial development which he has acquired by long residence in this country.

It is evident from what Dr. Wu has said this evening that he has been a close observer during his residence with us. He has even learned that New England trick of dodging a question by asking another. Recently I had the honor of entertaining him at my home at dinner. With characteristic generosity he permitted me to state that he would answer any questions in regard to China. There were present, among others, that constructive genius

in transportation, Mr. Harriman, who, during his last visit to Peking had proposed plans for a comprehensive railway system for China, including the Japanese sphere of influence. In that connection Mr. Harriman had carefully studied their transportation opportunities, and was, therefore, able to make searching inquiries. With his usual adroitness, he took advantage of Dr. Wu's offer by asking several questions leading up to one which, if His Excellency had answered, would have divulged state secrets of his Government. With surprising quickness Dr. Wu said: "Mr. Harriman, you have asked me six questions. I have answered every one of them. I will ask you only one question. I am told you control 50,000 miles of railroad. How did you get it, and how do you keep it?" The railroad magnate was sidetracked.

It is fortunate that His Excellency is returning to China at this time. There has been considerable industrial progress in China, and there is a progressive party there, but I am advised from Peking that the cry is now rampant: "China for the Chinese"—a sentiment that is seriously retarding the progress of that great country.

Minister Wu on his return can tell his people that the unprecedented success of the United States has been largely owing to the fact that we have welcomed foreign intelligence and capital to assist in the development of our resources; that while the foreigners have profited much, the Americans have profited more; that even where enterprises carried out here have been owned and controlled by foreign capitalists, our people have received by far the greater share of the benefits.

Minister Wu has studied our industrial conditions, and has noted that since he first came to the United States the wealth of the country has increased \$45,000,000,000; that we possess two-thirds of the railway mileage of the world; that while some of our industrial leaders have acquired great wealth, the benefits of our industrial development have been distributed among the masses. This has been manifest to him as he has travelled throughout the country, and has seen the evidence of general prosperity in the homes of our people who enjoy to-day more comforts than did the nobility in ages past. His Excellency can tell them that the deposits of our wage-earners in the savings banks have so increased during his stay with us that they now amount to \$3,713,405,710 in gold. At the

same rate per capita the deposits in China would amount to 25,000,000,000 taels.

Dr. Wu came to us thirteen years ago, and having kept in touch with his own country by three visits to it during that period he has had better opportunities than any of his countrymen to mature ideas as to what is best in our development for his people to adopt and adapt to their use.

Kurino, the Minister of Japan, was asked the secret of Japanese success in their war with China (1895). He replied, "It is easy to account for our victories. We were fighting the 'obstinate conservatism' of China." It is that same "obstinate conservatism" that prevents her to-day from utilizing her unlimited resources, her intelligence and low-cost labor to acquire the important position which it is possible for her to attain in the world of industry, and secure the resulting benefits in the vastly improved condition of her people.

The defeat of 1895 caused the retirement of the Empress Dowager Tzu-hsi. Then came the reform movement of the late Emperor Kwang Hsu, under the advice of that great scholar and reformer, Kang Yu Wei (1898), an event to which His Excellency has referred as "The Awakening of China."

The reform edicts of that period opened a new era in the long history of China. Although Kang Yu Wei had taken the highest degrees under the Chinese system of learning, he felt that an education based principally on memorizing the past should be supplanted by a system of mental training to equip men with alert minds to meet the conditions of the present and the future.

The reform edicts were so numerous and rapid that a reaction came, which resulted in the reestablishment of the power of the Empress Dowager. Kang Yu Wei had to flee from Peking, and several of his followers were beheaded. But in spite of the reaction the spirit of reform grew. Yuan Shih Kai, who had been in sympathy with the reform movement, became most influential at court, and partially succeeded in the difficult task of harmonizing the old and the new.

After the death of the Empress Dowager (1909) the Prince Regent deposed Yuan Shih Kai. This was regarded at the time by the foreigners as a step backward, but the reformers of the Kang Yu Wei party predicted that the present Prince Regent

would prove to be a more sincere reformer than Yuan Shih Kai. What the result will be, time will tell, but the outlook at present is not favorable. While there is a powerful progressive party, the reactionaries are very aggressive.

In justice to the Chinese, however, we must admit that the foreigners are largely responsible for the present attitude of the reactionaries. When we review the past we cannot wonder that the Chinese are fearful of Western methods, which, in dealing with them, have so often been characterized by hypocrisy, greed and injustice. At a recent Peace Conference the representatives of the Powers preached the "gospel of peace." The Chinese delegates were attentive listeners. But it must have been uppermost in their minds that the Powers there represented had taken advantage of the fact that China was the only one of the great nations that had continued on a peace footing. Those powers had seized, and they hold to-day, much of her territory. They established spheres of influence, and at least one of these powers, while preaching morality, encouraged, for profit, that most degrading vice—the opium habit.

I was present when Minister Wu was asked whether he thought his Government should discontinue increasing her military strength and rely entirely on the assurances by the Powers of universal peace. His Excellency did not answer that question, but, with rare tact, related a fable. A hen was perched on the limb of a tree, when a fox came along. Looking up, the fox said: "Mistress Hen, come down and walk with me. You need not have any fear; the animals have agreed on universal peace. Just then the baying of a pack of hounds was heard in the distance, and as the fox moved off, the hen said: Mr. Fox, why do you run away if there is universal peace? Ah, said the fox, how do I know but some of those hungry hounds may disregard the agreement?"

His Excellency, however, can positively assure his people that we do not want any of their territory; that they not only have the good will of our Government, but of our people. He can state, as an evidence of it, that after the boycott of American goods, after the balance of trade dropped from \$15,243,168, in our favor, in 1906, to \$9,378,699 against us in 1909, the people of the United States applauded our Government in giving up to China of the indemnity due us over \$13,000,000 in gold—an act unparalleled in history. He can impress upon them the fact that to interest Americans in

China will be a powerful addition to her political, as well as to her industrial strength.

But his countrymen may say to him, as he has said to us to-night: "The Chinese exclusion act remains on your statute books." I admit that subordinate officials have not always shown the consideration due to Chinese scholars and merchants landing on our shores, but this has been corrected. As to the wisdom or unwisdom of a free intermingling of the yellow and white races, I can add nothing to what has already been said. That is a question for the sociologists to expound. But, as a practical man of business, I can point out the best economic method of giving the Chinese the greatest benefit of our advanced industrial systems.

Instead of a large number of Chinese coming to the United States, the sound economic policy—and it can be made effective at once—is for the Chinese to induce American brains and money to take an important part in the development of their unlimited resources. For example, if 3,000,000 Chinese came to the United States, it would cost at least \$200 each to cross the Pacific Ocean, establish themselves and return, say \$600,000,000.

If concessions were given to our industrial leaders of demonstrated capacity, and the methods were adopted under which the United States has made the greatest industrial progress in the history of the world, the Chinese would receive, in a larger market for their agricultural and other products, in charges for transportation and in increased wages, over five times what the 3,000,000 Chinese could save from their wages in this country.

Minister Wu has studied our industrial progress, and with positive personal knowledge can assure his countrymen that we have captains of industry capable of making that statement good. If his countrymen question the soundness of that policy, he can point them to "a condition, not a theory"—to the following object lesson, that should be conclusive: President Diaz, by granting concessions to American industrial leaders of proved capacity, has secured an investment of \$800,000,000 United States gold in his country, with the result that the wages of the Mexican laborers have more than doubled, and Mexico has been transformed from a land of political revolutions to one of industrial evolution. By the same policy China can secure equally desirable results.

Mr. President, I thank you for the opportunity you have given

me to join in expressions of friendship and admiration for Dr. Wu on this, the eve of his departure. He has accomplished much in Washington, particularly during the trying period of the Boxer troubles; but his great opportunity to serve his people is in giving to them the benefit of his knowledge of the industrial methods which have made this country great, and have given to our masses a greater measure of well-being than ever before enjoyed by any people in the world's history. If he can induce his Government to welcome our industrial leaders of demonstrated capacity to take part in the development of China's enormous resources he will go down in history as one of the greatest benefactors of his people.

Your Excellency, I wish you long life and success in the larger sphere of usefulness which you are about to enter.

CLOSING REMARKS OF THE PRESIDENT OF THE
ACADEMY, DR. L. S. ROWE

We have now reached a point in the proceedings of this session at which it becomes my privilege to extend to His Excellency the farewell wishes of the Academy. We see you leave our country, sir, with feelings of profound regret, for you have taken a very definite place in our affections. This feeling of sorrow is combined with one of gratitude and obligation for the many services that you have rendered to us and to our country.

The policy of our country with reference to your Government and to your people has offered many curious contradictions. While our relations to the Far East have been dictated by the most lofty purposes, almost unparalleled in the history of modern nations, our treatment of the Far Easterner has been anything but satisfactory. It is not my purpose at this time either to justify or criticize the Chinese exclusion act. The economic causes underlying this legislation are well known to every one. The spirit in which this law has been administered, however, by the minor officials of the Government gives evidence of the existence of deeply rooted prejudices

against the Chinese. The arbitrary decisions of administrative officers and the hardships and cruelties perpetrated in the name of the law cannot be viewed with satisfaction or complacency by any patriotic citizen.

It has been the high privilege of Minister Wu to destroy at least some of these prejudices, and we owe to him, therefore, a real debt of gratitude for having given us a new point of view in judging of our relations not only to the Far East, but to the Far Easterner as well. It is no exaggeration to say that no diplomat from any country, whether of Eastern or Western civilization, has ever had the same influence on the opinion of this country. He has been Envoy Extraordinary to the Government at Washington, but he has been an envoy far more extraordinary to the people of the United States.

Mr. Minister, you take with you the affection and the sincere appreciation not only of the members of the Academy, but of a far wider public, and we hope that in the important position which you are to occupy in your own country the American people may benefit as much as they have benefited by your stay in the United States. We wish you all success and Godspeed.

SUPPLEMENT TO
THE ANNALS OF THE AMERICAN ACADEMY OF POLITICAL
AND SOCIAL SCIENCE
SEPTEMBER, 1910

The Work of the
National Consumers' League

During the Year Ending March 1, 1910

PHILADELPHIA
THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE
1910

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NATIONAL CONSUMERS' LEAGUE

Report for Year ending March 1, 1910.

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TABLE OF CONTENTS

	PAGE
Constitution	7
Annual Meeting, 1910.....	13
Report of the Secretary	18
Nightwork of Boys and Girls.....	20
Employment Bureaus of Local Leagues	21
Minimum Wage Boards	21
Meetings Addressed by the Secretary	22
Report of the Label Committee	27
List of Manufacturers Authorized to Use the Label	27
Report of the Committee on Legislation and Legal Defense of Labor Laws.....	30
Special Fund for the Illinois Case.....	31
Text of the Decision of the Supreme Court of Illinois sustaining the Ten Hours Law.....	32
Report of the International Committee.....	43
Report of the Publication Committee	45
Report of the Lectures Committee.....	46
Report of the Food Committee.....	47
Report of the Exhibit Committee	51
Report of the Special Committee on Colleges and Graduates	52
The Consumers' Health Bill.....	54
Treasurer's Report.....	56
Directory of Consumers' Leagues.....	58

CONSTITUTION

[As amended March 2, 1910.]

ARTICLE I

NAME.

The name of the Society shall be the National Consumers' League.

ARTICLE II

OBJECT.

It shall be the special object of the National Consumers' League to secure adequate investigation of the conditions under which goods are made, in order to enable purchasers to distinguish in favor of goods made in the well-ordered factory. The majority of employers are virtually helpless to maintain a high standard as to hours, wages and working conditions under the stress of competition, unless sustained by the co-operation of consumers; therefore, the National Consumers' League also proposes to educate public opinion and to endeavor so to direct its force as to promote better conditions among the workers, while securing to the consumer exemption from the dangers attending unwholesome conditions. It further proposes to promote legislation, either state or federal, whenever it may appear expedient. The National Consumers' League further recognizes and declares the following:

That the interests of the community demand that all workers shall receive fair living wages, and that goods shall be produced under sanitary conditions.

That the responsibility for some of the worst evils from which producers suffer rests with the consumers who seek the cheapest markets, regardless how cheapness is brought about.

That it is, therefore, the duty of consumers to find out under what conditions the articles they purchase are produced and distributed, and insist that these conditions shall be wholesome and consistent with a respectable existence on the part of the workers.

ARTICLE III

MEMBERSHIP.

Section 1. *Eligibility*—There shall be five classes of members: State League, Individual, Associate, Sustaining and Life. Any State Consumers' League may become a member of the National League by accepting the Constitution and By-Laws, and by paying its quota to the general treasury. In any state in which there is no State Consumers' League the President shall appoint a State Organizer, who shall carry on the work of the organization and who shall become ex-officio member of the State League for the remainder of the year in which such new League may be formed. Persons residing in localities in which there is no State or Local League may become Individual Members of the National Consumers' League by paying a yearly due. They will receive reports, but will not have the privilege of voting.

Sec. 2. *Dues*—Each State Consumers' League shall pay to the Treasurer of the National Consumers' League, before the first of each January, for the ensuing year, the sum of ten cents per capita for each and every member of each and every Consumers' League affiliated with it. Each new State Consumers' League shall pay to the National Consumers' League a minimum sum of ten dollars. Each State Organizer shall pay to the Treasurer of the National Consumers' League the sum of one dollar each year. Individual members of the National Consumers' League shall pay a yearly due of not less than one dollar. Any person may become an Associate Member by paying five dollars annually, or a Sustaining Member by paying twenty-five dollars annually. The payment of one thousand dollars at one time constitutes Life Membership.

ARTICLE IV

OFFICERS AND COUNCIL.

Section 1. The officers of the League shall be President, three or more Vice-Presidents, Recording Secretary, General Secretary, and Treasurer.

Sec. 2. The control and management of the affairs and funds of the National Consumers' League shall be vested in a central governing body, which shall be known as the Council. The membership of the Council shall consist of the officers of the National

Consumers' League and representatives from the State Consumers' Leagues. The officers of the National Consumers' League shall be elected by ballot at the annual meeting. A Nominating Committee, appointed at the previous meeting, shall prepare a list of nominees to each office, and the ballot shall be sent to each State Secretary in the January preceding. Any State League may propose names that shall be printed on the list. The officers and two representatives of each State Consumers' League shall constitute the Executive Committee of the Council.

Sec. 3. *Election*—At the annual meeting of the Council the officers of the National Consumers' League shall be elected to serve for the ensuing year.

Sec. 4. The Council shall have power to elect Honorary Vice-Presidents at its annual meeting on recommendation of the Executive Committee.

Sec. 5. *Vacancies*—A vacancy in any office may be filled by the President, with the consent of a majority of the officers.

ARTICLE V

MEETINGS.

Section 1. The annual meeting of the Council shall be held at such time and place as shall be determined by the Executive Committee.

Sec. 2. The Executive Committee shall meet annually before the annual meeting of the Council, and shall prepare a report of the condition of the National Consumers' League to submit to the annual meeting of the Council. It shall also meet at such other times as shall seem necessary, to appropriate money and transact routine business. It shall further make such recommendations and suggestions as may from time to time seem desirable.

Sec. 3. Special meetings may be called at any time by the President or by a two-thirds vote of the Executive Committee.

ARTICLE VI

AMENDMENTS.

This Constitution may be amended by a two-thirds vote at any annual meeting of the Council, notice of such amendment having been submitted to the Secretary of the various State Consumers' Leagues at least two months before the annual meeting, or by a unanimous vote at the annual meeting of the Council.

BY-LAWS

ARTICLE I

DUTIES OF OFFICERS.

Section 1. *President*—The President shall be ex-officio a member of all committees; shall sign all written obligations of the League, and shall perform all such duties as usually pertain to that office. In the absence of the President his duties may be performed by the Vice-Presidents in their order; or, in the absence of the Vice-Presidents, a chairman may be elected for the occasion.

Sec. 2. *Recording Secretary*—The Recording Secretary shall attend all meetings of the Council and of the Executive Committee, and shall keep the minutes of the League and the Executive Committee.

Sec. 3. *General Secretary*—The General Secretary shall give notice of the time and place of meetings, inform new members of their election, keep a list of all State Leagues belonging to the National League, and of all Individual Members, and conduct the correspondence of the League. She shall have custody of all books, papers and pamphlets of the League, and take charge of such distribution of them as the Executive Committee may decide, and shall perform all duties usually appertaining to the office.

Sec. 4. *Treasurer*—The Treasurer shall hold all funds of the League, and shall deposit the same, in the name of the League, in such bank or trust company as the Executive Board shall direct. He shall pay out money only by check and as directed by the Executive Committee. He shall keep a correct account of all money received and expended, render reports of the condition of the treasury at the meetings of the Executive Board, and make a full audited report of the financial condition of the League at the annual meeting. The Treasurer shall be ex-officio a member of the Finance Committee.

ARTICLE II

STANDING COMMITTEES.

Section 1. Standing Committees shall be established at an annual meeting by a vote of the Council, upon recommendation by the Executive Committee adopted not later than the January meeting preceding.

Sec. 2. The Chairmen of all Standing Committees shall be appointed by the President, their term of office to continue until such time as a successor can be appointed, each Chairman to form his own committee, subject to the approval of the President.

1—*Committee on Finance.* The Committee on Finance shall have charge of the finances of the League, shall secure donations, make suggestions as to the possible ways of obtaining funds, and do all in its power to add to the financial support of the League. The Chairman shall prepare a budget for the year, in conference with the General Secretary and Treasurer, which shall be presented at the annual meeting.

2—*Committee on Label.* The Committee on Label shall investigate all applications for the National Consumers' League label, and report to the Executive Committee how far each applicant complies with the standards maintained by the League.

3—*Committee on International Relations.* The Committee on International Relations shall keep informed of all work along the lines of the Consumers' League done in other countries; shall correspond with the officials or those interested in the work in other countries, to gain an interchange of ideas and methods of work; also to bring about, so far as possible, co-operation between organizations in all countries of the world interested in the objects of the Consumers' League. It shall study international aspects of the work, and endeavor to bring into closer touch the various European and American Leagues.

4—*Committee on Legislation and Legal Defence of Labor Laws.* The Committee on Legislation shall keep informed and report to the Executive Committee all legislation concerning the objects in which the National Consumers' League is interested; also all bills in any way affecting industrial conditions which are liable to come before the legislatures. They shall further be empowered (subject to the approval of the Executive Committee) to draft bills or seek legislation in any way helpful to the work of the National Consumers' League, and shall assist in the defense of the laws by supplying additional legal counsel or other assistance.

5—*Committee on Publication.* The Committee on Publication shall have charge of the printing of all reports of the National Consumers' League and all other leaflets or literature which the Executive Committee decide to have published. It shall have pub-

lished in magazines and newspapers, whenever practicable, articles relating to the work of the League.

6—*Committee on Lectures.* The Committee on Lectures shall arrange meetings to be held in the interest of the League; shall secure speakers, who will go about from place to place and explain the principles, objects and aims of the National Consumers' League; also, as far as possible, interest people in the formation of new Leagues.

7—*Committee on Exhibits.* The Committee on Exhibits shall collect and administer an exhibit in the interest of the Consumers' League.

ARTICLE III

BRANCHES.

Branches of the National Consumers' League may be formed in any State or Territory of the United States. Each Branch shall be called a State or Territorial League, and shall control its own funds, elect its own officers, fix its own fees and dues, and manage its own affairs. Each State or Territorial Branch is allowed to have two representatives on the Executive Committee. Each State or Territorial Branch shall be represented at the annual meeting of the Council by the President and one delegate at large or by their alternates, and by delegates from each Individual League in proportion to its membership—one delegate for Leagues numbering one hundred or less, and an additional delegate for every additional one hundred members.

ARTICLE IV

ANNUAL MEETING.

The Annual Meeting, as described in Article IV, Section 1, of the Constitution, shall be held, as far as possible, in the East, South and West in rotation.

ARTICLE V

AMENDMENTS.

These By-Laws may be amended at any regular or special meeting of the League by a majority vote of the members present, provided that the intended amendment shall have been previously approved by the Executive Committee and that notice of the proposed amendment shall have been appended to the call for the meeting at which such amendment is to be acted upon.

THE ELEVENTH ANNUAL SESSION OF THE COUNCIL.

The eleventh annual session of the Council of the National Consumers' League was held in Milwaukee, Wisconsin, on March 2, 1910, at 10 a. m. In the absence of the President, Mrs. B. C. Gudden, Vice-President, in the chair. Roll call responded to as follows:

Illinois—Mrs. Wilmarth, Mrs. Van Der Vaart.

Massachusetts—Mrs. Sherwin, Mr. Bradley.

New York—Miss Sanford, Miss Stokes, Miss Goldmark.

Ohio—Mr. Cadwallader.

Pennsylvania—Miss Sanville, Miss Cochran, Miss Cohen.

Rhode Island—Mr. Bradley.

Wisconsin—Mrs. Stern, Mrs. Goff, Mrs. Galloway, Mrs. Gudden, Mrs. Mihills, Mrs. Strang, Mrs. Frank Bowen, Mrs. W. Schrage, Mrs. Zufeld.

University of Wisconsin—Miss Carey, Miss Flagelen.

Minutes of the previous meeting read and accepted with minor correction substituting the word *bill* for *law*.

The report of Mr. G. Hermann Kinnicutt, Treasurer, was read and on motion of Mrs. Sherwin accepted.

The General Secretary presented her report, which was accepted.

It was moved that the Executive Committee be empowered to fix time and place of the annual meeting. Unanimously carried.

Miss Cohen, delegate from Pittsburgh, extended the hospitality of her city for the next meeting. This invitation was referred to the Executive Committee.

Miss Sanford, of New York, spoke with special appreciation of the needs of the Food and Exhibit Committees; and also of the great effort that the raising of the present budget necessitated on the part of the members of the Finance Committee. Miss Sanford stated that, in spite of the fullest recognition of the claims of Standing Committees, it is impossible in the state of the finances to pledge any financial support to the work of such committees. Carried.

The following resolution was adopted:

WHEREAS, The Consumers' League of Wellesley College has asked the National Consumers' League to endorse the label of the Shirtwaist Makers' Union; therefore, be it

Resolved, That the Label Committee be given power to endorse from time to time (and also to withdraw such endorsement) the label of any Union which may seek such endorsement, in any industry related to the work in which the Consumers' League is engaged, provided that this label covers in its requirements the requirements established for the use of the label of the National Consumers' League.

The report of the Committee on Legislation and Legal Defense of Labor Laws was given by Miss Josephine Goldmark, Secretary. Mrs. Wilmarth, of Chicago, moved the acceptance of the report, and Miss McDowell seconded the motion. Carried. A rising vote, expressing gratitude, was given Mr. Brandeis and Miss Goldmark.

The report of the Committee on Publications was given by the Chairman, Miss Josephine Goldmark. Report accepted.

The report of the Committee on Lectures was read by Mrs. Kelley. Report accepted.

Mr. Francis H. McLean, Chairman of Committee on International Relations, sent the report of his Committee, which was read by Mrs. Kelley. Report accepted.

The report of the Food Committee, Miss Alice Lakey, Chairman, was then read. Report accepted.

The following resolutions were introduced by the Food Committee:

Resolved, That the National Consumers' League respectfully urges upon Congress the necessity of amending the National Pure Food and Drugs Act in the following particulars, viz., To prohibit absolutely and unqualifiedly the use of benzoate of soda and similar chemical preservatives in the preparation and preservation of foods destined for interstate commerce, for the sake of preventing the utilization of unclean and offensive waste productions, which now, by the use of such preservatives, are branded as foodstuffs and sent through the channels of commerce.

Motion laid on table.

WHEREAS, President Taft's decision as to the labeling of whiskey discredits all food standards by ignoring the standards set for spirituous liquors by the Association of State and National Food and Dairy Departments at the Mackinac Convention, when the report on food standards was unanimously adopted; and

WHEREAS, These standards are of the utmost importance in defining what are the essential characteristics of foods produced and sold in America or imported chiefly for Americans; and

WHEREAS, President Taft's statement that neutral spirits, which the most eminent food chemists have declared an unlike substance to whiskey, may be added to whiskey and the whole product colored with burnt sugar or caramel without stating that fact on the label, together with his dismissal from the labels of the restraining and protecting words "compound" and "imitation," and his new definition of what constitutes a "blend," are destined to open the door for a return of all the evils of adulterated foods, drugs, liquors and medicines, that have for a time been held in check by the operation of the pure food law, following the opinions of President Roosevelt and Attorney-General Bonaparte, and upon the findings of Federal Judges Robb, Thompson and Humphrey, that whiskey and neutral spirits are not like substances; therefore, be it

Resolved, That we, the Council of the National Consumers' League, protest against the action of the President, and urge upon state food officials, in all states, the necessity of prompt and concerted action on their part to avert the peril threatened by President Taft's decision, so that if consumers cannot have the protection of the federal law, they may at least be safeguarded by state law from a return of the former evils of adulterating and misbranding the foods, drugs, liquors and medicines of this people.

Adopted.

Mrs. Wilmarth moved that we urge the passage of the following resolution:

Resolved, By the Senate and House of Representatives of the United States of America in Congress assembled, That the President be, and he hereby is authorized to forbid by proclamation the entry of cocoa into the United States or her possessions, where it is shown to his satisfaction that the same is the product of slave labor.

Adopted.

The report of the Special Committee on Colleges and Graduates was read and accepted.

The report of the Special Committee on Exhibits was read and accepted.

Mrs. Sherwin moved that the Exhibit Committee be made one of the Standing Committees of the National League. Carried.

The Special Committee on Minimum Wage Boards, consisting of Miss Balch, of Wellesley, Chairman; Professor Seager, of Columbia; Mr. Herbert Mills, of Vassar; Mr. Arthur Holcombe, of Harvard; Rev. John A. Ryan, of St. Paul Seminary, have prepared

a bibliography and a tentative draft of a bill on wage boards now in the hands of the Publication Committee.

The General Secretary then read the paper of Miss Lakey on "What the Consumer Can Do for Pure Food."

A report of the Oregon Consumers' League was then read by the General Secretary.

The following letter was presented by the Council of Jewish Women:

To the Members of the National Consumers' League:

We beg to call your attention to an effort made by us to secure a higher moral tone in the general contents of the public press. We recognize the great educational power of a free press in a free country and believe that without infringing on its full liberty it is possible to restrict the amount of obnoxious news, such as details of murders, divorces, personal and social scandal, accidents, etc., which can only have a demoralizing effect on those who read it, especially on the youth of our country. With this object in view, the Council of Jewish Women at an annual executive meeting adopted the following resolutions:

Resolved, That we vigorously deprecate the publication of such details of trials as are a menace to public morals, and also that we ask all public spirited persons to refuse support to those journals, that in the daily publishing of this and other most objectionable and sensational material, do ignore their high privilege.

Resolved, That we oppose this evil in practical ways and especially in the line of developing public opinion to appreciate its danger. We earnestly appeal to editors to aid us in this effort."

On motion of Mr. Bradley, the League expressed sympathy with the work of the Council of Jewish Women.

Mrs. Van Der Vaart gave a brief report of the special work that Illinois is doing for the child labor law.

Mr. Bradley reported the child labor work for Massachusetts; the struggle with the theatrical interests and the resulting strengthening of the law.

The following report of the Special Committee on Amendments to By-Laws was read and unanimously adopted:

AMENDMENTS.

The following changes in the Constitution, endorsed by the Executive Committee and recommended by it to the Council, were adopted:

Art. III, Sec. 2, Line 12—Omit the words "one hundred" and insert "one thousand."

Art. IV, Sec. 4 shall read "The Council shall have power to elect Honorary Vice-Presidents at its annual meeting on recommendation of the Executive Committee."

Sec. 4 shall become Sec. 5.

Art. V, Sec. 1 shall be amended to read "The annual meeting of the Council shall be held at such time and place as shall be determined by the Executive Committee."

BY-LAWS

Art. II, Sec. 1—Insert as Sec. 1 the following: "Standing Committees shall be established at an annual meeting by a vote of the Council, upon recommendation by the Executive Committee adopted not later than the January meeting preceding."

The following order of business for Council meetings, reported by the Legislative Committee, was adopted:

- 1—Roll Call,
- 2—Minutes,
- 3—Report of Treasurer,
- 4—Report of Finance Committee,
- 5—Report of Secretary,
- 6—Report of Standing Committees,
- 7—Report of Special Committees,
- 8—Unfinished Business,
- 9—New Business,
- 10—Report of Nominating Committee,
- 11—Election of Officers.

The Nominating Committee, consisting of:

- Professor Jacob Hollander, of Maryland, Chairman;
Miss Cornelia Bradford, of New Jersey;
Miss Emily Bissell, of Delaware,

presented the tentative ticket. (See List of Officers, page 1.)

The Secretary was instructed to cast a ballot for the list of officers as presented, and they were duly declared elected.

After a hearty vote of thanks to the Wisconsin and Milwaukee Leagues, the Council adjourned.

REPORT OF THE SECRETARY

By far the most important event of the year is the decision of the Supreme Court of Illinois sustaining as constitutional the ten hours law for women employed in factories, mechanical establishments and laundries.

If the National Consumers' League had done no other useful thing besides its contribution towards this decision, our eleven years' existence would be justified by this alone. For the thousands of women and girls in Illinois whose fatigue will at once be reduced are by no means the only beneficiaries of this work. All their innumerable successors will profit by it. But this is not all. The old decision has been for fifteen years a baneful influence in every industrial state in the Republic, always raising the question whether, after all, it was wise to spend energy in trying to get legislation of this character when the courts were likely to hold it contrary to the state if not to the federal constitution. This mildewing influence is now at an end, and we can go forward with new hope and assurance.

The text of the decision is given in full elsewhere in this report; and the relation of the National Consumers' League to the decision is shown in the reports of the Committees on Legislation and on Publication. The court reverses its decision of fifteen years before (in May, 1895) that no restriction could be placed upon the working hours of women, and now places Illinois in line with Massachusetts, Nebraska, Washington, Oregon, and the Supreme Court of the United States, establishing ten hours as the legal maximum working day in the industries named.

Since the publication of our last report, containing the decision of the Supreme Court of the United States in the Oregon case, that state has extended the benefits of the ten hours day to women in mercantile institutions, transportation and communication.

Upon the basis of these two decisions, it seems reasonable to plan for the extension of the ten hours law for women in every state, and to all industries in the census period 1910-1920. To this end, Miss Goldmark is continuing her work upon fatigue and disease.

It is cheering to note that the publication of the Illinois deci-

sion was immediately followed by the withdrawal from further consideration in the New York legislature of a disgraceful bill intended to exempt women and girls sixteen years old and older employed in canneries and fruit preserving establishments from the meagre protection now afforded them by the law. Had this bill become law, employers would have been free to keep them at work unlimited hours from June 15th to October 15th, each employer merely being required to keep for each woman and girl a record of the hours and minutes worked each day, and not letting the total exceed an average of ten hours each day throughout that period. Thus canner A might have employed a girl sixteen years old twenty hours a day for two months, and then sent her to canner B who might employ her twenty hours a day for the remaining two months of the four. Both employers would be strictly within the terms of the bill, provided each had kept a full record of the hours worked!

It is safe to predict, in the light of the Illinois decision, that this cruel measure will never be heard of again.

The National Consumers' League now embraces fifty-four Leagues in the following states: California, Connecticut, Delaware, Illinois, Kentucky, Maine, Maryland, Massachusetts, Missouri, New Jersey, New York, Oregon, Pennsylvania, Rhode Island and Wisconsin.

There are Consumers' Leagues in the following universities, colleges and boarding schools: The University of Wisconsin, Wellesley, Vassar, Smith, Bryn Mawr, Radcliffe, Mt. Holyoke, Swarthmore, Milwaukee-Downer, the Dwight School, Englewood, N. J.; Lasell Seminary, Mrs. Dow's School at Briarcliff Manor, and St. Agnes School, Albany, N. Y.

In several universities and colleges, members of the faculty are active members of the National Consumers' League, although there is no League or branch within the institution. This is notably the case at Harvard, Yale, Columbia, Chicago, St. Paul's Seminary, Oberlin and the University of California.

In Rochester, N. Y., excellent work has been done under the chairmanship of Mrs. Gardner Raymond by a Consumers' League Committee numbering more than two hundred members within the Women's Educational and Industrial Union. It is an anomalous condition that a large group of persons who have carried on an

unusually active campaign do not appear in the directory in this report because they constitute a committee of a local organization, not an autonomous Consumers' League. A similar anomaly exists in Pasadena, Cal., where a committee of the Shakespeare Club has for several years been doing most of the work ordinarily done by an efficient local Consumers' League.

The label is used by sixty-five manufacturers operating seventy-five factories in Illinois, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Wisconsin.

It is reasonable to hope that this list may grow more rapidly in consequence of the Illinois decision, because the desire of employers to have overtime work has, hitherto, been one of the great obstacles to the use of the label.

WORK AT NIGHT BY BOYS AND GIRLS.

A very long step forward has been taken in New York and Ohio by the enactment of statutes prohibiting the employment of boys at night in the telegraph and messenger service before the twenty-first birthday in New York, and the eighteenth birthday in Ohio. While this progress is due to the efforts of the National Child Labor Committee, the enforcement of the law will depend upon the co-operation of citizens throughout these two states in reporting violations of the law whenever they may occur. The task of making public the provisions of the law, and of carrying on a campaign of education preliminary to similar legislation in all the states is properly our own. No nocturnal visit from a young messenger, telegraph or delivery boy should ever be allowed to pass without vigorous protest addressed to the employer.

Cincinnati appears to be the one large city in which girls are not employed at night in the telephone service. The request is hereby addressed to all readers of this report that they send to the General Secretary the name of any company in any city known to employ exclusively adult men at night in the telephone service. It is desired to make a white list of such communities.

It is impossible to overstate the undesirability of this particular form of night work for women and girls; and the fact that boys in the telegraph service are protected against it, while nothing is done for girls in the telephone service is a challenge to Consumers' Leagues everywhere.

EMPLOYMENT BUREAUS

The newest development of our work is the establishment by the Consumers' League of Philadelphia, and projected establishment by the Consumers' League Committee of the Women's Industrial and Educational Union of Rochester, N. Y., of bureaus for placing young workers with a view to helping the individuals thus placed, but also getting trustworthy acquaintance with the conditions of work in the places to which they are sent. No more practical contribution than this could be made, to the new movement for educating and protecting *all* the young workers and minimizing the supply of unskilled workers created by our industrial conditions.

MINIMUM WAGE BOARDS

An important address by the Rev. John A. Ryan, of St. Paul Seminary, at the eleventh annual meeting, dealt with minimum wage boards. The campaign of education and legislation for minimum wage boards is undertaken in accordance with a recommendation of the International Conference of Consumers' Leagues held in Geneva, Switzerland, in September, 1908. A special committee has been formed with Miss Emily Greene Balch, of Wellesley College, as chairman. Through the efforts of Miss Balch, a tentative bill has been drafted to be discussed and ultimately submitted to the legislatures—one more contribution by the National Consumers' League to the nation-wide movement for uniform labor legislation.

The Consumers' League has been forced to the advocacy of minimum wage board laws by the stern teachings of experience. After twenty years of effort, between fifty and sixty retail merchants in New York City have been brought to agree to pay to women eighteen years old and upward, who have had one year's experience as clerks, not less than six dollars a week. Meanwhile, Miss S. B. Ainslie's investigation of the income and expenses of working women and girls shows that eight dollars is the least upon which women in New York City can keep themselves in health and efficiency. So grave a discrepancy between the need of the workers and the minimum wage attained in twenty years by the method of organized persuasion, calls for new and more effective ways of compelling payment of a living wage. This call is strengthened by the demand of tuberculosis sanatoriums for funds for the care of

broken down workers, the demand of reformatories for ever larger appropriations for use in reforming women who have abandoned the attempt to live on wages which do not support them, and the steady growth of institutions for the care of the insane and the melancholy. It is much to be desired that a careful study should be made of the relation of underpay and overwork to these three sets of institutions. It is not the daughters of the rich who fill them and fill their waiting lists. It is largely the ill-paid, unskilled and semi-skilled young workers who cannot replace by recreation and good food the nervous energy which they spend in their daily work, and who inevitably give way in health or morals, or both. So long as women's wages rest upon the assumption that every woman has a husband, father, brother or lover contributing to her support, so long these sinister incidents of women's industrial employment (tuberculosis, insanity, vice) are inevitable.

Minimum wage boards involve the fullest publicity of payrolls and wage-books and assure to the public clear knowledge, where now there is blank ignorance on the part of the shopping public of wages and the consequence of those wages.

The English statute, which took effect January 1st, 1910, affords an interesting and helpful basis of comparison for this new effort.

The text, with an introduction by Mr. A. N. Holcombe, of the Department of Economics of Harvard University, may be had on application to the National Consumers' League.

MEETINGS

During the year, the secretary has attended, in the interest of the League, one hundred and thirty-three meetings in sixteen states and the District of Columbia; California, Colorado, Connecticut, Illinois, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, Ohio, Oregon, Pennsylvania, Virginia, Washington, Wisconsin, and the District of Columbia. The places and dates of these meetings were as follows:

1909.

- March 5—New York City, Teachers' College, Columbia University.
 19—Northampton, Mass., Parlor meeting.
 Northampton, Mass., Smith College Consumers' League.
 20—Boston, Mass., Conference with Executive Committee of
 Massachusetts League.
 23—Paterson, N. J., Parlor meeting, the Mayor presiding.

- April 7—Albany, N. Y., Hearing on Mercantile Employees' bill.
 14—New York City, Girls' Hebrew Technical School.
 17—Philadelphia, Pa., American Academy of Political and Social Science.
 19—New York City, Consumers' League public meeting.
 20—New York City, Conference on Traancy Work.
 New York City, California Club.
 21—Oberlin, Ohio—Oberlin College.
 23—St. Louis, Mo.—Social Workers' Conference.
 St. Louis, Mo.—Mary Institute.
 St. Louis, Mo., Girls' School.
 St. Louis, Mo., Conference with Officers of St. Louis Consumers' League.
 St. Louis, Mo., Evening public meeting.
 25—Oshkosh, Wis., Congregational Church.
 26—Oshkosh, Wis., State Normal School.
 27—Menasha, Wis., Delegate meeting Consumers' League.
 29—Minneapolis, Minn., National Y. W. C. A. biennial meeting.
 30—Minneapolis, Minn., University of Minnesota.
- May 1—Minneapolis, Minn., Child Labor Committee.
 3—Chicago, Ill., Conference on ten hours bill.
 5—Ypsilanti, Mich., Normal School.
 7—Rochester, N. Y., Women's Industrial and Educational Union.
 12—New York City, National Child Labor Committee.
 14—New York City, Congestion Committee.
 20—Stamford, Conn., Public meeting.
- June 6—Montclair, N. J., First Congregational Church.
 8—Boston, Mass., Conference with Officers of Consumers' League of Massachusetts.
 9—Buffalo, N. Y., National Conference of Charities and Corrections.
 15—Rochester, N. Y., Public meeting.
 18—New York City, Summer School of Philanthropy.
- July 4—Seattle, Wash., First Christian Church.
 11—Seattle, Wash., St. Anne's Congregational Church.
 16—Seattle, Wash., Public meeting, Armory Hall.
 18—Portland, Ore., Unitarian Church.
 Portland, Ore., Presbyterian Church.
 Portland, Ore., Congregational Church.
 19—Portland, Ore., Parlor meeting, home of Mrs. Ballou.
 20—Portland, Ore., Portland Heights Club.
 21—Portland, Ore., Parlor meeting, home of Mrs. Lampson, Wil-
 lamette Heights.
 22—Portland, Ore., Catholic Institute.
 Portland, Ore., Irvington Club.
 Portland, Ore., Presbyterian Church, prayer meeting.

- July 23—Portland, Ore., Conference with League members and business men.
 Portland, Ore., Public meeting, Chamber of Commerce.
- 29—Berkeley, Cal., Hearst Hall, public meeting.
- 31—Berkeley, Cal., Association of Collegiate Alumnae.
- August 2—San Francisco, Cal., Conference with Milk Commission.
 6—San Francisco, Cal., Swastika Club.
 8—Oakland, Cal., Oakland Unitarian Church.
 San Francisco, Cal., California Club.
 10—Palo Alto, Cal., Public meeting.
 11—Palo Alto, Cal., Baptist Church.
 13—San Francisco, Cal., Nurses' Association.
 San Francisco, Cal., Central Labor Council.
 15—Berkeley, Cal., Unitarian Church.
 17—Berkeley, Cal., University—Opening lecture, Miss Peixotto's class.
 20—San Diego, Cal., Public meeting.
 21—Los Angeles, Cal., City Club.
 22—Los Angeles, Cal., Friday Morning Club.
 27—Denver, Colo., National Association Food and Dairy Commissioners' annual meeting.
- October 18—Syracuse, N. Y., Consumers' League.
 19—New York City, State Association of Nurses.
 20—Richmond, Va., National Association of Health Officers.
 21—Troy, N. Y., State Woman Suffrage Association.
 27—New York City, National Child Labor Committee.
 28—New York City, American Association for Labor Legislation.
 New York State Branch annual meeting.
- November 1—New York City, School of Philanthropy.
 3—New York City, State Child Labor Committee.
 4—New York City, School of Philanthropy.
 5—Boston, Mass., Conference with Massachusetts League officers.
 9—New York City, Greenwich House, Conference on Minimum Wage Boards.
 11—New York City, Barnard College.
 12—Harrisburg, Pa., State Federation of Women's Clubs.
 17—Philadelphia, Pa., Consumers' League.
 19—New York City, Teachers' College.
 21—New York City, Pilgrim Church.
 Brooklyn, N. Y., People's Forum.
 22—New York City, Brooklyn Heights School.
 23—Philadelphia, Pa., Friends' School.
 26—New York City, Harlem Liberal Association.
- December 5—Boston, Mass., Woman's Trade Union League.
 6—Boston, Mass., Conference with Labor leaders.

- December 7—Littleton, Mass., Lyceum.
 8—Boston, Mass., School for Social Workers.
 9—Boston, Mass., Conference with officers of Massachusetts Consumers' League.
 12—Warsaw, N. Y., Church Union Meeting.
 16—Rochester, N. Y., Parlor meeting, home of Mrs. Wolf.
 Rochester, N. Y., Social Center, West High School.
 17—Rochester, N. Y., Local Consumers' League.
 Rochester, N. Y., Social Center, East High School.
 18—Rochester, N. Y., Parlor meeting, home of Mrs. Blissell.
 Rochester, N. Y., Social Center.
 19—Rochester, N. Y., People's Sunday Evening.
 20—New York City, Y. W. C. A. Training School for Secretaries.
 New York City, National Child Labor Committee.
 21—New York City, Parents' and Teachers' meeting, Staten Island.

1910.

- January 4—New York City, Meeting at Gainsborough Studios.
 7—New York City, Commission on Unemployment.
 9—Stamford, Conn., Universalist Church.
 12—New York City, Normal College.
 13—New York City, New York Hospital Nurses' Alumnae Association.
 14—Boston, Mass., Faneuil Hall, public meeting of National Child Labor Committee.
 Boston, Mass., University of Boston, evening public meeting.
 15—Elizabeth, N. J., Unitarian Church.
 17—Washington, D. C., Conference with Commissioners on Uniform Legislation.
 18—Washington, D. C., Conference with Commissioners on Uniform Legislation.
 19—New York City, Women's Medical Association.
 20—New York City, Parlor meeting.
 23—New York City, Church of the Ascension.
 25—Wellesley, Mass., Wellesley College.
 27—New York City, Cooper Union—Annual meeting Consumers' League of New York City.
- February 3—Ithaca, N. Y., School of Philanthropy.
 Ithaca, N. Y., Women students public meeting.
 9—New York City, Working Women's Club.
 New York City, Flatbush Unitarian Church.
 11—South Hadley, Mass., Mt. Holyoke College.
 12—New York City, Union Seminary.
 15—Yonkers, N. Y., Annual meeting State Consumers' League.
 Poughkeepsie, N. Y., Public meeting.
 19—Cleveland, Ohio—Annual meeting State Consumers' League.

- February 20—Cleveland, Ohio—Dr. Pratt's Church.
21—Cleveland, Ohio, College for Women, Western Reserve University.
22—Cleveland, Ohio, Executive Board, Consumers' League of Ohio.
23—Cleveland, Ohio, Educational Alliance.
24—Oberlin, Ohio, Public meeting.
25—Oberlin, Ohio, Chapel Service.
Painesville, Ohio, Lake Erie College.
26—Painesville, Ohio, Lake Erie College.
Youngstown, Ohio, League of Clubs.

REPORT OF THE LABEL COMMITTEE

The Label Committee has considered a number of applications for the use of the label. As in previous years, the use of the label has been granted to more manufacturers in Massachusetts than in any other state because the rigid law relating to the working hours of women has there maintained the standard of factories in this respect, and also because the Consumers' League of Massachusetts concentrates its attention more closely upon the label than does any other League.

The application of the Oregon Consumers' League for permission to use the label as a seal on milk bottles was granted on condition that the Oregon Consumers' League guarantee the employment of a veterinarian and a bacteriologist, and also make itself responsible for good working conditions in the dairies. The power thus granted has not been used because the Oregon State, and the Portland municipal officers immediately entered upon a new career of activity.

Beginning January 1, 1911, manufacturers who use the label will be required to have it stitched to garments. Hitherto, in certain cases, labels have been either stamped upon the goods or attached to the garment with paste or pins.

At the request of the Consumers' League of Wellesley College, the following resolution was passed in regard to endorsing the label of the Ladies' Garment Workers' Union:

Be it resolved, That the Label Committee be given power to endorse from time to time (and also to withdraw such endorsement) the label of any Union which may seek such endorsement, in any industry related to the work in which the Consumers' League is engaged, provided that this label covers in its requirements the requirements established for the use of the label of the National Consumers' League.

MANUFACTURERS AUTHORIZED TO USE THE LABEL

Illinois—

- Marshall Field & Co., Chicago, underwear, medium and fine.
- George Lewis, Chicago, underwear, medium and fine.
- A. Roth Chicago, dressing sacques.

Maine—

- The C. F. Hathaway Company, Waterville, fine underwear.

Maryland—

- Mendels Bros., Baltimore, wrappers, kimonos, house suits and waists.
- E. Pohl & Co., Baltimore, corsets.

Massachusetts—

- George G. Bean, Winchester and Quincy, skirts, petticoats, kimonos, house dresses, aprons and dressing sacques.

- Brown, Durrell & Co., Boston, petticoats.
 W. H. Burns Company, Worcester, fine underwear (women's and children's).
 Clark Manufacturing Company, Boston, skirt and stocking supporters.
 Columbia Bathing Suit Company, Boston and Gloucester, bathing and gymnasium suits.
 Continental Waist Company, Boston, ladies' silk and lace waists.
 Elliott Manufacturing Company, Boston, shirtwaists and petticoats.
 Fairmount Underwear Company, Hyde Park, underwear, cheap and medium.
 Davis Frank, Boston, underwear, medium and fine.
 The George Frost Manufacturing Company, Boston, skirt and stocking supporters.
 Green & Green, Worcester, fine underwear.
 The German Embroidery Company, Boston, doing work for the Continental Waist Company.
 Holden-Graves Company, Boston and Gloucester, aprons, tea gowns and wash suits.
 C. F. Hovey & Co., Boston, for order work in their own work-rooms.
 A. Israel, Worcester, underwear, skirts, flannelette gowns.
 Jordan Marsh Company, Boston, for order work in their own work-rooms.
 Mrs. M. E. Kelsey, Boston, Bostonia petticoats.
 Lester, Mintz & Co., Boston, petticoats.
 Lincoln Manufacturing Co., Boston, petticoats and ladies' underwear.
 Natick Underwear Company, Springfield, underwear (women's and children's).
 Priscilla Undermuslin Company, Springfield, undermuslins.
 Meyer Rosenfeld, Boston and Quincy, wrappers, dressing sacques, shirt-waist suits.
 Royal Manufacturing Company, Gloucester, ladies' and misses' wash dresses.
 R. H. Sircom & Co., Melrose, petticoats.
 Sterling Manufacturing Company, Cambridge, skirts, petticoats, underwear, children's dresses and rompers.
 Superior Manufacturing Company, Boston, "Boston Silk Petticoat."
 Westboro Underwear Company, Westboro, underwear, cheap and medium.
 Whitall Underwear Company, Lowell, underwear, medium and fine.

Michigan—

- W. H. Allen Company, Detroit, underwear.
 Crescent Works, Ann Arbor, corsets.
 Jackson Corset Company, Jackson, corsets.
 A. Krolik & Co., Detroit, corsets.
 McGee Brothers Company, Jackson, petticoats.
 Standard Underwear Company, Jackson and Grand Rapids, fine underwear.

New Hampshire—

Ideal Manufacturing Company, Tilton, wrappers, skirts and waists.
Manchester Garment Company, Manchester, petticoats.

New Jersey—

Henry A. Dix & Sons Company, Millville, Carmel and Bridgeton, wrappers, dressing jackets.

New York—

Abramowitz & Brill, New York City, ladies' underwear.
Columbia Skirt Company, }
Gillette Skirt Company, } Cortland, petticoats.
New York Skirt Company, }
Dey Bros. & Co., Syracuse, underwear.
Henry A. Dix & Sons Company, New York City, women's and misses' tub dresses.
M. Wilber Dyer Company, New York City, ladies' underwear.
Elmira Skirt Company, Elmira, petticoats.
Gilbert Manufacturing Company, New York City, petticoats.
Poughkeepsie Queen Undermuslins Company, Poughkeepsie, undermuslins.
Utica Skirt Manufacturing Company, Utica, skirts.
The Wade Company, New York City, corsets.
The Wolf Company, New York City, underwear.

Ohio—

Miss Antoinette Rouland, Cleveland, aprons.

Pennsylvania—

Middendorf Bros., Philadelphia, fine underwear.
A. L. Samuels, Philadelphia, petticoats.
J. B. Sheppard & Sons, Philadelphia, fine underwear.

Rhode Island—

W. H. Anderson & Co., Providence, underwear.
The Keach & Brown Company, Valley Falls, fine underwear, curtains.

Vermont—

Brandon Garment Company, Brandon, wrappers.
Brown, Durrell & Co., Chester, wrappers, house dresses, waists, etc.
Richmond Underwear Company, Richmond, children's drawers and waists.

Wisconsin—

Leona Garment Company, La Crosse, three-piece undergarments.
Western Underwear Company, Oshkosh, underwear, all grades.

REPORT OF THE COMMITTEE ON LEGISLATION AND THE LEGAL DEFENSE OF LABOR LAWS

By the Secretary, MISS JOSEPHINE GOLDMARK.

During the past year, the Secretary has continued her investigation into the literature of fatigue and working hours. This was undertaken to supplement and complete the opinions and statistics on overwork collected two years ago for the brief in defense of the Oregon ten hours Law before the United States Supreme Court. The Russell Sage Foundation has, to date, given the sum of \$2,500 for salaries of readers and clerical work to carry on this investigation.

The first practical use of the results of this study was in defense of the Illinois ten hours case, for which a brief of 600 pages was prepared by the Secretary of this Committee, under the direction of Mr. Louis D. Brandeis, of Boston. In September, 1909, Judge Tuthill, of the Circuit Court of Cook County, issued an injunction, enjoining the chief factory inspector, Mr. E. T. Davies, and the state's attorney, Mr. W. E. Wayman, from enforcing the newly-enacted law. This law prohibited the employment of women in mechanical establishments, factories and laundries more than ten hours in one day.

In accordance with the object for which this Committee was formed, the defense of labor laws, the Secretary communicated at once last September with the Illinois officials and with representatives of various Illinois civic organizations.

The gratuitous services of Mr. Louis Brandeis, of Boston, were obtained for the State of Illinois, as we had previously secured his services for the State of Oregon in the ten hours case before the United States Supreme Court in 1908. Later, through the good offices of the Illinois Section of the American Association for Labor Legislation, the services of Mr. W. C. Calhoun, then newly appointed ambassador to China, were also obtained in defense of the law. The National Consumers' League, by enlisting the volunteer aid of distinguished counsel in these two Oregon and Illinois cases, obscure in importance at the time, has set a new standard in the defense of labor laws before the courts.

The far-reaching effect of the favorable Oregon decision, which settled for all time the right of a state under the federal constitution to protect its laboring women from overwork, is shown by the large number of states which have legislated in regard to women's hours during the past two years since the decision was rendered. In the East such laws have been passed or amended in Connecticut, Maine, Massachusetts and Rhode Island; in the West, in Illinois, Michigan, Minnesota, Montana and Missouri, Oregon and Arizona; and in Louisiana and South Carolina in the South. In some of these states there had been no previous restriction upon the working hours

of women; that is, in Illinois, Michigan, Minnesota, Missouri, Montana (telephone operators now protected) and Arizona (laundry workers now protected).

It is estimated that the favorable Illinois decision handed down April, 1910, sustaining the Illinois ten hours law, will free from overstrain 50,000 women now working upwards of ten hours a day and many more who are impressed into overtime work at rush seasons.

During the past year other cases affecting the constitutionality of laws limiting women's hours of labor have arisen in Virginia, Missouri, Michigan and Louisiana. In all of these cases copies of the Illinois brief were supplied by this Committee. In Virginia the constitutionality of the law was sustained by the lower courts and the Virginia Supreme Court dismissed the writ of error on which it was sought to appeal the case. In Michigan, the case is still pending. In Louisiana the law was sustained.

SPECIAL FUND FOR THE ILLINOIS CASE.

The heavy expense incurred by this Committee in printing at short notice the 600-page brief in defense of the Illinois case, was met by raising a special fund. Appeals for contributions were sent to individual persons in various cities; several State Consumers' Leagues contributed direct; while two other interested organizations helped to complete the fund, viz., the Illinois Section of the American Association for Labor Legislation, and the Illinois Woman's Trade Union League. Grateful acknowledgment is made to Mr. Pierre Jay, of New York, for acting as Treasurer. The donations, arranged by states, follow:

New York	\$285.00
Massachusetts	420.41
Illinois	330.00
Illinois Branch American Association for Labor Legislation	450.00
Illinois Woman's Trade Union League.....	100.00
Pennsylvania	321.50
Ohio	100.00
Oregon	50.00
New Jersey	15.00
Maryland	10.00
Wisconsin	10.00
Texas	1.00
Sale of briefs	31.95
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	\$2,532.86

PIERRE JAY, Treasurer.

DECISION OF THE SUPREME COURT OF ILLINOIS.

OPINION FILED APRIL 21, 1910

Appeal from Circuit Court of Cook County

W. C. RITCHIE & Co., a corporation, *et al.*, Appellees, *vs.* JOHN E. W. WAYMAN, *et al.*, Appellants.

TEN HOUR LAW FOR WOMEN CONSTITUTIONAL.—“An act to regulate and limit the hours of employment of females in any mechanical establishment or factory or laundry in order to safeguard the health of such employees; to provide for its enforcement and a penalty for its violation” (1909 Hurd, p. 1109) which limits the time to ten hours in any one day in which a female shall work in such establishments is constitutional in all of its particulars and as an entirety. It is a legitimate exercise of the police power of the state, is not amenable to the objection that it is special legislation; 1, in singling out the business of those persons who are conducting mechanical establishments or factories or laundries; 2, in dividing men and women into classes; 3, in dividing women into two classes.

Mr. Justice Hand delivered the opinion of the court:

This was a bill in chancery filed in the Circuit Court of Cook County by the appellees, W. C. Ritchie & Co., an Illinois corporation, and W. E. Ritchie, its president and general manager, and Anna Kusserow and Dora Windeguth, two of the employees of said corporation, against the appellants, John E. W. Wayman, as state's attorney for Cook County, and Edgar T. Davies, chief state factory inspector for the State of Illinois, to enjoin the enforcement against W. C. Ritchie & Co., and its officers and employees, and all persons similarly situated in the State of Illinois who may become parties to this suit, of “An act to regulate and limit the hours of employment of females in any mechanical establishment or factory or laundry in order to safeguard the health of such employees; to provide for its enforcement and a penalty for its violation.”

The bill avers that W. C. Ritchie & Co., an Illinois corporation, is engaged in the city of Chicago in the business of manufacturing paper boxes, paper box machinery, etc., and that W. E. Ritchie is the president and general manager of said corporation; that Anna Kusserow and Dora Windeguth, who are citizens of the United States and are of the ages of forty-five and thirty-two years, respectively, are in the employ of W. C. Ritchie & Co., in its business of manufacturing paper boxes, paper box machinery, etc., and that they have each been so employed for many years, and sets forth in detail the services which they each perform in said business. It is also averred that W. C. Ritchie & Co. have in their employ in said business, in addition to Anna Kusserow and Dora Windeguth, seven hundred and fifty females, and that during the rush season in said business, and to enable said corporation to fill its orders and comply with its contracts, it is necessary that its female employees work more than ten hours per day. It is also averred that W. E. Ritchie, as general manager of said corporation, and with the knowledge and consent of said corporation, has employed and allowed an adult

female to work in said business of manufacturing paper boxes, paper box machinery, etc., more than ten hours in one day. It is also averred that the said paper box factory is situated in a well lighted, heated and ventilated building and that the conditions surrounding its employees while at work are sanitary and healthful. It is also averred that the defendants, John E. W. Wayman, as state's attorney, and Edgar T. Davies, as chief state factory inspector, have instituted proceedings against W. E. Ritchie and the corporation for a violation of said act, which act, exclusive of the title, reads as follows:

"Section 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly: That no female shall be employed in any mechanical establishment or factory or laundry in this state more than ten hours during any one day. The hours of work may be so arranged as to permit the employment of females at any time so that they shall not work more than ten hours during the twenty-four hours of any day.

"Sec. 2. Any employer who shall require any female to work in any of the places mentioned in section 1 of this act, more than the number of hours provided for in this act, during any day of twenty-four hours, or who shall fail, neglect or refuse so to arrange the work of females in his employ that they shall not work more than the number of hours provided for in this act, during any one day, or who shall permit or suffer any overseer, superintendent or other agent of any such employer to violate any of the provisions of this act, shall be guilty of a misdemeanor and upon conviction thereof, shall be fined for each offense in a sum of not less than \$25 or more than \$100.

"Sec. 3. The state department of factory inspection shall be charged with the duty of enforcing the provisions of this act and prosecuting all violations thereof.

"Sec. 4. All acts and parts of acts in conflict herewith are hereby repealed."—Approved June 15, 1909; in force July 1, 1909. (Laws of 1909, p. 212.)

It is also averred that said act is unconstitutional and void, and the prayer of the bill is that the defendants be enjoined from enforcing the provisions of said act as against the complainants.

The defendants interposed a demurrer to said bill, which was overruled, and the defendants having elected to stand by their demurrer, the court entered a decree perpetually enjoining the defendants from enforcing against the complainants, and against all other persons who are similarly situated and who may intervene in this cause, any of the provisions of said act, and the defendants have prosecuted an appeal to this court.

The case of *People vs. Bowes-Allegretti Co.*, in which a judgment of conviction for the violation of said act has been entered against the defendants by the Municipal Court of Chicago and which case is now pending in this court upon writ of error, has, upon the joint motion of the parties to that case, been consolidated with this chancery suit, and that case was argued orally with the chancery suit and submitted upon the briefs filed in the chancery suit. The question of the jurisdiction of a court of chancery to entertain the bill filed in this case has not been raised in the court below.

and has not been raised in this court. We will therefore consider the errors assigned upon the records filed in the chancery suit and in the criminal case together and file but one opinion in the consolidated case.

The object of this litigation is to test the constitutionality of the act of 1909, which is generally referred to as the Woman's Ten Hour Law, and the various contentions of the parties will be taken up and will be disposed of so far as we think their consideration necessary for a proper disposition of the question involved.

It is first contended that the act of 1909, known as the Woman's Ten Hour Law, is in conflict with section 2 of article 2 of the constitution of 1870, which provides that "no person shall be deprived of life, liberty or property, without due process of law," in this: that it deprives W. C. Ritchie & Co. of the right to freely contract with its female employees and the right of its female employees to freely contract with W. C. Ritchie & Co. for their labor,—a property right,—by prohibiting adult female employees from agreeing to work, and from working, more than ten hours in any one day in the business of manufacturing paper boxes, paper box machinery, etc., as that business is carried on by W. C. Ritchie & Co. in the city of Chicago.

The legislation passed in comparatively recent years in this state, and in general by the states of the Union, has emancipated women, so that they now have the right to contract substantially as do men. It has been held by the Supreme Court of the United States in *Lochner vs. New York*, 198 U. S. 45, that a law prohibiting men from working in bakeries more than ten hours a day, or sixty hours in a week, was an arbitrary interference with the freedom of contract guaranteed by the fourteenth amendment to the Constitution of the United States, which amendment is substantially the same, so far as it guarantees to the citizen the right of freedom of contract, as is the provision of our state constitution heretofore quoted. It was conceded upon the oral argument by appellants, that if the statute now under consideration had been passed with a view to limit the employment of men in mechanical establishments, factories or laundries to ten hours during any one day it would be an arbitrary interference with the right of men to contract for their labor and unconstitutional and void. If, therefore, such an enactment would be void as to men, does it necessarily follow that such enactment must be held invalid when by its express language the enactment is limited to women, as is the statute now under consideration? This court has recently held that the disposition of property may be limited or regulated when the public interest requires that its disposition should be limited or regulated. (*City of Chicago vs. Schmidinger*, 243 Ill. 167.) If, therefore, the public interest requires that the time which women shall be permitted to work in any mechanical establishment or factory or laundry should be limited to ten hours in any one day, we are unable to see why this statute is not constitutional.

The right of the individual to contract with reference to labor is held inviolable under the constitution on the ground that the privilege of contracting with reference to labor is a property right, within the purview of the constitution. (*Frorer vs. People*, 141 Ill. 171.) There inhere in the

state, however, certain sovereign powers, among which powers is that characterized as the police power, which, when broadly stated, is that power of the state which relates to the conservation of the health, morals and general welfare of the public, and the property rights of the citizen are always held and enjoyed subject to the reasonable exercise of the police power by the state. If this statute can be sustained, it must be sustained, we think, as an exercise of the police power. In *City of Chicago vs. Bowman Dairy Co.*, 234 Ill. 294, it was said (p. 297): "The police power is said to be an attribute of sovereignty and to exist without any reservation in the constitution, and to be founded upon the duty of the state to protect its citizens and to provide for the safety and good order of society." In *McPherson vs. Village of Chebanse*, 114 Ill. 46, an ordinance prohibiting persons from keeping open their places of business in a city or village for the purpose of vending goods, wares and merchandise on Sunday was sustained as a proper exercise of the police power. In *Booth vs. People*, 186 Ill. 43, section 130 of the Criminal Code, which declares grain option contracts to be gambling contracts, was held to be a valid police regulation. In *City of Chicago vs. Gunning System*, 214 Ill. 628, on page 635, it was said: "The police power of the state is that inherent or plenary power which enables the state to prohibit all things hurtful to the comfort, safety and welfare of society, and may be termed 'the law of overruling necessity.'" (*Town of Lake View vs. Rosehill Cemetery Co.*, 70 Ill. 191; *Wabash, St. Louis and Pacific Railway Co. vs. People*, 105 *id.* 236.) Anything which is hurtful to the public interest is subject to the police power and may be restrained or prohibited in the exercise of that power. (*Dunne vs. People*, 94 Ill. 180; *Cole vs. Hall*, 103 *id.* 30; *Harmon vs. City of Chicago*, 110 *id.* 400.) All rights, whether tenable or untenable, are held subject to this police power.—*Northwestern Fertilizing Co. vs. Village of Hyde Park*, 70 Ill. 634." In *City of Chicago vs. Bowman Dairy Co. supra*, it was held the regulation of the sale of milk and cream in bottles and glass jars by a city was a proper exercise of the police power, and in *City of Chicago vs. Schmidinger, supra*, that the bread ordinances of the city of Chicago, which fixed the size of loaves and regulated the sale of bread, were a valid exercise of the police power.

From the examples above referred to, found in adjudicated cases, it will be seen that the police power is a very broad power, and may be applied to the regulation of every property right so far as it may be reasonably necessary for the state to exercise such power to guard the health, morals and general welfare of the public. It is known to all men (and what we know as men we cannot profess to be ignorant of as judges) that woman's physical structure and the performance of maternal functions place her at a great disadvantage in the battle of life; that while a man can work for more than ten hours a day without injury to himself, a woman, especially when the burdens of motherhood are upon her, cannot; that while a man can work standing upon his feet for more than ten hours a day, day after day, without injury to himself, a woman cannot, and that to require a woman to stand upon her feet for more than ten hours in any one day

and perform severe manual labor while thus standing, day after day, has the effect to impair her health, and that as weakly and sickly women cannot be the mothers of vigorous children, it is of the greatest importance to the public that the state take such measures as may be necessary to protect its women from the consequences induced by long continuous manual labor in those occupations which tend to break them down physically. It would therefore seem obvious that legislation which limits the number of hours which women shall be permitted to work to ten hours in a single day in such employments as are carried on in mechanical establishments and laundries would tend to preserve the health of women and insure the production of vigorous offspring by them and would directly conduce to the health, morals and general welfare of the public, and that such legislation would fall clearly within the police power of the state. Legislation limiting the number of hours which women shall work in establishments similar to those enumerated in the statute now under consideration to a period of not more than ten hours in any one day has been sustained in *Muller vs. Oregon*, 208 U. S. 412; *State vs. Miller*, 48 Ore. 252 (120 Am. St. Rep. 805); *Wenham vs. State*, 58 L. R. A. (Neb.) 825; *Commonwealth vs. Hamilton Manf. Co.*, 120 Mass. 383, and *Washington vs. Buchanan*, 59 L. R. A. (Wash.) 342.

We are of the opinion the statute limiting the time to ten hours in any one day in which a female shall work in any mechanical establishment or factory or laundry is a legitimate exercise of the police power of the state.

It is next contended that the act in question is special legislation, in this: First, that it singles out the business of those persons who are conducting mechanical establishments or factories or laundries and prohibits the employment of females in those establishments for a longer time than ten hours in any one day, while other establishments engaged in substantially the same business are permitted to employ females any number of hours in one day; second, that it has the effect to divide men and women into classes; and third, that after women have been set aside as a class, to then divide women into two classes—that is, that women who work in mechanical establishments or factories or laundries are only permitted to work ten hours in any one day and that women who are not employed in mechanical establishments, factories or laundries are permitted to work any number of hours in any one day,—is special and class legislation and unconstitutional and void.

The business places which are enumerated by the statute,—that is, mechanical establishments, factories and laundries,—form a class by themselves, and differ from mercantile establishments, hotels, restaurants, etc., in this: that the product of those establishments enumerated in the statute is largely produced by machinery, or the employees of such establishments work with machinery, or the pace at which the employees work in such establishments is set by other employees who work with machinery. It would seem, therefore, that the legislature has not arbitrarily carved out a class of establishments in which women whose time of employment is limited to ten hours a day are at work, but that the line of demarkation between the establishments to which the ten hour limit applies and those to which it does not apply is clearly defined. In *Hawthorn vs. People*, 109 Ill. 302, the

court said (p. 311): "It [the statute] embraces all persons in the state similarly engaged. If all laws were held unconstitutional because they did not embrace all persons, few would stand the test. . . . A law is general, not because it embraces all of the governed, but that it may, from its terms, when many are embraced in its provisions, and all others may be when they occupy the position of those who are embraced." In *Gundling vs. City of Chicago*, 176 Ill. 340, it was held that the city might regulate the sale of cigarettes, and that the law was not special legislation by reason of the fact that it did not require a license of all persons who sold tobacco in the city. In *City of Chicago vs. Bowman Dairy Co.*, *supra*, it was held that the city might regulate the sale of milk and cream in bottles or glass jars without the ordinance being subject to the objection of being special legislation because all persons who sold milk or cream in the city did not fall within the terms of the ordinance. We do not think the statute objectionable on the ground that it amounts to special legislation.

We have already pointed out that the physical structure and maternal functions of women place them at such a disadvantage in the struggle for existence as to form a substantial difference between the sexes,—a difference which, in our judgment, is of such a substantial character as to form a basis for legislation without making the legislation subject to the objection that it was not a proper exercise of the police power. The differences existing between the sexes has often formed the basis of a classification, upon which to found legislation. It is this distinction, when used as a basis for legislation, which authorizes legislation exempting women from military and jury service and from working upon the public highways or working in mines, and which permits men to enjoy, alone, the elective franchise and to hold public office, and fixes their status as the head of the family in exemption and homestead laws.

As to the third objection, that women by the act are divided into two classes,—that is, those whose service is limited to a ten-hour day and those whose service is not thus limited,—we have also already suggested the answer to this contention, namely, that those women whose service is limited to a ten-hour day work in establishments whose product is produced by machinery, or whose employees work with machinery, or the pace at which such employees work is set by other employees who work with machinery. We think that women thus situated, while at work, are under a pressure and spur which is much more likely to drive them to over-exertion when exhausted by long continued effort and thereby to impair their health, than are their more favored sisters likely to be driven who are engaged in an employment which is not forced at all times up to the limit of production by the agencies of steam, electricity or other motor power when applied to machinery. There is, therefore, we think, an obvious and clear distinction between the two classes of women when working in the class of employment covered by the statute and in other vocations of life, by reason of their environment when at work. It is well settled that legislation which applies only to a certain class of citizens is not, under all circumstances, class legislation. A law that is made applicable to only one class of citizens, how-

ever, must be based upon some substantial difference between the situation of that class and other individuals to which it does not apply. Here we think that substantial difference exists. (*Harding vs. People*, 160 Ill. 459; *Gillespie vs. People*, 188 *id.* 176; *Horwich vs. Walker-Gordon Laboratory Co.*, 205 *id.* 497; *Starne vs. People*, 22 *id.* 189; *Jones vs. Chicago, Rock Island and Pacific Railway Co.*, 231 *id.* 302.) We, therefore, conclude the act now under consideration not subject to the objection that it is class legislation because it does not apply to all women who perform manual labor.

It is contended by appellees that the cases *Ritchie vs. People*, 155 Ill. 98. *People vs. Williams*, 189 N. Y. 131 (81 N. E. Rep. 778), and *Burcher vs. People*, 41 Colo. 495 (124 Am. St. Rep. 143), hold that legislation similar to the Illinois act of 1909, is unconstitutional. The Colorado statute considered in *Burcher vs. People*, provided: "No woman of sixteen years of age or more shall be required to work or labor for a greater number than eight hours in the twenty-four-hour day in any mill, factory, manufacturing establishment, shop or store, for any person, agent, firm, company, co-partnership or corporation, where such labor, work or occupation, by its nature, requires the woman to stand or be upon her feet in order to satisfactorily perform her labors, work or duty in such occupation or employment." The defendant was convicted in the trial court, under this statute, for employing a woman in his laundry in the city of Denver to work for more than eight hours per day. The case went to the Supreme Court and was there reversed on two grounds: First, that the subject matter of the section under which the conviction was had was not "clearly or at all" expressed in the title of the act; and secondly, the General Assembly had not, in the act then under consideration or elsewhere, declared or considered the laundry business an occupation or labor therein injurious or dangerous to health, life or limb, which was held to be an essential condition precedent to the validity of an enactment of this character, whether it was based upon the eight-hour amendment to the constitution adopted in 1902, or upon the general unwritten police power of the state. It will, therefore, be seen that the *Burcher* case is not an authority either as to the validity or invalidity of a statute limiting the number of hours which women shall be permitted or required to work in any one day, as the validity of the statute, in so far as it prohibited women from working more than eight hours in any one day, was not considered or decided in that case.

In *People vs. Williams*, the statute which the defendant was charged with having violated provided that "no minor under the age of eighteen years, and no female, shall be employed, permitted or suffered to work in any factory in this state before six o'clock in the morning or after nine o'clock in the evening of any day, or for more than ten hours in any one day except to make a shorter work day on the last day of the week, or for more than sixty hours in any one week, or more hours in any one week than will make an average of ten hours per day for the whole number of days so worked." The charge upon which the defendant was convicted was that a woman, twenty-one years of age, was employed, permitted and suf-

ferred to work by the defendant in his book-binding establishment in the city of New York at twenty minutes after ten o'clock in the evening. This case, it will also be observed, does not consider or pass upon the validity of that portion of the statute which makes it unlawful to permit or suffer a woman to work in any of the prohibited employments more than ten hours per day, and the court limited, in express terms, the decision to the validity of that portion of the act which prohibited a woman from working before six o'clock in the morning or after nine o'clock in the evening, and held a statute which prohibited a woman from working in the prohibited employment between nine o'clock p. m. and six o'clock a. m. of any day was not a valid exercise of the police power of the state but was an infringement on the constitutional right of contract. The court, in the course of its opinion, in order, doubtless, that it might not commit itself to the view that the last clause,—that is, the ten-hour clause—of the statute was invalid, say: "It is to be observed that it [the portion of the statute under consideration] is not a regulation of the number of hours of labor for working women. The enactment goes far beyond this. It attempts to take away the right of a woman to labor before six o'clock in the morning or after nine o'clock in the evening, without any reference to other conditions. . . . She is prevented, however willing, from engaging herself in a lawful employment during the specified periods of the twenty-four hours. Except as to women under twenty-one years of age this was the first attempt on the part of the state to restrict their liberty of person or their freedom of contract in the pursuit of a vocation. I find nothing in the language of the section which suggests the purpose of promoting health, except as it might be inferred that for a woman to work during the forbidden hours of night would be unhealthful. If the inhibition of the section in question had been framed to prevent the ten hours of work from being performed at night or to prolong them beyond nine o'clock in the evening, it might more readily be appreciated that the health of women was the matter of legislative concern. That is not the effect nor the sense of the provision of the section with which, alone, we are dealing. It was not the case upon which this defendant was convicted. If this enactment is to be sustained, then an adult woman, although a citizen, and entitled, as such, to all the rights of citizenship, under our laws, may not be employed nor contract to work in any factory for any period of time, no matter how short, if it is within the prohibited hours,—and this, too, without any regard to the healthfulness of the employment. It is clear, as it seems to me, that this legislation cannot, and should not, be upheld as a proper exercise of the police power." It would seem, therefore, that this case cannot be relied upon legitimately to sustain the position that a statute limiting the hours in which women may work in mechanical establishments or factories or laundries to ten hours in any one day would be unconstitutional.

The statute considered in *Ritchie v. People* is entitled "An act to regulate the manufacture of clothing, wearing apparel, and other articles in this state, and to provide for the appointment of state inspectors to enforce the same, and to make an appropriation therefor." (Laws of 1893, p. 99.) The

section of the act which is material to the consideration of the question now in hand, and which was held unconstitutional, was section 5, and reads as follows: "No female shall be employed in any factory or workshop more than eight hours in any one day or forty-eight hours in any one week." It will be seen from a comparison of the act of 1893 with the act of 1909 that they differ in two particulars: First, as was observed in the Williams case, there is nothing in the title of the act of 1893, or in the act itself, which indicates or suggests that the act was passed for the purpose of promoting the health of women, except as might be inferred from the provisions of section 5, that it might be conducive to the health of women to prohibit them from working more than eight hours in any one day, while the act of 1909 expressly provides in its title that the limitation upon the number of hours which women shall be required or permitted to work in mechanical establishments or factories or laundries is passed with the view "to safeguard the health of such employees." This difference between the acts may not be so material but that if this were the only difference it might be difficult to differentiate the Ritchie case satisfactorily from the case at bar. The second proposition upon which the cases differ is this: The act of 1893 provides for an eight-hour day while the act of 1909 provides for a ten-hour day in which women shall be permitted to work in mechanical establishments or factories or laundries. Can it be said if the limitation upon the number of hours which women were permitted to work in the designated callings in the act of 1893 had been fixed at ten hours instead of eight hours the court would have held the act unconstitutional as an unreasonable exercise of the police power of the state or that the act would have been held obnoxious to the constitution as special or class legislation? We do not think it can be so said, as there is throughout the opinion a veiled suggestion which indicates that it was the opinion of the court that the limitation of the right to work longer than eight hours was an unreasonable limitation upon the right to contract, while the right to contract for a longer day, at least under some circumstances, might be a valid limitation upon the right of contract. To emphasize this view we here set out certain excerpts from that opinion. On page 113 the court say: "Inasmuch as sex is no bar, under the constitution and the law, to the endowment of woman with the fundamental and inalienable rights of liberty and property, which include the right to make her own contracts, the mere fact of sex will not justify the legislature in putting forth the police power of the state for the purpose of limiting her exercise of those rights, unless the courts are able to see that there is some fair, just and reasonable connection between such limitation and the public health, safety or welfare proposed to be secured by it." And again, on page 114: "There is no reasonable ground—at least none which has been made manifest to us in the arguments of counsel—for fixing upon eight hours in one day as the limit within which woman can work without injury to her physique, and beyond which, if she work, injury will necessarily follow. But the police power of the state can only be permitted to limit or abridge such a fundamental right as the right to make contracts, when the exercise of such power is necessary to promote the health, comfort, welfare or safety of society or

the public." And again, on page 115: "Tiedeman, in his work on Limitations of Police Power, says: 'In so far as the employment of a certain class in a particular occupation may threaten or inflict damage upon the public or third persons, there can be no doubt as to the constitutionality of any statute which prohibits their prosecution of that trade.'" And again, on page 117, quoting from *In re Jacobs*, 98 N. Y. 98: "When a health law is challenged in the courts as unconstitutional on the ground that it arbitrarily interferes with personal liberty and private property without due process of law, the courts must be able to see that it has at least in fact some relation to the public health, that the public health is the end actually aimed at, and that it is appropriate and adapted to that end." And the court, on page 113, also quote without dissent the following paragraph from Cooley on Constitutional Limitations, that "some employments . . . may be admissible for males and improper for females, and regulations recognizing the impropriety and forbidding women engaging in them would be open to no reasonable objection." We therefore repeat what we have once said, that it is not at all clear that the court, in rendering the opinion in the *Ritchie* case, where an eight-hour day was held to be unconstitutional, was of the opinion a statute fixing a ten-hour day in which women might work would be unconstitutional.

In the Oregon case the statute which was approved by the Supreme Court of Oregon, and afterwards by the Supreme Court of the United States, fixed the time which women should be permitted to work in any one day at ten hours. The Massachusetts statute approved in *Commonwealth vs. Hamilton Manf. Co.* *supra*, limited the number of hours which women should be permitted to work in any one day to ten hours. The Nebraska statute passed upon in the *Wenham* case also limited the number of hours which women should be permitted to work in one day to ten hours, and the Washington statute passed upon in the *Buchanan* case limiting the number of hours which women should be permitted to work in any one day to ten hours, and the same number of hours was fixed by the New York statute referred to in *People vs. Williams*, *supra*.

We think the general consensus of opinion, not only in this country but in the civilized countries of Europe, is, that a working day of not more than ten hours for women is justified for the following reasons: (1) The physical organization of woman; (2) her maternal functions; (3) the rearing and education of children; (4) the maintenance of the home; and these conditions are so far matters of general knowledge that the courts will take judicial cognizance of their existence. (*Muller vs. Oregon*, *supra*.) We are of the opinion that a statute prohibiting women from working in a mechanical establishment or factory or laundry more than ten hours in any one day is not an arbitrary or unreasonable limitation upon the right of women to contract. Surrounded as women are by the changing conditions of society and the evolution of employment which environs them, we agree fully with what is said by the Supreme Court of Washington in the *Buchanan* case: "Law is, or ought to be, a progressive science. While the principles of justice are immutable, changing conditions of society and the evolution of employment

make a change in the application of principles absolutely necessary to an intelligent administration of government. In the early history of the law, when employments were few and simple, the relative conditions of the citizen and the state were different, and many employments and uses which were then considered inalienable rights have since, from the very necessity of changed conditions, been subjected to legislative control, restriction and restraint. This all flows from the old announcement made by Blackstone, that "when man enters into society, as a compensation for the protection which society gives to him, he must yield up some of his natural rights, and as the responsibilities of the government increase and a greater degree of protection is afforded to the citizen, the recompense is the yielding of more individual rights. . . . The changing conditions of society have made an imperative call upon the state for the exercise of these additional powers, and the welfare of society demands that the state should assume these powers, and it is the duty of the court to sustain them whenever it is found that they are based upon the idea of the promotion and protection of society."

The appellees have raised other objections to the constitutionality of the act of 1909 limiting the number of hours which women shall have the right to work in mechanical establishments or factories or laundries to ten hours in any one day. While these objections have not been overlooked, we deem them of too slight importance to justify their discussion in this opinion.

We are of the opinion the act of 1909 is constitutional in all of its particulars and as an entirety.

The decree of the Circuit Court will be reversed.

Decree reversed.

Mr. Justice Vickers dissenting.

REPORT OF COMMITTEE ON INTERNATIONAL RELATIONS

By the Chairman, MR. FRANCIS McLEAN.

The year has been one of adjustments so far as the work of this Committee is concerned. The decision made at Geneva in 1908 in connection with a report made by this Committee, which meant the temporary shelving at least of any proposition looking to an international label, has taken this most pressing question out of the bounds of the activities of this Committee. During the time of its existence this was the one ever burning issue which was continually being pushed by our foreign colleagues.

As yet, no other problem of as high an importance has come to us. Upon the propaganda and educational side further adjustment has been required by reason of the American Association for Labor Legislation getting actively to work. For a long time, it was seriously questioned whether it was necessary for any agency like your Committee to continue the attempt to gather comparative information. It was finally decided, subject to farther change, that we should see if our sphere of usefulness did not lie in the very detailed examination of administrative methods, working intensively. It was then decided that we should endeavor to find some other avenues of discriminating criticism than those employed so far. Despite the remarkable services, which have been rendered by Professor Brunhes and others, the number of trained observers in other countries who will give freely of their time has not increased and our investigations have been practically cut off. In this extremity we approached certain officials in connection with a proposition to suggest the utilization of the United States consular service through the instrumentality of their field reports. So far, no hopeful development can be recorded in this direction. Negotiations are now on foot with the Department of Labor, which are awaiting an opportunity on my part to give enough time to the preparation of a somewhat specializing, yet brief schedule, dealing strictly with certain features of administrative detail in the continental and other countries.

The Movement.

We propose during the coming year to make a complete record of the different lines of activity, which have been successfully carried out by all of the Continental leagues, and the present condition and prospects of each one of the leagues, together with their plans for the future. The slave-grown cocoa incident illustrates the vastly different kinds of work which have been undertaken by our sister societies. Taking the returns of such an inquiry and adding to them the sum total of our successful American experience, will give us a document of a concrete character, which will be of service in spreading the movement. For in this connection the

Committee cannot report that leagues have been newly organized in other than the countries already interested, during the last year. I am firmly convinced also that we do not clearly enough recognize often (and by "we" I mean to refer to the local leagues) the avenues of possible activity which are open to us if we only get out of the rut of assuming that only that thing can be undertaken which has been undertaken before.

Therefore, the Committee believes that it has adjusted itself both with reference to the American field and the continental field, in connection with the creation of the American Association for Labor Legislation and the Geneva decision with which it heartily accords, and hopes to record a fruitful year during the next twelve months.

REPORT OF THE COMMITTEE ON PUBLICATIONS

By the Chairman, MISS JOSEPHINE GOLDMARE.

The investigation of the budgets of working women and girls living away from home, made by Miss Ainslie for the National Consumers' League, has been accepted for publication in "McClure's Magazine," and will appear at an early date. Six selected stories were published by the "Ladies' Home Journal" in November, 1909.

There have also been obtained and distributed the following reprints:

From "Hampton's Magazine," December, 1909, "Women's Demand for Humane Treatment of Women Workers in Shop and Factory," by Rheta Childe Dorr.

From the "Catholic World," July, 1909, "A Legal Minimum Wage," by Rev. John A. Ryan, of St. Paul Seminary.

From the "Survey," January, 1910, "Roving Children."

From the "American Magazine," February, 1910, "Man's Inhumanity to Woman," by Ida M. Tarbell.

Beside the reprint of Father Ryan's article in the "Catholic World," on Minimum Wage Boards, another from the "Quarterly Journal of Economics," May, 1910, contains the text of the British Trade Boards Act, with an introduction by Mr. Arthur Holcombe, a member of the Economics Department of Harvard University, and of the Committee on Minimum Wage Boards of the National Consumers' League.

There is now in preparation a book on Child Laborers in New York City, edited by the General Secretary, which will contain the results of investigations made under her guidance by Miss Margaret W. Browne, Miss Mary Flexner, both of Bryn Mawr College; Miss Mary Van Kleeck, Smith College, and Mrs. Barnwell, of Barnard College.

Of these, all were Fellows of the College Settlements Association except Miss Flexner, who was a resident at the Henry Street Settlement. There will be added a chapter by Miss Odencrantz.

REPORT OF THE COMMITTEE ON LECTURES

By the Chairman, REV. JAMES T. BIXBY.

Since the last annual meeting, I have sent out some thirty letters, asking permission to enter names on our list of men and women in the United States whose helpful spirit makes them willing to address the public in behalf of our work when called upon with due notice and when other engagements do not prevent.

Of these, nine most kindly consent and promise their aid and testimony. Dr. Richard H. Nelson, Bishop Coadjutor of Albany, writes: "I can assure you of my deep interest in the work of the National Consumers' League and of my readiness to speak in its behalf whenever I can."

Rabbi Emil G. Hirsh, of Chicago, writes: "Whatever you may ask of me in the way of addresses on pulpit and platform presentation of the League's aims I shall be most happy to give."

Dr. F. W. Hamilton, President of Tufts College, Massachusetts, is willing to have his name entered in our list and would be glad to help us on public occasions in the neighborhood of Boston.

Dr. George B. Foster, Professor in the University of Chicago, expresses "the hope that we will command him in any way that he may be of service in the great work of the Consumers' League."

Dr. David Philipson, President of the Central Conference of American Rabbis, "will be glad to do anything he can to further the splendid work of the League," and, as far as his engagements permit, he says, "I will gladly place myself at the service of your noble cause."

Dr. Henry H. Stebbins, of the Presbyterian denomination, of Rochester, says: "Count me every time to think and pray and plan and speak for a League that is so imperative in its claims and that has so many phases bearing on social betterment as yours."

Others who have promised to aid us with their voice in pulpit or on the platform are Rev. Dr. Algernon Crapsey, of Rochester; Dr. J. Addison Jones, of the Reformed Church, Albany, N. Y., and Dr. Paul M. Strayer, of the Presbyterian Church, Rochester, N. Y.

REPORT OF THE FOOD COMMITTEE

By the Chairman, MISS ALICE LAKEY.

The slaughter-house and meat inspection bills prepared for the Committee, chiefly through the valuable assistance of Mr. James Bronson Reynolds, now Assistant District Attorney of New York, have been printed. Four thousand documents relating to the subject were issued. The leaflet entitled "The Need of State Meat Inspection Laws" was reprinted at the suggestion of the bulletin of the Pennsylvania Department of Agriculture, that it be sent out as a "missionary tract." This is the address prepared by the chairman and read by Mrs. Kelley at the Denver meeting of the Association of State and National Food Officials, August 27, 1909. A special fund amounting to about \$130.00 to pay for printing and distribution has been raised and placed in the hands of the Treasurer of the Committee, Mr. John Martin.

The proposed model bills are being introduced into the Legislatures of New York and New Jersey.* They are also being considered by other states.

The chief work done by the chairman has been in a campaign directed against the decision as to "what is whiskey?" While the question of whiskey as whiskey does not concern this Committee (the chairman believing that every member of the human race would be better off if its manufacture were stopped), the question of labels on whiskey does concern us, as the enforcement of the Pure Food law will be materially affected by any decision on the labeling of whiskey, contrary to the spirit of the law.

After President Taft's inauguration, the rectifiers were given permission to have the question reopened, "what is whiskey?" this question having been settled before Mr. Roosevelt left the White House by what is known as the Roosevelt-Bonaparte-Wiley decision.

Solicitor-General Bowers handed down his opinion on May 24, 1909; while correct in ruling that neutral spirits was not whiskey, other features of the opinion meant disaster to the law. A campaign of opposition was carried on. Your chairman secured the co-operation of Mrs. Amidon, Chairman Food Sanitation Committee, General Federation of Women's Clubs. About one hundred and fifty letters were sent out by your chairman enclosing a statement citing objections to the Bowers opinion and asking that telegrams or letters be sent to President Taft urging him not to sign the opinion. Among the telegrams sent was one from Dr. Charles A. L. Read, Chairman of the Legislative Committee, American Medical Association. It read, "Official confirmation of the Bowers finding on whiskey would be disastrous in its moral, physical and commercial consequences."

The President did not sign the Bowers opinion, but, on December 27, 1909, issued his own opinion. This is the severest blow ever aimed at the Pure Food law. By its terms neutral spirits is recognized as a like substance

* Bill passed in New Jersey

to whiskey. Following President Taft's opinion, Food Inspection Decision 113 has been issued, permitting alcohol to be colored with burnt sugar and labeled "whiskey," thus completely overturning the Pure Food law. In Sec. 8, paragraph I, an article is adulterated, "If it be an imitation of or offered for sale under the distinctive name of another article."

The new ruling also permits a mixture of neutral spirits and straight whiskey to be labeled "blend" contrary to the Food law which states, Sec. 8, paragraph II—"The term blend as used herein shall be construed to mean a mixture of like substances."

Commissioner Barnard, in a letter to the chairman, February 21, 1910, writes: "If it should be seriously considered by the courts, the principle long ago adopted in establishing standards, that the name of a genuine article could not be given to an imitation, would go by the board and every manufacturer of imitation or adulterated food could put his wares upon the market almost without restriction. I think that under the Indiana law, we could establish the fact that the "government" whiskey is not whiskey if cases were carried to the Supreme Court."

Your Committee has adopted and published in the "Journal of Commerce" and elsewhere a resolution against the use of benzoate of soda in foods.

The Committee has issued a sanitary score card to be used for scoring all places where food is sold, also the Pure Food Don'ts, copies of which can be had on application.

Mr. Edward Hatch, Chairman of the Special Fly Fighting Committee of the American Civic Association, asks for letters from members of the League interested in fighting the fly peril. He writes, "Whatever we can do jointly for the introduction of the leaflets and other similar and popular literature concerning the fly, into the public schools of this and other cities, will be, I am convinced, the most important work at present to be accomplished in behalf of the fly campaign." Mr. Hatch has arranged for the printing of films showing the life history of the fly, how it carries disease by infecting the food supply. These can be used in moving picture shows and are convincing. He invites correspondence on this subject from League members. Mr. Edward Hatch, care Lord & Taylor, New York, N. Y.

Letters from H. H. Langdon or Harris have been received by members of the League. The "Journal of Commerce" of New York has unmasked this man. He is the agent of the Pacific Borax Company, hence his eagerness to extol the virtues of the use of chemical preservatives in foods.

An educational traveling exhibit of misbranded or adulterated foods is now being prepared. Contributions have been received from Dr. Wiley; others will come from State Food officials. This exhibit will be added to Miss Kendall's exhibit of the Consumers' League.

The question of slave-grown cocoa having been brought to the attention of the League by Mr. Burt, the Executive Committee of the National Consumers' League voted (October 15, 1909) to recommend the various branches of the League to do all in their power to put an end to a system of slavery which is a crime against the international conscience, by refusing to consume such product. In reply to a letter asking what firms used slave-grown cocoa,

Mrs. Burt replied, on February 16, 1909, that they were not in a position to give certain information as to what firms use this cocoa, but would give a list of those who do not use it.

Mrs. B. C. Gudden, Chairman of the Pure Food Committee of the Wisconsin Consumers' League, reports the passing of the resolution on labeling of whiskey at the annual meeting of the Wisconsin League, inspections of shops, articles printed in the papers at Oshkosh. Mrs. Gudden also reports members of the Food Committee at Grand Rapids, Whitewater, Sheboygan, Milwaukee, Green Bay, Menomonie. Mrs. Earl Pease, of Grand Rapids, reports good city milk and meat inspection, also scoring of several stores found satisfactory.

Mrs. Carl Stern, President of the Consumers' League of Milwaukee, recommends in her annual report the passage of a meat inspection bill. As the State Legislature is not in session, they have resolved to create public sentiment for this measure. Mrs. Stern reports that Dr. Boding, the efficient health commissioner, thinks the law most needed, but the opposition in the country will be very strong. Through his work only tuberculosis tested milk is supplied. He expects soon to have a decision from the Supreme Court as to the constitutionality of this law.

Mrs. Sherwin, President of the Consumers' League of Massachusetts, reports that they are to begin inspection of bakeries.

The Pure Food Committee of the Consumers' League of New Haven, Miss Rebecca Beach, Chairman, reports that their work has been providing pure modified milk for babies. Thirty-four thousand nursing bottles of modified milk ready to be warmed were distributed to 183 babies, of whom 176 were safely carried through the four hot summer months. This object lesson in nutrition was carried on at an expense of \$873.00, donated by charitable people in the city. Mrs. William Farnam, President of the New Haven League, reports that the New Haven League has twice voted against the use of benzoate of soda in foods, once the vote was signed by fifteen members of the executive council. This League has also voted for uniform meat and slaughter-house inspection laws for all the states as set forth in the model bills drafted for the National Consumers' League. On the question of Mr. Taft's opinion as to the labeling of whiskey, the vote of the New Haven Consumers' League was unanimous that "only pure whiskey should be labeled whiskey."

Mrs. McVickar, Chairman of the Food Committee of the New York State Consumers' League, reports that she accepted the position of chairman of food sanitation committee of Women's Clubs, believing that a closer affiliation of interests could be secured. This has been the case. Mrs. McVickar sent out a circular urging the clubs to work for a model state food law, also for state meat and slaughter-house inspection laws, better sanitation of groceries and dairies, and for covering food from dust and flies. Mrs. McVickar spoke to the Council of Club Presidents, and on other occasions, presenting the League's resolution endorsing Dr. Wiley's work and urging that he be left to continue it untrammelled; she recommended the model meat and slaughter-house inspection bills, distributing copies to mem-

bers present. Work for these measures is to continue this season. Mrs. McVickar also reports a campaign against the fly by the Rochester Consumers' League. She took part in the campaign against the Bowers opinion as to the labeling of whiskey.

The food investigation committee of the New York City Consumers' League, Mrs. William Shailer, Chairman, reports as follows: The year's work has been a continuance of work begun last year—that of investigating grocery stores, vendors' markets, fruit stands and push-carts, with the view to securing better conditions and greater protection to food sold on the street and exposed on sidewalks. Much that is unwholesome and repulsive, if not dangerous to health, has been found in certain sections of the city. The committee held a conference with delegates from the New York Retail Grocers' Union, whom they found in sympathy with their work. It was agreed to ask for help on the part of the Union in interesting customers in cleanly methods wherever maintained, hoping to inspire dealers to institute greater protection from dust and flies.

The Committee has submitted a sanitary rule to the city Health Department on sidewalk displays of foods. Mrs. Shailer reports co-operation in the campaign against the Bowers opinion as to the labeling of whiskey and adoption of the anti-benzoate resolution.

Miss Grace Purdy, Chairman, Mount Vernon (N. Y.) Food Sanitation Committee, reports distribution of Sanitary Maxims to children in cooking class of one public school, and work for clean milk. A woman inspector was engaged as a deputy police of the Board of Health to inspect markets, bakeries and confectionery shops.

The Oregon Food Committee, Chairman Mrs. A. E. Rockey, reports that their work for a year has been almost exclusively for better milk.

The Rhode Island Consumers' League, Miss Alice W. Hunt, Secretary, reports that the anti-benzoate and whiskey labeling resolutions have been unanimously adopted. The report of the investigation made for the Rhode Island League of bakeries and candy shops was published in the "Survey," January 8, 1910. A bill has been introduced in the Legislature to regulate conditions in bakeries and candy shops.

Miss Loewenstein, State Chairman of the Food Committee of the Kentucky Consumers' League, writes that her Committee is to work against the use of benzoate and for the inspection of slaughter-houses. Copies of the anti-benzoate resolution have been distributed.

Miss L. N. Breed, Secretary of the Kentucky Consumers' League, reports that she and Miss Loewenstein hope to get the meat bills introduced in the State Legislature. Miss Breed sends a copy of the regulations for inspection of bakeries and their products adopted by the food division of the State Experiment Station; these regulations have been endorsed by Miss Breed as Chairman of the Food Sanitation Committee of the Kentucky Federation of Women's Clubs.

Miss E. Lodwick, Corresponding Secretary of the St. Louis Consumers' League, reports an unanimous vote not to use slave-grown cocoa; also a vote to adopt the anti-benzoate and whiskey labeling resolutions. The League had an investigation made of candy factories.

REPORT OF THE EXHIBIT COMMITTEE

By the Chairman, MISS EDITH KENDALL.

The Exhibit Committee has had several important meetings in various parts of the country. It has made arrangements to have the Exhibit shown in many places, and if future meetings are as successful as the past ones have been, many new members will be gained.

At one exhibition held at the home of a former member of the Committee, Mrs. Thatcher Brown, Plainfield, N. J., twenty-five new members were added to the League.

The Committee has remodelled and freshened up the Exhibit, and engaged a curator to go around with it and explain it. This lady also investigates conditions, and looks for new material.

REPORT OF THE SPECIAL COMMITTEE ON COLLEGES AND GRADUATES

By the Chairman, MISS ROSAMOND KIMBALL.

Early in October letters were sent to the graduates of Smith College, of the class of 1909, asking them to join the leagues in their own cities, or to organize a league if they lived where there was none. Twenty-one replies were received. Of this number—

Four were unable to help,

Six are going to form new leagues,

Six will join local leagues,

Four, who are teachers, are organizing school leagues, and

One is serving on the Executive Board of the Consumers' League of Providence, R. I. So much for one class in one college.

In order not to have more work than we can do at the outset, we have not written this year to the graduates of other colleges.

A list of suggestions, telling just how to organize leagues in schools and colleges, and how to organize town and city leagues, has been prepared and can be sent to those in need of this information.

The Committee has written to the president of each college league that it holds itself ready to help in any way possible. In order that it may be a clearing house for the exchange of ideas, it has asked the presidents to send reports of their work. This will give each the advantage of the experience of the others.

As one important function of a college league is to educate and equip students for future social and philanthropic work, we have advised the leagues to hold monthly meetings for the discussion of various social problems. A list of subjects has been prepared for these meetings, together with a list of important articles which have appeared in periodicals within the past year. The students are urged to read these, and, in this way, keep in touch with the activities of the Consumers' League in the outside world.

The presidents of the college leagues have been requested to canvass the graduating class in the spring, and send a list of those who will continue their interest in the league after they have left college.

The Consumers' League at Smith College, with the aid of its alumnae, is collecting material with a view to forming a sociological museum. It is hoped that next year some of the other college leagues can be induced to start similar sociological collections.

We have received letters from teachers in schools in Washington, D. C.; Birmingham, Alabama, and Menomonie, Wisconsin, asking for information about the Consumers' League. They have been urged to organize school leagues, and all necessary directions have been sent.

We are also making efforts to organize leagues in the state colleges of

Maryland and Washington. We are hoping to induce students in all the state universities to organize leagues. They will be especially valuable in those states where there is no state league, as the college league will form a center from which the graduates may organize local leagues all over the state. The Committee also take pleasure in announcing that a league has just been started at Radcliffe College.

As the co-operation of the faculty contributes greatly to the stability and value of a college league, it is necessary to enlist their interest as well as that of the student body. Mrs. Manfred Ehrlich has been appointed a member of the Committee to take charge of this part of the work. We are now sending letters to the faculty at the same time that we write to the students of the important colleges of the United States, with a view to inducing them to organize college leagues.

THE CONSUMERS' HEALTH BILL

A BILL FOR A LAW TO PROTECT THE PUBLIC HEALTH, BEING CHAPTER, ETC.

Section 1. In any city of the first class within this state it shall be the duty of the owner of goods, materials and merchandise to protect, as hereinafter set forth, said goods, materials and merchandise from exposure to vermin and to germs of tuberculosis, syphilis, scarlet fever, smallpox, chicken-pox, leprosy, ophthalmia, scabies, ringworm, typhoid fever and all other contagious and infectious diseases whereby said goods, materials and merchandise may subsequently become vehicles for conveying said germs among the public.

Sec. 2. In any city of the first class within this state every person, firm or corporation engaged in the manufacture of any goods, materials or merchandise shall provide wholesome workrooms and storage accommodations free from vermin and infection or contagion for all said goods, materials and merchandise in all stages and processes of manufacture, storage and preparation for sale.

Sec. 3. Whenever any person, firm or corporation or agent or manager of any corporation shall, for the purpose of completing in whole or in part any process of manufacture of any goods, materials or merchandise, take, send or permit to be taken or kept or conveyed such goods, materials or merchandise away from the principal place of business of such person, firm or corporation, or from any factory, workshop, store or place of storage, controlled in whole or in part by such person, firm or corporation, said person, firm or corporation, agent or manager of said corporation shall for the purposes of this act continue to be responsible for the healthful surroundings of said goods, materials and merchandise and for the exposure thereof to the presence of vermin and of germs of any contagious or infectious disease exactly as if said goods, materials or merchandise had remained in said principal place of business.

Sec. 4. Whenever any goods, materials or merchandise shall be in the custody of any contractor, not the person, firm or corporation owning said goods, such contractor shall, for the purposes of this act, be deemed to be the agent of such owners.

Sec. 5. For the purpose of identification all goods, materials, or merchandise sent, taken or permitted to be conveyed away from the principal place of business of the owner of such goods, materials or merchandise, for the purpose of manufacture in whole or in part, shall first be marked by the owner with the correct full name and address of the owner printed in the English language and easily legible. In case any article is so small or otherwise of such nature that it cannot be marked as hereinbefore prescribed, such article shall be conveyed in a suitable receptacle large enough to carry

such marking, and such receptacle, so marked, shall be kept in the workrooms and shall be produced and shown upon demand made by any inspector of the Board of Health, or any inspector of the State Department of Labor, and the presence of such mark shall be *prima facie* evidence of the ownership of said goods, materials or merchandise by the person, firm or corporation named on such receptacle.

Sec. 6. Any goods, materials or merchandise found in violation of the provisions of this act by any inspector of the Board of Health, or of the State Department of Labor, in any place other than the principal place of business of said owner, shall be seized by the Board of Health and fumigated or otherwise cleansed and held until such owner shall claim such goods, materials or merchandise and shall pay such reasonable fee as may be prescribed for such service by the Board of Health.

Sec. 7. Every workroom and every place used for storage to which such goods, materials, or merchandise are taken, sent or permitted to be conveyed, or in which they may be kept, away from the principal place of business of such owner, shall be subject to the same requirements as to inspection, cubic air space, light, cleanliness, ventilation and sanitation as are now prescribed by law for factories and tenant factories, and in no case shall any such workroom or place used for storage be used for sleeping by day or by night by any person, nor shall any such workroom contain any bed, sofa, couch, mattress, pillow or other furnishing adapted to the use of persons in sleeping.

Sec. 8. The word manufacture wherever used in this act shall be taken to mean any process of making, altering, repairing, sewing, sorting, drying, picking, packing, storing, dyeing or cleaning in whole or in part any article whatsoever, not for the immediate personal use of the owner, or his family.

Sec. 9. The word workroom wherever used in this act shall be taken to mean any room in which goods, materials or merchandise shall be subjected in whole or in part to any process of making, altering, repairing, sewing, sorting, drying, picking, packing, storing, dyeing or cleaning whatsoever, not for the immediate personal use of the owner, or his family.

Sec. 10. Nothing herein contained shall be construed to cancel or abridge any power or duty now pertaining to the state inspectors of factories.

All acts or parts of acts which conflict with this act are hereby repealed (specific sections to be inserted later).

Sec. 11. *Penalty.* Every person, firm or corporation, agent, manager or contractor for a corporation who shall violate or fail to comply with any of the provisions of this act shall be guilty of a misdemeanor and shall for each violation pay a fine of not less than \$50 or stand committed, each day to constitute a separate violation.

Sec. 12. It shall be the duty of the Department of Health to enforce the provisions of this act.

TREASURER'S REPORT
REPORT OF CASH RECEIPTS AND DISBURSEMENTS

January 1 to December 31, 1909

RECEIPTS

<i>New York—</i>			
Special appeal	\$1,875 25		
Contributions	2,768 00		
Quota	166 65		
			\$4,809 90
<i>Massachusetts—</i>			
Contributions	\$1,010 00		
Quota	103 70		
			1,113 70
<i>Pennsylvania—</i>			
Contributions and quota			750 00
<i>Ohio—</i>			
Contributions	\$200 00		
Quota	52 00		
			252 00
<i>New Jersey—</i>			
Contributions	\$75 00		
Quota	88 50		
			163 50
<i>Connecticut—</i>			
Quota			71 60
<i>Wisconsin—</i>			
Contributions	\$9 00		
Quota	51 20		
			60 20
<i>Rhode Island—</i>			
Contributions	\$15 00		
Quota	29 00		
			44 00
<i>Michigan—</i>			
Quota			26 10
<i>Oregon—</i>			
Quota			20 00
<i>Delaware—</i>			
Quota			10 00
<i>Illinois—</i>			
Quota			8 20

<i>Kentucky—</i>	
Quota	\$10 00
<i>California—</i>	
Quota	10 00
<i>Missouri—</i>	
Quota	7 00
<i>Maine—</i>	
Quota	5 40
<i>Vassar College—</i>	
Quota	48 00
<i>Smith College—</i>	
Quota	40 60
Individual memberships	67 00
"Ladies' Home Journal," for selections from report on self-sup- porting women	150 00
Sundry receipts for printed matter, etc.....	22 96
	<hr/>
Total receipts for 1909.....	\$7,690 16
Cash on hand January 1, 1909.....	53 75

\$7,743 91

DISBURSEMENTS

Salaries	\$4,670 62
Printing and stationery	730 07
Rent	406 25
Special appeal	593 19
Postage	222 76
Balance of loan repaid	250 00
Office furnishings	91 25
Telephone	47 06
Traveling expenses	22 87
Sundry small payments and office expenses.....	190 37

Total disbursements for 1909..... \$7,225 34

Balance on hand December 31, 1909:

In Astor Trust Company	\$76 29
In Second National Bank.....	442 28

518 57

\$7,743 91

G. HERMANN KINNICUTT, *Treasurer.*

I hereby certify that I have examined the above account and compared it with the books and have found same correct.

FREDRICK C. MANVEL,

Certified Public Accountant of the State of New York.

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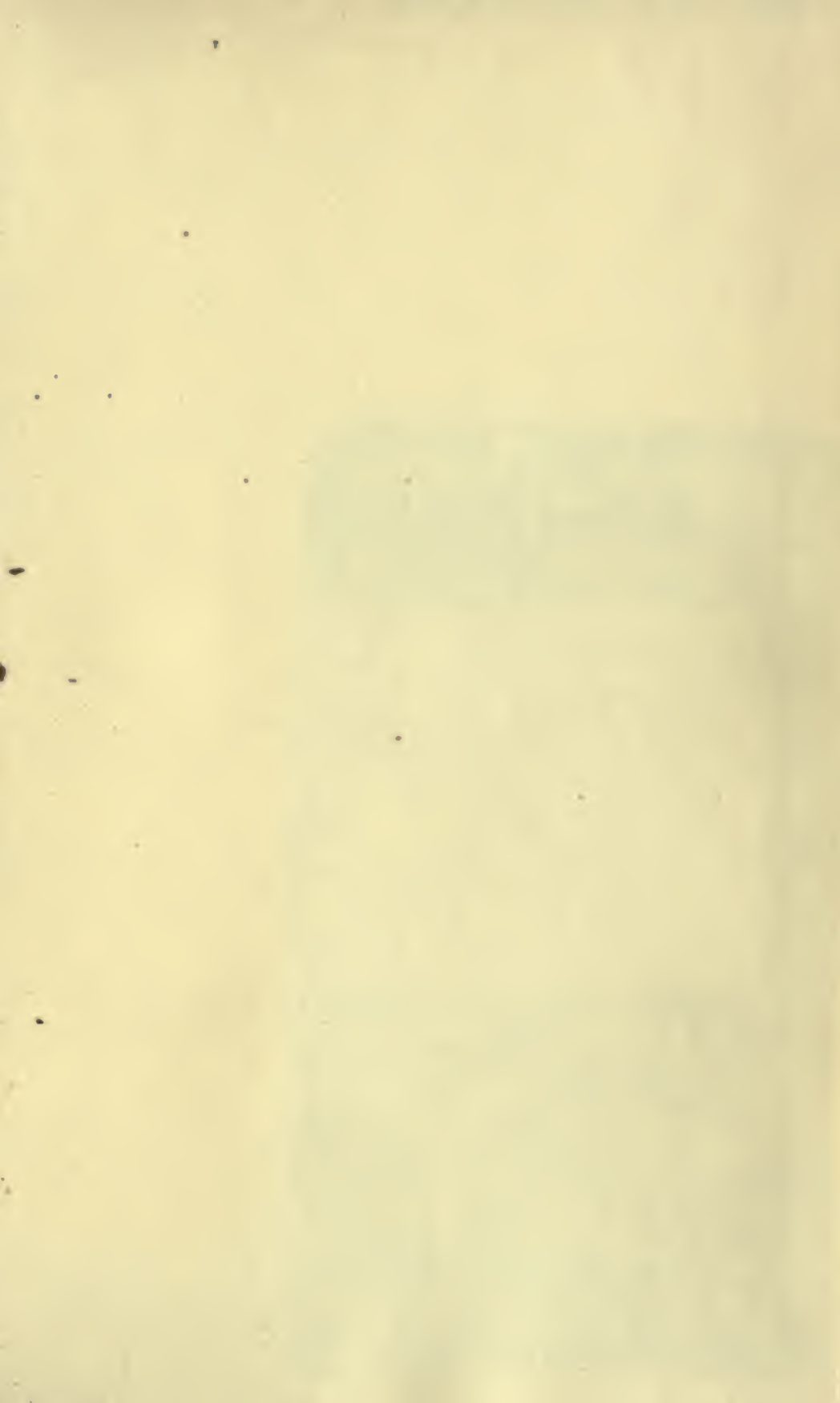
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