HOUSING AND TOWN PLANNING

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HOUSING AND THE HOUSING PROBLEM

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The nation-wide movement for housing reform has been stimulated by the overwhelming evidence that has come to light within recent years and which has left no doubt in the minds of statesmen, social workers and the public as to the existence of a serious and increasingly difficult housing problem. The evidence gathered has been so emphatically based upon the evils of the worse sanitary conditions that all efforts in the direction of reform have been centered about the task of fixing a minimum standard for the 10 or 12 per cent of the population affected. The task of accomplishing the meager results that we have to our credit after twenty-five years of tireless and socially costly effort has been so great that we have lost sight of the broader question, namely: the establishment of economic and legal conditions that will make possible a normal development and maintenance of housing standards consistent with the progress of the most progressive of nations. In other words, we have concentrated an undue share of our efforts upon the pathological aspect of housing by exercising the utmost of our critical faculties in dealing with existing evils. An analytical study of the causes of these evils would have pointed the way towards a broader movement based upon the needs of the nation as a whole, rather than upon the conditions which, through the lack of statesmanlike policies in the housing of the people, affect very seriously only a minor share of the population. The result has been the development of a school of housing legislation which has the regulation of the tenement as its object and which bears the marks of a "New Yorkism" that has made housing reform one-sided and housing legislation practically synonomous with tenement legislation.

While we recognize the need and importance of tenement legislation and reform as a step in the direction of solving our housing problem and while we do not desire to discount the generous effort in the direction of removing our most serious of evils, it is of the utmost importance that confusion between housing as a problem of es-

tablishing minimum standards of sanitation and housing as a factor of social, moral and economic progress in the development of the nation as a whole should be avoided.

Economically speaking we may divide the families for whom housing accommodations must be provided as follows:

1. The subnormal who are unable to pay a rental that would yield a reasonable return upon a home of a minimum standard of sanitation.
2. The wage earners capable of paying rentals on the basis of a minimum standard of housing.
3. Well paid unskilled wage earners.
4. Skilled wage earners.
5. Lower grade business and professional classes.
6. High professional and business classes.
7. Leisure class.

It is safe to assume that the larger share of our housing problem affects the first two classes and that only in a slight and indirect way are the other classes living under conditions that fall below a minimum standard of sanitation and comfort. What proportions of the population of the country belong to each of the classes above suggested is more a matter of conjecture than of absolute certainty. We must admit, however, that what has been generally classed as the housing problem is only a small part of the larger question, namely, of providing facilities for the highest possible housing standard within the reach of the largest proportion of the people.

The number of houses that are constantly being built in the United States to accommodate the normal increase in the population and the growing influx of immigrants is not generally based upon the demand for accommodations, but rather upon certain social, economic and legislative conditions which in no way meet local and temporary contingencies. The result is a constant lack of adjustment between demand which is easily ascertainable, and the supply which is far removed from the numerical demand for the various classes of houses consistent with the classes of incomes and standards of the people demanding them.

The function of legislation is the fixing of standards; that of government, the creation of conditions that make the maintenance of such standards possible. The fixing of standards on a basis so rigid as to render progress impossible and the failure of government

to safeguard these standards by creating social and economic conditions consistent with them constitute a breach against the principle of personal freedom that is opposed to our conception of true democracy.

There is no subject to which we attach more social significance than we do to the home. The poet, the moralist, the efficiency expert and the social reformer have made the homes the center of their speculations and the means of realizing their individual and social ideals. We are all agreed that the one family house with private garden and plenty of open space is the condition towards which we should all strive and yet we have permitted our cities to develop into tenement centers with the most serious dangers to health, privacy, comfort and safety.

Home ownership as a force in promoting personal and social efficiency is everywhere recognized and yet the proportion of home ownership in this country is constantly on the decrease without stimulating governmental and legislative action against this tendency.

Esthetically unattractive homes are a permanent detriment to our cities and a loss of human pleasure that can hardly be estimated in terms of currency. Is the city or the state or private enterprise exercising an organized effort in the direction of raising the esthetic standard of the average American home?

Certain types of building, like the row of houses and tenements, are less conducive to healthful conditions and a low mortality rate than others like the single or semi-detached homes. Has a national or a local policy been established to encourage the better types?

These and many others are indisputable facts, some subject to scientific verification and formulation while others are based upon the accumulated experience and the inborn convictions which act as a powerful agent in rendering these factors effective.

The student of housing reform will find, however, that legislation has failed to recognize the broader need of housing the people of this country, while a mass of restrictive legislation, applicable in the main to building alone, and limited to the multiple dwelling as a prevailing type, has been accumulated. That many of these restrictive laws are based upon experience limited to a small number of localities and that they are derived from the study of pathological rather than normal conditions must be recognized. It must also be conceded that the regulations now in force are at best mainly the result of mutual concessions between legislation, housing reformers

and property owners. We have fixed a minimum amount of air space but no evidence is available as to the sufficiency of the amount as a means of insuring the safest minimum standard.

We demand certain space between buildings in order to insure the best light and ventilation and fail to realize some of the essential conditions, like prevailing winds, width of streets, orientation, height of buildings, that determine the safest minimum distance. If housing is of sufficient importance to demand regulation, it is also of sufficient importance to demand that these regulations be based upon scientific facts that cannot be questioned and do not allow of compromises. Scores of scientists abroad have found inquiries along these lines pregnant with principles which lend themselves to the most accurate formulation and are well suited for legislative enactment.

In the last analysis housing is an economic problem and while scientific investigation and a careful framing of housing legislation in accord with the results of these investigations are necessary, its ultimate solution must be found in its economic aspects. Regulation that becomes confiscatory or interferes with a proper return on the investment serves to aggravate rather than solve the housing problem and decreases the possibilities for a continued rise in the housing standard.

The task of solving economically the housing problem will be accomplished therefore not by wholesale and drastic regulation of the building method, but by a complete readjustment of our legislative and administrative methods in dealing with the economic factors that determine the character, cost, supply and rental of homes.

The factors that determine the cost of a home may be grouped into three main divisions: (1) Accessibility to economic centers; (2) accessibility to social centers; (3) investment in materials and labor. The first two factors are community factors pure and simple and depend upon the town or city plan; the last is a cost factor that is largely independent of local conditions or at least is subject only to slight variation due to such conditions.

The distribution of industrial, commercial and business centers, the distribution of parks, playgrounds, schools, theaters, museums, etc., contribute to the economic and social environment which determines to a very considerable extent the cost of a home and rents. The city plan and the distribution of the factors constituting the

economic and social environment as expressed in terms of facilities, time and cost of transit, determine the non-creative land values of a community which are an important cost factor in housing reform and which a carefully developed community plan may reduce to a minimum. By reducing the need for transit facilities through a proper adjustment and distribution of the factors that are essential to the economic and social life of the people and by providing an evenly distributed municipal transit system that serves as far as possible the whole population without materially discriminating in favor of or against particular sections of the municipality, the enhancement of land values may be checked and congestion with its attending evils avoided. Generally speaking, the actual cost of the home may be affected by various methods, some of which have been tried both in this country and abroad and have been found successful. Others are still in the experimental state. A broad classification of these methods is as follows:

- 1. Legislative and administrative
  - Taxation of land and improvements
  - Tariff on building materials
  - Standardization of housing regulations to reduce cost and prevent enhancement of values
  - Municipal control of land
  - Cheap and efficient transit facilities
  - Banking regulations facilitating loans
- 2. Paternalistic
  - 1. Public
    - State and municipal building
    - State and municipal financial loans
  - 2. Private
    - Four per cent and philanthrophy
    - Model industrial villages
- 3. Private initiative
  - Coöperative copartnership building
  - Building and Loan Associations

It is not my purpose in this brief article to deal with the various methods affecting the cost of a home. All that I have attempted to do is to point out the most important and most generally accepted and practical methods employed that have brought about tangible results both in this country and abroad. The records of the large cities of Europe especially Paris, Berlin, Milan, Rome, London and

even some of the smaller cities have secured changes in the national as well as the local legislative and administrative machinery whereby land is made more accessible, taxes on wage earners' homes reduced, congestion removed or avoided and ownership of homes made possible for those able and willing to earn a reasonable income.

Many cities and even towns in Europe have been compelled to build homes for their families, especially those that are financially subnormal. In some cases cities have offered loans for the purpose of encouraging the building of individual homes or the construction of multiple dwellings that rent at low rates.

These steps have been made necessary by local conditions which by their seriousness as a local problem made the construction of new and additional homes a sanitary necessity. The city of Cleveland is the first one in this country to undertake the building of homes at public expense. New York has been the owner of tenements which had come into the hands of the city in various ways but which constituted a sanitary evil rather than a sanitary asset. Funds are made available in many European cities for the building of workmen's dwellings; in some cases up to 80 per cent of the total cost of the home and the rates of interest are fixed at from 2 to 4 per cent.

The Octavia Hill Association and other organizations as well as individuals in this country and abroad have made investments in new or old buildings and have attempted to furnish sanitary accommodations at reasonable rentals. Gary, Pullman, Fairfield, etc., and the many industrial villages of Europe represent a paternalistic development along certain lines of housing reform that have been productive of results both as social and economic experiments.

Private Initiative

The splendid development of the Garden Cities of England, Germany and the bold beginnings now being made in Italy are evidences of the economic and social value afforded by well organized private initiative and coöperation in home and community building. The work of the French coöperative societies emphasized the value of the coöperative factor as a saving in home building cost. The American building and loan associations, which represent a capital of over a billion dollars and a membership of very nearly two and one-half millions, embody a powerful agency for the handling of a con-

siderable share of the housing of the country. The efficacy of this agency in the direction of securing the best results I am not competent to discuss.

We have enumerated the various methods of promoting housing reform not with a view to weighing their social and economic values from the point of view of the United States but for the purpose of pointing out the variety of efforts in the direction of housing reform that are now being made throughout the civilized world and the broad field that they embody.

In this country we have endeavored to solve this important national problem mainly by means of local and state sanitary legislation. The fundamental economic, social and administrative causes have not claimed the attention of the housing reformer. Local muckraking has masqueraded under the guise of scientific investigation while local sanitary legislation and inspection have been mistaken for the means of attaining a national housing ideal.

The time is now ripe for a thorough and nation-wide study of housing as a national issue. Public sentiment is organized and sufficiently enlightened to welcome a constructive program of housing reform that would affect the American people as a whole rather than the limited number of those whose homes constitute a problem of social pathology. The facts are easily obtainable and public as well as private agencies whose rightful function it is to investigate and formulate a broad national housing policy are legion.

A BRIEF HISTORY OF THE HOUSING MOVEMENT IN AMERICA

By Robert W. de Forest,

President, National Housing Association, New York.

Housing reform in America began in the city of New York. This was not because of any particular virtue in that city. Nor was it because of any superior foresight in city planning. The subject was forced upon the attention of the city of New York by overcrowding incident to its being the initial port of entry for foreign immigration, and by unsanitary conditions created as the result of attempting to house immigrants in old houses not originally intended for such occupation. It was also forced by the lamentable unsanitary conditions of the earlier types of tenement houses. Slum conditions existed in New York, just as they existed, though in less degree, in other cities in which the increase of population was not so sudden and unexpected, but it was tenement conditions in New York which first drew public attention to the need of housing regulation, and it was many years after New York began to legislate on this subject that other cities began to feel the same necessity and to look for a remedy on the same lines. The first tenement law regulation in America was enacted for New York City in 1867. Agitation for tenement regulation had long preceded this law. This agitation began seriously in 1842, when Dr. John H. Griscom, the city inspector of the board of health, called attention to existing conditions in his annual report to the board of aldermen. The pamphlet which Dr. Griscom submitted, entitled "A Brief Review of the Sanitary Condition of the City," contains a vivid description of the condition in New York at the time. It appears that there were 1,459 cellars, or underground rooms, then used as places of residence by 7,196 persons, and that there were as many as 6,618 different families living in courts or in rear buildings. These conditions had apparently developed largely by reason of the sudden increase of the city's population by immigration.

Mr. Robert M. Hartley, one of the most enlightened philanthropists New York has ever produced, and secretary of the then

recently organized Association for Improving the Condition of the Poor, in 1853, made a report on housing conditions of the city which again called attention to the necessity for regulation. His report was based upon a careful examination of the city. According to this report there were in 1850, 18,456 persons crowded together in 3,742 cellars, which were "always damp, badly ventilated, generally filthy, and beds of pestilence and disease." The state legislature in 1856 appointed a committee of their own numbers "to make an examination of the manner in which tenement houses are constructed in the city of New York, and report the same to the legislature, and also what legislation, if any, is requisite and necessary in order to remedy the evils and offer every protection to the lives and health of the occupants of such buildings." This committee made a report recommending legislation but no legislation followed.

It was not until the so-called "Council of Hygiene and Public Health" was organized in 1864, to improve the sanitary condition of the city, that any action was taken. Under its leadership the metropolitan board of health was established in 1866, and a year later, in 1867, the first tenement house law was enacted. There were at that time about 15,000 tenement houses in the city, all of which had been built without any legal regulation whatsoever. This law remedied some defects and improved to some extent existing tenement houses, but it did not secure any good types of new buildings.

Little attention seems to have been given to this subject from that time until 1877, when Mr. Alfred T. White, of Brooklyn, determined to benefit the working people of his city by providing them with decent and comfortable homes. He then built his well known "Home Buildings," in Brooklyn, and a year later he erected an entire block of model tenements, with a large park or courtyard in the center. Mr. White's tenements were popular from the start and earned 7½ per cent during the first year of their existence. This was an object lesson of the first importance. It demonstrated that good housing was appreciated and that good housing accommodations were commercially profitable. Wide publicity was given to Mr. White's successful experiment, and public attention was again called to this subject, so important for the city of New York. A mayor's committee was appointed at a public meeting held in Cooper Union to devise measures to carry tenement house reform into effect. Capital

was raised for improved dwellings in old New York to follow Mr. White's Brooklyn example, and a new tenement house law was enacted in 1879, which for the first time limited the percentage of lot to be occupied by a new tenement.

Meantime the movement for tenement reform in New York grew in force. The experience gained by different efforts, successful and unsuccessful, pointed the way, and the movement finally culminated in the New York state law for cities of the first class, passed in 1901, which made an epoch in tenement regulation, not only in the provisions of the law itself but also in placing the enforcement of the law under the jurisdiction of a new city department called the tenement house department. The successive steps by which this result was accomplished included a legislative commission in 1884, of which Dr. Felix Adler was chairman, the amendments of the law in 1887 as a result of the recommendations of this commission, another legislative commission in 1894, of which the late Richard Watson Gilder was chairman, some of the recommendations of which were enacted into law in 1895, and the state tenement commission of 1900, of which the author was chairman, which drafted the tenement house law of 1901, now in force, and the amendments to the New York City charter under which the tenement house department was created.

Wide publicity had been given throughout the country to the movement for housing reform in New York, which resulted in the law of 1901, and the first fruit of that legislation was the tenement house law of the adjacent state of New Jersey. Jersey City and Hoboken, in New Jersey, separated only by the Hudson River from New York, were practically suburbs of New York. In a less intimate sense the same was true of Newark. The same tenement evils which developed in New York had been duplicated in Jersey City. It was quite natural, therefore, that the New Jersey law should follow closely our New York law. The New Jersey law was passed in March, 1904.

Up to this time the movement for housing reform and the enactment of housing regulation had taken the form of tenement regulation, using that word in its legal sense, as applicable to all multiple houses in which three or more families lived independently. The tenement evils, however, existed in comparatively few cities outside of New York and its suburbs. The development in other cities had

been largely that of the small house, frequently the small frame house, and the more acute problems in other cities related rather to slum conditions than to the evils of multiple dwellings. Housing reform in other cities had, not unnaturally, imitated in greater or less degree, the New York regulations affecting tenements. Among the cities which have framed their housing codes to meet their own special conditions may be mentioned Columbus, by way of illustration. Its housing code regulates the building, alteration and maintenance of single family houses as well as tenements.

The growing national interest in this subject led in 1910 to the organization of the National Housing Association. The board of directors of this association was constituted by representative men and women from all parts of the United States as well as Canada.

As illustrating the progress of the movement toward better housing conditions, at the time this association was organized, less than four years ago, there were not ten cities outside the states of New York and New Jersey in which there was any housing regulation or any serious effort to secure such regulation. A year ago, when the author had occasion to obtain statistical information on this subject, there was state legislation applicable generally to certain classes of cities in the states of New York, California, Connecticut, Massachusetts, New Jersey, Pennsylvania, Indiana and Wisconsin. There was regulation either by state law or by ordinance in the following cities outside of the states named: Baltimore, Md.; Chicago, Ill.; Cincinnati, O.; Cleveland, O.; Columbus, O.; Louisville, Ky., and St. Louis, Mo. Within the past twelve months (I am speaking as of November 1, 1913) the following additional progress has been made: Boston Mass., by a state law applicable only to this city, has changed the definition of a tenement house from the four-family house to the three-family house. Under the previous law, in force a year ago, there had been about 7,500 houses subject to regulation in Boston. At the present time, by this change of the law and by the construction of the year, about 35,000 tenement houses have come under this jurisdiction. In California a new tenement house law has been enacted, marking a needed advance in wise regulation. In Cincinnati, O., added powers have been given to the tenement house inspectors. Cleveland, O., is at the moment drafting a new tenement house code. Columbus, O., is regulating the construction of single-family and two-family houses as well as tenements. The state

of Connecticut has enacted more advanced legislation. The state of Indiana has passed a new law applicable to all cities of over 10,000 inhabitants. Louisville, Ky., has now a law based on the model tenement house code. Thirteen towns of Massachusetts have adopted the provisions of the state tenement house law. Pennsylvania has passed a new law applicable to Philadelphia, its only city of the first class, marking a notable advance. Pittsburgh, Pa., a city of the second class, has assembled its ordinances and passed new ones, the whole forming a housing code considerably in advance of the general state law applicable to such cities. St. Louis, Mo., has passed a new ordinance, dealing chiefly with sanitation and aimed to abolish gradually privies in tenement houses. The state of New York has enacted a tenement house law for cities of the second class, applicable to a number of important cities, including Syracuse and Albany, a notable step forward. Seattle, Wash., has adopted ordinances intended to improve tenement conditions. Duluth, Minn., has adopted a well-framed ordinance regulating its tenements. The state of Indiana has adopted a new tenement house law by overwhelming majorities in both houses of its legislature.

While all these laws and ordinances are not ideal, and are not adequate from the point of view of those who are best acquainted with this subject, they are all steps in the right direction. The widespread national interest in this movement, which has borne fruit in legal regulation, is further illustrated by the fact that at the present time, including the cities named and the cities in states which have state regulation applicable to them, there are known to be 87 cities in America, of which 82 are in the United States and 5 in Canada, in which public attention is directed to housing reform. In many of these cities the movement is still in embryo; in others regulation more or less satisfactory is in force. The following is a list of these cities, classified by states:

Alabama

Birmingham

California

Los Angeles
Oakland
Pasadena
Sacramento
San Francisco

Connecticut

New Britain
New Haven
Hartford
Stamford
Waterbury

District of Columbia

Washington

Georgia

Atlanta
Savannah

Illinois

Chicago
Springfield

Indiana

Evansville
Indianapolis
South Bend
Terre Haute

Kentucky

Louisville

Louisiana

New Orleans

Maryland

Baltimore

Massachusetts

Arlington
Belmont
Boston
Braintree
Brockton
Brookline
Cambridge
Fall River
Haverhill
Lawrence
Lexington
Lowell
Lynn
Milton
Newburyport
North Andover
Salem
Springfield
Stoneham
Taunton
Wakefield
Walpole
Watertown
Wenham
Weston
Weymouth
Winthrop
Worcester

Michigan

Detroit
Grand Rapids

Minnesota

Duluth

Missouri

Kansas City

New Jersey

Newark

New York

Albany
Brooklyn
Buffalo
Elmira
Mt. Vernon
Newburgh
New York City
Rochester
Schenectady
Syracuse
Troy
Utica
Yonkers

Ohio

Cincinnati
Cleveland
Columbus
Youngstown

Oregon

Portland

Pennsylvania

Erie
Harrisburg
Philadelphia
Pittsburgh

Rhode Island

Newport
Providence
Pawtucket
Woonsocket

Tennessee

Nashville

Texas

Dallas

Virginia

Richmond

Wisconsin

Milwaukee

Canada

Hamilton, Ontario
Montreal, Quebec
Ottawa, Ontario
Toronto, Ontario
Winnipeg, Manitoba

This list is by no means complete. There are undoubtedly other cities not named which should be added. I am simply using the latest statistics which I have at hand. That so much progress has been made in so brief a time argues well for the progress we have a right to expect in the future.

Nor is the advance in housing reform confined to cities or to statutory regulation. Many large employers of labor, notably corporations which need accommodation for their operatives or employees, are giving enlightened attention to this subject. The United States Steel Corporation has made careful plans for housing its workers at its new plant in Duluth, and is studying the question even more thoroughly before making plans for its projected plant at Ojibway. In many of the smaller towns and country districts, industrial villages have sprung into existence that owe not only their being but also their form to the enlightened management of the works to which they are appurtenant. The Goodrich Tire and Rubber Company, of Akron, and the American Rolling Mills at Middletown, O., illustrate this phase of the movement. The same may be said of many New England communities.

Nor should the garden city movement in America be unmentioned, a notable example of which, intended for the middle rather than the working classes, is that of the Russell Sage Foundation at Forest Hills, L. I. To more than mention this movement would extend this article beyond its allotted space.

Meanwhile the work of reform has steadily gone on in the city of New York, where it originated. The New York law has been amended from time to time to meet practical conditions. It has been strengthened where it was found to be weak; it has been relaxed where it could be relaxed without detriment to the principles in-

volved and the ends to be attained. A notable expression of popular approval of the law occurred in 1912 (less than two years ago), when a decision of the New York court of appeals, on technical grounds, threatened to destroy the tenement house law of 1901, which had been on the statute books for over eleven years and which had found almost universal acceptance. An appeal was made to the governor of the state for an emergency message, which alone made prompt legislation possible under legislative rules, and the technical defect was remedied by legislative action within a few days after the decision was handed down.

As illustrative of the degree in which this law has been enforced in the city of New York, and the result of its enforcement, the following facts are pertinent. At the time of its enactment there were in the city of New York fruitful sources of disease in the shape of more than 9,000 "school sinks" or privy vaults, located in tenement house yards. These "school sinks" were practically open privies for the common use of all the inmates of the houses to which they were appurtenant, flushed occasionally into the sewers with water. The law required the abolition of these "school sinks" and the substitution for them of toilets in the houses, and prescribed that no toilet should furnish accommodation for more than two apartments. It also prescribed that these toilets should open to the outer air. At the present time only 375 "school sinks" exist in the city of New York, most of which are in outlying sections of the city, where sewers have not yet been installed. At the time this law was enacted there were over 350,000 dark rooms in the city of New York; that is, rooms which had no opening to the outer air. The law made the ventilation of these rooms to the outer air obligatory. At the present time there remain in the city of New York only about 76,324 such rooms. During the first eleven years that the new tenement house law had been in operation, that is from 1902 to 1912, inclusive, 22,925 tenement houses were built, of an estimated cost of $708,983,489, containing 248,815 apartments, accommodating, on an average of five persons to each family, 1,244,075 persons. While there is no obligatory provision in the law with regard to baths, it should be noted that more than 87 per cent of these new-law tenements have a bath in each apartment; more than 4 per cent have baths in the houses but not in each apartment, and only about 9 per cent have no baths at all. Improvement of the sanitary conditions of old

tenements, and the improved sanitary regulations with regard to new-law tenements in New York City, have been only two of several causes favorably affecting the death rate. That they have been an important factor in this result is self-evident. The death rate in New York City for 1900, before this new cause began to operate, was 20.057 in the thousand. This has gradually decreased, until the death rate in 1912 was only 14.11 in the thousand. Translating this into human lives, based on a population of 5,000,000, it means an annual saving of nearly 30,000. Translating it into immunity from sickness would give much larger figures.

No history of housing reform in America would be complete without the mention of two names—Jacob A. Riis and Lawrence Veiller. Jacob A. Riis began to write on this subject more than thirty years ago. His voice at first was like the voice of one "crying in the wilderness." But it caught the listening ear. His many magazine articles and books, notably *How the Other Half Lives*, produced a profound impression on the country and did much to create the popular sentiment on which any successful reform must be based. Lawrence Veiller initiated the tenement house exhibition of 1900, which preceded the New York state commission of that year. He became secretary of this commission, and when the new tenement house department of New York City was organized became the first deputy commissioner. His books on the subject, published by the Russell Sage Foundation, entitled *Housing Reform—A Handbook for use in American Cities*, and *A Model Tenement House Law*, constitute the best literature on this subject, and should be in the hands of all who are seeking to inform themselves about it and to promote its cause by intelligent regulation.

THE RELATION OF LAND VALUES AND TOWN PLANNING

By Raymond Unwin, F.R.I.B.A.,

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As men learn to coöperate in their industry, their commerce, their intellectual pursuits and their social pleasures, their desire to live together becomes stronger. The village becomes a town, the town spreads and becomes a city, and owing to this increase of size, competition to occupy the more central stations becomes keen because of the further possibilities they offer for coöperation. By multiplying the opportunities of life and industry these central positions acquire a high value and the more energetic people are willing to pay a good price for the privilege of occupying them. In this way arises site value or ground rent, which is simply a payment for the right to occupy the more profitable places.

Theoretically, ground value represents the sum of the advantages which any site has by virtue of its position, beyond those attaching to the best unoccupied places. If the whole of the land were in one ownership, and the advantages of each place could be accurately assessed, then actual ground value or rent would approach as nearly to theoretical rent as would leave a margin of advantage sufficient only to stimulate the necessary competition.

Seeing that the advantages of the best sites can only be enjoyed by the few, and that the larger number of people must put up with the less good positions, the principle of equality of opportunity is not best satisfied by a low ground rent; but on the contrary, leaving aside for the moment the question of who enjoys the ground rent, that principle would seem to require that ground rents or values should be high, that those who enjoy positions of exceptional privilege or opportunity should pay approximately the full value for them. In a community in which industrial activities are on an individualistic basis, and where the site value is mainly used to defray public expenses, either by taxation or by public ownership, rent would be a means of equalizing the positions for everybody, as its effect would be to handicap the exceptionally well-placed. In a mod-

ern community there are many factors disturbing this simple position; but it should be definitely recognized that it is not to the interests of the many that site value or site rent should be low, and can only become so to a limited extent when the greater part of that rent is enjoyed by a few individuals. The amount of rent which may be attached to any position is not, however, due only to the advantage of the position, but to all the advantages of any kind, the enjoyment of which depends in any degree on the location. The establishment of a convenient railway station may very greatly enhance the value of the land around it; and nearly all public improvements increase the value of the sites in their neighborhood. On the other hand, restrictions upon the use that may be made of a site will limit the value materially; and this is equally true whether those restrictions are due to custom or to law. In modern cities then we see that ground value is to an increasing extent controlled or influenced by public or semi-public activities, even in those countries where the theoretic principles of individualism have been least interfered with.

So long as these activities of the public are not understood, the owners of land accept their effects as part of a natural law of supply and demand and submit with good or bad grace to have the value of their land increased or reduced. If an owner tries to use his land for the building of high tenements in a country where the people refuse to adopt this system of housing, and if, in consequence, he fails to realize the high value of his land which may be obtained by this use of it in other districts, he hardly thinks of asking the community to compensate him; but if the community, by regulation, forbids him to build more than a limited number of stories, he immediately thinks that he is entitled to compensation. In like manner, if an owner has a strip of his land rendered useless for building by reason of some objectionable erection on an adjacent plot, he has to accept that as one of the natural circumstances causing fluctuations in land values; but if the community in the public interest seeks to set back his building a few yards to widen the street, he claims the highest compensation that he can induce any valuer to assess.

I think, therefore, that the second point that should be realized in reference to land values is that they have ceased to represent merely the result of unconscious competition; but that they are constantly being increased and reduced by conscious communal action

of one sort or another. Apart from one important circumstance, there would seem to be no sufficient reason why the community should not regulate the use of land entirely in the public interest, and with as little regard to the effect on individual land values as is paid by the natural law of supply and demand. That one important circumstance is that the whole financial arrangement of our society depends to a large extent on the stability of land values. We cannot, therefore, consider policies which affect these values purely in regard to any abstract right, but must also consider their expediency; whether the gain will counterbalance any evils arising from disorganisation of finance and commerce.

There can be little doubt that urban problems would be immensely simplified if the whole of the land on which the city stands and over which it may be likely to extend were owned by the community, and if the rent that is payable by the privileged for the best positions could be used to defray communal expenses, the benefits of which are enjoyed by all. We see in Europe many instances where the urban community owns so much land that all communal expenses are defrayed out of the resulting revenue and in some cases there is even a distribution made annually of the surplus income, either in cash or produce.

There is, however, a very considerable difficulty in reaching this position when once the contrary one of private ownership has been established. It arises from the fact that the increase in land values is so considerable when a town grows, that individuals are willing to speculate extensively on the probability of this increase; and that around existing towns the speculative value of land is always very considerable, and any community purchasing that land must necessarily enter into the speculation. If the town should continue to grow that speculative value would, no doubt, very soon be overtaken. On the other hand, if the town should remain stationary, the speculative value might not be reached for a long period, might even never be reached, and the public would in that case be saddled with a very heavy charge.

There are two main interests which the public have in this question. The first and most important is to secure that land shall be used in the best possible way in the public interest. This is as important in urban centers as it is in rural districts. The second public interest is that the value or ground rent which is paid by privileged

people for the occupation of advantageous sites should be enjoyed as far as possible by the whole of the people who are excluded from those sites, so that the inequality of opportunity should, as far as possible, be removed.

Of these two interests, the first is overwhelmingly the more important. Indeed so important is it, that if a case could be made out proving that the public, acting in their corporate capacity, were incapable of securing as good and effective a use of land as individual owners could secure, it would justify leaving to individual owners the exclusive enjoyment of a substantial share of the ground value resulting from their use of land, as an inducement to them to manage it in the best manner. Cases could no doubt be cited in which individual management has been better than public management, and where the community as a whole has been benefited by it. We are, however, being forced today towards public control or management because, owing to the size and complexity of modern towns, the individual owner acting by himself is no longer able to secure that use of land which is most desirable in the public interest, even where it would be to his own interest to do so; and when, as frequently happens, the most desirable use would be detrimental to his own personal interest, one can hardly expect him to go out of his way to secure it. It is fairly evident that neither the interest of the owners collectively, nor the interests of the public can be served in a modern city by leaving unfettered individual control. It is only through collective management or control that many of the most important requirements of a modern city can be met. For this reason nearly all civilized communities are attempting to regulate, by means of town plans and town planning schemes, the use and development of urban land, to prevent the congestion of traffic, overcrowding of buildings, and indiscriminate mixture of buildings of different classes; and to secure the advantages of properly protected residential quarters, of industrial areas provided with adequate conveniences, and of commercial centers where the activities are not hindered by congestion of traffic or the occupation of valuable positions by factories and warehouses which should have been placed elsewhere.

One result of this regulation of development by town planning may be to control very materially the development of land values. In so far as town planning increases the efficiency of the industries and commerce of a town, in so far as it improves the opportunities

of intellectual and social life, and adds to the amenity of the residential areas, it will undoubtedly increase the total sum of land values, because it will add to the actual advantages of the city sites as compared with those offered by the nearest available unoccupied positions outside. But in so far as town planning restricts the use that may be made of individual sites, limiting for example the height of buildings or the number of houses that may be built upon each acre of ground, it must tend to reduce the value of land any part of the value of which is due to the expectation that a somewhat congested use of it would be permitted. In the same way the restriction of certain areas for particular classes of buildings, as, for instance, the reservation of areas for industrial buildings only, may, at any rate for a time, have the effect of reducing the value of those areas. The reservation of land for open spaces must also have the effect of taking away from the areas so reserved all prospect of a building value. On the other hand, wherever areas are reserved for open spaces in the immediate vicinity of a town, the reservation must have the effect of increasing the value of other land farther out, because the prospective buildings which expectation has placed on the land reserved for open spaces, expectation will now place on the land next available. Moreover, the limitation of the amount of building which may be placed on an area of residential land will have the effect of spreading the building value due to the residential use over a much larger area.

Let us for a moment examine the effect of limiting the number of houses to the acre upon any piece of land. At first sight it would seem that to halve the number of houses that may be put upon an area of land would have the effect of reducing its building value by half. But this is by no means the case. The increased value of land due to the increased crowding of buildings upon it represents a very diminishing return. The greater the number of houses placed upon an acre of land, the greater is the proportion of the land which must be occupied by roads; and the greater the number of roads on any piece of land the greater is the amount of street area compared with the effective building frontage. So true is this that very frequently it happens that a considerable reduction in the number of houses on an area of land will raise the cost of the plot by a mere fraction, even if the same initial value is paid for the land; and, in all cases, the reduction of the number of houses per acre very considerably reduces

the cost of the available land per square yard to the occupier. Moreover, if the number of stories in the building or buildings on the acre be reduced, a given increase of population will require a larger area of land, and so building value will extend over a wider area. It is pretty certain, therefore, that the total effect of limiting the number of houses to the acre, and generally of preventing congestion in residential areas is, paradoxical as it may seem, to secure cheaper land for the occupant and a greater total amount of value for the land owners. If the town planner is to be in a position to secure for a city the efficiency which springs from concentration of commerce and industrial activities, combined with the health, freedom, and general welfare which depend on a sufficient distribution of the population, the community must have the greatest freedom to control and limit the use of land and must not be hampered in the exercise of this power by a prohibitive cost of compensation, by the fear of injustice to the individual land owner, or of financial evils springing from large disturbance of land values.

To make our problem clearer, let us take as an example the case in which the maximum difficulty arises, namely, the reservation of adequate open space. There can be no doubt that in most of our large towns congested urban development has reached an extent beyond which the town should not spread without the reservation of a considerable area of open space. While such open space would not necessarily take the form of a continuous ring (this would depend on the nature of the land and other circumstances) still substantially what is required is a belt of open ground to serve as a breathing space, and to secure recreation and general amenity of conditions. This belt would take just the area of land which has the highest prospective building value, and to condemn this wholesale under a town planning scheme to be reserved as open space without compensation would undoubtedly cause great individual hardships and produce considerable financial disturbance. On the other hand, to purchase it at its present prospective building value would involve the community in a very heavy outlay, and an outlay, moreover, which is not really justified, because the community would be paying for a building value which it does not destroy but merely transfers. The effect of reserving a quarter mile belt of open space around a town would simply be to transfer the prospective building value of this belt to the belt immediately outside it. The

town would continue to grow, but the houses, instead of being built on the first quarter of a mile belt, would be built on the second. The prospective building value of this second belt would rise, not only because the first belt was taken out of the market, but also because the attractiveness of being adjacent to a belt of permanently reserved space would render that land actually more valuable for residential purposes than the land which was taken out of the market.

The problem then before us is this. Can we adopt any method which, without creating undesirable financial complications or inflicting undeserved hardships upon individual property owners, will enable the public properly to control the development of its towns and check the congestion of its urban dwellings?

There would appear to be two methods which would secure the end aimed at.

1. There is the obvious method of purchasing the land around the town. If a city purchases a sufficient area of land all round its borders, it can then control the development; and as it will have purchased some at high building value, some at medium, and other at purely agricultural value, it may proceed to regulate and distribute those values by allotting some land for open spaces, some for agriculture, some for industrial development and other for residential purposes, without reducing in any way the total value; and indeed, it would probably materially increase the total value by the great increase in efficiency for industry and attractiveness for residence which careful planning and distribution would secure. On the other hand, as pointed out above, if the town became stationary and failed to develop further, the community would be saddled with an outlay based on prospective building value which was never realized.

2. There would, however, seem to be a second method of securing the end we aim at. We have seen that we are really dealing with a question of distribution of land values and not with one of their destruction; that wherever the value of some land is reduced by limiting the amount of building allowed upon it, or by its reservation for open spaces or factories, other land will be increased in value to a like amount by having transferred to it the prospective building value that has has been removed by the restrictions. Now this increased building value is a new value conferred by the action of the community; it does not form part of the present prospective

value. No financial arrangements have been based upon it; no individual expectation can have included it; it will arise, if it arises, purely by conscious public action which will deprive one piece of land of a certain building value and will confer it upon another piece. Surely it would be in every way expedient and fair that the value thus conferred on the one piece of land should be used to compensate the owner whose land has had value taken from it.

It should not be beyond our power to frame machinery which will enable the community to secure enough of the increment of value which is due to its town planning action to pay the greater part, at any rate, of the compensation which that action entails. I am convinced that this can be done more readily because the increase of value due to town planning will far outweigh any incidental decrease.

COST FACTORS IN HOUSING REFORM

By Carol Aronovici, Ph.D.,

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The whole housing movement of today is to be judged not by the amount of philanthropic work done by individuals, organizations or governmental agencies, but by the return in terms of housing facilities that the rentee or individual builder is able to secure for a given investment. Let us analyze the component parts of this investment with a view to separating the creative from the non-creative, and if possible point out the weaknesses of our present system of financing, planning and building homes.

The cost of land, material, labor, capital and maintenance are the factors which determine the character of the homes that are being built. The relation between the supply and demand for homes, while a potent factor in determining the amount of construction and market price, must in the last analysis be reduced to the question of cost. Let us, therefore, consider cost in its various aspects.

LAND

Land more than any other building factor has a shifting value, aside from its natural value as farm land. It gathers its financial assets, not from any intrinsic qualities, but from its environment. Land values are eminently social products because they represent no labor and depend mainly upon the presence and needs of people for their use. This being the case it is clearly conceivable that those having the greatest share in the creation of the values, the people of the community, should derive the greatest benefits. Land cost, however, is determined by the demand for its use plus the needs of the owner for the cash value. This represents the result of a widespread development of land monopoly by a highly perfected and wholly anti-social system of land speculation which compels the builder to invest in or charge up to land a large and unfair share of the cost of a structure. The share that land claims in the building of homes affects the total amount of capital which it left for planning and building. In other words, in a given total cost of a structure, the

market value of the land determines the investment in the building, thereby affecting the work of buildings and the freedom with which land can be used.

To counteract the influence of land cost, the cities must own land, so that they may fairly compete with the speculator. Zones of building restrictions should be established so as to limit the fluctuation of land values due to social, economic, political or industrial accidents and favoritism and introduce a stability in land values. This will eliminate speculation and return to the honest investor a confidence in the stability of the community which will promote better ideals of home permanency and greater freedom of investment in buildings.

MATERIALS

The statement has frequently been made that in the last two thousand years, except for the introduction of steel, there has been no progress in the invention and use of building materials. So far as I am aware this statement has not been and cannot be denied. The question therefore resolves itself to an examination of the factor determining the availability and cost of standard building materials.

Wood will always be the staple element of building since it is the material that invariably beomes a part of the structure and is an accessory in the making of scaffoldings, forms, etc. The United States is becoming more and more deforested and lumber is yearly increasing in price. Lumber being in many sections of the country the most important building material the cost of construction is being enhanced and the character and size of buildings are therefore being perceptibly affected. This results in a rise in rents and as wages do not as a rule keep pace with rents, housing standards go down.

The advocates of conservation of natural resources are clamoring for laws that would preserve and protect our forests. The builders are complaining against the high price of lumber due to monopoly and a shortage of supply while the tariff interferes with free importation of lumber. The failure to heed the demands of the advocates of conservation and the tariff imposed upon lumber render impossible the cheap building of homes and nullify much of the effort towards conservation. A removal of the tariff on lumber would in comparatively few years allow the development of national resources of lumber and make the United States a strong competitor in the lumber

market of the world. The downward revision of the tariff that went into effect last October contains rates which show a recognition of the need for cheaper building materials and protection of the present undeveloped national resources in this country.

Other building materials, like hollow tile, are subject to tariff restrictions that are making monopoly possible with the unavoidable result of high prices. It is also true that the price of wood due to the scarcity of lumber, monopoly and the tariff contribute to a large extent towards the maintenance of high cost of building materials which may be used instead of wood.

One other important and frequently obnoxious difficulty encountered in the reduction of the cost of building materials is due to the building regulations which are generally prepared by men mainly interested in the reduction of the fire risk and guided by false notions of safety. We tolerate fire and safety regulations and restrictions on one general basis and along lines which apply fairly only to a limited number of buildings located in especially crowded sections of our cities and towns and disregard the larger interests of the community as a whole. In many instances, owing to failure to recognize the value of town planning and the failure to calculate the cost of overcrowding in residential districts, we must pay for the undesirable proximity of our neighbors by an increase in the provisions for safety and protection against fire. Scientific facts giving exact data upon which to base regulations dealing with fire prevention are still wanting and the mass of available legislation is inconsistent with the best interests of the people. Careful investigation of the principles of safety and a critical examination of existing laws will undoubtedly result in the overthrow of many theories which have found expression in increased cost and unnecessary restriction.

On the question of safety our urban laws are very specific and much detailed inspection is required to insure the maintenance of the prescribed standard. The regulations are assumed to be based upon generally accepted standards unflinchingly obeyed by both builder and architect. The surprising fact, however, is to be found in the differences of standards used by the same builders and architects in the unregulated districts as compared with those used in localities under strict regulation and inspection. Were the variance in the standards used by the same men small or insignificant the subject would deserve no discussion here. The facts show, however, that building in suburban and rural districts is made considerably

cheaper than in regulated areas and yet the liberties afforded by the unregulated areas present advantages to the most scrupulous and conscientious builders and architects. The question of the fitness of these regulations for dealing with safety must therefore be raised and answered beyond a question. A margin of safety fixed at a point where it will not place unnecessary burdens upon those who in the end must pay for the structure either in direct investments or in rents, is imperative; it should be based, however, on exact scientific facts and should protect the people in the smaller populational centers with the same zeal that it displays in the larger cities.

One of the most striking examples of what appears to be unnecessary discrimination in the matter of materials of construction, on the question of safety, is the almost general restriction placed upon the use of hollow tile in cities. This material is cheap in itself and saves labor when used in construction. That some defects may be found in a few units is not a sufficient reason for its exclusion from use. With the complicated and costly systems of inspection now in use, coupled with additional specifications of the character of tile to be used, its fitness as a building material could be insured beyond a question.

LABOR

In the discussion of this factor of the economic aspect of housing I wish to remove from the reader's mind the ordinary conception of the word "labor" and define it as the mental and physical processes that enter into the financing, planning, directing and carrying out of the work of land development and construction. This broad definition represents more fairly the actual labor that should be considered from the point of view of the investment. A classification of labor from the above point of view would be as follows:

- Non-creative
  - Financing
  - Banking
  - Legal service
  - Promotive
- Creative
  - Directive
    - Engineering
    - Architecture
    - Administrative
    - Governmental
  - Executive
    - Skilled labor
    - Unskilled labor

Non-Creative Labor

This classification indicates at least four functions which are distinctly non-creative. They have nothing to do with the ultimate use value of the structure and present processes necessary under the present *laissez-faire* method of providing housing accommodations which tolerate a cumbersome spoils system of speculative building and places large unproductive financial burdens upon the ultimate occupant of a building.

In European countries, especially in France and Germany, banking and insurance laws have placed special restrictions upon the use of banking and insurance funds. These restrictions give to the wage earner and small private builder the opportunity to secure loans from these institutions without paying exacting and unnecessary fees and without creating a host of middlemen's profits that are not creative and hinder rather than develop the opportunities for home building.

Instead of the promoter, whose standard of proper buildings is to be found in the net profits that he derives and the rapidity with which he sells and shifts responsibility, the community should provide every legitimate facility for individual enterprise. This will result in a better character of building because it will have personality and correspond to the needs of the individual families, rather than to a haphazard standard of shifting averages.

It has been said that "The tasteless man has no right to realize his ideas of a house in the presence of a great multitude of his fellow-beings. It is an indecent exposure of his mind, and should not be permitted." If this is true of the individual building for himself, how infinitely more true it is of the man building for others.

Speculative building as applied to the workingmen's homes is one of the most serious housing evils we have, both on account of its lack of architectural character and because of its economic wastefulness due to a free shifting of responsibility from builder to owner. The disorganized method of the speculative builder leads to overbuilding in certain directions and failure to build in others. This means social waste because of oversupply of certain types of homes and failure to supply others. Speculative building means confusion in the housing market and a consequent social waste resulting from a lack of adjustment between supply and demand. The fact that

only about 17 or 18 per cent of the homes of wage-earners are owned by the occupants, many of which are still carrying mortgages, is very forceful evidence of the futility of speculative building as a means of promoting home ownership. An examination of figures dealing with this aspect of the subject seems to indicate that an average charge of from 25 to 35 per cent of the total cost of a house and land is non-creative investment.

Creative Labor

We have seen that land speculation and non-creative work in connection with promoting building enterprise consume a large although varying share of the investment of the ultimate occupant of the structure. Given a fixed capital to be invested in buildings, most of which are homes, the character of the buildings will be determined by the proportion of this capital that must be invested in non-creative work as compared with the proportion that can be spent in directing and executing the enterprise as well as in the purchase of materials.

The work of governmental control as perceived today, by the restrictive and exacting legislation and inspection, frequently approaches the point of non-creative labor. Governmental work, however, may be made the most potent factor in promoting the interests of proper building and in reducing waste. Among the creative functions that government may and in some instances does perform there might be developed a simplified system of legal formalities in real estate transactions, educational work in the interest of the most economic and most attractive building, the maintenance of information and experimental bureaus on matters of construction, the use of public funds in the promotion of easy financing of wage-earners' homes, the granting of exemptions from taxation of especially desirable buildings below certain values. A more general recognition of these possibilities of governmental work is necessary and unless an organized effort in this direction is made, government in building operations will remain synonymous with restriction, control and limitation of business enterprise. There is no doubt as to this point of view being undemocratic and uneconomical and that it needs a speedy change to the constructive, promotive and creative.

One approaches the subject of executive skilled and unskilled

labor with much hesitancy and the consciousness that the only reduction in the cost of labor can be found in increased efficiency which is indirectly a reduction in cost. Labor unions are an important factor in determining the investment required in the construction of certain buildings. Their wage interests are amply protected by their organizations but unfortunately the standard of efficiency of those connected with labor unions is frequently low and wages are in the end determined by the average efficiency of all rather than by the arbitrary standards of the few. Wages in the building trade are high and they could, with justice to all concerned, be made higher if the general standard of efficiency of the average member of the Building Trades Union were made higher. A scientific standard of efficiency in the building trade established by careful investigation would lead to a saving in the cost of construction and an increase in the average wages in the building trade.

To summarize our statement concerning labor in the broadest sense we may say "that a reduction to a minimum of the non-creative labor, a general recognition of the financial value of architectural planning and administration, a change from a non-creative and restrictive to a creative point of view of governmental functions in building affairs and a rise in the standard of efficiency of the building trades," will meet the needs of the labor problem in the field of building in general and home building in particular. Such a program is consistent with modern tendencies and is based upon concrete and ascertainable facts.

CAPITAL

The financing of building enterprise is justly considered as a very potent factor. We have hinted at the complicated and costly machinery connected with the securing of capital to be used in the construction of buildings when the owner is not prepared to meet immediately the entire cost. The most burdensome expense in the securing and use of capital is to be found, however, in the interest that must be paid for its use. The rates paid vary from 3½ per cent, on very rare occasions, to as high as 8 per cent per year. The ultimate owner or user of the structure must pay this interest which in the end must be charged to the total cost. This being the case first mortgages are seldom paid up by the moderate owner and the

estimate of the meager proportion of families occupying their own homes must be still further reduced if it is to give an accurate conception of absolute ownership. The annals of the struggle of small owners against loss of ownership due to high rates of interest paid upon loans form a sad chapter in the history of thrift. The state and the municipalities have made no move to furnish capital for the building of homes. Insurance companies, banks and financial institutions use local deposits in foreign lands because of the larger returns they bring. To counteract this evil, Germany is now imposing upon insurance companies, saving banks, etc., well defined requirements compelling a minimum per cent of the capital to be used locally and at a fixed rate of interest. The bulk of this local investment is used for housing purposes.

The municipalities and the state can secure money at a low rate of interest which with the addition of the cost of manipulating these public loans could still assist the modest builder to secure necessary capital at a much lower rate than he pays under present conditions. The increased possibility for securing such funds would reduce the non-creative investment and would afford the community taxable values that are being retarded because of the lack or high cost of capital.

In connection with the securing of capital it should also be added that the obnoxious practice of many banks and loan associations of lending money only upon completed or almost completed building places the investor at the mercy of the speculative builder who builds for the market without individuality, and without regard to durability or fitness to environment.

MAINTENANCE

It is a well known fact that the difference in the cost of construction between the present day temporary building and the higher type of permanent construction is much below the difference in the actual return on the investment when quality and length of service are considered.

If a house, because of its solid construction, yields a continuous return for fifty years with a small maintenance cost and a flimsy structure yields a continuous return for twenty years with a high maintenance cost, it is clear which is preferable as far as the individ-

ual investor is concerned as well as from the point of view of the community as a whole. In the construction of buildings, however, immediate needs seem to be paramount and the maintenance cost is wholly overlooked. A clear vision of the economic relationship between maintenance cost and length of service as related to initial investment is still wanting.

With the savings made possible by a scientific adjustment of the relationship between the various elements of cost, and the elimination of non-creative charges, greater durability could be secured. The saving in the natural resources would have its effect upon the price of materials and a greater freedom in the use of durable elements would result.

An element of maintenance cost that has received considerable attention in recent years and which is slowly making itself felt among thinking men is taxation of land values and improvements. We cannot here enter into a detailed discussion of the principles of taxation and the best methods to be adopted. A tax reform movement that inspires confidence is now finding expression throughout the country and a solution is bound to come within a generation. We cannot refrain, however, from mentioning that monstrous system of double taxation which places a tax upon full values of mortgaged property and upon the mortgages themselves. By this system the man who is poor and must borrow in order to obtain a home is fined for his poverty.

In the foregoing pages we have outlined briefly the main factors of cost and have endeavored to point out the relation between creative and non-creative labor and investment.

The housing problem has been variously defined as one of land values and land use, or as a question of credit and loans, transportation, congestion and birth rates. All these are unquestionably important factors in controlling the housing situation throughout the world. Fundamentally, however, it is determined by the relation that exists between creative and non-creative work in the home building industry. Eliminate waste and center the largest possible share of the investment in the creative elements of the building and the housing problem will be solved both economically and esthetically.

TAXATION OF REAL ESTATE VALUES AND ITS EFFECT ON HOUSING

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The single-taxers maintain that if all public revenues were raised by a tax upon the rental value of land, excluding improvements, the effect would be to stimulate building by forcing unoccupied land, favorably situated, into its most profitable use. They say that the single tax would put an end to the holding of vacant land for speculative increases in value, as no one could afford to pay a heavy tax on land from which he was getting no revenue, especially as the tax would increase from year to year with the appreciation of the site value of the land, and wholly irrespective of the owner's expenditures for improvements.

It appears that, if this theory is correct, the single-tax on land values would result in the building of a compact city around the business center in every case where the topography would permit nearness to constitute desirability of location. Inasmuch, however, as there are few city sites where nearness to the business center is the only element to be considered in determining desirability, the expected result of the single-tax upon city building may be more accurately stated as the development of a compact city along the topographical lines of least resistance around the business center. In other words, the city would be compact in its various parts, though it would not be symmetrical unless topography invited symmetry.

It is obvious that any force tending to close the open spaces and make a city compactly built must have a fundamental effect on housing. Apparently, the adoption of the single-tax would throw upon the community as an organized unit of self-government the entire responsibility for the reservation of open spaces for all purposes. The natural tendency, so far as the private holder of land was concerned, would be to build as intensively as possible on the site controlled by him. Without a city plan and governmental intervention, this would mean high buildings, buildings covering the entire ground space, no parks or open squares and streets narrowed

down toward the vanishing point. Obviously, these tendencies, if unchecked, would bring about the worst possible housing conditions.

It is urged, however, that these tendencies toward congestion would be checked by competition in building. Over-improvement would tend to destroy, or at least diminish, natural site values and bring into use sites farther out from the business center or otherwise less favorably situated. Thus the single-tax policy, unaccompanied by public regulation, would invite what from the housing standpoint must be considered bad building, but lots of it, and so everybody could have a big house, but it would be a poor one. A man's home would be all inside and no outside. There would doubtless be some reaction in favor of better houses and the restoration of rental values destroyed by over-improvement, but this reaction would have the usual force of hindsight. Houses are used as they are built, especially in large urban communities, and it takes a very considerable amount of hindsight to correct a mistake in building which a very little foresight would have prevented. In other words, it is true in housing as in other matters, that an ounce of prevention is worth a pound of cure.

It will take something more than taxation to handle the housing problem. This should not be considered as an adverse criticism upon the single-tax program, because, so far as the writer knows, no responsible single-taxer would for a moment urge the adoption of his tax plan without governmental regulation to supplement it. In fact, under any conceivable system of taxation, some sort of a city plan and some scheme of direct limitation upon or regulation of private activity in the improvement of land are necessary. Even in the heedless times during which American cities have been born and "come up," there has always been some city planning. The poor child has always had some clothes and has received from time to time at least a few educational cuffs. But with the proposed adoption of the single tax as a social program, necessarily goes a comprehensive scheme of city planning and community regulation. This much may be taken for granted.

It should not be forgotten that taxation is only one of many factors in the housing problem. In this discussion we are trying to isolate this one factor and study its results. The logical effects we discover in a theoretical discussion are likely to turn out to be mere tendencies and, in actual practice may, indeed, disappear from view

entirely, having been overcome or neutralized by other tendencies arising from other factors of the problem. With this point in view, perhaps we may safely say that the tendency of the single tax on land values as a separate factor in the problem under discussion would be to increase the quantity of available housing but to make its quality in relation to the outdoor world worse.

The tendency of the single-tax to affect housing doubtless would vary with the relative quantity of the tax. If only a small portion of the rental value of land were to be taken in taxes, the effect would be relatively slight, while the taking of the entire rental value in taxation would accentuate to the utmost the tendency described.

Certain approximations of the single-tax are now being urged in various quarters, either for the purpose of increasing public revenues or as part of a program of civic improvement or of economic justice. Their advocates sometimes claim for them marked effects upon the housing problem. In particular, a campaign is now being carried on in New York City for the halving of the tax rate on buildings. The scheme is gradually to reduce the rate on improvements until it is only half the rate on land values. It is obvious that unless public revenues are to be reduced the process of pushing down the tax rate on buildings will automatically result in the raising of the rate on land values. While the proposition now pending in New York looks no further than the relative halving of the rate on buildings, it would appear that the logical outcome would be the ultimate exemption of buildings from all taxation whatever. This scheme, if carried to its logical end, differs from the single-tax only in that it does not forbid the raising of revenue by other means than the tax on real estate.

In this New York campaign for tax reform great emphasis is being laid upon the alleged social benefits that would accrue from the reduction of the tax rate on buildings. Specifically, it is claimed that it would result in the lowering of rents. This would be brought about by the stimulation of new construction. It is estimated that about twenty million dollars a year would be shifted directly from the backs of the tenants to the backs of the landlords, and the enthusiastic advocates of the scheme allege that this sum of twenty millions is only a fraction of the total financial benefit to accrue to the working class if the scheme is carried out. Evidently, if the results anticipated by the advocates of the scheme are really to be expected, the

tendencies of the plan would be the same as those of the single-tax except for differences in degree. Anything that reduces rents affects housing directly or indirectly. Either the quantity of available housing is increased or the financial ability of the tenants to demand better housing is raised.

In this connection it is to be noted that a house is rather inelastic. If the number of houses or apartments relative to the number of families needing them is increased, rents will be lowered by the competition of vacant apartments for tenants. Except in relatively few cases, two or more families do not live together in a single house or apartment in order to dodge the effects of high rents, and in still fewer cases would a single family spread out to occupy more than one house or apartment as a result of lower rents. As a general rule, a house or apartment continues as it is built, and, if occupied at all, is occupied by a single family group, whether rents are high or low. The chief exception to this rule is in the taking of boarders, who in most cases are single men or women and would not occupy houses or apartments by themselves anyway.

The process of readjusting and enlarging existing apartments to suit the expanded tastes and financial abilities of tenants is difficult, expensive and slow. If a family in a crowded city desires and can afford better quarters, the usual process is for the family to move out and find other quarters originally constructed on a more liberal scale. This moving out, whether a cause of lower rents in the abandoned location or a result of better accommodations for the same or lower rents in the new location, does not change the house or apartment from which the family moves. It simply leaves a social cell vacant. It does not improve the cell, or give the families occupying the neighboring cells any more room or any better accommodations, within their homes. Of course the yards, the streets and the neighboring parks and playgrounds are less crowded.

If there were no influx or increase of population to occupy the vacant places, there would be not only an immediate lowering of rents as a result of competition for tenants, but also a gradual readjustment or reconstruction that would ultimately eliminate the surplus apartments. This readjustment would necessarily be slow because of its expensiveness. Naturally, an owner will accept lower rents for quite a while before going to the expense of rebuilding the house. Indeed, the immediate effect of lower rents and decreasing

values in many cases will be a curtailment of improvements. A landlord, though urged by competition to improve his houses in order to hold his tenants, will also be urged not to improve them where values are falling and the prospects of future profits are not bright.

A close consideration of the scheme for reducing the tax rate on buildings as proposed in New York shows a probable effect much less important than is anticipated by its advocates. From the preceding discussion it is clear that if rents are lowered through the competition of vacant apartments, the inevitable result will be a shrinkage in the value of the land. The houses will not be worth less. If anything, they will be worth more, for the stimulation of building will naturally result in a greater absolute or relative scarcity of building materials and consequent higher prices. And so land values will be diminished while building values are increased. While so great a change in relative values as completely to offset the change in the relative rates in taxation does not seem probable, the tendency undoubtedly would be in that direction. This fact calls attention to a certain flaw in the scheme that would tend to make its results disappointing from the standpoint of its hopeful supporters. If the plan were to limit the relative amount of taxes to be levied on buildings as compared with land values rather than the relative rate of taxation, the forecast of results would be much more dependable.

In any case, as with the single-tax itself, satisfactory results from the housing standpoint cannot be expected, unless the tax scheme is supplemented by a comprehensive city plan and drastic public regulation of housing construction.

Another approximation of the single tax sometimes advocated is the extra tax on future increments of land values. This scheme is brought forward as supplying an additional source of revenue and is justified by its advocates by the usual arguments advanced by single-taxers and admitted by many as sound under ideal conditions but impracticable in the presence of existing vested interests in land values. While an additional rate of taxation as applied to future increases in land values, if the addition were considerable, would doubtless tend to check land speculation and mildly stimulate the profitable use of land, its effect upon housing would not be different in kind and would probably be less in degree than the effect of the taxation schemes already considered. An increment tax that would

take a part of the increase in land values in a lump sum either at stated intervals or as an incident to the transfer of title to the land would be like a special assessment for benefits, except that no question would be raised or proof required as to the source or cause of the increase in value. It is reasonable to believe that special assessments, if levied without reference to improvements on the land benefited, do, and that the kind of an increment tax just described would, tend to curtail land speculation and encourage building.

If we turn to the other extreme, and ask what the effect of the exemption of land values from taxation and the levying of a heavy tax on buildings would be, it is reasonably clear that building would be discouraged. If the building tax were levied on values, every effort would be made by builders to curtail cost and postpone or entirely avoid improvements. The quantity of housing might not be so much affected as its quality. The type of congestion encouraged, by such a scheme of taxation, would not be the New York, tall-tenement type, but a squalid low-house type more like that prevailing in London. It is clear that such a plan of taxation would be effective in preventing the intensive improvement of land. It would be a sort of automatic check upon the height and cost of buildings. The only kind of city planning that would be effective, so far as housing is concerned, under such conditions, would take the form of direct governmental or philanthropic investments in model tenements. Private enterprise would need to be supplemented and stimulated, instead of being repressed and regulated. But, at least so far as America is concerned, this phase of the discussion is quite academic, as no one proposes an increase in the rate or amount of taxation on buildings as compared with land itself.

We must still consider the housing effects of the real estate tax as commonly known in American cities. While we have had ample experience with this tax, the discussion of its effects is more or less speculative, because we have always had it and have never had much else to compare it with. If a single tax on land would encourage building and a single-tax on improvements would discourage building, what are we to say as to the effect of a tax that falls equally on both? Assuming that the assessors arrive at the same percentage of true value in assessing both land and buildings, a uniform tax rate on all real estate would apparently neutralize the effect of the building tax and the land tax so far as housing is concerned. Indeed it

is hard to see how variations in the rate of taxation, from low taxes to high taxes, so long as the rate applies equally to land and building values, assessed equitably, can have much direct effect upon either the quantity or the quality of housing relative to the population of a given community. High taxes, if they mean extravagance and waste, or low taxes, if they mean neglect and stagnation, may check the growth of a city. It may be so expensive or so inconvenient to live or do business there that population and industries will not come into being or will go elsewhere. It may be that taxes equitably levied and wisely spent will increase the prosperity of a city by improving the condition of its citizens or by attracting additional population, or by both. If the condition of the people is improved the quality of their housing will gradually improve to meet the effective demand. If the number of the people is increased the quantity of housing will increase. If the condition of the people is improved, and their number increased, the quality of housing will improve and its quantity increase. If the condition of the people grows worse while their number increases, there will be poorer housing but more of it in total quantity.

In conclusion, it appears to the writer that desirable housing reform cannot be brought about by new schemes of taxation alone. Taxation of land values may be used to stimulate, within certain limits, the building of houses, but whether this stimulation will have good or bad results will depend on the wisdom and effectiveness of city planning and direct and indirect community regulation. It may be possible to make a horse go by striking him with a whip, but unless you have something for him to pull, a place for him to pull it to and some way of guiding him, what is the use of laying on the gad?

THE RELIGIOUS VALUE OF PROPER HOUSING

By William B. Patterson,

Secretary, Commission on Social Service and the Interchurch Federation, Philadelphia.

In days long past the instruments and agencies of mortality were few and simple. Cain used a bludgeon. That act of murder was raw, and crude, and brutal—utterly inartistic. Then Cain built a city—the first city. And as civilization has increased, as the city has grown, and as our social cruelties have become more refined, so also have our instruments of death and destruction partaken of these elements of "progress." Hence, we have in the city the slum and the tenement.

Cain, the murderer, left no record of having originated the tenement. This, perhaps, was due to his lack of refinement in the gentle art of taking human life. He did not, therefore, project his murderous mania into the city conditions that were to come with the growth of civilization, preferring to leave to the ingenuity of his descendants the invention of newer and more effective death-dealing methods. Therefore, it has remained for those of later days, and especially for those of America, to invent the tenement. And, very properly, it was located in the city. Thus we find that the city, originally devised by one whose hands were stained with the blood of his brother, produces one of the modern instruments of death; and strange as it may seem, it is only within recent years that our perception has enabled us to place the noisome tenement on the same deadly plane with the bludgeon and the poisoned dagger. After all, the chief difference between the bludgeon of Cain and our tenement house is that while the bludgeon murders without the law, our tenement house kills within the law.

When the Federal Council of the Churches of Christ in America, composed of official representatives of thirty-two religious denominations, formulated an initial social creed in Philadelphia, in December, 1908, it was not quite able (seemingly) to apprehend the religious importance of proper housing; but when the same Federal Council met in Chicago four years later and revised its social pro-

nouncement, a significant advance in the thought of the churches was registered, in that the revised creed featured proper housing as a definite aim of religious effort.

As a matter of plain fact, it is becoming increasingly clear that the author of the decalogue and of the sanitary code is one and the same God. Perceiving this, the religious bodies of America are beginning to manifest a keener appreciation of the necessity of proper housing.

The aim of all true religion is the establishment of the kingdom of God, the coming of which is the great comprehensive ideal of the church. This kingdom we believe to be not only an individual good but also a social state. The ideal city which is to be ushered in with this final consummation is typified in the New Jerusalem—a holy city, a spacious city; and in the blueprints which we have of this city of the kingdom of God we locate its very antithesis of the city which obtains in all parts of the world today.

In the description of the New Jerusalem is no suggestion whatsoever of crowded quarters, of the congestion of peoples, or of insanitation. This city "lieth four-square"—which term must be taken to mean that it is perfect throughout in all of its dimensions. In contrast, we have the American city, the English city and the continental city, each with its herding and massing of human beings, with its enormous death-rate in the congested sections, and its rapidly multiplying processes that make for delinquency, degeneracy, defectiveness, disease and death; and which sinister slants and tendencies project themselves into the generations to come.

And as for the dimensions of the shambles in which, catacomb-like, our poverty is massed, they are as far from the "four-square" ideal of the city of John's vision as the East is from the West. Witness the dimensions of the American tenement house in our large cities: breadth 25 feet, depth 50 to 60 feet, height 50 to 75 feet, with an air-shaft which is generally a well of foul and stagnant air, about 3 feet in diameter. There is still a fourth dimension to the American tenement, which Dr. Walter Laidlaw terms "dividends." One would not be far wrong in saying that this known fourth dimension is by all means the most important. Eliminate it and the problem of the tenement house is just about solved.

The housing problem is inextricably interwoven with the problem of the home and the family, and for this reason, at least, it

must continue to be more and more an object of religious concern. The tenement house is an impediment to God's plan for the home, and no matter to what high degree of physical healthfulness we may raise the tenement, this basic fact will remain. The ideal home can by no stretch of the imagination be located in a tenement, and we would do well if we were to put less emphasis upon the matter of building "model" tenements, and more emphasis upon the necessity of single houses for single families, in order that the home may be preserved.

Dwight L. Moody said of England that it was more in need of homes than of churches. This statement is with equal fitness applicable to all of our American cities; for the situation which there obtains involves a surplus of churches, practically all of which are under-worked, and an appalling deficit of homes.

It is true that the tenement house is a growth which is due to the complexity evolved by our changing social and industrial conditions, and by the great influx of people to the cities. It is true, moreover, that slum conditions which root in improper housing, are to be found in the smaller towns, and even in the country districts as well as in the large cities; but in these former places the slum is an anomaly, whereas, in the great city it is the result of our sweaty haste and heedless commercialism.

True as this is, yet it is equally true that in most of our dealings with the gigantic problem of housing we have been too content to apply remedies and palliatives and correctives, too often without thought of the standards which should actuate our efforts. Witness the history of the first "model" dwelling in the United States, located in New York City, in 1855, by the Workingmen's Home Association, which "model" dwelling soon became one of the worst tenements in the city.

I cannot refrain from drawing attention here to the momentous fact that we are today passing from the old to the new philanthropy. It was the old philanthropy which inspired us to build hospitals and sanatoria, and to load great ships with provisions, and clothing and medical supplies, and send them to the relief of famine-stricken peoples at the other end of the world. So the old philanthropy laid emphasis upon cure, remedy, alleviation. In other words it dealt primarily with effects.

The new philanthropy, while not minimizing in any degree the

utter importance and necessity of hospitals and sanatoria, finds its chief business, however, in its searching for and treatment of causes. It would abolish plagues and epidemics by conforming to the laws of health and sanitation; by giving pure food, pure milk, pure water, healthful homes, and there is a very real sense in which the American and British trained engineer is of vastly more importance to the famine and plague stricken spots than the supplies of the relief ship and the ministries of the physician.

Tuberculosis, meningitis, rheumatism, diphtheria, and the entire train of diseases which play havoc periodically in the congested sections of the great cities—all must be treated. But the new philanthropy discovers in prophylaxis a far more valuable principle and a vastly more important asset than is to be found in therapeutics. In 1912, sickness among the people of the United States cost more than $700,000,000. During 1912, $19,000,000 was spent in anti-tuberculosis campaigns. Of this latter sum it is conservatively estimated that less than $500,000 was spent for preventive work. The question here suggests itself as to what results would have issued if the new philanthropy, which strikes at causes but which does not ignore symptoms, had been able to guide the expenditure of these vast sums of money.

We must face the fact that bad housing and tuberculosis bear the relation to each other of cause and effect; therefore, if we would annihilate this scourge we must, in the first instance, utterly annihilate the breeding spots of the white plague. In permanent net results there is not, to my mind, any question whatsoever but that $18,500,000 spent in the work of abolishing the causes of tuberculosis would be of infinitely more benefit than the same amount spent in the building of hospitals and sanatoria, which is not to say that these curative agencies are unnecessary.

We have surely progressed beyond the point of some people who dwelt at the base of the cliff, and who were divided into two factions: one declaring that the way to put an end to the mortality that resulted from people falling over the cliff was to place about its edge a strong, durable fence; the other faction contending that the end would better be served by the establishment of a modern ambulance corps at the cliff's base. We face this identical proposition when we take hold of the housing problem,—it matters not from which angle we approach it.

If we are to prevent immorality, crime, disease and premature death, it is for us to blast at the roots of these ills in the social body, and if we are agreed that the tenement house, with its swarms of heterogeneous peoples, and its promiscuity of living conditions, is the prolific breeder of these ills, then it must follow that the tenement, as we know it today, must go. Not until we have apprehended the home and gained a knowledge of the tremendously important part which it has played in history, will we be able to realize the far-reaching significance of the movement for proper housing.

The history of Israel is the history of the family, and throughout the Old Testament the emphasis is on the family descent and continuity. The genealogical record in the book of Genesis and elsewhere; the genealogy of Christ with which Matthew begins his gospel—all these attest the high value which was placed upon the home and the family by those of the early days.

The ancient Jews made ample provision for the home, realizing that what the home is the child will be. The family, home and household—all figure prominently in the ministry of Christ; indeed, primitive Christianity began in the home, and through the home and the family was it propagated. In this respect may we inquire as to the chances of success which Christianity would have had if for the home in the early days had been substituted the tenement house of our day? What chance has God in the average tenement in the congested sections of our American cities? Would not the "family altar" be a travesty under tenement house conditions? Does not even common morality fail to procure more than a precarious lodgment?

Dr. Josiah Strong states:

> The Bible knows nothing of the philosophy of evolution as a philosophy, but is full of illustrations of its truths because it is full of references to nature and human life. The individual, the soul, the nation, the church, are all presented as growths needing a favorable soil, the right nurture, the care of the vine-dresser, or the gardener. The parable of the sower and the seed as told in the Gospels brings out especially the nature and truth of environment. The seed which the sower plants is always the same, but its results depend upon the nature of the soil, whether it be stony ground, or by the wayside, among the thorns, or in good soil.

If plant life needs proper soil for its development does not child life likewise require proper environment for its growth and expan-

sion? Will not children growing up with little family life, create homes with less? Important as is physical environment, yet more so is the moral and intellectual setting of a life.

The home today as well as the family, is disintegrating. The pressure of social, industrial and economic forces, coupled with the tendency of people to congregate in the large cities, and of still more people—namely, the immigrants—to colonize, for the most part in the older sections of the cities—all make for an undermining of the home and the decadence of family life.

Of what sinister significance is the testimony adduced from a woman worker among the tenements who appeared before a New York commission and said that, in her opinion, the greatest social evil was not direct prostitution, but "accidental prostitution," indicating that thousands of children are reared where purity is impossible? Investigations by vice commissions from now to the crack of doom could not yield a more scathing indictment against society than this simple statement of a social worker who spoke from first-hand knowledge of the facts.

What type of citizenship will issue from the tenements where living conditions invariably make for what has been termed "hugger-mugger promiscuousness?" If the home life is not conducive to health, comfort, decency and morality, and safety of life and limb—and assuredly it is not, under tenement house conditions—then are not we of this generation, by our very dallying with this phase of the housing problem, by our dealing with palliatives, amelioratives and remedies, are we not consenting to the enlargement and the aggravation of the problem with the sure expectation of bequeathing it as an unholy heritage to the generations to come?

Karl Marx said of the Anglican Church that it "would rather lose the thirty-nine articles than one-thirty-ninth of its income." To make this serious charge against one communion is obviously unfair, because in the realm of business, and especially that business which has not yet begun its approach to regeneration, the church creeds, Christian principles and religious perceptions are ignored if not forgotten; and the type of *soi-disant* Christian, who profits through the shame, degradation, vice and crime of those who are compelled to occupy his death-dealing tenements, is he whose brain is divided as is the hull of an ocean liner, into separate, distinct, non-communicating compartments. In one he keeps his business, in another his

politics, in another his domestic affairs, in another his so-called social life and in still another that which he is pleased to term his "religion." And it is quite often the cowardly boast of this type of "Christian" that he does not permit his "religion" to enter into his politics or his business.

Happily this type is becoming lyterian. The chief lesson of the recent men and religion movement, the salient feature of all its campaigns throughout the United States, was in the unequivocal pronouncement that unless a man was Christian in all of his relations in life, and unless his religion dominated all of his actions, such man could not possibly be Christian in any of his relations.

In his story, *The Mansion*, Dr. Henry Van Dyke, makes clear as crystal the incontrovertible fact that the man who extorts, even with the sanction of the law, high rentals, and big dividends from the lowly dwellers in noxious tenements on earth thus elects himself to a poor "abiding place in the Father's house of many mansions." And the advanced thought of the church today goes even beyond this point, for does it not vision the assembling, before the bar of infinite justice, on an indictment of murder, of all who are guilty of profiting at the expense, and thus conniving in the debauchery, degradation and death of those men and women whose dull, leaden lives were lived in the tenements?

THE WORKINGMAN'S HOME AND ITS ARCHITECTURAL PROBLEMS

By Frank A. Bourne,
Architect, Boston.

A cottage and a garden, home and family as the day's work ends, are the ideal of happiness for many a man, one of the bulwarks of the town and nation, and the ultimate goal of the housing problem.

In America one of the earliest typical houses was the "Cape Cod Cottage," built around a single chimney with one or two sleeping rooms on the ground floor for the benefit of the mother who generally did the cooking as well as cared for the children. A century later on the other side of the continent a similar house has developed known as the California bungalow. This type has spread across the country and now stands side by side with its colonial ancestor on the Atlantic coast. Similar one-story houses are being built to solve the low-rent demand in Germany and Austria. In Budapest a shoemaker stopped the work he was engaged in with the help of his family in his little glazed-in porch, to show me the three living and sleeping rooms all on the first floor and the unfinished second floor or attic in which the family wash was drying. In England similar accommodations are generally provided in two finished stories. It should be noted that all these foreign examples have incombustible outside walls. The portable house capable of extension as the family grows, a development in America of the last three years, will fill, in some localities, the requirements of single-story inexpensive houses.

The cheapest type of single house is the "story-and-a-half" with its chamber walls and plate about 4 feet above the second floor level. From this point the ceiling follows the slope of the roof until the 8-foot horizontal ceiling is reached. Examples of this may be seen in the manufacturing centers, such as Lynn, Mass., or Erie, Pa.

The two-story house with square, level ceilings on the second floor, is but little more expensive, but the tendency is then to raise the roof and finish rooms in the attic which makes the building too expensive for consideration as a type.

For two families, however, this two-story and attic type has certain advantages, and the "two-family house" is a familiar though rarely a beautiful object. Two front doors are customary, one leading directly to the second floor, and under usual building laws, two staircases are required for fire-protection, giving front and back stairs so that the family on the first story has access to one room in the attic, and the second story dweller has his separate cellar and heater as well as a room in the attic, all separate except in the matter of sound. An advantage urged by the builders and sellers of these residences is that a man may own the whole of the house and control it, and pay the running expenses by the rent of the other apartment.

The frame apartment house, for three or more families, particularly the "three-decker," is in disrepute and forbidden by many building laws. If it is semi-fireproof, with brick or fireproof walls, there is not the same objection, provided there is sufficient light and air, and the area between fire-walls is not too great.

Double or multiple houses, where each family controls all the space between earth and heaven within its party or lot lines, give an individuality only equaled by the single family dwellings, and preferable to those that are small and crowded. The family in a block is more isolated from its neighbor than the family in a single house where the windows often look into the next house almost within hand-shaking distance, 6 or 10 feet away.

Many workmen are obliged to occupy houses that have descended from some high estate, and it is difficult to find such houses that have been altered so that the sanitary conditions are tolerable. The problem of alterations is peculiar to cities, and the more careful the original city-planning, the less danger will there be of such change in districts. The purpose should be to keep residence districts of a certain class the same and prevent the turning of the tide of the population which lowers real estate values, as at present. All this is an economic loss that brings the necessity of making alterations, an ever-present architectural problem too often not solved by architects or sanitarians.

The "quadruple" house has been developed in Germany, notably at Leverkusen, and has lately been introduced into the United States. Illustrations of this may be found in the *Architectural Record*, New York, July, 1913. It is a square building consisting of

four houses, one on each corner, each with its separate entrance and yard. Each has three stories, the third being in the roof, and the effect is that of a good-sized single house. Aside from the unfavorable north or northwest exposure that one of the families must have, the arrangement seems to be very practical and economical; it is also good architecturally as it introduces larger units.

In regard to the relationship between attractiveness and cost, we cannot expect beauty from shoddiness. The speculator, the shyster architect or no architect, and the jerry-builder go hand in hand. The builder, brought up on a half century of gingerbread decoration, regards everything in that line as extra expense, and coupled with the customary extra supervision is apt to be timid and to give a high estimate if an architect is employed. The architect too is often disinclined to get down to the simplest details of construction, and even if he works out simple details, finds it difficult to change the custom of builders without causing greater instead of less expense.

Grouping adds to the effectiveness of houses if they are sufficiently near to merge the sky-line. One of the greatest objections to the appearance of our modern towns is their aimless irregularity. The irregular old German towns were picturesque. Take, for example, Rothenburg, Dinkelsbuehl, Buttstedt. But notice that they were not aimless in their arrangement, and in detail they are delightful.

Houses nearly alike and placed in rows, may be attractive, if they are evidently well suited to their purpose, and individually interesting. The houses of this class erected by the London County Council at Norbury, are much more attractive than speculators' rows on adjacent streets.

There is opportunity for economy in the arrangement of the staircase. The "huehner-treppe" or "hen-house steps" in the new Garden City houses at Hellerau, near Dresden, Germany, are excellent examples of stairways that are large enough, though small and steep. There is little satisfaction in a common-place stairway, that is not gradual enough in its ascent to be an easy and ornamental addition to the house, nor steep enough to be economical of space and quick to climb.

In discussing the architectural attractiveness of workingmen's homes, it must not be forgotten that they should be attractive to the people who are to occupy them. When Denry had succeeded

in life and built a house with "all the modern improvements," he was unable to get his mother to live in it, as she preferred the old house on the old street with all its antiquated but familiar inconveniences. It has been found difficult to get people to move from slums to suburbs; there seems to be an appeal in the big busy brick buildings that the country cottage or suburban garden does not satisfy. Indeed there is no accounting for tastes and we must acknowledge that we really do not know what is best for us. There is always the lurking desire to ape one's betters, without acknowledging that they are better, that makes the requirements that we are willing to pay for quite different from our needs. A family must have a parlor, dining-room, sitting-room and kitchen, infinitesimal in size, when a good living-kitchen would be better and cheaper. It is largely a question of popular education as well as of architecture and the line of demarcation is not clear. The problem is not sufficiently definite when it is handed to the architect and he finds fault with requests for three rooms when he feels that one will answer.

Into the servant question we happily do not need to enter, for the workingman's home is also a working woman's home into which the servant does not and should not enter. Now if this situation can be made a matter of pride for the working family and the kitchen made the best room in the house, like the old New England farmhouse kitchen, or the living-room where the cooking is done in the little houses of England and Germany, is not a great cut immediately made in the cost of the house as well as in the cost of living in it?

In Frankfurt I was shown into a sunny living-room; the built-in range, neat and suggestive of home, gave sufficient heat for warmth as well as for cooking the food. It was only a step for the mother to put the food before three children in the dining alcove. It compared favorably with our tiny northwest kitchens and two double-swinging step-delaying doors that our American servantless mothers have to endure. What was a pleasure to the German in the company of her children, is with our American arrangement, drudgery.

As to essentials and non-essentials, where is the line to be drawn? The landlord must let the house, and the house will not let without certain features that are not essential, and there seems to be no grade of poverty so low where a house with certain non-essentials will not be taken in preference to more modern and sanitary accommodations but restricted to simple necessities.

The writer aided and abetted the changing of an old mansion in a degenerating suburb of Boston, into a three-apartment house. The appropriation was limited and it developed in discussion with the real estate agent, that while it was essential to have a "bath-room" in the apartment that the tenant could talk about to her friends, it made no difference whether or not a bath-tub was installed so long as space for it was there. Therefore in the interest of "economy" and "requirements of tenants" the bath-tubs were omitted from the contract and tenants moved in before the contractors were through and out of the house.

Beyond such requirements as a good roof and an outer window in every room, it is possible to state certain essentials:

1. A living-room or living-kitchen in which the most of the family work is done and where the meals are cooked and served.
2. A wash-room or scullery.
3. Three sleeping-rooms, more or less.
4. A toilet or bath-room.
5. A cellar or shed.

If the sleeping-rooms and bath are on the second floor, there will be space enough for a parlor or a porch on the first story and these are generally included even in low-cost houses. If the parlor can be shut off, it can be used as a sleeping-room.

Just what is the "irreducible minimum" for the workman's living-room? Can the combination sink and laundry-tub with wooden cover stand in the room with the gas stove and the dining table, as they do in the Charlesbank homes, Boston? Or shall the sink be placed in a separate wash-room or scullery? If in the living room, is it possible for aspiring workmen's wives to conceal them by a screen —the only "non-imitation furnishing" of the bachelor girl's room?

A novel recently published in Boston, tells the story of how "A middle-class New Englander emigrates to America" and finds "one way out" of his over-burdening clerk's life and suburban house with its false standards, through the simpler life of a four-room flat in the Italian quarter of his own city. By sloughing off an unnecessary style beyond his means, he was able to find the essentials of healthy, happy living, and in the end better though less expensive living conditions than before. What we need is the "intensive cultivation" of houses making it possible for one family to obtain living space where two did before with more favorable conditions and no increase in rental.

The subject of housing is calculated to give anyone a sense of great weariness and visions of dry statistics. What is wanted, in a word, is to give every family a home, and the architect's problem is to give the proper place for that home. The problem is not entirely the architect's; it is to a large extent educational. The demand for simple homes must be created. There must be some restriction in the occupants per room, demanded as much by decency as by the housing law. Too much deference, on the other hand, must not be paid to the demand for many separate rooms, for a parlor, when sleeping rooms are needed and a larger, lighter, airier living-room. Yet in planning group houses it is possible to arrange some houses with parlors in order to keep the younger members of the family in the evenings off of the streets. Under these conditions the parlor may be considered a necessity, but if it becomes merely a rarely used stiff front-room, with the best light in the house, it is a mistake.

In the servantless house how wasteful it is to have to cook too far from the dining table. It is stated that not more than 10 per cent of the families have servants; it would seem that out of the remaining 90 per cent a few would be willing to live in houses designed for families that were willing to acknowledge that they did not have servants and never expected to have them. For such a family the living-room or living-kitchen would immediately become the largest, sunniest, most pleasant room in the house, with a small wash-room near by, where the cooking is done in the living-room and the same range that cooks the food heats the house, or else the small pantry-kitchen can be developed where a gas stove is used, close by the living-room.

The architect's problem for a cottage or for small city flats, is not to take any conventional plan and try to put a pretty exterior around it, but rather to develop a compact, adaptable, economical plan suited to the essential requirements of the average family, and then to express this plan without meaningless ornament in the exterior design. The most attractive small buildings we know of are the English laborers' cottages. These are attractive because they are the simplest possible expression of the workman's needs, small in scale, of permanent materials that grow more and more picturesque with time.

Can we not get a little of this simple but satisfying character into our smaller homes?

CAN LAND BE OVERLOADED?

HOW LITTLE LAND DO PEOPLE NEED TO LIVE ON?

By Benjamin C. Marsh,

Secretary, New York Congestion Committee.

The mere raising of the question as to what constitutes overloading of the land, raises at the same time the question, when, where and why we have become so short of land that we have to justify, or even to condone, the massing of 500, 750, 1,000, or more people to the acre, for living purposes. Various advantages are alleged for warehousing people in this way. Among others, that it is conducive to sociability, makes coöperative housekeeping, with its manifold benefits, easier, and reduces rent, and the cost of government. An examination of these claims hardly justifies ascribing to these alleged advantages sufficient importance to offset the accompanying and inevitable disadvantages.

It is true that a crowded four or six-story tenement population has all the advantages of propinquity. But propinquity in and of itself does not constitute sociability. It is quite apt indeed to engender irritability, unless there are other factors more potent than mere propinquity to offset it. A sarcastic wit remarked, "God gave us our relatives, but thank God we can choose our friends." This is assigning larger responsibility to the original creator, and a sort of direct action, usually considered to be the exclusive prerogative of the Industrial Workers of the World, and kindred organs of protest.

It is a novel statistical incursion—or shall we call it intrusion—into the realm or psychology, to claim that sociability increases in proportion to the number of people living on the acre. It is doubtless a soothing sentiment to the beneficiaries of capitalized congestion land values. Their formula is so logical and convincing. "If sociability with 250 to the acre equals x, then sociability with 1,250 to the acre equals 5 x."

Unfortunately, however, for the proponents of the propinquity sociability theory the Garden Cities of Europe, and especially of

England, with a very strictly limited density of people, have developed unique and very successful sociability.

It should be noted, too, that organized sociability has been attempted chiefly in congested parts of American cities, where the largest number of people could be reached with the minimum per capita expenditure, whether private or public. Sociability may be found to be as indigenous in homelike surroundings as in austere barracks of peace, in this country, as well as abroad.

That coöperative housekeeping, eliminating much of the drudgery of that not too thrilling vocation, would be easier in a three-story tenement than in a village with only ten or fifteen cottages per acre and a population of say seventy people, is self-evident. But such coöperative housekeeping is not materially easier, manifestly, with a density of 750 people to the acre, than in continuous buildings, three stories high, with but 200 to 300 to the acre.

To claim that massing people on a limited area would reduce rents, with our present system of taxation, is manifestly ridiculous. The price for the site of a building is determined by the anticipated revenue. If there are to be many and much rentals collected from a plot of land, intensively used for habitation, the price of the land will increase. It is generally admitted that restrictions upon the volume of building will keep down the price of land, and the construction of large buildings increases the price of land. So too, if 1,000 people are concentrated in a small block it might seem slightly cheaper to provide them with sewers and police protection, but, on the other hand, the cost of land for parks, and sites for public buildings of all sorts, will be much greater.

To what extent density of population per acre, provided all live in well-lighted rooms, with perfect sanitary conditions, and no overcrowding affects morbidity and mortality rates is an open question. No adequate statistics, corrected for age, sex, occupation, social and economic status, and ability to get out of the environment have been compiled. One cannot say that a density of 2,500 people to the acre, ipso facto, means a death rate five times as great for all ages as a density of 500 to the acre. A modern sanitary apartment house, on a large plot of land with open spaces all around, with an interior yard so constructed that every living-room has adequate sunlight, might be tenanted with 2,500 people to the acre, all of them with incomes permitting ample space, adequate food and rest and

three months' residence in the country every year, with much less serious menace to their health, than that of 500 people to the acre in unsanitary, crowded, dark-roomed tenements. "All things being equal," is a most important qualification in all estimates of mortality or morbidity rates, due to density of population.

Some rather startling testimony on the results of overcrowding is given, however, by medical men. Dr. George Newman says: "In overcrowded communities life is shorter than under other conditions. Sir Shirley Murphy has compared the length of life in Hampstead with that in Southwark, a poor and overcrowded district, and he finds that comparing males in the two communities, out of 1,000 born in Southwark, 326 die before reaching five years of age, while in Hampstead, out of 1,000 born, only 189 die before reaching the age of five years." This may be due to better milk in Hampstead, but Dr. Newman continues:

> At ages 25 to 45, when probably, so far as the community is concerned, the economic value of life is at a maximum, the difference in the two communities is most marked. Thus, of 1,000 males aged 25 living in Southwark, 236 die before reaching the age of 45 years, while the corresponding figure for Hampstead is only 125.
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> A more convincing proof of the disastrous physical results of overcrowding appears when we examine the mortality statistics for various districts. For example in Edgbaston, the suburb of Birmingham, the general death rate is 13.1, in the overcrowded Floodgate area in the middle of the city, it is 31.5. In Hampstead it is only 9.4 as compared with Finsbury, the most crowded tenement district of London, where it is 21.5. In the least overcrowded census area of Finsbury, the death rate is 14.4; in the most overcrowded census area it is 31.4.

Why then should there be any limitation upon the number of cubic feet of space to be provided? Frankly, not because there are not some advantages in having a good many people live in a limited area, but because those advantages are outweighed by the disadvantages. The standard of housing enunciated by various housing experts and by housing laws in various countries must have some basis in accepted conclusions. The tendency today is toward small buildings, and, whenever commercially feasible, individual homes and detached, or at least small multiple homes with a garden for each family. This is the fundamental purpose of the English town planning act of 1909, of the Garden Cities, the growth of which has been marked during the past decade, and of the German system of

districting or zoning cities, *i.e.*, progressively limiting the number of stories and proportion of the lot area that may be occupied in outlying sections of cities, as the distance from the old and built-up part increases.

The factors which lead to such arbitrary limitations, supplemented by regulations as to the cubic air space per occupant, are twofold. Experience, if not refined statistics, proves that for the highest physical development, open spaces, and playgrounds are essential. A noted housing expert stated several years ago that certain congested districts of New York City had not only reached but passed the point of human saturation. There were only a few open air spaces in this district with its teeming population, but the density of population per acre for any considerable area would not exceed 600 to 700.

The death rate in some blocks in New York, with a per acre density of over 1,000, is lower than in certain high-class apartment hotels, with a much less dense population.

No American city with a dense population has adequate parks or open spaces within walking distance. One may safely assume that no Americn city will ever attempt to provide parks and open spaces anywhere near its congested areas to meet the demands of those areas. The price would be prohibitive.

Would it be desirable, however, to have ten-story tenements, or over, only two rooms deep, or four at most, with say a density of 1,200 to the acre, if 30 square feet of playground, or other open space were provided contiguous thereto, for each unit of population, or even 80 square feet? It is difficult to prove any advantage of such unequal treatment of adjoining land. It is probably equally improbable that even 20 square feet of unoccupied area would be left for each one of the 1,200 people, for even assuming that today there are such vacant areas next to such packed ones, the owners of the vacant areas will not rest content with any smaller profit than will the owners of the land which has been capitalized at the anticipated rentals from the intensively utilized land adjoining. The city will assess this vacant land, if it has an equitable system of assessment, properly enforced, at about the same rate as the improved land. Whether the city, or the owner of the building himself, acquire the vacant land so as to secure to the tenants better lighting and ventilation, a heavy price must be paid for the land, because the owner has

a legal right to utilize his land as intensively as his neighbor, each under our blessed system having an equal right to "improve" his land regardless of the effect upon his neighbors. The law of ancient lights, which prevents an owner of land in England from building on his property in such a way as to interfere with his neighbor's light, does not hold in this country.

Of course, an alternative method is to build tenements on the receding plan, *i.e.*, to build straight up for five or six stories—a distance equal to the width of the street say—and then to set back a sufficient distance so as to permit light to enter the buildings on the opposite side of the street. By sufficient dexterity and ingenuity, such tenements can doubtless be constructed on a plot 5,000 or 10,000 feet square, which, with several recessions, would remotely resemble a terraced garden, for plotted plants might appropriately be planted over the roof in this latest venture in applying the mysticism and occultism of the cubist to modern architecture. Incidentally there will not be much, if any, light for the interior rooms in this monstrosity of modernism. The experiment of constructing such buildings might properly be undertaken by some institution like the Russell Sage Foundation.

In the minds of the common people, however, the question may inadvertently and impertinently crop up, "With less than one-tenth of the housing area of almost every great city in the United States utilized with tenements, and with a large proportion of these cities, areas absolutely unused, why speculate on the theory of how many angels may dance on the point of a needle?"

The writer agrees with the common people, instead of with those housing reformers, whether or not directly connected with realty companies, who are anxious to experiment with high densities of population to see whether the condensed population can thrive under certain conditions. It is a very safe assertion that, if the financial profits of the intensive use of land were secured by the community instead of by land owners, these latter gentlemen would not find so many advantages in massing people to the acre. Home life for the people would be much more attractive, if there were just as much profit for land owners in this sort of housing as in warehousing people. The advantages of a home with a bit of a garden would under that condition be accorded better consideration. The blessing of sunlight and air unexhausted by the lungs of thousands would be realized.

CONGESTION AND RENTS

By Bernard J. Newman,

Executive Secretary, Philadelphia Housing Commission.

What is meant when the term congestion is used is generally understood. Usually it is defined as more than an average number of people living in a neighborhood. In a more limited sense it means more than a legal number of persons occupying one room. Congestion as a term applied to the housing of the people means simply too many inhabitants living within a circumscribed area to enable them to obtain the most wholesome living conditions. As here used it does not refer so much to room overcrowding, or to the overcrowding of buildings upon the land, as to the massing of people within restricted areas thereby intensifying the problems of such areas. It varies in its numerical listing, for what would be a moderate congestion in a city like New York, hampered as it is by natural barriers, would be outrageously high for a community like Philadelphia and Chicago; just as a degree of occupany acceptable for these latter cities would be abnormal for smaller towns. The term, therefore, is variable in so far as the actual number of people is concerned but it is fixed in so far as it applies to the grouping of people in a neighborhood in such numbers as to increase the moral or health risk or the cost of living.

On the other hand, an accurate definition of rent is less prevalent. Usually it is defined as the price paid for the privilege of shelter under a given roof or within a given apartment. Thus many compare the outlay per house while others contrast that per room and on such basis judge the relative exorbitance of one area over another. Such comparisons mean nothing and rent interpreted in these terms has no economic standing. Rent cannot be contrasted with income without taking into consideration all that it purchases. What would generally be called a low rent might in reality be excessively high. Thus, a room leased for 50 cents a week sounds low, but if it purchases an inner room, in a dumb-bell tenement, it is excessively high no matter what proportion of the total income it may chance to be. Or a house of six rooms, without toilet facilities and with a water

supply taken from a pump polluted by neighboring cesspools, though it may be obtained for $5, or about one-eighth of the tenant's monthly income, may be a higher rent than the $10 a month paid for a neighing property of the same size but well drained and with ample water supply. So, too, rent though stated at a higher figure may yet be actually lower owing to the proximity of the house to the workshop and to places of amusement. Rent is the price one pays for the shelter he gets plus the conveniences that aid healthy living, produce economic efficiency, and facilitate wholesome sociability. Its comparison with income cannot be made on the basis of the rent receipt to the pay envelope, but on the basis of the habitation, conveniences and benefits secured as contrasted with the total income. In short, no definite understanding of the effect of congestion upon rents can be grasped unless there is a full comprehension of the fact that rent is a purchasing medium capable of securing, without any change in its monetary reading, helpful or baneful conditions.

As a purely business proposition, rent is determined by three major factors: (1) The cost of buildings, including both the land and house; (2) economic and social conditions; and (3) the number of houses available to meet the demand. It matters very little whether the site is in an area where the density of population is ten or ten hundred per acre, these three factors control rents. Analyzing their influence brings out the accuracy of this postulate.

It is the first of these upon which congestion is most influential. Here two sets of costs must be considered. One is the initial outlay that attends the purchase of the ground and the erection of the building, and the other is the fixed charges that arise from running expenses. That is, the price of the land, the cost of material, the character of the plan determining the amount of materials needed, the labor in designing and in construction, inspection service, legislative enactments determining the fire and health hazards for which provisions must be made, all influence the first investment needed to construct the house. To these costs are added those that arise from municipal improvements such as sewers, water mains, roadways and like investments that are financed by the community but are transferred to the individual and become charges against the site. In a measure, these dual expenses can be considered fixed to the owner. No matter how fluctuating values may be his is a total outlay and charged either at the time of building or at the time of

purchase. His return is upon this outlay, plus other expenses to be mentioned shortly, in the form of rent or increment, either or both. As with the possibility of a gain there goes the possibility of a loss, so the increment may become nil while the rent, under environmental changes or economic conditions, may become, figured on an interest return on the initial investment, only a safeguard against a larger loss. The rent, while initially determined by the owner when erecting his house or by the purchaser when buying, becomes ultimately less a matter of individual control and more a matter of environmental influence. At the time of acquisition, the owner determines the return he expects and adjusts his rent accordingly. After this step has been taken, he relinquishes in a large measure this power and becomes subject to other factors over which he has comparatively little control. It is this element of uncertainty, the guarding against the wrong turn of the neighborhood, that in a large measure creates the speculative character of real estate operations. But rent also depends upon running expenses. Into this factor enter a number of influences among which are taxes, insurance, water rates, in most buildings, lighting and heat in some, but in all, management and repairs. Management varies in its character but is also dependent upon the type of building, becoming complex in multiple buildings where cleaning and janitor service and attendants total sums that make noticeable impressions on the expense account. In smaller buildings the charges for supervision are less though the site risks are greater, determining more frequently the rental possibilities of the property and thus affecting the yearly rental income. In all the tenant risk enters, reduced to a minimum where a reliable family occupies the house or raised to a maximum when an unreliable family is the occupant. Perhaps the largest single item of expense in the average property used for renting purposes, with the probable exception of taxes, is the upkeep or repairs. This varies, though in most buildings erected by jerry-builders it has become a fixed charge; while in old buildings, owing to changes in city ordinances and laws, the improvements necessitated often absorb from six months' to a year's gross rentals.

The second major factor controlling rents finds root in economic and social conditions. Here the variety and location of factories, proximity to transportation and amusements, racial segregation and antipathy, the family income and their physical needs and social

aspirations, industrial depression, panics and good times all play an important part. Lax business management and absentee landlordism, or a landlordism seeking the largest returns but deputizing control to real estate brokers, and insisting upon a management that will mulct the property of its highest net return, also play a part. Occasionally, under the inspiration of a conspiracy among brokers to maintain rents, abnormal conditions are developed and despite normal influences working to adjust the prices charged, higher rates are obtained.

As a rule, the logical result of the working of the foregoing factors upon rents would be to increase the amount exacted from the tenants. It would be quite natural to have such the case. The renting of property is a business with the sole object to get the highest possible return upon the capital outlay and with the least amount of supervision in the getting. The very pressure of this desire is responsible for the maintenance of a check upon exorbitance, for it creates a competition among owners, stimulates building and throws into the market a greater supply of houses, thereby creating the third factor already mentioned. Building booms, which come to every town, are the natural responses of loose capital to the call of this investment field. Such competition brings the house under the influence of the law of supply and demand. In some communities, as in Philadelphia, other influences enter. A type of house requiring relatively a small outlay of capital, a well-organized building and loan association system, with its easily disposed-of first and second mortgages, the legitimatizing of such for loans by banking laws, a systematized form of operative building and a simple procedure in obtaining necessary funds for construction purposes, all encourage speculative building and overbuilding. By putting the erection of houses upon a comparatively speculative basis, a group of operators have been called into the field who look for their profit not from rentals but from quick sales. They place a product on the market independent of rental considerations. They pay their expenses by creating mortgages and making transfers with a small cash bonus for themselves. The lure of speculation is magnetic and results in an oversupply of houses. This has the direct effect of throwing into the field of competition more houses than are needed to supply the demand. Wherever a like situation arises a check is established

upon the abnormal encroachment, other than changes economic conditions would cause, of higher rents for like accommodations.

These three factors act upon properties to determine rentals. They are the normal influences at work in every community where normal conditions prevail. They act even under abnormal conditions in the constant warfare carried on by invested capital to earn the largest possible return. The housing reformer, under the present economic system, welcomes this play of forces and has a practical interest in seeing that the result is such as to enable a legitimate return to be secured on the investment made. Private capital and individual initiative in housing erection can only be secured when the result obtainable is worth the effort to obtain it. Whenever any combination of causes mitigates this return there are one or more things bound to happen. As a result there is a house famine, or a crowding of two or more families into the space formerly occupied by one, thus manufacturing the tenement, or a change in the character of occupancy of homes, converting the privacy of the dwelling into the promiscuity of the rooming house, intensifying in both cases the moral and health problem of the people concerned.

These are the factors that primarily determine rent. It can readily be understood that the first two respond more acutely to congestion of population. Especially is this the case with the first or that which is included in the cost of the site and the building plus the upkeep and running expenses. A discussion of the second factor is hardly worth while here since it is so closely associated with the causes of congestion. With the present system of taxation, the more people are herded together the higher the site value becomes. Certain given areas under observation have, within recent years, advanced several hundred per cent on account of the concentration of population about them. This increased cost necessitates a greater outlay simply for the ground upon which to erect the building. Typical instances of this increased cost are found in selected areas in every city where such values are so great that it is financially unprofitable to erect any other than the multiple type of building. Added to this handicap is the outlay called for by a larger tax assessment, an increase that is not temporary to be met at one time and then charged into the initial cost, but one that runs on from year to year and for which provision must be determined in advance so

that whatever may be the structure erected it must provide a sufficient income to carry it in the yearly charges. Thus, before a single shovel has been put into the ground toward the future building, the overcrowding of people necessitates a larger capital to correspond with the larger costs. The site determines the minimum building costs and the character of the house, creating a larger risk and restricting the number who can take it. But the effect does not stop here. With the larger building, the cost of management is raised, while the outlay for upkeep is correspondingly larger. Moreover, certain typical results in the construction of the building follows. The health risk and the fire hazard are increased through the height, proximity, and occupancy of many rooms under one roof. Hence, legislators, without scientific data, create standards of structure, fire-proofing and fire-escapes, girders and floor stress, often four and five times beyond actual safety requirements, but justified on the ground that lax inspection and the evasions of the jerry-builder force these added precautions. These, together with the plumbing requirements, provisions for light and ventilation made necessary by the increased occupancy, fix upon the buildings an added cost that further affects the amount of capital invested upon which a profitable return must be secured. Thus the overcrowding of people on the land forces added stories to the building, adding materially to the cost per cubic foot and necessarily establishing the financial basis for fixing the ultimate rental return. Moreover, when it is borne in mind that rent is measured not so much in terms of rooms but in terms of the benefits that produce healthy, moral and comfortable living conditions, the financial increase of rents in multiple buildings is added to by the lesser number of cubic feet of air space in the apartments, the smaller floor area and the restricted light and ventilation. These things are not necessary accompaniments of multiple dwellings but with the cost as now assessed and cost factors multiplied by unscientific handling of congestion problems they are the actual concomitants of such construction.

Other factors also enter when too many people occupy a given area and thereby raise the actual rents. These come through municipal improvements forced by the added traffic and service rendered to the individual by the community. The sewer system has to be enlarged, water mains likewise have to be enlarged, fire protection increased, high pressure stations built to pump an increased volume

of water and to raise it with adequate pressure to the floor heights. Health regulations and inspection, police supervision and the various ramifications of civic life made necessary by crime and the care and control it obligates, including even added street lights and shorter police patrols, all add their mite to the sum total of carrying costs. Moreover, other municipal costs which have their reflex upon the property holder enter, such as traffic regulations and facilities, the delays occurring on streets laid out to carry a normal amount of traffic but, under the increased congestion, obliged to serve 100 where before they had served 1, the wear and tear on the pavements, calling for more costly surfacing and more frequent cleaning, all of which are normal services rendered in the large by each community for all its citizens but intensified when the population becomes concentrated within restricted areas. The increased expenditure from each is little, compared with the site increase in costs, but they all help to become a consequential factor when taken in the bulk. Added to these increases are the risks forced upon the tenants in the form of reduced room space, presenting in the growing family its moral dangers, and the exposure to the spread of contagion accompanying the common use of halls and stairs and, as is most frequently the case, of toilet facilities, with all the expenses attendant upon such. The rent, in such areas, purchases fewer of the conveniences and safeguards that make for wholesome living. To sum up, congestion enhances values, enlarges requisite investments, reduces both the available floor area within the economic reach of the tenant and the returns obtainable in personal well being and comfort.

It must be remembered that this analysis of the effect of congestion upon rents is made on the basis of building operations and structural changes forced by the effort to adapt an area to a larger population than should normally occupy it. Many individual houses at one time occupied by families of wealth and rented at a price largely enhanced by the exclusiveness of such, under the influence of a change in occupancy which brings in an undesirable element, decline in rental value. Many brown-stone fronts in our large cities have lost their investment attractiveness to their original purchasers through such population transformation, and instead of returning a gross rental of $800 a year, now return only $450. This does not, however, alter the facts as previously set forth; it only emphasizes the controlling influence of supply and demand. Here the demand

for the private residence in this particular neighborhood at the larger rental fell off entirely. The encroachments of the multitude upon the exclusiveness of the few became too ever present until the former finally won out. Consequently another type of occupancy had to be catered to, for which the buildings were not structurally adapted. Under the new condition economy of space, so necessary in order to obtain the full rental value of the capital invested, could not be secured. The investor faced a loss anyway, and rather than sacrifice all involved in the building itself, chose to salvage a part, actually writing into his loss account the difference in capital outlay equivalent to the amount represented by the difference in rent.

This illustration is cited in order to show that the loss is one of judgment, just as in any speculation that turns out poorly no matter if it is stretched over a long period of years. As a matter of fact there are comparatively few cases where the gross loss falls upon one person. The transfers of title are so many that the loss is distributed. It is the supply and demand, modified by social and economic conditions, therefore, that serve to check too abnormal an increase in rents as a result of the increased cost of building.

The fact of this is borne out further by the effect which improvements have upon increased rents. It is commonly believed that every sum expended upon a property to better it must earn its own return. Very little data are available, but that which are clearly prove that such expenditures are a clear outlay in so far as the owner's financial return is concerned, unless there are too few houses for rent in like neighborhoods to affect the market. A questionnaire, recently sent to about fifty cities, brought forth data which showed that improvements increased rents when there was a house famine and they had no effect upon rents when the supply more than met the demand. The best figures available came from Philadelphia. There, for 1,332 houses, where the average cost of improvements approximated from six to eight months' rentals, only on 8.4 per cent were the rents increased, while in 1.2 per cent instances they were reduced. It must be clearly borne in mind, however, that these changes were in improvements that did not add one more room space to the houses. Invariably in the latter case the additional room was accompanied by an increased rental.

If the foregoing analysis of the factors that control rents is correct, and if the effect of congestion is as has been set forth, certain

definite changes cannot be introduced too quickly. In the first place, the causes that produce congestion need to be brought under control. Comparatively little effort has been made in this direction. The concentration of people upon limited areas has been taken as inevitable. Under a proper municipal program it is not inevitable. When present, it is only the tangible evidence of communal neglect and the lack of proper planning. In the second place, legislation controlling building construction must be reduced to a scientific basis. Pseudo reformers who secure legislative restrictions or establish standards by guess work must be persuaded to do some mathematical calculation upon scientifically acquired data. When the cost of materials and the amount to be used play so large a part in the extra cost of building, all guess work as to what should and should not be ought to be ruled out. Municipal inspection service with adequate penalties to make it effective must be placed upon an efficient basis so that the honest builder and owner shall not be penalized by stringent structural requirements because the unscrupulous contractor is likewise engaged in construction work. Where political conditions make it unfeasible for municipalities to go into the building of homes, a form of municipal governmental loan at low interest and easy payments must be made available so as to offset the exorbitant rates now charged to operative builders, thereby reducing proportionately the initial cost. To further reduce the carrying cost of the house, preferential taxes must be inaugurated, while an adequate zoning system with restricted uses of tenantry in given areas must be established, thereby controlling the neighborhood changes that are now so largely responsible for the deterioration which eventually produces the slum.

Without these, no matter what other form of housing betterment is attempted, rents will not be adjusted to the point where they will give the investor his fair share and the tenant his just return at one and the same time.

HOUSING REFORM THROUGH LEGISLATION

By Lawrence Veiller,

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In these days when all things are being challenged it is perhaps not inappropriate for the efficacy of housing reform through legislation to be also called in question. Perhaps it is just as well that this should be so, for it enables us to review the grounds upon which the movement for housing reform is based.

To the social reformer who believes that the solution of the housing problem is to be found in a change in methods of taxation or in a new industrial era this article will have but little interest. How delightful it would be to be able to believe that all that is needed to bring about proper housing conditions is a change in the economic status of the working people! That given enough wages, slums would vanish! Flying carpets, wishing caps and magic philters have from time immemorial always had an indescribable charm for humanity. But alas, it is not to be done so easily! City slums cannot by the wave of a necromancer's wand become gardens of delight.

Those of us who are veterans in the cause of housing reform—though perhaps it is a little embarrassing to have to admit being a veteran in any cause—have been conscious for some time past that the "younger statesmen" have been getting restive and dissatisfied with the methods heretofore employed in this country in attempting to solve the housing problem. I am not quite sure whether we ought to call our friends "post-impressionists" or whether they do not more truly belong to the cubist and futurist schools, for the field of social reform as well as that of art is blessed with these manifestations of ultra-modern thought.

I must confess that it is rather interesting to find what has been America's distinctive contribution to the solution of the housing problem called in question. For America has not excelled other countries in this movement in other respects. Its one and distinctive contribution has been its system of control of these evils through legislation.

We have not as yet at any rate developed examples of artistic

communities, either garden cities or garden suburbs, that can successfully compete with what has been done in recent years by England. Nor has America in its model houses produced results, either in our crowded cities or in our small towns, that are in any way superior to the work that has been done on the other side of the ocean—in Germany, in Great Britain or in France. Nor have we anything especially noteworthy to show in the aid which the government has extended to the housing of the workers. America as yet has done nothing in this field. Those who are interested in such aspects of housing reform must look to France, Belgium and other European countries. Municipal housing in America is unknown. In that field, therefore, the other countries of the world have little to learn from us. Nor have we developed anything especially noteworthy in systems of transit to facilitate the moving of the workers from their place of industry to homes outside of the city. Here again we must look to Europe for example. Neither can those who believe in taxation as an influence affecting housing conditions look to us for advice or aid. As yet nothing has been done in America in this direction. Here, too, we must look to Europe.

If, then, we have nothing especial to show the world in the way of results in these various directions, what, it may be asked, has America done in its seventy years of effort at housing reform which is worthy of note and which may be helpful to other communities grappling with this problem? The one distinctive contribution which America has made has been in its system of control of slums and of bad housing conditions through the enactment of regulative laws and their enforcement.

While it is true that we have been conscious of the housing problem in America for seventy years, this is true only of the one city of New York, where housing conditions are unique, and it is not at all true of the rest of the country. While bad housing conditions in greater or less degree are to be found throughout all parts of the United States as they are in all other countries, most of the evils have developed in comparatively recent years and the movement for their reform has been of very short duration. But the effort that is now being made in America to solve the housing problem is deliberately being taken along the lines of legal regulation and not in the other directions referred to at the beginning of this article. If we are going in the wrong direction, it is time we knew it.

While the testimony of the stranger within our gates is not always to be taken literally and allowance must necessarily be made for the complimentary attitude of the visitor to our shores, still the testimony that we have recently had from a representative of the Hungarian government is a striking tribute to the changed conditions which have come about in recent years in one city at least, viz: the city of New York. Dr. Nemenyi, of Budapest, sent here by the Hungarian government to study America's methods of dealing with the housing problem, in a recent interview said:

> New York's tenement laws and their enforcement have no parallel anywhere in Europe. New York's handling of the tenement problem is, to European eyes, unique, admirable, impressive. Conditions in the worst of your tenements are vastly better than in the worst of Europe's. Your laws have produced this superiority.

After a four weeks' study of New York's tenements in all parts of the city, Dr. Nemenyi made this utterance and added:

> The overshadowing feature of the New York tenement situation is the kind of laws you have and the way you force obedience to them.
>
> Your tenements as a whole are far better than those of Europe, while your slums are not nearly as bad as those of many cities in Europe. Of course there are tenement house and building laws in Hungary and Europe generally, but they are not such laws as you have. They do not protect the health and lives of dwellers in the tenements as do yours, and it is for this reason that Hungary wishes to revise her laws along American lines.

An understanding of whether housing reform has been successful along certain lines or not depends a great deal upon one's conception of what housing reform is and before there can be an adequate discussion of what constitutes housing reform there must be agreement as to what the housing problem is. In other words, we must know what we are going to reform before we attempt to reform it.

There is a great variety of opinions on this subject, especially among those to whom it is more or less a new subject. Some of our friends seem to believe that the housing problem is essentially the problem of cheap houses; as some have expressed it "of providing a home for the man who cannot afford to pay more than $9 a month." But this is a singularly misleading and restricted view of a large and complicated question. It is but one aspect of it. It would be just as appropriate to say that the problem of child welfare is the providing of milk at 4 cents a quart.

Another group believe that the housing problem is the problem of rapid transit. With their eyes fixed upon the more crowded quarters of some of the larger cities where the problem of moving back and forth the vast throngs who journey from one part of the city to another twice a day is fraught with great difficulties, they conceive that the housing problem is the problem of rapid transit and that if cheap and effective rapid transit could be once provided the housing problem would be solved. This is not a new view. We have encountered it before. Still another element believes that the housing problem is the problem of supplying a sufficient quantity of housing accommodations and that anything which tends to encourage the building of more houses will solve the housing problem, the assumption being that there is a dearth of housing accommodations and that people live under bad conditions simply because there are not enough houses to go around. There is a grain of truth in all these views. Each one is a factor involved in the housing problem, but no one of them can be truthfully said to constitute that problem.

The housing problem is the problem of enabling the great mass of the people who want to live in decent surroundings and bring up their children under proper conditions to have such opportunities. It is also to a very large extent the problem of preventing other people who either do not care for decent conditions or are unable to achieve them from maintaining conditions which are a menace to their neighbors and to the community and to civilization.

If we accept this view of what constitutes the housing problem we see that it has many sides; that it is not only an economic problem, that it is not only a question of supply and demand and of furnishing a sufficient quantity of homes, but also that the quality of the home is of vital importance. The assumption that thousands of people live under conditions such as are found in our large cities throughout America because there are no other places in which they can live is wholly unwarranted and not borne out by the facts. There is no use in dodging the question. We may as well frankly admit that there is a considerable portion of our population who will live in any kind of abode that they can get irrespective of how unhygienic it may be.

But the social reformer is in danger of having a somewhat distorted view of this question. His attention is necessarily focused to a very great extent upon the abnormal conditions which prevail.

It is very easy for him to lose sight of the fact that the great mass of the people in a country like America are not slum dwellers and do not live under the bad conditions which he sees around him. There is probably no country in the world where the individual detached house occupied by a single family, containing most of the comforts and conveniences of living, exists to the extent that it does in America. This is the normal type of home of the American wage-earner. The conditions which are found in the foreign colonies and slums of our large cities are exceptional and abnormal, symptoms of disease, not of health; conditions which of course must be dealt with. But we should not let their existence overshadow or cloud our vision with regard to the real conditions which exist.

If housing reform is not to be achieved through legislation, as it is claimed, how are we, I wonder, to remedy the main housing evils which we find in America today? Take the evil of the privy vault, for example, probably the greatest single evil that we have to face at the present time, certainly the greatest evil from a sanitary point of view. I can think of a hundred cities where privy vaults exist literally by the thousands. Each one of these, as is well recognized, is a potent source of infection to the community. If this evil is not to be remedied through legislation, I wonder how the advocates of other methods of housing reform would go to work to get rid of these privy vaults. Do they really believe that in a city of 500,000 people where there are 12,000 of these vaults in existence today, the establishment of a garden city or suburb on the outskirts in which possibly a thousand people might be housed, will get rid of the vaults?

Assuming for the sake of argument that such a garden city is established and that a goodly number of people move out to it, deserting the homes which they have previously occupied, is there anything in the experience of any city in America that would show that such homes would thereupon become vacant and in a short time be torn down and the land converted to other uses? If this were so, then it is conceivable that through such a march of events, if a sufficient number of people made this migration, that the vaults might ultimately disappear, but unfortunately there has been no such experience in the history of any community in this country or any other. It is true there has never been any development of garden cities or garden suburbs on so large a scale as to have any material effect upon the housing conditions of the great mass of a city's popu-

lation. But even if there were, the assumption that the houses thus vacated would cease to be occupied leaves out of consideration the growth of cities, the tremendous increase in population which goes on year by year in our thriving communities. Because of this growth the quarters thus vacated are immediately occupied by new groups of working people. Experience shows clearly one thing above all others, that so long as houses exist, they are likely to be occupied.

If the establishment of garden cities would not rid the city of this plague of privy vaults, I am puzzled to see in just what way the development of better transit facilities would accomplish this result. The arguments that have just been advanced in regard to garden cities seem to have equal force in this case as well. Improved transit facilities, it is true, might move many of the population to the more sparsely settled sections of the city, but it is also equally true that in such sections privies are apt to exist to a far greater extent than they do in the older sections. It is the new section, as a rule, that is unsewered and undeveloped in these directions. The tendency of better transit then would be, so far as one can see, not to remove any of the existing objectionable privy vaults, but on the contrary, probably to increase the total number of such vaults within the community.

Changes in methods of taxation, advocated as tending to encourage the building to a greater degree of new houses, would at best operate in the same manner as the development of garden cities. At best the new houses would be occupied by the well-to-do members of the community. New houses are always more expensive than old ones just as a new suit of clothes costs more than a second-hand one. I am similarly puzzled to see how the building of a group of so-called "model" houses would effect the removal of the 12,000 privy vaults in the city in question, or how government subsidies to persons wishing to build houses would work a similar reform.

The only way that I know of by which such conditions can be ended is through the enactment of laws which will compel the removal of these nuisances and the substitution of modern sanitary conveniences. This is not theory but the result of the experience of many cities.

Legislation alone, of course, will not do it. Laws must be enforced. Some of our social reformers seem to think that getting a housing law upon the statute books will change housing conditions.

Unfortunately, laws do not execute themselves and no law will do much unless an adequate system of enforcement of that law is also provided.

We have seen how legislation is necessary to get rid of the privy vault; let us take another housing evil—the evil of cellar dwellings. In many cities we find a considerable part of the population living underground, in rooms which are damp, dark and badly ventilated, rooms not fit for human beings to live in. In some cities there are many thousands of such rooms, and singularly enough, generally where such conditions exist there is no lack of proper housing accommodations.

I am here puzzled also as to how the establishment of garden cities or improvement in our systems of transit or changes in methods of taxation or government subsidies to builders of homes will drive these people from their dismal cellars. So long as these cellar rooms stay there, so long as there are landlords to derive a profit from renting them and so long as there are people poor enough and unfortunate enough to live in them, they will be occupied. There is no city in America in which it is not a common experience to find such rooms occupied in considerable number and to find in the same town a very large quantity of vacant apartments of a much more adequate and sanitary type. The only method that I know of by which the occupancy of these unfit habitations can be stopped is to forbid people to live in them. This can be done only through legislation; but even then people will live there, unless the laws are enforced.

Similarly with regard to dark rooms. By which one of the above methods now so urgently advocated can we cope with a situation which existed a few years ago in one of our large cities where it was discovered that there were over 360,000 windowless rooms in the homes of the working people—rooms without light and air, each one a potent source of danger and a serious factor in the spread and development of tuberculosis? How can a garden city or improved methods of taxation get rid of these 360,000 dark rooms? The only way I know of to get rid of a dark room is to let the light into it, to cut a window in or to tear down the house. The only way I know to stop people living in dark rooms is to forbid it and then see that the law is enforced. That such a method is effective, the experience of every city in which laws of this kind have been adopted clearly shows. True it is a painful operation. It takes time and

energy and above all things patience. It means constant effort. It means attention to innumerable details. It means foregoing, often, immediate results to secure larger future return.

And so one might go through all of the other important forms of housing evils as we know them and ask similar questions. But the answer in each case is the same. The great mass of the housing evils which we encounter today can only be remedied through legislation. If we find a city in which the men who are building houses build houses which are not fit for human beings to live in, which contain dark rooms, which have unsanitary plumbing, which do not afford adequate protection in case of fire, what way is there other than through legislation to bring about the building of the right kind of houses?

There are two other ways open, education and example. It might be possible to so impress upon builders the disadvantages to the community of such forms of construction that they would willingly forego the larger profits which result from them and adopt the more desired and less remunerative one, but unless the breed of builders becomes very different from what it has been since the beginning of the world, I fear there is little likelihood of very large results flowing from this source. Those who wish to undertake that kind of an educational campaign will, I fear, become discouraged in a short time. The prospect of securing results is not an alluring one.

Surely, someone will say, the force of example should be a potent influence. Building a group of model houses ought to influence the types of houses that other builders will build. Perhaps it ought. But the writer must confess that he has not as yet been able to discover any instance where it has worked in this way. It is very simple to put the matter to the test. Let any group of people who are taking up housing reform and who think that larger results can be obtained through these methods of education and example than through legislative action try their plan and await results. At least they will have the gratification of knowing that they are not being bound by what other people have done.

Housing is a commodity like food or clothes and the methods to be employed in securing the right kind of housing for the people of any community differ in no essential respect from the methods to be employed in providing the right kind of food or clothing for that

community. In a city where the children of the poor were dying from typhoid because of impure milk, I think we should feel that it was trifling with a serious problem if it were urged that nothing could be done through legislation but that the only way to insure a better milk supply was to encourage the people to move to the country where they could have their own cows and thus insure the right kind of supply for their children.

We should also feel that we were playing with a vital situation were it proposed to meet a crisis of this kind through the establishment of a model dairy which would furnish milk to 1 per cent of the children of the city and at the same time allow the other 99 per cent to be poisoned by bad milk. What every community has done under such circumstances has been to rise in its might and say bad milk shall not be sold. In other words, they have sought the remedy for such a condition through law and law enforcement, and they have gotten results. It is all right to establish a model dairy to encourage others and show how good milk can be produced, but this should follow an ordinance prohibiting the sale of skim milk or milk containing too large a bacterial count. No sane community would accept the establishment of one model dairy as a substitute for that kind of legislation. Good housing is to be provided in the same way.

In housing reform we need especially to beware of importations from across the sea, not because they are from across the sea—I hope no such provincial view of life controls us—but because the conditions which exist in the old-world countries are so totally different from those which prevail in America. And we are dealing with America, not Europe. We are not dealing as they are with a homogeneous population of but one race. On the contrary, we are seeking to amalgamate all races and nationalities into a new and different race from anything the world has ever seen before. Nor are we living in a monarchy where comprehensive plans may be executed by royal edict and where the habit of obedience to constituted authority has become fixed and absolute. On the contrary we are dealing with conditions that exist in a democracy where our rulers are rulers of the hour, where every man is as good as, if not better than, his neighbor, where laws are made to be broken, and where any suggestion of obedience to constituted authority is looked on as an invasion of the rights of the individual, and where liberty has become license. The methods which have been suc-

cessful in Europe have been so because they have been suited to the conditions which exist there. To be successful here we should have to engraft upon our civilization the governmental bureaucracy which we find in Europe. For these reasons the label "made in Germany" when attached to plans for housing reform should be viewed with caution.

The question which every housing reformer must face is, what method will give the largest results with the least expenditure of energy and effort? It is largely a question of emphasis. The method which will return 90 per cent of results and not 10 per cent is obviously the method to follow. No one thing will in itself solve the housing problem in any community. Housing evils are of so manifold a nature and have so many manifestations that it is of course apparent that many things must be done before right conditions can be achieved. There is no method of housing reform which the housing reformer should not adopt provided it will produce results. It must always be submitted to this practical test. In some cases all methods are to be employed, not merely one.

That legislation alone will solve the housing problem is of course absurd. Laws to be effective must be enforced. But the point that I should wish to lay emphasis upon is that in most cases the largest results have come from legislative action and that until certain fundamental evils have been remedied it is futile, or worse, to adopt the methods of housing reform which may be said to belong to the post-graduate period rather than to the kindergarten stage of a community's development. It other words, we must get rid of our slums before we establish garden cities. We must stop people living in cellars before we concern ourselves with changes in methods of taxation. We must make it impossible for builders to build dark rooms in new houses before we urge the government to subsidize the building of houses. We must abolish privy vaults before we build model tenements. When these things have been done there is no question but that effort can be profitably expended in the other directions mentioned.

WHEREIN DIRECT HOUSING LEGISLATION FAILS

By Edward T. Hartman,

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Direct housing legislation is useful and always will be as a means of voicing public opinion and setting standards below which one may not go under any circumstances. The careless and the pernicious have most always to be reached in this way. But housing legislation deals with a result. Bad housing, while it causes many difficulties, is itself essentially a result. To solve it we must reach the causes. The tendencies in home construction and maintenance are the result; the causes are various.

Housing legislation fails to regulate taxation and therefore largely fails to solve the housing problem. Housing legislation increases the cost of homes; increases the tax on homes; increases rents; forces people into poorer homes; makes home ownership more difficult; delays marriage; retards the development of the home and parental instincts; tends to the perversion of these instincts. Housing legislation does not regulate taxation, for we tax homes. When a man builds a home we put a penalty on him. Housing legislation does not recognize the unearned increment, therefore it penalizes the man who helps to build up the community and favors the man who maintains vacant lots, and develops weed patches and dump heaps.

The tax on homes increases because housing legislation does not bring us to conduct the enterprises which help to keep down taxes. We run all non-profitable enterprises in large part by taxing improved lots, industries and homes and turn over to private groups all profitable enterprises.

Housing legislation fails to show us that one lot is as valuable to the community as the lot next to it, so we tax the improved lot higher than the vacant lot, and tax the improvements in addition.

Housing legislation fails to regulate the planning and the development of a city. Tom, Dick and Harry put streets of the kind they please, where they please; and the taxes on improved lots, industries and homes have to pay for making the streets usable and for getting sewers into them.

Housing laws do not control the number of houses to the acre, as does the English town-planning act of 1909, except in a very general way. Exercise of this power would prevent congestion on the land and put a very effective stop to land speculation, because land with a restricted use will not attract speculators like unrestricted land. This restriction would enable people to live under better conditions in respect to both cost and sanitary conditions. Direct housing laws do not reach this problem.

Housing laws do not regulate the improvement of old streets. It often happens that control of an area is secured, a law is passed providing for the widening of a narrow street through it, the improved lots and homes are taxed to pay a large price for the land and property taken and for making a new street. The value of the property in the neighborhood is enormously increased. Housing laws fail to give this increase to those who paid for making it possible. This unjust imposition on people not benefited is a favorite method of city building in many places.

Housing laws fail to regulate monopoly, so improved lots and homes pay the taxes which ought to be paid by monopoly. Monopoly has this advantage over homes reached by housing laws and it also has the power to increase the other costs of living so that people have to move into poorer homes and home ownership becomes more difficult, family life is held back, good instincts are perverted and bad instincts gain a foothold.

Housing laws do not control transportation, so people have difficulty in getting out to light, ventilation, and a helpful environment. The city can thus not grow as it ought and improved lots are more used, houses are more crowded, sickness, immorality and poverty are increased and improved lots and homes have to be taxed more to take care of the results.

Housing laws fail to promote home ownership. To develop a community of citizens home ownership is desirable. The cities of Germany recognize this. Ulm, for example, is embarked on a campaign to become a city of citizens owning homes. The city is building the homes. It will build homes for all who can pay down 10 per cent of the cost and it intends to build homes for all who will begin to save the 10 per cent required.

Housing laws in America fail because they do not distinguish between citizen building and fortune building. They fail to show our

city, state and national governments that the welfare of all the people is more important than the welfare of a few at the expense of all the remainder.

Housing laws fail to affect wages. They increase efficiency, but this increase goes more to the employer than to the employee. The laws increase the cost of houses but only remotely affect wages so as to make people able to occupy houses at increased rentals. Hence people are kept out of good homes and forced into bad homes.

Housing laws fail to affect the honesty of labor. Labor is to a large extent given to doing as little as possible for a day's work. The cost of a day's work goes into the cost of homes and of living. An honest day's work helps to reduce the cost of homes and of living.

Housing laws fail to affect public opinion. All we do depends on public opinion. In Europe cities are run by bodies of men picked for their ability to run cities properly. They keep land values down largely by restraining land speculation and by public ownership of large areas of land. They keep down taxes on homes by taxing land and by running paying enterprises as well as losing enterprises. We will have to content ourselves with less personal freedom, which is too commonly mere license for the few. Freedom of action for the few comes to us at the expense of "thralldom and repression for the many."

Housing laws fail because they do not reach the constitutions. Written constitutions ought to be amended frequently, for the world changes. When our constitutions were written they were fixed and changes were made difficult, almost impossible. Our housing laws encounter this difficulty and we have adopted means of getting around it only to a very slight extent. A real constitution is the voice of the living present, not of the dead past, except as the past gives us experience.

It is a mere truism that the people make the community, yet many people, among them many who call themselves housing reformers, think that business and houses make the community. Business and homes are essential, but only as servants of the people. Housing laws, now about all that any housing organization has recognized, fail to make good homes obtainable homes. They will continue to fail till they are worked out jointly with the other problems mentioned.

Housing laws fail in all these things in America because America

treats them as a detached proposition, which they are not. Housing laws in America are not, however, a total failure. When they are developed they help people to see other things needed and when these are once fully observed the necessary things will be supplied and housing laws will be interwoven with all the other needed regulations to the end that people may live and grow strong. The people are the community and the community, business and all, go up as its human element goes up, down as its human element goes down.

THE OLD HOUSE AS A SOCIAL PROBLEM

By Mildred Chadsey,

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The subject of this paper is an invocation to the muse of eloquence. "About the old house clusters tender memories and dear associations," or again, "Home life in America is lacking in flavor because our houses are too new and without setting." Here the muse departs for she learns that we are not interested in the old house from the standpoint of its years, but that for the purpose of this paper we are classing some houses of less than twenty-five years as old and some of more than fifty years as new. As a matter of fact, the mere passage of time has as little to do in determining the age of a house as it does in determining the age of an individual. Much more depends upon the material with which the years have to work and upon environment. The two types of old houses that we are interested in are, first, the small, poorly designed and cheaply constructed house that later becomes a miserable shack, and second, the large substantially built house that has outlived its usefulness as the residence of its owner and is transformed into a makeshift tenement.

Every city has its heritage of miserable, dilapidated shacks that were built in violation of every code of beauty, safety, sanitation and comfort, or have long outlived the code under which they were built. Fifty years ago, when most of our cities were only growing towns, these houses with cisterns, stables and earth closets in the yard were comparatively harmless because the yards were not crowded with other houses, and so they had an opportunity for light, fresh air and cleanliness that distance affords, but as the city has grown, as other houses have been built upon the lots, and as no repairs or improvements have been made, these houses have deteriorated into wretched hovels where human derelicts congregate and breed disease and vice. Not remotely removed from the heart of "one of our large and beautiful cities" there was until yesterday such an infected area where forty of these shacks, built by squatters

a generation or so ago, huddled together on a hillside property owned by a railroad. As more of these shacks were built year by year, the yards became so crowded that the refuse of the earth closets stained and dampened the walls and floors of the lower tier of houses, and the ditches that formerly carried away surface drainage became open sewers, and the cisterns, getting not only the water from begrimed roofs but the seepage from filthy yards, became germ-breeding holes. In one of these houses lived a woman who, with the aid of charity that was not charity, was supporting, by washing, a syphilitic husband, a tubercular sister and five children, four of whom were physically and mentally defective. Who can reckon the number of people who were exposed to the dangers of disease that emanated from this one old house? Yet the railroad company hesitated to order these shacks removed because many of their occupants had been in its employ or were the mothers or widows of those who had been in its employ. To say that the company felt that it was doing these people a kindness to let them live under such conditions might be overstating the case, but at least it felt that it would be doing them an unkindness to order them to vacate and to remove the shacks.

The other type of old house that we are interested in is the old building remodeled into the makeshift tenement. It represents the architectural splendors of comfortable living of a few generations ago, and because of its durability, it has survived in a neighborhood where all else has changed. It represents decadent respectability and stands as a monument to the ruthless waste and needless sacrifice of an evershifting population because our cities have been allowed to grow without plan or reason. By adding storerooms on the front, by joining other old houses on the rear, by subdividing rooms with thin board partitions, thus creating unventilated, inside rooms, these houses have been changed into flimsy tenements that are worse than the dumb-bell and railroad types of tenements of New York City. The apartments thus made are without privacy, without fire prevention, without plumbing and generally, without a possibility of real homemaking. I know of several such tenements where it is necessary to go through one suite to get to another, and I know of one such tenement where it is necessary to go over a roof of one apartment to get to another. Practically all of these tenements have insufficient water supplies and toilet facilities. In many cases what was once the bathroom of a one-family house now serves as a public toilet

for two to eight families. When a tenement house inspector ordered an owner of one such a place to make some necessary improvements, he, who by the way was on the city's payroll, replied, "What was good enough for me to be born in is good enough for that bunch of foreigners to live in," and this notwithstanding the fact that he was born there over fifty years ago and was a member of one family and today there are four families occupying the house with little or no repairs in twenty years.

In this day when we are learning that public health is a public asset and that it is a purchasable commodity, let us inquire what the effect of the old house is upon the health of its occupants. That these miserable dwellings that violate every sanitary law afford an excellent environment for the development and spread of the germs of a number of diseases is self-evident. We all know that tuberculosis flourishes best in dark and damp rooms, that the typhoid bacillus is conveyed through a polluted food supply and venereal disease is spread by overcrowding. Sanitary surveys everywhere are telling the close relationship between disease and old, insanitary dwellings. Recently a study of two contrasting districts was made in Cleveland, and one of the results was the showing in actual figures of the relation of disease and death to the insanitary dwellings. One district is in the old crowded business section of the city, where the population houses itself in abominable, makeshift tenements and dilapidated, filthy houses that are never repaired or cleaned up because the owners expect soon to sell the property for business purposes. The other district, which was chosen for the purpose of contrast, is in the outlying section of the city near some manufacturing plants, and is made up mostly of comparatively new houses, many of which are being purchased by the tenants, and practically all of which are maintained in a sanitary, even attractive condition, though the rents are no higher than they are for the houses in insanitary condition. In the first district there were 908 cases of tuberculosis since 1907 or 52 per 1,000. In the second district there were 450 or 28 per 1,000. In the first district there were 665 cases of contagious disease in 1912 or 3 per 1,000. In the second district there were 286 cases of contagious disease or 18 per 1,000. Other cities are finding out the same facts. The welfare commission of Kansas City found that infant mortality was from five to seven times as bad in districts where the disgraceful shacks and hovels which have defaced

the city for so long exist than in any other part of the city. In a study of fifty backward children from a Chicago public school, it was found out that forty-three were physically defective, and every one of these forty-three children came from houses that were so sordid and insanitary that they were unworthy to be called homes. A report from Glasgow shows that children that come from homes of one or two rooms are smaller and lighter in weight than those brought up in larger and less crowded and better lighted rooms. However, to discuss from a statistical or scientific standpoint, a fact so obvious as the effects of the filthy, dilapidated, overcrowded house upon the health of its occupants, is as futile as it is unnecessary. Just as we have passed a day when a health officer can say, "It was the will of God to visit the community with an epidemic of typhoid," so we have passed the day when we need be told that dark, damp, unventilated rooms, foul plumbing, vault closets and filthy yards and stables breed germs faster than all the doctors in the land can cure the resulting diseases.

The effects of the old house upon the moral and social life of a community are almost as obvious as they are upon health. Contrast the sanitary maps of any city that show where its neglected dwellings are, with those that show where its juvenile delinquents, its wayward girls, its insane mothers, and deserting fathers, its drunkards and drug habitues, and its criminals come from, and you will find that they indicate the same areas. We must accept as a matter of course that the child reared in these unhealthy and unattractive homes where there is not an opportunity for normal and wholesome living and natural development, will be either morally or physically defective or both. A probation officer visited one of these old houses on the rear of a lot to confer with the mother of a young girl who had been arrested for soliciting on the streets. He found the mother and three younger children tying willow plumes in a small, ill-smelling room. After listening indifferently to her visitors for a while, the mother smiled pityingly and said, "Do you think that I don't know what my daughter is doing and do you think I am not glad to have her escape this in any way she can?" and she waved her hand about the room. Only such travesties of home as this could make such a travesty of motherhood. It is not to be wondered that mothers of such homes go insane, that husbands desert and children fill our reformatories. The child to whom the word home recalls

only the unattractive, crowded rooms in a miserable building that looks like all of the other miserable buildings of the street, from which he gladly escapes to find his pleasures in the street or public places, is very apt to end his career where he began it—rearing more unfortunates to a life that he himself could not escape. Visiting nurses, associated charities agents, probation officers and settlement workers may expend their time and resources in these districts, but they can do little more than alleviate the misery of today that will in some hideous form manifest itself tomorrow, so long as human beings are left to live under conditions that breed not only disease and death, but under conditions that are so sordid and so miserable that happiness and beauty and comfort can never be known, and in their places grow sodden indifference, blind despair and viciousness.

There are those that argue that the miserable conditions that we find in these old houses do not make these people, but that they, because they are subnormal, will inevitably fall down the social ladder to the pit at its bottom. But why have the pit? Why not let the social waste go to the institutions that are designed to care for it, and so remove the possibility of its breeding more of its kind and spreading its infections throughout the community? Then there are others who argue that these old houses are necessary to accommodate the poor who cannot afford better living conditions. In Cleveland a year ago, twenty families living in miserable shacks were ordered to vacate as the shacks had been declared unfit for human habitation by the local board of health. All of these families claimed that they could not afford better quarters and declared that if their houses, for which they paid little or no rent, were destroyed they could not exist. Before they were finally ejected from these houses, the associated charities was interviewed and agreed to assist them to pay their rent in better quarters in an effort to rehabilitate them. The year has passed and not one of the families has applied to the associated charities for aid and every family has moved into better houses—as they had to do because they were living in the worst hovels that the city possessed—and every family is paying more than twice the rent it had paid except one, which built a new and comfortable home. In this change several families cast off some unnecessary impedimenta, such as an insane grandfather of eighty years whom one family had refused to commit to an asylum; a tubercular friend who was sent to a sanitarium and two defective children who

were sent to an orphan asylum and one drunken husband who was forced to make a longer sojourn at the workhouse than he had done before. Many neighborhoods, like many closets, are the better off for such a clearing out and no doubt a family that has lost such a charge as some of these that had dragged it down for years, can the more readily rehabilitate itself. Former Ambassador Bryce summed up this phase of the social problem of bad housing in the sentence, "Cleanliness, health, self-respect, manners and morals, are all immensely depressed by sordid conditions, and correspondingly raised when the environment is improved."

Most of our cities, due to their rapid growth, have districts that are going through a transition from resident districts to factory and business districts. Rent from dwellings is decreasing, while land value is greatly increasing. The owners of many of these houses, foreseeing the opportunity to sell the land for business purposes in one year or ten years, will not repair or improve their houses, because they argue it would be a waste to put more money in the houses that will in themselves bring no return when selling the land. They tell you in complacent tones that imply that they think themselves philanthropists that they are asking little or no rent, just enough to pay the taxes. They fail to realize that the taxes could be paid and never missed from the unearned increment. You suggest that if they are not willing to repair these houses, that they vacate them and hold them vacant, and they are indignant that you should be so impractical as to ask them to pay taxes on property that is bringing them in no income. Yet, this same property that they paid $3,000 for twenty years ago, they will sell for $30,000, and in the meantime they have enjoyed a fair interest on the original investment through rent. And notwithstanding the fact that the owner is getting in rent returns only enough to meet the taxes, he has gradually increased the rent without giving to the tenant any advantages in return, for as land values have increased, the taxes have increased, and so he has correspondingly increased the rent.

In addition to this obvious injustice to the renter, is the injustice to other property owners. This injustice is manifested, first, in the failure to force owners of this type of property to comply with the existing laws. For example, in one of our growing and therefore typical cities, a railroad company proposed a high-level bridge, a contemplated interurban station as well as a long-hoped-for union

depot. The railroad company has been figuring on purchasing certain properties for five or more years, and it is supposed by hopeful property owners in these regions that the company will purchase certain other properties. In the estimation of the courts of that city, it is unreasonable or unjust for the building or sanitary departments to enforce their regulations on houses in those districts, because these houses are soon to be sold and torn down, and the court does not think that those houses should in the meantime be held vacant. One of the many results of this opinion is that fourteen families have been permitted to use and continue to be permitted to use one foul yard closet, while the owner continues to get a good rent from his houses and holds the land at three times its original value. Can the sanitary department of that city consistently require other property owners to provide one sanitary toilet for every two families as the law states? The second injustice against property owners lies in the fact that new houses have to enter into rent competition with these houses. Thus the entire housing problem of the city is complicated because real estate dealers cannot be expected to build a new and sanitary house that must enter into rent competition with these places, that are allowed to deteriorate from year to year until they all but fall upon the heads of the tenants, for the rents from the new houses must be sufficient to keep up repairs and bring a fair return on the money invested. Therefore it would be exceedingly difficult for them to compete with these houses that receive no repairs and pay no return on the investment, as that is more than covered in the increase in land value.

These old houses not only prevent new houses from being built but they have a degrading effect upon the tenants who occupy them. When people live in buildings that are not repaired or properly maintained, there is no incentive on their part to care for them, or to maintain a decent standard of living within them, nor does this inculcate in them respect for property. The tenants from such houses frequently encounter trouble when they go to occupy property that is properly maintained. Only those who have attempted to be mediators between tenants and property owners can realize how serious is the disposition on the part of a tenant to treat carelessly or destructively the property that he occupies. Recently, on the orders of a city health department, a property owner installed sanitary plumbing through a large tenement at an expense of several hundred

dollars and in less than a month's time, he invited the inspector to survey the stopped toilets, the broken water faucets, the sinks with missing drain pipes, etc. For ten years, ever since they had been in the country, the tenants had lived in miserable places with no water supply in the house and with vault closets in the yard. This landlord is paying the price of neglect on the part of other landlords, but naturally the pleasure that he might have taken by initiating these foreign peasants into the mysteries of modern sanitation, was somewhat counteracted by the size of his plumbing bill. Too much emphasis cannot be put upon the influence that the old house has upon the occupant's conception of property. Living in a house that is a source of manifold ills and discomforts to him, and a source of income without expenditure or care to the owner, creates a spirit of resentfulness that expends itself in a desire to mistrust property owners, and disregard property rights, and too often this red flame of resentment kindles a spirit of lawlessness and anarchy that is a menace to the community. Such tenants come to hold all property and all law in disrepute, and so the very real problem of the tenants' use of property and regard of sanitary regulations comes to be, and so the property owner who would prefer to give his tenants fair treatment becomes discouraged and skeptical.

The old house is the old bugaboo that all city and state legislators have paid abject homage to for years. Fair-minded real estate dealers and city planners are nailed to this cross of vested rights, and on either side of them hundreds of innocent victims are nailed to crosses bearing the same inscription. We draft new building codes, we expend hundreds of thousands of dollars to inspect new tenements to see that not in the slightest detail do they violate these codes, but what do we do about the old houses? We pass very colorless laws that demand that they be kept in a reasonable repair and that a reasonable amount of improvements be made. Let me give you an example of what is not a reasonable improvement. One city's law requires one toilet for every two families in all existing tenements, and if these toilets cannot be placed in the house, it allows the yard fixture—a fixture that has ten years ago been legislated out of existence for new buildings. A property owner who had five families using one toilet in a hall states, that there was no place for another toilet. He had built upon his entire lot, so that there was no place in the yard, and so he was told by the tenement house

department that he must use some of the space that is now used for living rooms, for toilet rooms. He took the case to court and the court agreed that the department was unreasonable to expect him to decrease the number of rooms of his apartments for which he could not receive rent for the installation of necessary plumbing. With this legal decision, we are apparently safe in assuming that the owners of the old houses comply with the requirements only when it does not inconvenience them to do so. A city official once sent an owner of property to the head of the tenement department with this note written on the order issued by that department: "Mr. —— is my good friend, and is willing to comply with any reasonable orders, but he will not spend any money on this old house." An admirable definition of what is reasonable when dealing with the old house.

Most experts agree that the housing problem will never be solved by philanthropists building model houses or renting them to tenants at a price that does not yield a fair return on the money invested. They are claiming that tenants do not want and must not be the recipients of such philanthropy. Why then, should the owner of the old house be given such marked consideration over the owner of the new house? Is not he the recipient of legal discrimination that should be far more humiliating? The old house has already paid for itself many times over. The new house has its earnings all to make. In a word, if we recognize that certain sanitary regulations are just and necessary for the new buildings, why should they not be just and necessary for the old buildings? Unequal standards, whether in the world of ethics or materials, have only worked for injustice and discontent. If the old house is so bad that it cannot be repaired or remodeled to come to a legal standard, it should, like an outgrown garment, be cast aside and not kept up for sentiment's sake. Our American cities today are cluttered with hideous, insanitary houses, with sheds and stables that depreciate property values all about them, and stand as eye sores to the community and as an eloquent tribute to the doctrine of vested rights. Single taxation would sweep away these places from our midst as vacuum cleaners would clean up the floor, but in its absence an equalizing of the requirements for old and new houses would not only remove the old, but would in return stimulate the building of new houses.

To summarize, the old house is a menace to the health, the

morals, the standard of living of tenants; it is a constant source of expense to the community; it fosters a spirit of misunderstanding between property owners and occupants; it paralyzes new building enterprises; it sets a false basis for rents that fair-minded owners cannot cope with; it fosters a lawless disregard for all property rights; it depreciates surrounding property; it defaces the city and stands in the way of the city's progress, and it is therefore a dishonest source of income. An individual who sinned so grieviously against the community would be punished—why should we be so much more charitable to an individual's property? The old house, like the old sinner, should be dealt with less charitably than the new.

THE PROBLEM OF THE OLD CITY HOUSE

By John Ihlder,

Field Secretary, National Housing Association, New York.

The problem of the old city house is one of the most baffling with which housing workers have to deal. Not only does the old house often present financial and structural difficulties which are serious enough in themselves, but it offers to those who would remove its baneful influence legal obstacles and puzzles in community psychology. The old house is an inheritance from a past generation, but unlike the easels that adorned its parlor in the days of its prime, it can not be put away in an attic and forgotten until some iconoclast discovers it and to the relief of every one casts it into the fire. It stays where it was built, obstinately immovable, for it usually remains a source of profit long after it has outlived the purpose for which it was erected.

The old house becomes a problem in three ways: it is permitted to run down until it individually becomes a detriment to the community, or the character of the neighborhood changes and the house —though perhaps individually up to standard—becomes less desirable as a residence, or housing standards are raised and the old house is no longer considered satisfactory. The first method of creating the problem is usually due directly to an individual owner or series of owners, the second to community changes often due to the migration of the wealthy to more fashionable districts, but not infrequently caused by lack of foresight in city planning, the third to rising standards that accompany increased knowledge of the effect of living conditions upon morals, health and efficiency.

If the houses of a city were like the tents of an army, inexpensive, easily removable, and the property of an organization interested primarily in the well-being of the people they shelter, the problem would virtually cease to be a problem. For then unwholesome houses would be scrapped as ruthlessly as antiquated machinery, the owners of which find that new and improved machinery is more economical. Were only the third of these operative the time is nearly come when such houses would be scrapped. Company

houses in the past have had a bad reputation. Whatever may be said against them on other scores, company houses are today, and will be increasingly in the future, made not only sanitary but homelike. Wide-awake employers have begun to see the advantages gained during the past by a few of their leaders who realized that it is as important, from a business standpoint, that their workers have good dwellings as that they have good tools.

This being granted the solution of the problem may seem obvious. But obvious answers usually are not the right ones, especially in the solution of social problems where it is so difficult to gather in all the premises upon which a conclusion may be safely based. The problem of the old house is due chiefly to leaving what are in great measure matters of community concern almost entirely in the hands of individuals. It is not to be solved by putting entirely into the hands of the community things that are largely matters of individual concern. Rather the solution is to be worked out by changing the emphasis. Moreover the emphasis must be different for two distinct classes of old houses; those we have now, the product of the *laissez-faire* policy of the past, and those we shall have with us in the future, the product, we hope, of a more intelligent, foresighted policy in city building. For we shall always have old houses, houses that have outlasted the purpose for which they were erected.

First, then, what shall we do with the old houses of the present? As a basis for the argument let us state that it is the duty of the community to safeguard the morals, health and efficiency of its members. For without these of what value are "those self-evident truths, those unalienable rights to life, liberty and the pursuit of happiness?" It is to promote these that we open parks and playgrounds, establish recreation centers and do a thousand and one other things for which the founders of the republic prepared us when they told the world why we should be an independent nation. Merely to safeguard these we must see that our people have wholesome homes in which to live. It is then the duty of the community to set standards below which homes may not fall, and to raise the standards as increasing knowledge shows that higher standards are practicable and are for the public good.

Such a policy will, in individual instances, entail hardship. The widowed and orphaned owners of watered stock who figured so conspicuously a few years ago have their counterparts in widowed and

orphaned owners of unwholesome dwellings. They should have sympathy and consideration. So should the man who has invested his small savings in real estate, ignorant of the fact that the successful management of real estate calls for financial resources and for as much knowledge and skill as do most other trades or professions. But our sympathy should not blind us to the fact that far more important both to individuals and to the community than the financial cost to owners are the lives and the health of those who dwell in the houses. And our consideration should not extend beyond the point of making compliance with the established standards as easy as possible.

When the deterioration of a house is due to the owner, even when he can plead poverty as an excuse, there will be comparatively little disposition on the part of the public to back his cause. A man whose inability to manage his business and who injures others should not continue in the business. Enforcing standards in such a case will not only safeguard the health and lives of tenants but will also protect neighboring property values. But when deterioration is due to changes that blight a whole neighborhood, those who can not see beyond immediate cause and effect will be more prone to think that the owner is being hardly used—until the evils of the slum appear. Then, having a more immediate instance of cause and effect before their eyes, they will forget their former ill-timed sympathy and execrate him as a spoiler of the poor.

The older parts of our cities must be accepted in large measure as they are, ill-planned to meet the changes that accompany growth. The one-time fine residence districts were platted with but the thought of meeting the desires of their then owners. The deep lots, the spacious single-family dwellings that are characteristic, become burdens when tenants of smaller means move in. They become, in the owner's view, impossible when the unskilled wage-earner succeeds the salaried man. And under the old régime the owner's view was the only view. Cheap new buildings filled the old yards, the old mansions were subdivided in the cheapest way to take in the greatest possible number of families. So the total income from the property increased rather than diminished, but the city found its bills for the maintenance of police and health departments mounting while the work for them to do constantly exceeded their resources. When at last the limit was reached the slum had become not only a

scandal, but a constant menace to the whole community. Then, too late, began the slow, costly, unsatisfactory work of trying to make bad a little less bad.

Today, with the examples of our older and most crowded cities before us, we can see the folly of letting affairs drift until they become intolerable. There is a new civic spirit which revolts at the thought that a short distance from the homes we show with pride is a slum that we can not ignore. There is a clearer understanding that no part of the community can suffer and the rest go scathless, and beyond all this is the knowledge that somewhere we must set the limit, somewhere we must draw a line and say, "Here the public good demands that standards shall be no further lowered."

That being true, where shall the line be drawn? Wherever it is drawn there will always be some "innocent" investor who has thought to make a profit by lowering standards still further, and who faces loss when he is halted. Some of the worst of New York's old double-decker dumb-bell tenements were owned by the widow, the orphan and the Italian push-cart peddler, who lived in the cellars of their barracks and saw no reason why others should live better than they. Their case was harder by far than would be that of the original owner of a mansion who moves to a newer and more fashionable part of town, renting his old home for a boarding house or sub-dividing it into apartments. So it is with him that the line should be drawn.

Minimum standards must be established that will provide for adequate open space on the lot, light, ventilation, water supply and toilet conveniences, privacy and protection from fire. With these standards established the owner may still find many uses for a property that has outlasted the purpose for which he originally designed it. And, though he may not make as great a profit on its use or its sale as if he had been left entirely to his own devices, he has no legitimate cause for complaint. He has no right to ask that the community suffer in order that he may make a profit out of a change of whim or an error of judgment. Still less cause for complaint has the speculator who, studying the drift of the city's business, holds old residence property for an expected rise in values. Heretofore he has been permitted to do almost as he would, on the score that his houses had but a short expectation of life and that improvements would not yield a profit. It is not a question of whether the

improvements will yield a profit. It is a question of the health and the lives of his tenants and of the community's welfare. If the houses are not worth keeping up to standard, then they should remain uninhabited. The well-being of the tenants is an item that must figure in the speculator's estimates.

In the case of old houses that already have traveled far down the road to the slum and must be brought up to standard, the rule is the same though the enforcement is more difficult. The city can not afford to tolerate conditions that undermine the morals, health or efficiency of its people. Even in the case of houses that complied with the standards in force at the time of their erection or of their conversion to present uses, but do not meet standards that we now know are necessary, the same rule applies—though enforcement may be even more difficult because of false sentiment on the part of the public which does not realize the vital importance of the issue. No landlord has a right to house his tenants in such a way as to endanger them. If the law has been lax and he has acted according to the letter of the law he has no reasonable complaint when the law is made more adequate and so compels him to do what he should have done of his own volition.

The right of the city to enforce higher standards than those obtaining when the conditions complained of were established was settled by the Moeschen case.[1] Mrs. Moeschen was a widow and the owner of a New York tenement house, that is, the deed was in her name but she owned an equity of only $3,500 in the building. The tenement house department, in accordance with the law of 1901, ordered her to close the school sinks in the back yard of her building and substitute indoor water closets. The case was taken into court where it was shown that the school sinks complied with an order of the health department in force at the time they were built. It was also shown that the cost of the improvement might approximate the value of her equity in the building. Yet the courts, up to the Supreme Court of the United States, to which the case was carried, upheld the right of the department to enforce its order, designed as it was to safeguard the health of the people.

The old houses of the future will, we hope, offer us a problem easier of solution than do those of the present. Our cities have be-

[1] 203 U. S. 583.

gun to adopt housing codes, not mere tenement house codes. With a good housing code enforced the old house of the future can not become the menace that its predecessor has been and is. For a housing code covers all dwellings and it sets two standards, one as high as is practicable for existing houses, the other, much higher, for houses still to be erected. So as time goes on and existing houses pass away, as even the worst of them must, the ranks of old houses will be recruited in constantly larger proportion from dwellings that have never been permitted to fall as low as those with which we now are struggling.

Moreover there is hope for us in the rapidly increasing knowledge of city planning. With rare exceptions our cities up to the present have simply "growed" like Topsy, without thought or aim. Our cities in the future will be planned. We shall make use of the experience of the past. We shall no longer lay out new subdivisions with but the single thought of getting as many quick-selling lots as possible. If not the real estate dealer, then the city will take thought of the time when the character of the district will change. The width and direction of new streets will be a matter of community interest. The size of blocks will be figured not merely according to custom or to the convenience of the moment, but with an eye to the time when it will be advantageous to drive new streets between the original ones. The depth of lots will be based upon the possibility of future division. Then new houses may be built upon the rear of the present deep suburban lots, facing the new streets, the sites of which will have been kept free from buildings so that they may be converted at a minimum cost. Residence districts will be safeguarded from the intrusion of business and industry, which will be confined to those sections of the city best fitted for them.[2]

[2] J. C. Nichols, of Kansas City, Mo., states that "A little more emphasis might be laid upon the economic burden, in dollars and cents, that every city carries in its abandoned home districts. I have sometimes wondered if this did not amount to several hundred million dollars a year. For instance, I believe in many western cities, this loss is several million dollars a year, and taking it all over the country, it certainly is enormous. Perhaps when you consider this phase, it impresses a little more strongly the importance of protecting residence districts from the intrusion of business and industry as you suggest, and will lessen the number of old houses which give the occasion of your argument."

So we shall have greater elasticity in our future cities and at the same time greater stability. When it is practicable to utilize the backs of deep lots in a wholesome way one of the greatest temptations to bad old housing will be removed. When it is possible to protect a residence district from the intrusion of the business and industry that have so often blighted them, there will not be so many old houses converted to uses for which they are ill-fitted. Then the problem of the old house will have become comparatively easy of solution.

SOME EFFECTS OF HOUSING REGULATION

By John J. Murphy,

Commissioner, Tenement House Department, New York.

The growth among ordinary people of the perception that the municipality owes a duty to its citizens, is one of the most conspicuous signs of the times. The preponderance of the city as an important factor in national life is of very recent date. Intensive living develops the need for civic interference in directions which in the past have been deemed to be fields of purely private activity. In no direction has this tendency been more obvious than in the regulation of private housing.

Like the individual, the community which turns from evil and careless habits into a better path, finds the road strewn with unsuspected obstacles. One of the first that becomes manifest is, that when an agitation arises for the enactment of regulative legislation, and when such legislation seems to be on the verge of realization, there is an overwhelming rush to file plans for the erection of buildings before the new law becomes effective, in order to evade compliance with the new statute.

The new restrictions are apt to provoke in the minds of capitalists and builders a defiant attitude, and the assumption is very freely voiced that houses built under the new conditions will not pay; hence for quite a considerable period there will be almost an entire cessation of new buildings. The consequence of this condition is that the value of old and unsanitary houses is increased, with the result that for several years the beneficial effects anticipated are not realized.

Out of respect for the rights of owners of property, the law is always tender about interfering with existing conditions and consequently existing tenements are permitted to continue to occupy a percentage of the lot greatly in excess of the requirements made by the new law; they may have windows which do not open to the outer air and many other conditions which are specifically condemned so far as new houses are concerned. Tenement owners take the ground, and it is impossible to deny its superficial justice, that there were

building and tenement laws of some kind in force at the time when they erected their houses; that they complied with such rules and regulations, and that therefore there is a tacit contract by the community with them to permit them to occupy such houses for the period of their normal existence. It is further contended that only on such condition will anyone build at all. The contention is sometimes raised, that if the moral perception of a community advances to a point where better living conditions are required by public opinion, the public should contribute to the changes required to be made.

The New York tenement house law enacted in 1901 marked a great advance in the construction and arrangement of new tenement houses. It contained requirements for light and ventilation, which many builders and owners then regarded as confiscatory. Added to its requirements for light and ventilation were stringent requirements for fireproofing. The plumbing requirements, moreover, and the general arrangement and construction tended to increase the cost of the building. The change from old to new conditions was necessary, however hard it was to comply. Thousands upon thousands of tuberculosis victims could testify that it had been too long delayed. Fortunately the new law contained many restrictions in regard to old buildings, which, while primarily intended to improve the living conditions in them, also rendered the initial cost of a new building only reasonably greater than the value of an old one of similar size which had been made to comply with the law. In spite of this fact a temporary cessation of tenement building followed the enactment of the law, during which time the value of the old buildings rose rapidly. The law was enacted in April, 1901. Almost no tenement houses were erected during the balance of the year, and only 562 were erected in 1902, most of which were of the smallest type.

Owners soon discovered, however, that the cost of complying with the law in regard to the old buildings was considerable and values began to decline. They soon discovered also that the vacancies in new law houses were very few, compared with the vacancies in old law houses, and that the old buildings lost tenants when a new tenement was erected in any neighborhood. Every new tenement house erected under the provisions of the new law became an educational object lesson to persons living in the neighborhood.

People who were not possessed with sufficiently vivid imaginations to understand the written descriptions of conditions which the law required, and thought they were either oppressive or unnecessary, became convinced of their wisdom, when the realization in bricks and mortar was brought before their eyes. Thus a steadily increasing demand for new tenements arose. More than 22,000 new law tenements have now been erected in the city; nearly a billion dollars has been invested in them in eleven years, and almost a million and a half people live in them. It is safe to say that this gratifying result has been accomplished largely by the preservation of a sort of balance in values. Only in this way can the problem of rents be met when changes in building laws are made. So long as the values remain relatively unchanged, the demand for the better housing conditions afforded by the new type of houses will increase and will eventually predominate.

It has been the custom for many years in certain foreign cities for the municipality to tear down old unsanitary tenement houses. The work of the London county council is probably the most notable example of this procedure. There the city condemns a large slum tract, tears the buildings down and erects new sanitary dwellings upon the site at its own expense. The advantages of this method, however, are counteracted even there to some extent by the hardships produced through tardiness in replacement. Hundreds of people are practically left homeless when a slum area is demolished, and statistics show that the process of rebuilding is far from keeping pace with that of demolition. There is, furthermore, a certain harshness about this procedure which seems to be somewhat repugnant to American legal principles. This method is also open to the objection that a municipality can rarely acquire property at reasonable figures, the cost of condemnation being usually 25 to 50 per cent greater than if the same property had been acquired by a private citizen. Therefore, it usually happens that if the city condemns a slum area and erects sanitary houses thereon, and then attempts to charge rents which will pay a reasonable return upon the amount invested, the poor can no longer occupy such houses. The experiment of demolishing old unsanitary tenements was tried several years ago in New York City by the board of health and proved to be a failure, mainly because of the attitude of the courts.

The gradual elimination of old tenement houses through changes,

which not only improve them but which also place a check upon their value, has much to be said in its favor. The summary harshness which results from condemnation and demolition is thereby removed. The owner does not experience a serious loss by being allowed to rent his old and partly unsanitary building. He simply obtains a smaller revenue from it through rentals than he would receive from a new and better building. He is also obliged to spend something in repairs or alterations, and if his property decreases in value he knows that he cannot expect his building to be the equal of the newer type.

It may not be out of place to comment here upon the effect of our present system of taxation upon the replacement of old houses by new ones. We now tax at full value improvements as well as sites. Naturally, as the old buildings deteriorate, the assessors tend to lower their values, so that the owner gets some mitigation of the loss which he meets in having to accept lower rents. If the old building is demolished and a new one erected, his tax bill rises much more proportionately than would the increase in his revenue. It is therefore hardly open to question that a taxation on improvements in real estate tends to prolong the life of an old building and to retard the erection of a new one.

New York's new tenement house law has now been in effect a little more than twelve years. The old law tenements have so far held their own to a large extent. Modern standards of housekeeping have advanced rapidly, however, and this fact coupled with the number of new law tenements that have been erected will shortly result in the demolition of many of the old type to make way for the new. The same thing has happened in the case of many business buildings in the city. It is not an unusual sight to see a business building, erected only a decade ago, being torn down to give place to a new structure in keeping with modern demands. In the same manner, as soon as the old tenements have become sufficiently unpopular with tenants, wholesale demolition or reconstruction is bound to follow. That time is not far distant in New York City. The light rooms, the fireproof halls and stairs and the baths in the new law houses are now eagerly sought out by prospective tenants. Few of the old law houses contain baths; in many cases the toilets are in the yard, and owners of such buildings state that they already have the greatest difficulty in renting their apartments. The process of

eliminating the old buildings is now not one of law but of competition, which is both surer and speedier in its results. This stage would doubtless have been reached years ago but for the long period of litigation regarding the tenement house department's power to order the removal of school sinks and privies from the yards of tenement houses. While this litigation was in progress, few of the important alterations required by the tenement house law were made. During that period the status of old buildings was only a little better than if the old tenement house law had still been in effect. The new buildings were therefore temporarily unable to compete with the old from a financial standpoint, the difference in rentals being too great.

There is much to be said in favor of the contention that in the present stage of our municipal development, municipal regulation of housing is better than direct municipal operation. It seems hardly to be doubted that, were the city to go into the provisions of housing for its citizens on a large scale, it would serve to check private investment of the same character, and thus tend to create a worse rather than a better condition. There seems to be no lack of capital to provide adequate housing in any city, provided site values have not reached a prohibitive figure. When the city enters into competition for sites within its own area, it tends to enhance their values rather than otherwise, and in this way also tends to defeat its own object.

FIRE WASTE

By Powell Evans,

Chairman, Fire Prevention Commission of Philadelphia and
Fire Waste Committee of the Chamber of Commerce
of the United States of America.

Fire waste is as old as life. It has always been considered measurably necessary. Its cost has for many years—virtually throughout the civilized world, without limit even to national boundaries—been distributed as a burden upon all the people through the medium of fire insurance. There is a marked difference in the amount of this waste, measured per capita or on an insurance basis, between different nations, as well as between groups of nations. On the average the cost of fire waste and insurance in western Europe is about one-tenth that in North America, due mainly to better building construction, more intelligent control of occupancy, thriftier habits of the people and better governmental regulation of the entire subject abroad.

Until quite recent years the real causes and corrections of fire waste with us have been clearly known and understood only by the relatively small circle of fire insurance underwriters and their associates. About ten years ago the plan of a state officer empowered to investigate and regulate fire waste was first adopted in Massachusetts. By 1906 about half a dozen other states had followed suit. During the past five years there has been a marked awakening throughout all circles of the country concerning the size and character of fire waste in life and property, and the fact that it is in large part needless and preventable. During this time forty states have installed fire marshals (or other officers with similar powers), and many municipalities having realized that the bulk of this danger and loss was in their congested areas, have begun to exercise police power more freely and intelligently through varying agencies to control and abate it. Of late, especially, civic and commercial bodies are recognizing their stake and responsibility in the matter, and are beginning with fast growing understanding to take a determined hand in bettering fire waste conditions. Insurance which distributes the cost of fire waste is so much a part of the whole question that it must now be briefly reviewed.

The insurance world as a whole has, in physical and engineering research, rendered magnificent assistance in working out the problem of fire control. As a business proposition of conducting commercial fire insurance underwriting at a profit—insurance is procurable on properly located, constructed, protected, occupied and managed property in America at low final cost—on the one hand from the factory insurance associations (groups of certain stock insurance companies), and from certain individual stock insurance companies which specialize in the insurance and reinsurance of such selected risks, at low fixed charges; and, on the other hand, from the associated factory mutual fire insurance companies (mill mutuals) on low mutual charges determined by the final net coöperative loss.

Much farm and village property is insured in numerous small rural mutual companies throughout the country. The mill mutuals operate through a central inspection bureau, aided by a laboratory for the study and determination of physical standards—both in Boston. They, as well as the stock factory insurance associations, are specially active in spreading the doctrine of fire prevention in all its phases and hence are able to conduct continuously profitable underwriting at net final charges of from five to ten cents per $100. Such insurance is all done without commissions to agents and brokers. Insurance in the United States covers about $35,000,000,000 of property—about 80 per cent of which is stock insurance averaging a rate of approximately 1 per cent per annum.

The bulk of city property is stock insured at flat rates. These rates are determined by the application of an automatic universal rate schedule, based on the ideal building for its respective occupancy on an ideal location, which is modified by the local rate conditions, fixed by the local stock underwriting board having jurisdiction, and further modified by the conditions of the property itself, ascertained through surveys by the same local board.

Many of these local boards have, especially in recent years, displayed commendable interest and energy in broadcasting fire preventive doctrines; and the active managers of these have welcomed the submission of plans for construction and reconstruction of buildings in advance for criticism as to fire prevention and protection—all of which is admirable work. Others, however, are so influenced by the agent and broker element in their membership as to be indifferent to this aim.

The total personnel of all these interweaving boards is so great, however, and the views and purposes so varying, that no fixed general policy is yet in evidence on their part as a whole to exercise their best knowledge, experience and influence to prevent fire waste to the practical limits possible.

The National Board of Fire Underwriters (New York) is the stock body which speaks for the policy of the stock insurance interests. It operates the Underwriters Laboratories, INC. (Chicago), for the detailed physical study and determination of fire appliances (standards of appliances,) in general coöperation with the Mutual Laboratory (Boston); and does much good publicity work.

The National Fire Protection Association, which numbers in its active membership all the stock and mutual boards, bureaus, associations, etc., as well as a large and growing number of engineering and trades associations of national scope, combines the general engineering opinion of the country on the physical facts relating to fire danger, and formulates the standard rules and requirements (standards of practice) to control fire hazard of every description promulgated by the National Board of Fire Underwriters for the guidance of its associated local boards. Copies of these standards are procurable by any one from these bodies.

The National Fire Protection Association is the best equipped organization in existence today in experience on the subject of fire waste and its control, and the most altruistic and progressive of these formed in large part of insurance representatives. It is growing more and more representative of all the interests of the country touching this problem. It has been an active force in the past in spreading the general doctrine of fire prevention and promises in the near future to become a much more effective influence in this propaganda.

The twenty-five odd state fire prevention associations in as many states, composed almost entirely of insurance personnel, are also doing excellent work in fire-preventive inspections and public education.

So far in this country almost every fire safeguard has been a matter of voluntary adoption. Too much liberty has been left to the individual about constructing, protecting, equipping, occupying and managing property—to suit his greed, ignorance, indifference, or shiftlessness—thus permitting a frightful loss in life and prop-

erty, resulting in a constant heavy and largely useless waste in both to the whole people.

The bulk of insurance influence to date has exerted itself in: (1) A protest in general terms against fire waste; (2) the preparation of physical "standards" usable to control the evil; (3) a system of underwriting which as a rule penalizes bad conditions only by charging a high rate on such bad conditions, which are discovered by constant inspection, and limiting the amount of such risks written. Most of the bulk underwriting is done through agents and brokers, now claimed to be too highly paid and inadequately regulated, whose influence is baneful to the extent that both on the average are merely eager to do the largest business at the highest commission, and hence are not interested in property loss as owner or insurer.

Losses when they occur are usually settled through adjusters, who also need more regulation—as recent arson cases in New York and Chicago have disclosed. In the main the aim of the large majority of insurance underwriters is to make their business profitable. This end is best attained by collecting the largest gross premiums and saving at least half of these by skillful business management—the method being a continued process of leaving property largely as it is found or alleged, charging the highest obtainable rate, distributing the risk, paying good agents and brokers liberally for securing such contracts (averaging over 20 per cent of the gross premiums) and taking chances on fire loss, without any special provision for the life hazard.

Such is the bare outline of the machinery, physical and commercial, which insures property against fire in America. Almost all we know about the physical engineering control of fire danger has been originated and brought to its present perfection through the medium of insurance engineers. It is enough at this date if sufficiently widely known and applied to be fully 90 per cent efficient, hence we should now center our attention on applying it adequately. It must be clear why under these loosely controlling conditions we have so much fire waste of life and property in America. How can anyone question the conclusion that society should now fully measure and reckon with this common and largely controllable danger to life and property, and sternly and effectively take the situation in hand all over the country through appropriate legal regulation, both for humanitarian and economic reasons?

Substantial relief from this danger can be brought about in any state or city by any group of men, or almost by any one man, who will devote time, money, purpose and intelligence to this end.

It is pertinent here to briefly review recent history on this subject in Pennsylvania and Philadelphia to make this point clear, although this closely touches my own activities.

Starting actively on the problem here early in 1911, I have been able by gradually disseminating correct information, creating interest and winning support of individuals and organizations, to procure the passage of legislation in its present effective form establishing the offices of Pennsylvania state and Philadelphia city fire marshals and to completely reorganize the operation of the latter office so that it now does efficient work through the agency of the Philadelphia fire prevention commission.

The Philadelphia fire marshal now has the use of seventy-five active firemen, whose time was formerly absolutely wasted, who inspect and re-inspect about three hundred buildings per day and all the theaters in accord with an absolute continuous system. They have within six months corrected over 60,000 fire-breeding conditions and all of this work has been done to the distinct betterment of fire danger to life and property in this city.

As this work in Philadelphia, planned and initiated as above described, progressed we found much valuable data and experience procurable from a few other progressive states and cities in the country. It was evident, however, that the great bulk of the country was scarcely awake to the known means whereby nation-wide actual progress in fire waste control could be effected, and only touched the high spots in their solution of the problem—and these not in common. As the cost of insurance is admittedly a nation-wide tax, based on the average of the total fire waste of property and associated expenses, including the cost for public fire protection, it is obvious that there must be a nation-wide reduction of fire waste if the insurance cost is to be reduced, and further that loss of life and health, and from business interruption arising from this cause, can only be lowered by reducing the property loss. The United States Geological Survey, *Bulletin* No. 418, 1907, on "The Fire Tax and Waste of Structural Materials in the United States," as well as the annual reports of the National Board of Fire Underwriters during the past five years, provide the best summaries of this waste; which

is now estimated at $300,000,000 per annum, or, including associated costs, $450,000,000 per annum—the lower figure averaging a charge of $3 per capita per annum upon every man, woman and child in the country, distributed throughout everything they use in life.

Admittedly a legally enforced policy of fire prevention and protection all over the country would attack the source of fire waste; and would save, according to the soundest judgment, from one-half to two-thirds of this loss in life and property within the life of most of the people now living. This is the most important avenue of improvement in life and property loss from fire, and of reduction in insurance cost. The further possible reduction in insurance cost derivable from lowering the expense of doing business by the reduction of the extravagant commissions paid for selling insurance contracts can only be referred to here.

Fire, the cause of all this trouble, is always local in origin. Under our governmental system the state is the unit of local control and can in turn regulate its cities and country districts; and so we must look to a sum total—uniform as nearly as may be—of state action, imposed in turn over all of the area of each, if we are to eliminate the bulk of American fire waste. Progress in this matter in a few states and cities does not bring reasonable or adequate relief. Large and wide betterment must be achieved to produce an average proper reduction in life and property waste, and in the cost of insurance and public fire protection.

Has not the time come, however, for the national government to do a great service to the country by collecting the total studies on fire waste, prevention, protection and insurance, and formulating these suggestions and conclusions for use by the country as a whole?

While every fire is local in its origin, the sum total of all fires, or fire waste, is certainly national in effect; and the necessary method of collecting this tax through the virtually semi-public function of insurance underwriting and the insurance policy contract constitutes a truly national problem with us at this time.

I quote in conclusion on this point from the Illinois fire insurance commission:

"From nearly every standpoint fire insurance seems to be interstate in its nature, perhaps more nearly so than any other business. It is based upon averages and distribution, and if we take into account large conflagrations neither average nor distribution can be intelligently applied within the limits of any single state."

RURAL HOUSING

By Elmer S. Forbes,

Chairman, Housing Committee,
Massachusetts Civic League.

Rural housing is here taken to mean the housing of that portion of the community which gets the larger part of its living directly from the cultivation of the land, viz., the farmers; together with a few others, like the country minister, the store-keeper, the cobbler, the blacksmith, who may be farmers in a small way and whose manner of life in any case is substantially the same as that of the farmers among whom they live. The subject is restricted in its application to the older settled parts of the country. No attempt is made to deal with conditions as they exist in some sections which have lagged behind the general social development of the time, nor in those which are still in the pioneer stage or which at best are but a short remove from pioneer days.

Rural housing as a whole exhibits the same differences, the same degrees of excellence as does the housing of the towns. There are numbers of farms where the dwellings are well built and provided with modern systems of heating and lighting and with every convenience for the economical despatch of the work of the household, where the barns and outhouses are well kept and clean, and where the sanitation is all that can be desired. At the other end of the scale there are to be found here and there in the country single houses or small groups of houses which exhibit many of the characteristic marks of the slum. Not all, for in the open country at the worst, there is plenty of fresh air and sunlight and space; but there are dirt and filth indescribable, the most primitive sanitation, serious overcrowding and indecent promiscuity. These slum spots exist not only in remote districts far from the railroads in the backlash of civilization, but close search will find them in many communities where they would not be expected and where their presence is known to but few, on narrow country by-ways and lanes, in wild places in the vicinity of the railways, in neglected woodlands; indeed, there is scarcely a hamlet or town within whose limits these disreputable shacks may not be discovered.

Two or three cases may be instanced by way of illustration. The family of a small farmer on the outskirts of a country village was found living in a one-roomed log cabin in utter disregard of the ordinary laws of health and decency. As a consequence, two of the children had been attacked by tuberculosis, and unless immediate action were taken there was every reason to believe that all would become affected. Another such family lived in a dilapidated combination of dwelling and barn, not fit to be the habitation of either cattle or human beings, where the overcrowding was equal to that in the most congested districts of the cities and all sanitary conveniences were conspicuous by their absence. As an example of a still lower type there may be instanced a degenerate group of four men, two women and three children who occupied a shack in a clearing of the woods in the neighborhood of a New England town until they were finally dispersed by the authorities.

Such cases can be duplicated almost anywhere. In all of them, with scarcely an exception, the housing conditions are vile, the equal of anything in the slums of the towns, and yet in the opinion of the writer the problem which they present is not essentially one of housing reform. In this respect the particularly bad housing of the rural districts is quite different from that of the towns. City slums are due in large measure to land and building speculation, the utilization of land for dwelling house sites which is too valuable for this purpose, an inequitable system of taxation, the lack of any housing law worth the name, inadequate supervision, and a disposition on the part of some landlords to exploit their tenants. These are causes which are in no way connected with the character of the families living in the slums, and their operation can be checked by right legislation honestly enforced. Germany is an example to the world of what can be done in this way. One of the most remarkable features about many of the German cities is the complete elimination of the slum. It does not and can not exist in the face of the effective legislation against it, and by the same kind of legislation it can be driven out of American cities whenever the people so desire.

The slum spot in the open country, however, is not so much due to social or economic causes beyond the control of the occupant as it is to his own mental and moral deficiencies. Land speculation, speculative building, methods of taxation, the greed of landlords, none of these in most cases, has anything to do with it.

Such dwellings are the natural expression of the lives of the shiftless, feeble minded, immoral, drunken or criminal people who inhabit them. It is not a better housing law which is required here so much as it is the labor colony, the penitentiary, the almshouse and the home for moral imbeciles. These social plague spots are the cause of enormous public expense and are a steadily increasing burden upon the industry and thrift of the community. They should be accurately registered, carefully studied, and each one should be disposed of upon its own merits. All this will cost much effort and money but not a tithe of what it will cost twenty, thirty, of fifty years hence, and incidentally it will wipe out the country slum.

Thus neither the best nor the worst housing in the rural districts is in need, as such, of special attention. But between the best and the worst there is a great deal of existing housing which is susceptible of improvement, the like of which should not be permitted in the future. In a great many farm houses the occupants are not safe from fire and in many more the sanitary arrangements are extremely defective. Every year lives are lost in the destruction of farm houses by fire, which would not happen if the proper safeguards were provided. After a few experiences of this kind we might suppose that something would be done to prevent such accidents in the future, but when the holocausts of the cities have no effect upon the public conscience it is, of course, too much to expect that the loss of a single life here and there will attract any notice.

But the case is different with defective rural sanitation. The disposal of the waste products of the body and the household is a much more serious matter, and mistakes are dangerous to a very much larger number of people. Dr. W. C. Stiles, of the U. S. Marine Hospital Service, states that of 3369 farmhouses in six different states 57 per cent have no privies of any kind. The better grade of farmhouse is always provided with some sort of sanitary convenience, but the number where it is anything more than the ordinary outdoor privy is comparatively small. The neglected privy is the greatest danger to the health of the farming community, and a menace to the population of the towns through the part which it may play in the contamination of the milk, vegetables, and fruits sent to city markets. It defiles the soil around it, and unless carefully located may pollute the family water supply. The fact is so generally known that it is not necessary to give statistics showing

that serious epidemics have been started by the use of water from country wells polluted by the disease-infected privy. It is the breeding place of countless generations of flies, and when used by persons suffering from any kind of infectious disease, as fevers, dysentery, diarrhea, and the like, the contagion may be spread far and wide by their agency.

The family cesspool is but one degree less dangerous than the outdoor privy, and together they have undoubtedly been responsible for a vast amount of sickness and death. Accurate statistics on this point are not available, and perhaps never can be, but the records of outbreaks of infectious diseases and the studies of the transmission of contagion by flies and insects have established the fact beyond dispute, that carelessness in the disposal of human and household waste has resulted in the destruction of thousands upon thousands of valuable lives; and still this appalling and preventable slaughter goes on.

Besides these glaring defects in country housing, danger from fire due to unsafe construction and the serious menace from bad sanitation due to carelessness and ignorance, there are other objectionable features, of secondary importance, it is true, but which nevertheless have a marked effect upon the health and happiness of the people. Great numbers of farm houses have few of the conveniences which have become necessities in these modern days, no plumbing, no bathroom, no water in the house, no central heating apparatus, no lighting except the lamp or candle, and little or none of the machinery in the kitchen, the laundry and the dairy which lighten so much the work of the housewife. The lack of these comforts and conveniences entails hard and unremitting labor upon the women of countless households, often seriously affecting health and breaking them down before their time. It is needless to say that there can be a perfectly wholesome family life without electric light and a furnace, but rural housing will not be what it ought to be until all country dwellings have at least the minimum essentials for the saving of time and strength in the performance of the daily work of the household, as they are now provided in the best type of houses on prosperous farms.

Of course these are matters which at present are beyond the reach of the law. No housing code can prescribe that every house shall be provided with stationary washtubs and a gasoline engine for

pumping water, but all who are interested in the improvement of country living conditions should look forward to the time when at least the necessities for comfortable living will be included as a matter of course in the equipment of the country dwelling. It cannot be done today, nor will it be possible until the economic condition of the farmer is much better than it is at present. This last is the fundamental prerequisite for securing these features of the best country housing. The state can demand that from the viewpoint of fire risk dwellings shall be made safe for their inmates, and it can insist that rural conditions shall not endanger the health of the community; but anything more than this, such as the installation of bathrooms and washing machines and power churns, and the like, must be conditioned upon the ability of the farmer or country householder to pay for them; hence the improvement of rural housing is bound up with the whole country life problem; solve this and you secure the other.

It is sometimes charged, with a show of reason, that social reformers are strangely blind to the causes which produce the evils they are fighting, and so do not apply their efforts where they will do the most good. For those who are working for better country housing to lay themselves open to such criticism would be fatuous in the extreme. On the contrary, they should be close students of the needs of country life and deeply interested in all that makes for rural progress; otherwise they are no better than a medical specialist who gives his treatment without reference to the general health of his patient.

Ex-President Roosevelt diagnosed the needs of rural life as "better farming, better business, better living." The farmers as a class have not kept up with the times. Great advance has been made in the application of science to the processes of agriculture, but the average farmer is very slow to adopt new methods. He is apt to think that what was good enough for his father is good enough for him and continues in the old ways. Furthermore, in almost every line of business except farming, there has been a large reduction in overhead expenses through combination. The farmers of Denmark and Holland have developed coöperation in the marketing of their products must successfully, to the mutual profit of both themselves and the consumer, but not yet has this been done to any such extent in the United States. Apples, for instance, have been selling in

city markets for a dollar a bushel while fifteen or twenty miles away great quantities have been rotting on the ground, to the mutual loss of both the farmer and the consumer. Better business management would find a remedy for such a condition. Better living means less isolation and a better social life, better amusements, better education, a wider outlook, a larger influence in affairs. Not until there has been improvement in country life in these directions can rural housing become what it ought to be; consequently every one who hopes some time to see the country dwelling made comfortable, convenient and safe in all points, should apply himself to the fundamental, underlying problem of making the farmer economically able to satisfy these conditions.

Certain requirements, however, for safety and health should not wait upon this somewhat distant consummation. The country householder, landlord or owner, should be compelled by law to provide the minimum essentials of decent and healthful living: well lighted rooms of reasonable size, privacy, freedom from overcrowding, protection against fire, and proper sanitary conveniences inside the house wherever possible, or if they must be out-of-doors then so constructed as to safeguard the health of the community. It should not be difficult to secure this measure of rural housing regulation, for the interests which oppose similiar regulation for city and town have little influence in the more sparsely settled districts of the country.

The construction and maintenance of cesspools and out-door privies should be according to law. Stiles remarks that "a compulsory sanitary privy law or ordinance should exist and be strictly enforced in all localities in which connection with a sewer system is not enforced. Since from a sanitary point of view, the privy is a public structure in that it influences public health, it seems wisest to have city and town ordinances which provide for a licensing of all privies, the license being fixed at a sum which will enable the town or city to provide the receptacles (tub, pail, etc.), the disinfectant, and the service for cleaning. The expense involved will vary according to local conditions and density of population. The importance of taking the responsibility of the care of the privy out of the hands of the family is evident when one considers that one careless family in a hundred might be a menace to all.

"It is probably the exception that an economical public privy cleaning service can be carried out in the open country, on account

of the distances between the houses. To meet the difficulties involved several suggestions may be considered, according to conditions. A county privy tax can be levied, the county can furnish the pail and the disinfectant, and one member of each family or of several neighboring families hired to clean the privy regularly; a landlord can be held responsible for the cleaning of all privies of his tenants, receiving from the county a certain sum for the service; a portion of the county privy tax might perhaps be apportioned by school districts and distributed as prizes among the school boys who keep their family privies in best condition; each head of a family might be held responsible for any soil polution that may occur on his premises and be fined therefor."

Both the construction and care of cesspools and privies should be under strict supervision, preferably of the state boards of health. As a rule country local boards cannot be depended upon for this service. They have neither the knowledge nor the training which would make them useful inspectors. Furthermore, the enforcement of sanitary laws upon one's friends and neighbors is a thankless and unpopular duty and it cannot be expected that it will be done efficiently. The public welfare demands that it be put into the hands of the state boards of health, whose agents can do their work without fear or favor.

These two measures, securing the essentials of healthful dwelling house construction and sanitation, represent the maximum improvement in rural housing that now seems possible. A further advance in the direction of comfort and convenience, including the installation of labor saving devices, will follow a rise in the general economic ability of country life.

RECORD KEEPING AS AN AID TO ENFORCEMENT

By Kate Holladay Claghorn,
New York School of Philanthropy.

The American public, having lately acquired the idea that social ills may be reached by legislation, has taken up the idea with such enthusiasm that the one thing immediately proposed when some special difficulty is brought to our attention, is to "pass a law." And the same enthusiasm, trickling through to legislatures, enables the said "law" to be passed with ease. Unfortunately, public attention seems to flag at this point. Having attained the immediate object, which in itself seems a wonderful advance upon our ancient tradition of individual responsibility, everything is thought to be accomplished.

As a matter of fact, the passing of the law is the beginning, not the end of a process of social remedy. It is merely the establishing of conditions for a social experiment. However carefully any matter of social reform has been thought out, it is impossible to lay down beforehand exactly the means to attain it, or to prophesy exactly the reactions that will take place for good or for ill, or the hindrances that will arise, in the complex conditions of our modern civilization.

But what would be thought of the chemist, who, after combining the elements of his experiment, cheerfully turned his back on them, leaving them to form the expected compound or blow up, as might happen!

Yet something of this sort is constantly being done by us. With regard to housing legislation there is one good reason for this procedure in that while housing evils are widespread throughout the country, and in communities of every size, housing laws, of any thoroughgoing description, have been enacted for only a few localities, mostly the larger cities, and in most of these so recently that the experiment may be said to be only just under way. In one case, however, the need of continued watching of the experiment was foreseen. That was in the New York City tenement house department organized in 1902 to carry out the provision of the tenement house act of 1901.

The method of testing an experiment is by observing and recording its results. And this was provided for in the tenement house department by the establishment of a bureau of records to collect and classify such observations.

It is obvious that a law will fail of its purpose, first, if not properly administered; secondly, if it does not meet new and unforeseen conditions that come to light in the course of its concrete application.

Altogether too little attention has been given to either of these points. If it is thrust upon public attention that a certain law is a failure, the only thing thought of is that it has been administered by "rascals" and the "rascals" must be "turned out." There is not usually much concrete evidence of bad administration available, or anything to show that the difficulties really arose from conditions of the problem itself, as is sometimes the case. Evidence along these lines the bureau of records of the New York tenement house department was organized to furnish, as well as to prevent bad administration and imperfect enforcement. The system adopted was devised by Mr. Lawrence Veiller, then first deputy commissioner under Commissioner Robert W. de Forest, and its usefulness has been proved by the fact that, throughout twelve years of changing administration, it has been found necessary to retain all of the essential features of the original scheme.

For the principal set of records the card system was adopted on account of its readiness of reference and general adaptability. A record was started for every building in the city under the jurisdiction of the department, and the plan was extended to include, for some particulars, the other buildings. Of tenements alone there were over 80,000 at the time of organization of the department; by 1912 the number had increased to over 103,000. These cards were filed according to street and number so that all the facts about one house could be found in one place, and the cards were of different colors for different sets of facts. One set consisted of the original reports of inspectors on conditions found in their inspections. Yellow cards were used for such reports. The tenement house law of 1901 is mandatory, prescribing in considerable detail what shall be done. For inspections to determine how far buildings conformed to the conditions prescribed, printed forms (cards 5 by 8 inches) were divised, indicating the conditions to be noted, with blank spaces to be filled with a check mark to show that the condition indicated

existed, or with the word "Yes" or "No," or with a measurement. One form dealt with points to be noted in inspection for structural conditions in tenements built before the passage of the act; another, for structural conditions in newly built tenements. All new tenements are thoroughly inspected in course of construction and, when completed, comply with the law. The "new building" card is made out, however, to give a convenient record of its structure so that subsequent alterations may be detected, if any are made without filing plans with the department. Another printed blank card dealt with sanitary conditions, another with fire-escapes, another with basements. Each covered some important branch of the department's work, prescribed in certain sections of the law.

These cards are filled out in the field, by the inspector, and signed by him, so as to fix responsibility for the accuracy of the statements made. These printed blanks have several advantages. One is the saving of time in making out the report, a large part of which is printed on the card. Another is that the report is made in the same order by each inspector and the results may be clearly seen and compared. Still another is that, with a printed list of things to look for and to check as present or not present, the inspector is less likely to overlook anything and may be held to stricter accountability if he does so. To report conditions not provided for in any printed form, an unprinted yellow card is used, also signed by the inspector.

These cards when filled in are forwarded from the different bureaus of inspection to the bureau of records where there is no possibility of subsequent alteration by the inspector.

The primary use of these records is as a basis for orders to owners to remedy conditions in violation of law, and as evidence against owners in case of a suit. They are also useful as a check upon the work of the inspectors. In case the same or another inspector makes a subsequent inspection of the same premises, the results may be compared and inaccuracies or attempts at fraud may be discovered.

Another set of cards (white in color) gives a summary of the exact order issued to the owner. As fast as any portion of an order is complied with, that portion is crossed off the summary. So that at any time may be seen just what the owner of a given house is legally liable for, and what work he has already done. This portion

of the record is much used as a source of information by persons dealing in tenement property, to adjust prices equitably according to the amount of obligation for repairs, and so forth, attached to the property at a given time. Other city departments with a less modern system of records require from a week to ten days to give out such information; the tenement house department will furnish it in twenty-four hours. These "searches" as they are called, are in themselves a valuable aid in enforcement. If a buyer finds a building heavily encumbered with "violations" he presses the seller to comply with them before the sale, which the latter usually hastens to do. These white forms are kept permanently on file in the bureau of records, but inspectors are given duplicates of them for use in reinspection. These duplicates, between reinspections, are themselves kept in a separate file.

Still another set of cards belonging to the main file in the bureau of records are those recording deaths, cases of tuberculosis, and cases of contagious disease other than tuberculosis, as they occur, in tenement houses. These are chocolate color, buff and pink, respectively. The general purpose of these is to correlate housing conditions and health conditions. Their immediate use in departmental practice has been to indicate houses where special inspections should be made. The reporting of a death or case of disease which brought the number above the ordinary, was the signal for an immediate, careful inspection, to remove any illegal condition that might have contributed to the unusual death or sickness rate. This set of cards also affords a basis for a study of the causal relation between housing conditions of different sorts and health, which would be most valuable as a guide to further legislation, or possible modification of the present code, with sufficient material and sufficient time to work it out. Up to the present time, however, the records have not been thoroughly studied in this light.

All the cards for each house are preceded in the main file by an index card, blue in color. On this card are entered, from reports forwarded from different divisions, the dates of complaints and their serial numbers, the fact that inspections of different kinds, indicated by symbols, such as "I" for structural, "U" for sanitary, and so on, have been made, date and serial number of orders issued to owners, date of dismissal of orders, serial number of plans filed for new buildings and alterations, with dates of filing, approval and issuance of

certificate of completion, date and serial number of permits to occupy basement, date of replies to requests for information as to violations, and such other items of information as are needed in department procedure. This index card thus affords a bird's eye view of the entire history of a tenement house, so far as the department has been concerned with it. It also, and this is an important feature, provides a list of the other card records which should be on file. The inspector's original report cards, kept in the file, are numbered to correspond with the violation orders which are based upon them, and also have a serial number of their own. The white cards, summarizing the violation orders, also bear their respective violation numbers. These numbers again appear on the blue index card as a record of action. Every number shown on the blue card then, referring to a violation order calls for two cards in the file,—an inspector's report card of some sort and a summary of the order. In like manner, every number on the index card refers to some report or paper concerning the house, which should be on file. This system of checks makes it extremely difficult to tamper with the records successfully for the sake of destroying evidence or for any other reason.

A dishonest inspector may wish to suppress evidence which might incriminate him. An unscrupulous owner might want to clear the record of his property by altering that record rather than by doing the work ordered. Any attempt in that direction involves getting hold of so many links that some are usually omitted, so that discrepancies in the record appear and the fraud is quickly detected. In one notable case a lawyer had arranged with a contractor, for a substantial fee, to secure the early dismissal of violation orders on certain properties. The contractor afterwards claimed that the service he thought he was paying for was simply a little acceleration in unwinding what many considered the unnecessary "red tape" of the department.

The lawyer's method, however, was this. He secured confederates in four divisions of the department, each of whom was responsible for destroying or altering some piece of evidence. Cards had to be abstracted from several different files, certain stamped entries had to be made, index cards had to be taken away from the department that false entries might be typewritten thereon, letters on departmental letterheads were written, and signed by a purloined

signature-stamp, and other operations gone through. Notwithstanding the care and cleverness with which this plan was organized, the alterations made in the records and the discrepancies arising, soon attracted attention, and put the department on the track of the fraud. An indictment for forgery was found against the offending lawyer, and the result was a salutary warning against further practices of like nature.

In practice, then, this complete system of records has been of great service in assuring the success of the social experiment involved in the tenement house law by assisting in its enforcement. It helps materially in keeping the inspectors up to their work, and in checking "graft." Anything that makes grafting difficult, and blocks the way of temptation, is naturally a help to the morals of the inspection force. It also helps enforcement on the side of compliance by the owners. With a complete record of actual conditions before them, heads of departments can make their claim against the owner with assurance that the claim is just. Many times the owner who is disinclined to admit the justice of these claims, on being confronted with evidence, is obliged to agree that they are just. These exact records not only enable the officials to resist the pressure of all sorts of demands, but form a means in turn of checking the efficiency of their administration. For these records, under the law, are "public records," to be at the public disposal under proper regulation.

The records have also proved useful in testing the results of the "experiment"—otherwise the tenement house law. They have afforded material to show the different effects upon housing conditions of the different provisions; to show hindrances in popular feeling, or in attendant circumstances, economic and social, to carrying out the law; and to show unforeseen practical difficulties. This material has been freely utilized to secure proper modification of the law, and to resist unjust attacks upon it, and has been of the greatest value.

When the tenement house department was organized, no one knew even how many tenements there were. Now a running account of the tenements is kept, so that at any time one may know how many there are, whether of the improved type erected under the law of 1901, or of the older types; how much living accommodation each class affords, what are the structural conditions in each, how they are distributed, how rapid is the progress of improvement, and so on.

A field of study that should be worked more thoroughly is that of the relation between housing and public health. The health record gives the basis for that, but attempts to carry on such studies have not been very successful, partly because sufficient material had not been accumulated. By this time, however, the record covers a period of eleven years, and with a carefully framed plan, some valuable results ought to be secured.

To make the best use of records along the lines indicated, they must be continuous, and they must be comparable. A gap in the record may leave out the very link you are most anxious to find. When the records are not kept in the same way at one time as another, comparisons are not possible and we cannot trace any line of improvement or deterioration of conditions, of increase or decrease of efficiency. It is a vexing problem, often, whether to let a poor system of records stand, and keep the possibility of comparison, or to improve it, having a better system but losing comparability.

And of course in establishing a system of records there must always be an intelligent adjustment of means to ends. The New York system, applying to over 100,000 tenement houses, would be absurd for a town of two or three thousand dwellings, where one man is both inspector, keeper of records and chief of department. Furthermore, in any place, big or little, any system of records is absolutely useless unless the records are made with intelligence and used with intelligence. No "system" by itself can secure either of these essential points. If records are made by inspectors, these must have training and sense enough to know how to set down their observations accurately and clearly. The "practical" man, who has been a plumber, or a builder, or a trade worker of any kind and is supposed to be especially fitted for housing inspection by reason of his concrete knowledge of conditions, is likely to fail on this very point. It is surprising to find what mistakes can be made in recording matters of observation, as for example, in merely enumerating "dark rooms"—a term clearly and expressly defined in the law, and in departmental regulations.

Inspectors should not only be required to pass an examination for appointment, but should be carefully trained after appointment. This means that their chiefs and supervisors should be capable of training them and keeping them up to a standard.

It is of course perfectly useless and wasteful to heap up an elab-

orate record of conditions that is not used by anyone. This is the defect in many elaborate systems installed—there is no one around with sufficient intelligence to draw any conclusions from them. In installing a system it should be considered who is to use it, and for what purpose, and the system should be adjusted accordingly. Much of our proposed reform in municipal accounting fails in this way. A system is adopted requiring a large staff of experts and much expense to keep it going. The "experts" may be drawn from an ordinary clerk's or bookkeeper's eligible list, and unable to keep up the work properly, the reluctant heads of departments upon whom it has been forced will not make use of it, and the general public cannot. Its only use is for professional investigators, and its value will depend upon the judgment they exercise, which is not always the greatest.

A HOUSING SURVEY

By Carol Aronovici, Ph.D.,

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The last century was a period of human achievement; the present century promises to be one of human improvement. We have been hoarding knowledge and wealth and boasting of what the human mind is capable of knowing and doing; we are now ready to use this wealth and knowledge and experience for the general improvement of the race by increasing its capacity for work, service and happiness. In a word, we are turning from the objective to the subjective in human society.

In dealing with housing conditions and the evils resulting therefrom we find that the lines of resistance to disease, infant mortality, longevity and industrial, moral and social efficiency may be unhesitatingly drawn along the boundaries that divide the community according to the condition of the homes and the living conditions which they render possible. This being the case it is of the utmost importance to ascertain the housing conditions of a community in order to ascertain the forces working against proper housing conditions and make possible the outlining of constructive housing policies consistent with the local facts.

The far reaching influences of bad housing conditions must appeal therefore to those who are interested in the welfare of the community for its own sake, as well as to those who calculate their social service in terms of increased efficiency in the daily tasks of the workers, and savings in financial responsibility both towards the city and the philanthropic agencies of the community. The work of ascertaining housing conditions of the people should therefore be done with the utmost care and the results weighed in terms of health as well as in terms of moral standards and industrial efficiency.

The most serious defects of housing reform work in America are the assumptions that the problem is one apart from the rest of the community and that it is wholly a problem of sanitary accommodations. That the absence of town planning and the general environmental conditions outside of the home coupled with inflexible

and frequently antiquated laws and practices are the real menace of the home must, however, be realized.

The broad point of view of the problem may be briefly stated as the providing of healthful accommodations, adequately provided with facilities for privacy and comfort, easily accessible to centers of employment, culture and amusement, accessible from the center of distribution of the food supply, rentable at reasonable rates and yielding a fair return on the investment.[1] That the housing problem will always be with us unless we consider its more intricate and far reaching relationships to our entire social and governmental practices is daily becoming clearer to both social workers and enlightened statesmen.

The sanitary aspects of the housing problem should be considered along the following lines:

Conditions of Dwellings

1. Is the locality a community of homes or of three and four or more family houses and what is the number of each type?
2. What is the average proportion between rental and family income? (If this cannot be ascertained, the rental per tenement by number of rooms in some characteristic sections should be considered.)
3. Are the families crowded in small tenements and what is the extent of the crowding? (Number of persons per room, crowding in bedrooms, etc.)
4. How frequently are roomers taken in to piece out rents?
5. Is the water supply in the homes of good quality and sufficient for the use of the families?
6. Is there a sewer system and is it connected with the dwellings in all parts of the city? If not what is the number of dwellings not connected and the number of families and individuals affected?
7. What is the character of the toilets; are they located in apartments, cellars, halls, basements or yards and are they connected with the sewer? (Secure facts concerning each.)
8. Are toilets used by one or more families each and to what extent is overcrowding in toilet use prevalent?

[1] Carol Aronovici, "Constructive Housing Reform" in *National Municipal Review*, April, 1913, p. 221.

9. What types of toilet ventilation are prevalent?

10. To what extent are bathrooms provided in the poorer sections of the community?

11. Is household refuse removed by the city and what is the method and frequency of removal?

12. How frequent are windowless rooms in dwellings?

13. How frequently are rooms dark because of proximity of buildings, lighting through airshafts or narrow courts?

14. Are yards provided in tenements and what are the prevailing sizes?

Environment of Dwelling Houses

1. What is the average width of the tenement streets and how wide are the sidewalks?

2. Are the streets swept, watered, flushed or oiled in the tenement districts and if so how often and by what methods?

3. Are the streets paved and what is the type of pavement in tenement districts?

4. Are playgrounds provided in the crowded districts?

5. Are street car lines common in these districts and is the use of the streets by children dangerous?

6. Are saloons common in the residential districts and to what extent are they found in buildings occupied by private families?

7. Are houses of prostitution or prostitutes permitted in the neighborhood of or within dwellings?

8. Are the dwellings in the proximity of the factories and are they affected by smoke, gases or other by-products which might be injurious to health?

9. Are there in the proximity of dwellings swamps or lowlands which breed mosquitoes or produce offensive odors?

10. Are noises prevalent in the dwelling districts that could be reduced or avoided?

11. Are abandoned buildings common in the neighborhood and are they protected against improper use by tramps and persons of questionable character?

Rooming Houses

With the growth of industries and the migration of labor from one center to another has come a problem of housing persons living away from their families, which in many cities has assumed large proportions and frequently constitutes a serious social problem. The rooming houses and the hotels are the places which largely provide homes for this class of population and the consideration of these hotels and rooming houses should receive attention in the body of a housing survey. The problems connected with this type of housing can be stated in this manner:

1. What is the total population by sex living away from home?
2. What is the number of rooming houses connected with private homes?
3. What is the number of hotels and public rooming houses and what is the method used in conducting them?
4. Are they controlled by local or state legislation, what is the character of this legislation and what authority enforces it?
5. Are there any special rooming houses provided by philanthropic agencies and what is their capacity?
6. Are there houses or tenements in which men keep house without women and what is their number and condition?
7. What is the sanitary condition of the rooming houses and hotels? (Use as a basis for study the questions on conditions of tenement houses.)

Ownership of Homes

Closely connected with housing conditions is the rate of home ownership existing in the community. Ownership determines not alone the condition of the homes, but the stability of the population, the standard of citizenship and self-respect.

The main questions in connection with this subject to be asked are as follows:

1. How many families own their own homes?
2. Is the tendency to own homes on the increase or on the decrease?
3. Are the individually owned homes on the average better than the homes owned by other persons or corporations?
4. What is the general character, size, building material, and architecture of individually owned homes?

5. What is the average assessed valuation of the individually owned workingmen's homes?

6. What is the per cent of individually owned homes free from mortgages?

7. Are mortgages on homes taxed separately from the property itself?

8. What are the building associations that promote individual home building?

9. What are the practices of the local banks with regard to loaning money on mortgages or for building purposes?

10. To what extent do the mills provide houses for their employees?

It will be found upon examination of the facts revealed by an inquiry into home ownership that a disappointingly small proportion of the workers own their own homes. That this is due to clearly definable causes cannot be doubted and a survey should not hesitate to ascertain them. The taxing of mortgages, the taxing of improvements upon land, speculation in land values, lack of coördinate distribution of transportation facilities and employment centers, ungenerous and over-conservative banking practices and the high price that the wage earner must pay for the use of capital are among the main causes of the small proportion of home owning wage earners. That these causes can be removed or their force reduced has been amply demonstrated both in this country and abroad where a desire for improvement along these lines has been manifested.

As may be seen from the above general consideration of the subject the problems of housing may be segregated into three groups namely:

A. *Sanitation*, which determines to a considerable extent the health and efficiency of the workers.

B. *Congestion*, which has to do with sanitation as well as the morals of the tenants.

C. *Ownership*, which largely influences the stability, thrift, and citizenship of the population.

When facts concerning the housing conditions have been collected and so arranged as to give a clear conception of the problem, a thorough study of the laws relating to housing, sanitation and house building should be made. This can best be done by persons familiar with handling legislation and with the building trade

Whenever it seems apparent that the building laws are insufficient to meet the needs of the community an examination of the aspects left without legal provision should be included in the survey. When the laws in existence do not seem to be enforced much profit may be derived from an examination of the aspects of housing legislation unenforced and a consideration of the machinery provided for its enforcement should be made from the following points of view:

1. Is the machinery and appropriation provided for the enforcement of the law sufficient to meet the local needs?
2. Is the law clear and definite enough to empower the officials to enforce it?
3. Are the officers efficient and honest in the performance of their duty?

These three questions should be applied as a test to all legislation dealing with social conditions and whenever possible the officials concerned should be consulted and their work examined with a view to securing facts and whenever possible, coöperation.

Relation of Homes to the Community

In the foregoing sections dealing with housing the individual building is considered as an independent entity, without any close relationship to other buildings or the neighborhood. Strictly speaking, this has been the prevailing point of view in most housing reform movements which have found their most concrete expression in legislation and inspection. Accessibility to place of employment, educational, cultural and amusement centers, marketing facilities to insure a cheap food supply have not received the attention they deserve in a broad treatment of the housing problem. "The city beautiful" as expressed by the town planning movement has found little favor with the housing reformers and still less with the local governments and real estate interests. The cost of land and construction of houses has not been studied with a view to developing constructive policies whereby houses may be built cheaply and rental rates maintained on a scale which would make possible good houses for all, yielding a reasonable return upon investments without placing an unreasonable burden upon the tenants.

These are important problems to solve and studies along these lines may be started by answering the following questions:

1. What transportation facilities are the street car and railway systems providing to facilitate the transportation of employees?

2. Are reduced fares for working people provided?

3. Are the outlying districts provided with adequate transportation facilities so as to make access to amusement and cultural centers easy and cheap?

4. What are the differences in the average cost of staple foods between the congested sections and the outlying districts?

5. Is the city following a carefully worked out plan in its development of streets, parks, playgrounds, etc., or are the real estate interests the main factor in the development of the community?

6. Are large tracts of land being opened up for residential purposes and what steps are being taken by the community to insure symmetry, open spaces, etc.?

7. Can individual homes be built at a sufficiently low cost to make possible reasonable rents and a fair return upon the investment? If not, why?

A fair and thorough housing survey of housing conditions and their causes will raise economic and administrative questions, far removed from the usual conception of the problem and which require immediate radical changes in our present practices. This may help to clear the way toward intelligent town development which is so frequently encumbered by legislative junk and archaic administrative practices.

HOUSING AND THE REAL ESTATE PROBLEM

By J. C. Nichols,
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In studying the housing problem of practically all of our American cities, much more consideration should be given to the careful creation and maintenance of good residence neighborhoods for the man earning from $9 to $12 a week.

Every city is considering the planning, construction and financing of the laboring man's house or tenement, the price and amount of land to be used for such houses, the tax upon them, rents, transportation, social opportunity, fire protection, street layout, the playground, and many other phases of the housing question; but little thought is being given to the actual creation and safeguarding of any extensive residence neighborhoods for laboring men.

Practically every city has its restricted and highly protected residence section for the better homes; and no high class development is launched today without the control of a considerable area of land, so as to establish harmonious surroundings and give permanency to the character of the neighborhood. The location of outbuildings; the fronting of residences; the exclusion or control of business property and other injurious surroundings; the elimination of billboards; provision of free space between the houses for air and sunshine; the establishing of building lines; provision of more room for garden, grass, trees, flowers and shrubbery; the perpetuation of restrictions; abandonment of the obsolete alley; requiring of minimum costs of residences in the varying sections, and frequently the control of the architectural design and exterior color scheme of the residence, as well as the grading plans of the lot, are carefully thought out and made a requirement in every part of the development.

In this property, the most skilled landscape architects are called upon to study the scientific layout and landscape treatment of the streets, the designing of lots for building tracts, so as to give the maximum amount of desirable exposure to every residence, and the greatest passage of the currents of air, as well as to retain every possible natural charm and picturesque opportunity of the place. Also

the rendering less conspicuous of the incongruous water plugs, the obtruding hitching post, the fire alarm box and the mail box; the provision of appropriate standards to carry the name of the street, establishing a good plan of numbering houses, the softening and harmonizing of colors in the street improvements and the elimination of ugly fences. The engineers are entrusted with the responsibility of making the plan of streets conform to both the pleasure boulevards and the general trafficways of the city, so as to give both the present and future generations the easiest opportunities of traffic circulation, both as to direction and as to grades. In addition to this, experts in road building and sidewalk construction are specifying the best material and methods for the most pleasing, as well as the most permanent, construction for high-class residence neighborhoods. The landscape treatment of the neighborhood as a whole in such residence property is given most careful consideration. All of this has given more staple value, and better residence property is coming to be regarded in most cities as an attractive investment.

It is recognized today that the progressive, efficient city may lead in industrial supremacy and at the same time place a high regard upon civic beauty and the control of the surroundings of the better homes of its people. These homes and their surroundings need not necessarily be sacrificed to the industrialism of the town. It is generally conceded that this important phase of city planning in the establishment of the residence neighborhoods for the better class of homes is creating more substantial values for such property, and sufficiently anchoring residence neighborhoods as to avoid in the future, in a large measure, the great economic loss suffered in the rapid abandonment of the various good residence sections of the city. This feeling of security in such home communities, and the feeling of permanence with which every improvement is added, are creating a more interested citizenship, and a more home-loving family. The general public interest that has been attached to the results of the various developments of highly restricted property throughout the country has been most encouraging. This is evidenced strongly by the constant and frequent study by real estate men throughout the entire United States, of such examples of the creation and maintenance of good residence neighborhoods for better homes, as may be found in Roland Park, Baltimore; Brookline, Mass., and Forest Hills Gardens, New York. The splendid example

offered by these developments is establishing new possibilities and standards for all of our cities.

Every individual home, with its well-arranged grounds, has become a powerful part of the broad city planning movement. It has been demonstrated that good surroundings pay in the better residence property. Insurance companies, banks and other loan resources of the country are already looking with more favor upon these neighborhoods which are carefully planned and safeguarded.

But is not practically all of this care and provision confined to the neighborhoods of our better homes? It is probably true that much more thought is being given to the actual housing of the poor than to the housing of the well-to-do. But is this true as to the neighborhood of the poor in comparison with the neighborhood of the better homes; and will the housing problem ever be successfully solved until more consideration is given to the creation and permanent safeguarding of neighborhoods of considerable area for the man who earns $2 a day, or less. And while considerable attention has been given to many of these items as relating to the housing of the poor, should not the same consideration be given to every one of these phases in the neighborhoods of the poor as well as in the communities of the rich?

In every American city today, the poor man in reality buys the highest priced property on the market. He usually buys his property absolutely unimproved, seldom with even the street brought to grade. Frequently his water mains are inadequate in size, simply being small pipes laid by the aggressive real estate owner merely large enough to enable him to advertise "city water."

Many cities require the establishment of grades of the streets before the property is platted, but this class of buyer seldom inquires whether or not the street has actually been graded to the final grade, and very frequently soon finds his property 10 or 15 feet above the grade of the street, requiring an expensive retaining wall, or several feet below the final grade of the street, requiring expensive filling. This man seldom realizes the difference between the expense of the street improvements on a street 60 feet wide and that upon a street 40 or 50 feet wide; and these purchasers are often required to pay for a 5 or 6-foot granitoid walk, where a 3-foot walk would do as well, or a 50-foot paving where a 20-foot paving would meet all their requirements. Custom seems to rule rather than efficiency and demands.

This class of purchaser seldom realizes the amount of special tax such as grading, sewer, park tax, paving, curbing, walks, etc., that will soon accrue upon this property, and it is generally the object of the owner to sell all of his lots before these taxes begin to come due. Little regard is had in most cities for the establishing of residence sections for laboring men in those parts of the city where the sewer, park and other special costs will be the least.

The only thing that seems to appeal to the purchaser is the size of the monthly payment. It is frequently observed that it is just as easy to sell ground for $15 a foot as $10 to this class of buyer, if the monthly payment is made small enough.

The owners of this character of property generally regard simply the interests of their own few blocks. Seldom is traffic circulation of the city taken into consideration. Frequently this property is platted and sold in a location that may never be convenient to the street cars, which is so essential for the laboring man, who must necessarily use street car transportation. Frequently little consideration is given to the proximity of such property to the large factories where the laboring men are employed. Should not such neighborhoods for the laboring man be selected after a careful and scientific survey has been made of the present and future locations of factories and other large centers of employment for such laborers, so as to attain a reasonable compromise between more favorable surroundings and close proximity to the industries themselves?

This property is ordinarily sold without any building restrictions as to the use of the property. Livery stables, laundries, undertaking establishments, coal yards, slaughter houses, breweries, stone quarries, foundries, hospitals and factories of all descriptions, may be located on the adjoining tracts. A neighbor may decide to face his house on the other street and place his foul smelling barn, and his pile of manure immediately adjoining the laborer's modest home. Frequently this little home may find itself lined with privies on either boundary line.

The lot may be so narrow that the sun may never shine between the homes. The lot may be so small that the children of this working man may rarely have the joy of grass, flowers, gardens, trees, or shrubbery upon their lot, while this is the particular class that, from economical reasons alone, should have the garden opportunity for at least growing vegetables for their own daily use.

The more industrious laborer, who, with the help of his wife and family, through years of saving, may have become able to build himself an attractive, modest, four-roomed cottage, may soon find his little home between unpainted, one-room shacks, and the most undesirable neighbors, or he may find the adjoining lot being used as a junk pen, or a huckster's unsanitary yard. A little stream of water nearby, that may have been clear and pure at the time he bought his lot, several years before, may have become polluted and unsanitary. The only protection that this laborer may have for the surroundings of his home may be the health regulations, so frequently lax and unobserved in such places. This particular section of laboring men's homes may be so located that it is removed from schools and churches, and the real estate promoter is willing to leave the future of his clients to the activity of the school authorities in giving more convenient schools. Frequently the property may be immediately adjoining the jails or the houses of prostitution of the city, and the children may come in contact with such influences every hour of the day.

Probably no provision has been made at the time of platting the ground, for any public playgrounds in that section of the city; and the only possible way that they may be later secured is for the playground or park commission of the city to condemn a section of this dearly bought property and assess the costs to these already burdened lot or home buyers.

Frequently this laboring man has been enticed into buying a lot long before he should, when he was even not able to properly feed and clothe his family. Frequently a purchaser may have been led into his purchase by the advertisement that the property was beyond the city limits, and would bear no city tax, and yet within one or two years, the city may have been extended, and special taxes begin to accrue, but generally not until the owner may have disposed of all of his holdings. Who has ever heard of the agent developing such property, providing against the erection of immense and flaming billboards, or the tall, unpainted, ugly board fences so common in these sections?

In how many of these additions or sections of this character is it deemed important in the beginning to grow trees in the street to relieve the heat, or to add beauty to the homes in the future? In how many cases is any plan devised by which vacant property may be kept free

of accumulating trash and papers and weeds, which not only endanger the adjoining homes by fire, but become a serious menace to the health of the people living nearby?

Much thought has been given to the greatest possible amount of ground that can be used for each home, devising plans by which frontages may be eventually and properly made upon both ends of the lots, the erection of attached houses in order to reduce the cost of building units and afford a greater amount of land; but is the proper amount of consideration being given to the safeguards over the entire neighborhood, which are so evidently needed to avoid the injurious and damaging surroundings so common in this class of property?

Should men be allowed to build their houses on the very street line, when the owner between, with only 15 or 20 or 25 feet of ground may have already set his little cottage back 20 or 25 feet from the street in order to have room for air and sunshine, grass and flowers for his children; or should the owner across the street be able to build his house facing upon the street beyond and place his barn on the street line in his rear, thereby causing this little family to look every day into the barn-yard and manure pile? Or should the industrious laborer, who, before work in the morning and after work in the evening, has been able to build himself a little two-room home, and may have carefully placed his house to one side of his lot, in order to give room for the exposure on the south, find all of his light, air and sunshine cut off on the north by that owner not being required to provide a similar amount of free space on his south?

While frequently it is the case in such properties that, although one block of land may become fairly well built upon, several blocks of land lying between these homes and the schools, stores, churches or places of labor, may remain unimproved, causing the entire family for years to wade through the mud, water and snow over the intervening property. Probably no consideration has been given to this necessary convenience.

Real estate dealers and owners of today are not alone responsible for this condition. It has become the established custom in most cities and there has been little evidence of public sentiment to the contrary against it, and this class of buyer will require considerable education along these lines. Certainly however, many of the safeguards given the better residence property could be given in the same degree in proportion to the laboring mens' homes. Would not

the efficiency of the laborer, made possible by better surroundings for himself and his family, give greater assurance of his ability to meet his payments, or ultimately buy more land? Would not the advertisement of better opportunities offered in such a section attract other purchasers? Would not the remaining lots in such an addition, which are otherwise always difficult to sell, and frequently offered at less prices than the first lots sold, become more and more valuable and command even greater prices as a result of the better development? Should not the efficiency of the property for the purposes used, be given some consideration; and if the real estate owners of the country will not give this question the same consideration as they are in the better residence property, is it not a matter for municipal control and legislation? Many laws and ordinances in every city affecting these things in better residence property are now being enforced. Municipal control has been extended by the board of park commissioners of Kansas City, Missouri, to the right of condemning a building line in the acquiring of a boulevard for pleasure purposes. Certainly if the people have this power in such property, they could exercise the same authority in the homes of the poor.

No pauperizing influence can arise as a result of exercising this control and regulation. On the other hand it strikes at the very source of the family pride and manhood and stimulates the noblest aspirations in the laborer. It appeals directly to the strongest sentiment in him—to give his family better and more permanent surroundings.

Greater consideration by the various city governments in keeping down the costs of street improvements and preventing the unnecessary width of street and street improvements in such properties, would lift at once a great economic burden from the laboring man.

Encouragement given to the laboring man by the National Housing Association and the various social organizations of the country, that his surroundings would remain permanently desirable, would be a stimulation to this man by his own labor to further improve his home and grounds; and in this way greater results would be attained upon the character of these individual homes than frequently comes from the better home, where the owner seldom has any of the joy of the actual doing of the physical work upon his home or laboring in the soil with his own hands.

We are all familiar with the rapid deterioration of such classes of property. And is there ordinarily any real encouragement when you look at the neighborhood of the average laboring man's home? Better residence property has been carefully protected and safeguarded, with carefully thought out restrictions, and most minute planning, because it has been found that it pays financially in the end. Would it not pay the average real estate owner if he could so develop an addition for the laboring man that he would feel it was always good business to promote another addition immediately adjoining?

From the sociological standpoint, is not the moral influence of the outcome of the average investment in a home by a laboring man, one of the most discouraging phases of our municipal life? Are not his loyalty to the government and his sympathy with his community severely tested when his earnings are not only frequently dissipated by an unfair investment, but frequently lost by the lack of proper safeguards having been provided in the beginning?

Even though the value of accessible land may be such that it is impossible to have detached houses for the laboring man, is it not equally as important to give him the advantages of the encouragement of many of the other neighborhood safeguards which would apply equally as strongly to the tenement houses as to his individual cottages? Is the house, most carefully designed to meet both the demands and means of the laborer, the greatest success if it is not placed in a congenial and permanent neighborhood?

There could be no greater civic asset than harmonious and carefully safeguarded laboring men's neighborhoods. Self initiative could not be encouraged more than by giving the laborer protection similar to that given in the developments for better homes; and the good results of every housing code would be greatly enhanced if they were applied in neighborhoods created and maintained over extensive acres carefully and permanently safeguarding the surroundings of the laboring man's home.

COPARTNERSHIP FOR HOUSING IN AMERICA

By Arthur Coleman Comey,

Member, Massachusetts Homestead Commission and American Society of Landscape Architects, Cambridge, Mass.

The problem of new housing is three-fold, architectural, social and financial. Present methods are but partially successful in solving any of these phases, largely because the incentive to attain ideal conditions is lacking. Under the "landlord system," so-called, the interest of the original owner is in financial returns and speculative profits, whereas the dweller is interested primarily in social returns, that is, in the utility of the property.

Barring philanthropy, which is of relatively limited application, the only sure way to make these interests identical is for the resident to become the "original owner," that is, the owner before the property is developed. He must obtain capital at a fixed rate, commensurate with the risk involved, and retain all surplus and speculative profits. To secure the economies of wholesale operations there must be collective action. Finally with the adoption of such methods many concomitant advantages, chiefly of a social nature, will become practicable. Prominent among these will be the adoption of advanced methods of construction and of city planning, in the development of garden suburbs and the provision of many social functions for common use, such as community playgrounds and club-rooms.

There are three rather sharply defined types of organization for housing operations aiming to meet most of these conditions, which may be termed for convenience the limited dividend, the homestead aid, and the copartnership companies.

The limited dividend company has been in operation in this country for a number of years, usually with the rate fixed at 5 per cent. Up to the present time twelve or more companies have erected some eighteen hundred or more houses and as many tenements in the United States. Several additional companies have recently been organized, so that the movement is evidently spreading. These are stock companies similar to any real estate company, except for the dividend limitation. They either rent or sell for cash or installments.

Speculative profit is eliminated, the surplus going into improving the property or reducing payments. But the residents, as such, have no voice in the affairs of the company; and the creation of new companies depends entirely on outside initiative of a philanthropic or altruistic nature. In England most of the garden suburbs have been organized as limited dividend companies on a five per cent basis, there being at present twenty-one companies, which have already erected over 9,000 houses on 2400 acres and propose to expand over 10,000 acres with a total of 37,000 houses.

Homestead aid for individual purchasers of single houses is to a great degree already supplied by the various mutual banking institutions, but so far as the writer knows it is not in operation with participation by the residents in wholesale developments for workingmen, in which collective action would secure many benefits. Such a scheme is, however, now being attempted in Massachusetts

The third type of organization, copartnership, is a more radical advance over current methods. It is sharply distinguished from the preceding two companies by the collective ownership of the property, each resident renting from the company, of which he is a member. Once the traditional American prejudice against coöperative or social enterprises is overcome the copartnership type would seem to have the widest application to the problem of providing homes at the lowest cost and with the greatest attendant economies and advantages.

The resident will live in an attractive neighborhood and in a well built house which he is encouraged to take care of; he will secure capital at a low rate, and will profit by economical wholesale methods; he will retain all surplus profits and the unearned increment; and, finally, with common ownership he is secure from loss in case he has to move.

The copartnership method is not at present in operation in the United States, though one company is beginning work in Canada. Seventeen companies have been organized in England in the past ten years, and over three thousand houses have been erected on 700 acres of land. Smaller developments have also taken place in Germany and elsewhere on the continent.

The movement in England may properly be said to have been started in 1901 at Ealing, near London, though a small company, the Tenant Coöperators, Ltd., had been operating in scattered districts outside of London since 1888, apparently, however, with no succeeding developments. Coöperative societies have also aided their members

in acquiring some 46,000 houses by loans aggregating $46,000,000 under methods similar to those of American building and loan associations, but have not been thus far as a rule very progressive in adopting modern ideals in planning.

The Ealing Tenants, Ltd., which is often referred to as the pioneer copartnership suburb, was organized by a few men in the building trade, under the guidance of Mr. Henry Vivian, who has since become the leading exponent of the movement. From small beginnings the society grew, at first slowly, but with increasing momentum until in 1909 the estate covered sixty acres, with provision for seven hundred houses and a valuation of $1,300,000. At first, but one of the ideals of copartnership, the improved method of financing and tenure, was worked out. During the first five years the building was of the usual rather uninteresting type in rows along the street, but in 1906 a large additional tract was planned along advanced garden suburb lines, with artistic houses limited in number per acre and attractively grouped, and with large common grounds for recreation, allotment gardens, and many other advantages which naturally arose from the participation by the tenants in the ownership of the property. This up-to-date type of site-planning has been adopted by all the copartnership companies subsequently organized. A third ideal identified with the movement, coöperation in building, has been much slower in being put into effect, though recently several such companies have been started in the various trades.

Fast following the Ealing Tenants came the organization of a company near Leicester. This also developed slowly at first and did not obtain its site of 48 acres until 1907. Meanwhile twenty-four houses were built by a small company in Kent in 1903. In the same year Letchworth, the first Garden City, was begun in the open country thirty-five miles north of London and a portion set aside for a copartnership company.

With the growth of the movement the necessity for a central body became apparent, and in 1907 the Copartnership Tenants, Ltd., was established. Most of the local societies have joined it and contribute 1 per cent of the value of their properties to it. Its objects are stated to be: (a) To provide expert advice, based on accumulated experience, of how to buy, lay out, and develop an estate; (b) to raise capital for such societies as join the federation and accept its advice; and (c) to pool orders where practicable so that the benefits

of wholesale dealing in building materials shall be secured to the societies joining the federation.

In the past seven years ten additional companies have come into being in various parts of England, the total valuation of the fourteen affiliated companies being some $6,000,000. Of special interest are the Hampstead companies, which own three large tracts in the Hampstead garden suburb on the edge of London. Here many new community benefits were first worked out under the expert planning of Mr. Raymond Unwin, which set the standard for garden suburb development on a very high plane. It is the purpose of the present article, however, to deal primarily with financial methods and not the physical aspects.

These copartnership societies, as they are called, are "registered with limited liability" under a "provident societies act." Capital is of two kinds—shares and loan stock. Each resident rents his house from the society and must subscribe to a certain amount of share stock; but not over $1,000 in shares may be held by any one person. Five per cent is usually paid on shares and 4 per cent on loan stock; and the surplus, after paying for repairs and a sinking fund, is credited in capital to each tenant according to the rent he pays, until he holds the value of the house he lives in; and after that it is paid in cash.

The advantages of such an arrangement, already referred to, are, briefly: capital at a very low rate, economy of wholesale operation, responsibility by the tenant in the property, and safety from loss in case of removal.

The American development of the copartnership plan will naturally differ somewhat from the British methods, in order to meet local conditions, but the fundamental principles should remain unaltered. To organize such a company the first step will usually be for a committee to issue a prospectus, based if possible on an actual piece of land, upon which an option has been secured. This pamphlet should make an appeal alike to the prospective resident and to the investor and should give a concrete description of the workings of the company. As this is at present pioneering work in the United States, the following draft, which has been adopted by the Massachusetts Homestead Commission, is presented as a basis for such a prospectus. A number of allied benefits, such as remission of rent, have been incorporated, thus combining the best practices known for the development of improved housing.

COPARTNERSHIP HOMES COMPANY

I. OBJECTS

The objects of this company are:

1. To promote the economic erection, coöperative ownership, and administration of healthful homes in attractive surroundings, at sufficiently low cost to be within the reach of all who desire to improve their home conditions.

2. To avoid the dangers that too frequently accompany the individual ownership of houses and speculative building devoid of public spirit.

3. To harmonize the interests of resident and investor by an equitable use of the profit arising from the increase of values and the careful use of property.

4. To provide an opportunity for gardening under instruction, thus maintaining the home in part through the use and sale of products.

To quote Mr. Unwin:

"The introduction of the copartnership principle marks a new era in housing; for not only is the individual likely to procure for himself a better house and larger garden by obtaining them through a copartnership society than by any other means, but the introduction of coöperation opens up quite a new range of possibilities. For through the medium of coöperation all may enjoy a share of the many advantages, the individual possession of which can only be attained by the few. . . . . In fact the scope of the principle is limited only by the power of those who associate to accept and enjoy the sharing of great things in place of the exclusive possession of small things."

II. METHODS

1. Suitable land will be acquired accessible to the city, and will be planned along advanced garden suburb lines, restricting the number of houses per acre and their character and arrangement and providing adequate roads, sites for community buildings, and allotment gardens, where the wage-earner may successfully carry on intensive gardening under competent instruction and go far towards paying the rent of the home. Under the allotment scheme he may undertake as much or as little as he feels able to carry along without being required to assume the obligation of the additional area in subsequent years.

2. It is aimed to assure a better means of laying out property and building houses. Every road will be developed with its own characteristic features; every tree so far as possible will be kept; and others planted according to a careful plan. There will be playgrounds for children, recreation centers for all ages, sites for school and other community buldings, and spaces for allotment gardens. No house may darken its neighbors, but they will be attractively grouped around central features, adopting the most recent advances along city planning lines.

It is hoped to prove that people with small means can secure adequate homes, with opportunity to garden, and continued increase in community benefits. The social center should develop into a powerful factor in the lives

of the residents. By these methods health has been proved to be augmented, the death rate reduced, and good citizenship promoted.

3. Substantial, sanitary, convenient homes will be erected, closely adapted to the needs of the prospective residents.

4. A prospective resident must present references and be approved by the directors, and he must take up at least two shares of common stock.

5. He will pay a reasonable rental and after fixed charges are paid will share whatever surplus profits are made in proportion to the rental.

6. As dividends on rent and on common stock are credited in common stock until the value of twenty shares is reached, subsequently these dividends will practically offset the rent.

7. The cost of repairs will be deducted from the twelfth month's rent and the remainder remitted to the resident, thus still further encouraging care in the use of the property.

III. ADVANTAGES

A. To the resident

1. He gets a home at a rental not higher and probably less than elsewhere and is encouraged to take care of it by having his twelfth month's rent remitted, less the cost of repairs.

2. He gets a house with a garden, and plenty of fresh air—a house well built and sanitary, with some individuality, in which he can take pride. He lives in a neighborhood where all are equally desirous of keeping up the property.

3. Economies will be effected through wholesale buying of land and materials, building houses in numbers, efficient management, saving in legal expenses, and the elimination of speculative profit.

4. He can invest his savings in the company at 5 per cent.

5. The unearned increment goes to benefit all the resident members, for with increase in values they will get either a dividend on rent or pay rent below market value.

6. He secures practically all the surplus profits after fixed charges are paid, in the form of a dividend on his rent, this being credited in common stock until his total holdings equal twenty shares, after which they are paid in cash.

7. He lives in a social atmosphere, with new and vital interests, and collective friendships in the community. He has a mutual interest in common recreation facilities, playgrounds, halls, etc.

8. Ownership is common, not individual, thus providing security from the risk of loss if a resident has to leave, as he has no liability beyond the shares he holds, on which he may continue to receive dividends, or which he may dispose of.

9. Capital is provided at a cheaper rate than by any other sound system, due largely to wholesale operations. Outside capital is gradually retired by savings.

B. To the investor

1. The company by collective ownership and responsibility offers an exceptional security.

2. The greater the surplus, the less the risk, and it is to the interest of the residents, who receive surplus profits, to take care of the property, thereby lessening depreciation, to find tenants for empty houses, and to pay rent punctually. This individual interest is found to equal in value 1 per cent per annum on the capital.

3. The common stock forms a fund on which the company can draw if necessary for temporary arrears in rent, or repairs due to neglect, thus eliminating loss from this item.

IV. FINANCIAL SCHEME

The business of the .....company shall be carried on by a board of directors, ultimately to be elected by the holders of common stock; but until the common stock is about one-half paid in the holders of preferred stock shall be entitled to an equitable representation (see memorandum).

The authorized capital stock of the company shall be $200,000. The value of each share shall be $100. There shall be 500 shares of common stock and 1,500 shares of preferred stock.

Common stock shall be paid for at a rate of not less than 10 per cent upon allotment, and the remainder in installments of not less than $1 per month per share, until fully paid up, and shall be entitled to dividends not to exceed 5 per cent, payable quarterly, after all other obligations of the company are paid. Dividends shall be applied as payments on stock until the equivalent of twenty shares is fully paid up. Not more than twenty shares shall be held by any one person. Shares shall be transferable, subject to approval by the directors of the company.

Preferred stock shall be paid in full, not less than 10 per cent at the time of subscription, and 30 per cent each succeeding month thereafter, and shall be entitled to dividends as stated on the certificates, but in no case exceeding 5 per cent, cumulative, payable quarterly, out of net earnings. Holdings are not limited and are transferable. Preferred stock may be retired in any part at par on a year's notice by the directors of the company.

First mortgages at 5 per cent will be placed by the company as rapidly as houses are completed, covering 60 per cent of the value.

A reserve fund shall be established after all interest and dividends on preferred stock are paid, paying into it at the rate of 1 per cent of the outstanding capital stock per annum, until it equals the value of the outstanding stock.

V. PROCEDURE

With the total issue of 2,000 shares taken up about 250 houses can be built. As soon as sufficient subscriptions are received options will be secured on suitable tracts.

The first annual meeting will be called within one month from the time that $15,000 on stock is paid in and a total of $40,000 subscribed.

The ..... company will make it practicable for a family in moderate circumstances to live in a healthful home and in attractive surroundings, and at the least cost; and to maintain it in part through the use and sale of garden products, raised on adjacent land. The undersigned committee invites your subscription to common or preferred stock. Please use the accompanying forms.

_____

_____

_____

Committee.

RELATION BETWEEN THE SMALL HOUSE AND THE TOWN PLAN

By Charles Frederick Puff, Jr.,

Author of *The City Plan of Newark, New Jersey;* District Surveyor and Regulator, Philadelphia.

First analyze, then organize. Such is the advice given by Frederick W. Taylor in his volume on *The Principles of Scientific Management;* and without doubt the most logical method of expressing "the relation between the small house and the town plan" is by schematic diagram showing a complete graphical analysis.

On analysis, one will readily see that the small house is an element and the purpose of this paper is to point out and accentuate the fact that this element controls the most remote fiber of the network.

THE SMALL HOUSE

The lot	Distribution of population	Environment	Effective locations	Happiness
The block	Regulation of future needs	Efficiency	Proper areas	Morals
The street	Character of service	Labor	Proper classification	Health
The street system	Transportation plan	The industrial plan	Park and playground plan	Housing plan

The Small House a Real Element

It is quite possible and very probable that some one will question the statement that a single element can have such far reaching effect, but in proof of this, one has only to remember the failure of the Quebec bridge. The element involved there was the strength of steel, the strength or allowable working stress was in some way exceeded and the result was the complete failure of the bridge. A child's blocks stood on end in a row is an excellent example and its application to the subject under consideration should be studied.

Street systems are formed by coördinating the streets of a city, town or village but how often have we seen symmetryism mistaken for coördination. There is no denial of the fact that symmetry does assist distribution and circulation and it is pleasing to the eye in plan but often in its use, the main factor or element is neglected in the placing of the street. What then are the elements of coördination? Simple though it seems the answer to this question is: first, determine the future character of the block, whether it be commercial, industrial or residential; second, by scientific study of the underlying element or unit, so plan as to make the block available and profitable only when used for the purpose for which it is intended.

Great commercial highways may be planned but suppose the abutting blocks are not properly planned, is it not evident that the street will prove a failure? Residential streets may be mapped out but suppose we forget the element in this subdivision, can an economic and healthful layout of houses be effected? Generally speaking, it can not. Volumes have been written in extolling the virtues of the small house and it can safely be said that almost every one approves of it. Better morals, a sense of responsibility and increased pride follow in the wake of these small houses and when the three characteristics mentioned have been instilled into a person, higher ideals and efficiency result. Crowding? Yes, just as much congestion or overcrowding could take place in these houses as in any tenement but it does not. Sanitary conditions are vastly better. Sunshine and air are more abundant. Today "small house" building is an art in itself.

Here then is the element which has such a controlling influence on all other branches of the art of city planning. If the small house is a good institution, then we need it, and if we need it, we have arrived at a unit for measuring: (1) the size of our blocks thereby locating our streets; (2) the town's transportation needs; (3) the number of industries the town can supply with labor; (4) for providing a good housing scheme for workmen; (5) for determining the areas needed for park, parkway and playground purposes; (6) for ascertaining the number and position of foodstuff distributing stations, and (7) determining the location and size of school houses and in fact all utilities.

Relation of the Small House to the Lot, Block and Street System

It has been said that, with the house as a unit, the larger subdivisions can be more scientifically planned than by assuming an arbitrary block and subdividing it. This fact is self-evident, but when one attacks a practical problem of planning say 3,000 acres, he immediately finds that there must be a compromise between system and element. In this case the element must be given precedence where it will not affect the general efficiency of the plan.

In a rectilinear system of streets, block depths can readily be obtained by determining on the character of the house but it is just at this point where theory is rudely jarred by practice. In Philadelphia the standard block in most sections of the city is 400 feet square. This provided for an excellent layout of lots, for by placing a 40-foot street midway in the block and providing two 3-foot alleys, a lot depth was left of 88½ feet or two 100 foot depth lots for the main streets and two 77 foot depth lots for the intermediate street. One can readily see the beauty and utility of such a layout, but alas, instead of one intermediate street being placed in a block, we now have two and the result is that the lot depth is cut to a minimum of sometimes 46 feet. Lately the board of surveyors of Philadelphia, who control such matters, have passed a resolution that lot depths should be at least 50 feet unless special reason is found for doing otherwise. But as the law allows the shallower depth, provided 144 square feet of yard space is left in the rear and side of the building, it remains for the board of surveyors to act as the check, by rejecting all city plans giving these objectionable lot depths.

Therefore, while the small house may be a great help to the street plan in many ways, yet it often affects it adversely. The small house of the Philadelphia type depends upon the rectilinear system for success and on this account more than once in Philadelphia, plans for a gently curving street following the natural topography have had to be abandoned owing to the attitude of the real estate owners and builders. Gradually however, these men are learning that "blighting" a high-class neighborhood with houses entirely out of its class is poor business.

Relation of the Small House to the Transportation Plan

That the small house aids in the distribution of population is also a fact which has an important bearing on the "city plan." Comparing the density of population, for example, in any tenement district with the population in an average small house district gives astonishing results. Once more, in planning or providing for future extensions, etc., the ultimate service necessary can easily be determined and this in itself is a wonderful help to either a city builder or planner. Naturally there are adverse transit effects created in a "small house" plan and one of these is the length of the local distribution lines. This point, however, acts as a boomerang to those making it, for if the transportation problem is properly solved, rapid transit lines will carry to distributing stations and the local surface lines can be comparatively short.

The Relation to Industries

This is the era in which a man is not judged by the number of hours he works but rather by how much he produces. In other words, efficiency is the measuring rod. Can anyone doubt that environment affects efficiency? The actual results speak for themselves and if one needs any proof of this fact, he may find it in the northeastern section of Philadelphia where thousands of these homes are built. Is it not reasonable to suppose that a workman will desire to work where he can find the best living conditions? For the past twenty-five years, great corporations have been removing to the open country, establishing new communities and providing the "small house" for their workmen. How then can we successfully plan a great industrial zone without due consideration to the element in the housing of its workmen and is it not true that in this element "the small house unit" has a vast controlling influence?

The Relation to Housing

It was mentioned above that great corporations were removing to the open country and establishing new homes for their workmen. Does anyone suppose that this is done on a philanthropic basis? They have realized what proper housing and environment can accomplish for a workman and the efficiency procured by this method pays large dividends. Gerald Lee in *Crowds* dwells considerably

on "the inspired millionaire" and he mentions Mr. Cadbury in favorable terms, but the writer is firmly convinced that Mr. Cadbury's shrewdness as a student of human nature and industrial reform led him to establish the village of Bourneville which today is a model of housing.

If the Philadelphia small houses were taken and interesting groups made of them instead of the long straight line, the acme of perfection in workmen's houses will have been reached. This would still further affect the size of lot and block and subsequently the street system. These houses are usually from 35 to 50 feet in depth. In the better class they are often built in pairs thus giving three sides of the house free to sunshine and air. Now, if a group of four of these smaller houses of say 14-foot front were placed together back to back, instead of having 28 feet of air and sunshine, they would have about 50 feet or nearly double. In addition to this the construction would be more economical. Any scheme presented on this subject must be backed by figures showing a financial gain, if it is to be considered at all. Therefore, assuming that the average frontage of a house is 15 feet 4 inches, in a row we have 26 houses and in a block 156 houses. In the scheme suggested using a 14 foot front we could obtain only 132, a loss of 24 houses. Again assume that the profit on these small houses selling between $2,000 and $3,000 is $250 per house, the loss then would be 24 times $250 or $6,000. Suppose now that owing to the better advantages of this style of layout $50 could be added to selling price. This would total $6,600 and, subtracting the loss above mentioned, produce a net gain for the block of $600.

Still another factor, and a large one, is the cost of construction. Here quite a percentage could be saved in many ways, one small item being in plumbing. A system could be devised necessitating but one water supply and one sewer outlet per unit and the system for the entire unit could be placed with great economy. If the saving thus effected be placed in beautifying the development, Philadelphia could become, with a single bound, just what its founders intended it to be, a garden city. I believe this will come to pass, at least in part, as soon as the builders realize that they are losing nothing. I believe it will still further emphasize the influence of the element in determining a housing scheme as well as a street system.

Relation to Parks, Schools, Markets, etc.

To the remaining subdivisions of city planning the small house has exactly the same relation as it has to the foregoing branches. Evenness of distribution of population produces a higher moral plane, greater sense of responsibility and appreciation of various benefits provided and will tend to produce a natural protection for these utilities. With this coöperation greater projects can be planned and supported and in time no man will be so ignorant as not to appreciate the greatest work of art that man has ever produced—the modern city.

Thus we see that the small house and the inhabitant thereof play an important part in the drama of city planning and building; and it remains for the engineer, the architect, the social worker and others to get their thoughts together and perfect this element which has such wide influence. Beautify this utility, spare no effort to make it the most comfortable place in the world for its dwellers and they will return the effort put forth in their behalf many fold greater. The inward thought of man is just as readily influenced, as it is expressed, by his house. Why lose this splendid opportunity for moulding characters?

Plan, plan well, without hesitation, radical, if you please, but forget not the one real element of all planning—the small house.

RELATION BETWEEN TRANSIT AND HOUSING

By John P. Fox,

Secretary of the Transit Committee, City Club of New York.

One of the most interesting developments of the last hundred years is that of city transit, or simply transit, the importance of the subject being responsible for the appropriation of this hitherto general term.

It was many years after the introduction of steam that the street railway was introduced, and it now seems curious how long mechanical traction in any form was delayed on the streets after its universal use on the railroads.

It is hard for us to realize today how many thousand years the world managed to exist without real transit facilities. Cities have existed for ages, but it is only within the last fifty years that street cars succeeded a more meager omnibus service; while the real development of transit has occurred since the introduction of electricity—twenty-five years ago.

It is well sometimes to look back over the past and see whether all the changes have been beneficial or whether developments have taken place which are not altogether best and which should be turned in the right direction.

In the early days of American cities, their small area enabled people very largely to walk to their work. There was space enough for some persons to keep horses, especially in the smaller cities and immediate suburbs of the larger ones. Early in the last century the omnibus was introduced to entice people to take life easy and surrender exercise and money at the same time. The street railway succeeded the omnibus, with its faster, smoother, and quieter service. In London first, and then New York, the slowly awakening desire for faster travel produced the first subway and the first elevated railway. But it was not until the introduction of electricity that transit reached its most rapid stage of development and that people became so dependent on means of riding to work and traveling rapidly through the streets.

Today transit has pushed its way into almost every corner of the globe; and, while the people of the old world were slower at first to

change their habits than those of the new, one English city has seen its rides per capita multiply six times over in nineteen years, or increase by 500 per cent, while Philadelphia and Boston's rides per capita increased only 50 per cent.

Looking most critically at the growth of transit, many beneficial results are apparent. Families have been enabled to leave undesirable neighborhoods and move to houses where better surroundings and more space are afforded. Communities adjacent to each other, but separated by space or topographical conditions, have become more united and jealousies broken down. The possibilities of social intercourse have been greatly increased and the people as a whole must have benefited greatly by the large extension of social horizon and the widening of the area in which one could make friends. For many persons the time in getting to and from work has been reduced; persons out of work can look for new employment more easily; work requiring travel about a city is more easily carried on. Places and means of recreation and exercise have been made more accessible, such as parks, playgrounds, theaters, amusement resorts, country and seaside, educational institutions, museums, concert places, churches, etc., can more easily wield their influence for good by becoming more accessible. Persons in hospitals and other institutions are within reach of their friends. Business has been concentrated more in the center of cities, a thing which some persons consider a disadvantage but which Dr. Werner Hegemann of Berlin believes is one of the marked superiorities of the American city over those of the old world. More land has been opened up, permitting advantage to be taken of lower prices and lower rents.

But with all the advantages brought by transit, there are serious disadvantages which have been altogether too much overlooked. The most objectionable accompaniment of transit today is the overcrowding of the cars, an evil especially aggravated in America, owing to the indifference, selfishness, or stupidity of most of the traction companies, and the ignorance or ineffectiveness of public authorities. Those who have studied this condition of overcrowding have found that it is an unnecessary evil, especially in the light of European experience. But companies have carefully fostered the belief that congestion cannot be remedied and still cling to the delusion that it pays; so that the evil results, though somewhat improved in the last few years, still persist.

The worst side of transit today is its unhealthfulness. People are obliged to stand while traveling long distances, adding often to the fatigue of long hours of labor. They are brought into contact favorable for the spread of disease and injurious to morals. Politeness and kindness are not only well nigh impossible but the selfish instincts of people have been developed to an alarming extent by the rush to get places on cars. Women and girls are the worst sufferers; men have been the most demoralized. The old and infirm can hardly travel safely even when attended. The air of many cars is still debilitating when the windows are closed, though ventilation is slowly being recognized as an asset by the companies. But in the New York subway, where the congestion can be found at its worst, and where the air receives the most pollution from human emanations and the steel and particles due to wear of equipment, the only attempt at ventilation is still simply the churning up of the car air in summer by revolving fans, the fresh air finding its way in as best it can. The subway is really the sewer for air of the street, and the more ventilating openings there are, the more the street dirt can filter down into the tunnels where it is breathed at the stations and sucked through by the trains into dark regions where the disinfecting rays of the sun rarely penetrate. The noise in subways is bad enough for those who must listen to it, still worse for those who strain their throats to talk. Better car lighting may have reduced the eye strain; but almost all cars in America, both steam and electric, through neglectful design, vibrate too much for comfort, if not for safe use of the eyes for reading.

While the cost of transit to the individual may not seem large, at the same time one cannot help wondering whether there is not a great waste of expenditure going on. The cost of riding per capita seems small, being about $10 per year in Pittsburgh, $14 per year in Boston and Philadelphia, nearly $20 for Manhattan and the Bronx. But when the cost per family per year is considered, it is about five times the previous amounts. And the actual sums spent by persons who do ride and the proportion of family income devoted to the purpose are often surprisingly large. Some commuters who live near New York spend as much as $150 a year riding to and from work.

Many New Yorkers today are proud of the city's investment in transit lines, and of the immense sums that are being expended for new lines. Other cities have caught the fever for subways and are building or planning to build. Whether the immense investment for

transit in New York is not partly unnecessary because it produces more or less injurious results and is proving an economic drain on the community without a sufficient gain still remains to be ascertained.

In addition to the possible money loss to the individual and the city from too much transit there is the possible waste of time. A half hour or an hour spent between home and work twice a day constitutes a considerable share of a lifetime. If this time were spent in walking it would generally be beneficial. When it is spent in carefully reading the newspapers by one seated in a well lighted, well ventilated car, or reading anything worth while or in useful conversation, or in quiet resting the result may be beneficial. But when spent under the unhealthful conditions already named, there is certainly a loss. The longest daily journeys are not be to found in America, however, but in Belgium, where the remarkably low workmen's fares on the state railroads, enabling men to travel 6 miles for 2 cents, 21 miles for 3 cents, 38 miles for 4 cents, and 58 miles for 5 cents, encourage a workman to keep his home at however great a distance his work may be. In extreme cases a man will spend six hours every day on the train, with only five hours at home at night, from 10 p.m. to 3 a.m.

While in many cases transit development has resulted in the moving of families into better homes, in the case of the New York subway there appears to have been little gain. Before the subway was completed all along the two northern branches, apartment and tenement houses began to spring up and the people who have moved uptown along the new lines have merely exchanged one tenement for another, newer perhaps, but still a tenement. The larger and uncomfortable ride offsets the improvement in living conditions.

There is one curious aspect to the remarkable increase in riding, especially in the larger cities. It has been found that, as fast as new facilities are provided, they become overcrowded. This is notably true of the New York subway and has been used as the strongest argument for more subways. But, if more subways will always result in more congestion, are we sure it is right to build them? Their construction has been urged with feverish anxiety lest existing transit lines be swamped. But it appears likely now that new lines largely create their own traffic and congestion and that if they were not built, there might be simply less travelling going on, to the benefit perhaps of the city and not to its detriment.

It should be made clear at this point that this apparently pessi-

mistic view of the value of transit does not mean that the writer is against transit, but that he is merely raising the question as to how much of it is really needed, how much not needed or really undesirable.

For the possible evils of too much transit, city planning suggests a remedy, viz: walking to work. This does not mean a return to the conditions when every one worked at home, with his shops in his house; but rather the locating of business, industries, and commerce on the one hand and houses on the other so that persons can walk to and from work. Some people believe this can be brought about by the scattering of industry, so that houses can be used all about the place of work. But would not this result in too scattered a community and undo the beneficial tendency towards unity which transit has brought about? Other persons believe in creating different centers of activity, with people living about these centers, connecting them with the main center of the city and with each other through adequate radial highways and transit lines. Even with such a plan, too great a spreading out seems possible and too great an expense seems necessary to connect the centers together with adequate highways and rapid transit lines.

The New York subway, curiously enough, suggests the best remedy for preventing the very evil which it has caused. At the same time that it has been creating too much riding at the rush hours to and from work, it has been spreading business out in a long line up Manhattan Island. Manhattan Island today has, roughly speaking, five zones. In the center, along the subway and central transit lines, is the business zone. On each side are housing zones, made up of tenements and old houses, in the southern half of the island and newer houses, tenements and apartment houses in the northern part of the island. Along the river front are two commercial and industrial zones. The two housing zones extend far south, flanking even Wall street on the west side, and are absolutely indispensable, because they permit so many people to live within walking distance of work who could not afford the long ride to and from outlying sections.

It is surprising how many people do walk to their work regularly, in all cities. Boston, by a miracle, has stopped the march of business over Beacon Hill, and has there, and for the Back Bay, a large reservoir of space for the wealthy to live near their work. The poorer classes can live in the west and north ends, or over the rivers and channels in Charlestown and South Boston, and still be near the business and commercial sections. Some cities are better situated than

others, but the idea of walking to work is not so revolutionary as it may seem to some people.

The application of the New York idea is simply this: That every city, as soon as it can afford it, should build a rapid transit line through the district or districts best suited for business, shopping and similar purposes, providing for the best possible train service and lowest possible fares, so as to induce business from existing locations to locate along the new line. This line should be located as far as possible so as to allow housing zones each side, where the poorer workers at least could live within proper walking distance of their work. A transit line, with fast and good service, ought to do for other cities exactly what the subway has done for New York, which is making it possible again for people to live in most desirable districts like Murray Hill, and men to walk to their place of business and women to the stores close by.

The radiating of transit lines, as in Chicago and Boston, is a hindrance to this plan and where radiating lines are needed to serve existing conditions the best improvements should be made along the route best suited for the extension of business. Boston, for example, might have had a four-track rapid transit system between Charlestown and Roxbury, which would have kept the Back Bay for residences and prevented the present uncertainty where to locate new stores and buildings. It may not be too late even now to make the improvement. For Philadelphia, Broad street should be made the business axis, with a straight transit line from north to south and without the ill-advised delivery loop subway now planned, which would tend to duplicate in Philadelphia the evils of Chicago's congested business center. Chicago itself certainly needs a real rapid transit line, running straight through the down-town district, to extend business out the way that the New York subway has, with a chance for housing each side. Pittsburgh needs lines extending from Allegheny to East Liberty, around one or both sides of the hill district, near the surface all the way and not a deep tunnel as planned, which would merely develop two congested business centers down town and at East Liberty, neglecting all the available business and housing land between where topography would force almost ideal conditions of living and working.

The writer is aware that the foregoing suggestions are contrary to accepted standards of city planning, especially in the advocacy of a

longitudinal city as against a round city. But the more one studies the round city, the more faults it develops and the more objections arise.

The round city, as found in America tends to have a congested business center, with high buildings, high land values, high rents, congested streets and similar faults. It tends to require riding to and from work, especially if one wishes to live anywhere near the country. It requires too many radiating streets to reach surrounding territory, using more land than necessary. It makes it impossible to build one adequate rapid transit line to serve all the central district and the residence sections. It buries most people in its midst too far from the country, the latter being reached only by riding, which many poor people cannot afford to do.

The advantages of the longitudinal city are most marked in the thriving municipalities of Barmen and Elberfeld just east of Düsseldorf in western Germany. Lying along the valley of the Wupper River, is one of the prosperous regions of Germany, famous for its chemical industries. The manufactories extend along the river, served by two lines of the state railroads. On the slopes of the valley above the river are the homes of the workmen, within walking distance of work, while directly behind the houses is the country, within easy reach of all. Cheap passenger transit is afforded the whole length of the region by the railroad lines and by the well known suspended railway, built largely over the Wupper River. This suspended railway, supplemented by surface electric lines, affords the utmost facility for reaching the industries along the valley for convenience in case of a change of work, for reaching the business and shopping sections, the amusement resorts, etc. The workmen can travel the whole length of the line in the morning for one cent, 8½ miles. At different points along the valley is business concentrated as at Barmen and Elberfeld. These business districts ought to be extended in the future at right angles to the river, in order not to encroach on the manufacturing zone. Adequate transit should be afforded to the lateral business districts so as to develop their extension away from the river. With the people working in the business houses, living on each side of the lateral zones and the workmen above the industries in the valley, an ideal community would be found.

The situation of the industries at Barmen and Elberfeld is extremely suggestive. Would it not be well to locate all industries in narrow zones along railroads, with the houses close by and the country

just behind instead of scattering factories all over a city or in small towns? Should not business also be located ideally in a narrow district at right angles to the industrial belt, with houses each side and the country again near, and a rapid transit backbone, crossing the industrial belt at a central station? If these ideas are right then the model city is a Maltese cross; narrow enough to keep the country always within walking distance of all the inhabitants, rich and poor. If those who are inclined to criticize this ideal will reflect on it and try to apply it to different cities, perhaps they will see the advantages over other city developments. The adoption of the cross-shaped city with industrial and business belts and cheap and rapid transit in both directions seems to be the next step in city planning.

In closing, one would point out the superiority of the suspended railway found at Barmen and Elberfeld over all other types of rapid transit lines. Improved on in the Berlin plans, and recognized as the ideal by most of the leading German engineers, the suspended railway has none of the defects of subways and ordinary elevated roads. Safer, quieter, cheaper, with no flooring to obstruct light and air, with no noise to damage property, with no possibility of derailment, with a cost only two-thirds that of elevated lines, stable and smooth running, the suspended railroad is as remarkable a development in transit as its location in Barmen and Elberfeld is ideal for city plan. The cars are capable of running in a subway with none of the dangers of the ordinary railway. But the logical place for human beings to ride, as some of the foremost American subway builders have always maintained, is in the light and air of the streets, with freight and not passengers underground.

THE INTERRELATION OF HOUSING AND CITY PLANNING

By Andrew Wright Crawford,

Secretary, Art Jury; Editor of the City Planning Section of the *Public Ledger*, Philadelphia.

Over much the greater part of its area, the physical city is the result of the coördinated action of housing and city planning, each also acting and counteracting upon the other. Each is affected by the operation of forces that do not play upon the other, but each is subject to influences that also control or affect the other. Some approximate definition of these two terms is necessary. Such definitions are doubtless given in the papers that precede or succeed this one, but both city planning and housing are in a state of flux, and individuals use the terms with different interpretations.

Housing covers places where people live—places that used to be called "homes" and that still are called homes in the country and in parts of cities. But a flat does not have that sense of family life separated and shut off from all the world oustide, that sense of peace and happiness and aloofness, and comfortable security, that the word "home" brings to one that has known an abiding place other than a flat. But, nevertheless, it is the many-inhabited flat, the tenement, that has caused the rise of the housing inquiry, an inquiry that is gradually creating a knowledge that has something of the character of a science. The forms of living are too various to permit such an investigation to develop a strict science, but certain of the details of housing, such as the amount of cubic space of air that each room should contain per each individual, are rapidly becoming, and in some cases have become, scientifically understood; and that understanding is being formulated into statutory law. Housing is not generally regarded as applying to buildings intended for business, commerce, manufacturing, transportation or similar business.

City planning is concerned primarily with what the public authorities do, or with what they can control, such as the street and other transportation systems, the recreation system, the dock system. It is in certain details that its direct action upon housing is most apparent.

Supposing that the best city plan in its widest acceptation were realized, bad housing conditions would still be constantly arising. Room overcrowding and personal filth cannot be prevented by city planning; these are examples of cases where housing is only remotely connected with city planning, and where many other causes,—education, physical fitness, the standard of living of the community, for example—have more direct bearing. Nevertheless the physical city has an effect on the physique of its inhabitants—a city like Chicago with Chicago's recreation centers, will have fitter citizens and fewer unfit ones than a city like Chicago without such playgrounds. It is in large measure true that the saying, "the condition of the sty depends upon the pig," applies to the surface problems of housing. Put a public-school-educated, healthy family into a filthy house, and it will be a different dwelling by the morning. Obviously, therefore, so far as city planning affects the physical citizen it will have a relation to housing. Other examples of such relationship, less remote and more remote, could readily be given, were not the space required for the phases where the action and interaction of housing and city planning are direct, and consequently more easily demonstrated and more easily made to coöperate towards good results.

City planning will be shown to have its effect on the structure of the house, not the use or abuse of it after its construction. The chief agencies in creating this effect are transportation, lot dimensions and heights of buildings, as provided for or permitted by the city plan.

All of these have to do with the space of the city that is not to be built upon. A chief function of city planning is to provide open space, whether in the form of parks or playgrounds, streets or parkways, court-yards or alleys. The common function of these diverse open spaces is to let sunlight and fresh air into the city—each open space also provides for other necessities of city building, but all provide these essentials. An important function of housing, perhaps the most vital, is to let sunlight and fresh air into the house. Obviously you cannot have fresh air within the house if there is none without, and hence city planning and housing are from this point of view the necessary complements of each other.

The fundamental factor in city planning is transportation, by which I mean not only the system of rapid transit, but the system of

streets. Streets are the only indispensable method of transferring an individual from one point to another, the particular means, whether by foot, by horse-drawn vehicle, motor, trolley car, subway, or elevated, being a secondary consideration, all the improved methods depending ultimately upon the street. True, subways may, and frequently ought, and in two cases, the London tuppeny tube and the Harvard-Boston line do, leave the lines of the street, but generally they follow them.

The directness of the dependence of housing on transportation in a city of large size will be shown shortly by an unfortunate example, but first as to the qualifications as to size. As long as a community is so little extended that the laborer can live within an easy walk of his place of labor, the facilities of street and railroad transit systems will not be reflected in his home. But when the community passes beyond that stage, the situation changes. Ebenezer Howard, who is generally regarded as the originator of the English garden city idea, the chief modern contribution of that nation to city planning, quoted approvingly a recent article that declared that what is needed is "England planning," in order that "the problem of the transport of the worker may be most economically and happily solved by bringing the distance necessary to be traveled within easy range of a walk or a bicycle ride." To do so, it will be necessary to create many small cities and to limit them arbitrarily, as has been done in Letchworth. Such methods do not savor of practicableness for the condition that confronts us, which is indeed not a theory. But the suggestion serves to emphasize the distinction between small and great communities so far as the effect of transportation on their housing is concerned, a distinction that is really one of kind and not merely of degree.

The dependence of the workman in the big city upon transportation for the character of his home, and indeed for the possibility of his owning his home, will be evident from a moment's thinking of the places where workmen live in New York and where they live in Philadelphia. New York for years offered no opportunity to get out of the straight jacket made by its bounding rivers, and the workman who earns $1.75 or $2 a day, in the first place, must live in a six-story flat, with no yard of his own for his children to use for play, and hence, for bodily and mental health; and in the second place, he cannot aspire to own the property—even the thought of doing so

seems absurd. But the Philadelphia laborer lives in a two-story, single-family (*his* family) house, and can aspire to own it, and does so to the extent of 20 per cent—the statistical total being 22 per cent, including persons who are not covered by the general definition of the word "workman."

The direct dependence of housing upon transportation is shown by the same city. In a report to the City Parks Association of Philadelphia, two years ago, the author called attention to this fact as follows:

> Upon transportation depends of course the ease, rapidity and flexibility with which commerce flows, but transportation affects vitally not only the commerce of the city, but its housing conditions as well. We have had unfortunately in Philadelphia recently a sharp reminder of this truth, a reminder that has taken a form, that threatens the extension of our system of two-story, single-family homes. When the Market Street Subway and Elevated Railroad was built, it brought within fifteen or twenty minutes of the center of the city a considerable area of unimproved ground in West Philadelphia, with the result that the land appreciated in value so much, that the ordinary workman's house, two stories in height and occupied by one family, would not bring a commensurate income. The result is that two-flat, two-story houses have been erected in considerable numbers within the sphere of influence of the subway-elevated railroad. In order to prevent this result the transportation facilities of the city should at the same time have brought other large areas into competition. If land to the southeast, the south, the southwest, the northwest, the north and northeast, had been brought within fifteen or twenty minutes of the City Hall, the evil result in West Philadelphia would not have followed. The system of two-story, single-family houses can continue to exist only so long as it brings a fair return on the value of the investment. That value can be kept down only by competition. If it is not kept down, the system of two-story single-family houses will inevitably give way.
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> There is no use blinking the fact, that these two-family flats in West Philadelphia portend evil to the working classes of the community and to the local body politic. If two families can live in two-story flats, why not erect a third story for a third family? With the ground purchased and the supporting stories already built, the third story will not cost much in addition, and the rent will be almost as high as that obtained for each of the other two stories.
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> This argument cannot fail to bring its disastrous results in the near future, unless the family, which otherwise might occupy that third story, can get a whole house to itself for about the same rent.
>
> Therefore by our city planning we must see to it that transportation facilities are increased with such regularity and that new building areas are made available in such abundance, that the values of land are kept low enough for the workman to be able to own his own home. Any system of city planning that fails to bring a home owned by himself within reach of the day lab-

orer is a bad system, bad for the workman, worse for the community. There is undeniably a spirit of unrest throughout the community, a spirit of change, naturally brought about by the laudable determination of labor to secure and its success in securing a larger share of the wealth it produces. We rejoice that this is so, but we must not ignore the fact that other changes will result. The best assurance that those changes will be made considerately, conservatively and with a due regard to the rights of all, is to make it possible for each laborer to secure a home of his own. But who can foretell the ultimate result of conditions that will generally force workmen and their families into many-family tenements?

Transportation by means of an adequate system of direct thoroughfares, plus an equally adequate system of transit facilities on the surface and below the surface, must be provided, and this is the work of the community. No work more intimately concerns each one of us.

The necessity for this improvement in transportation is voiced in a recent parliamentary blue book by declaring that what is needed is a transit system that offers rapidity of carriage, shortness of intervals between trains, and cheap rates.

The "city plan" was at one time understood to mean the plan of the city streets—the city map of the news stand. It was regarded as an uninteresting, negligible thing. It is now known to be of primary importance in city building. When one street is plotted, two things are done: its distance from or nearness to the nearest parallel street is determined and the depth of the lots fronting upon it is also reduced to a choice within limits so narrow that it is also determined. These results necessarily follow for these reasons: If the street is only twenty feet from its nearest parallel street, a distance that has certain advantages and has been advocated for certain sections where the poorest live, there will be only one lot between them. If the distance is only forty feet there will also be only one lot between the streets. If the distance is 80 feet there may be one lot—or possibly two of about 40 each; if one is larger than 40, the other will be smaller. As the distance between the streets increases, the depth of the two lots will correspondingly increase until the parallel streets are so far apart that a third is opened between them. The prevailing rule in New York is that the streets are 200 feet apart making the lot depths 100 feet deep; and the prevailing rule in Philadelphia is that the parallel streets are from 100 to 150 feet apart, with proportionately smaller lot depths.

The New York rule has worked badly, a large part of the bad result being due, however, to New York's straight jacket. The Phila-

delphia rule, for a city of a million and a half, has worked well. If it were a city of only 50,000 people, the monotonous rows of similar houses would be inexcusable. Even as it is, their monotony could easily be avoided, but their small "oblong-box" formation—like "shoe boxes stood on their sides"—has made it possible for a workman to own one of them together with a yard, and to call the whole thing "my home."

The distance between parallel streets has been shown to bear directly on the lot depths. The distance between the streets that run at right angles to these streets affects, but less necessarily and directly, the lot widths. If an operator wishes to erect forty houses between two streets, their distance apart will affect their widths to a slight extent.

But the widths of the streets themselves have a very important bearing on the housing system. In some of the western cities, the average width of streets is said to be over 100 feet. This takes from the land that might have been used either to support buildings, to make yards for them, or to make public open spaces, an inexcusably large proportion of the area of the city; it invites unnecessarily wide paving at a useless increment in the original cost and in subsequent maintenance; and it increases length of transit, creating cities of "magnificent distances" and malodorous slums. There is not a city in the land where unnecessarily wide paving has not been done on many streets. Numerous streets are too wide and many are too narrow.

One of the best contributions of recent city planning publications has been the discussion of the desirable widths of streets from house line to house line, and the proper subdivisions of their cross sections so as to provide for attractive and beautiful streets, with an elasticity capable of subjecting a greater paving area to the use of the traffic that will be demanded by a minimized reduction in the attractiveness of the streets. The general recognition of the need of wider thoroughfares for traffic, and smaller by-ways for residences, has been one of the conclusions from this discussion that is sure to bear most valuable results, including improved housing conditions on the byways.

But, looked at broadly, the essence of the interest of housing in the widths of the streets on the city map is the amount of space left for building. The percentage of the built-up area of the city

turned over to travel never fails to surprise those who have not investigated the subject. It averages more than one-third. In Washington, the street area combined with that of the parks and the grounds around public buildings reaches the maximum, with 54 per cent of the total area of the city—less than half of the property remains for housing, and for buildings of all kinds. In old Philadelphia the percentage of the street area alone is about 36 per cent. In the region where the two-story house prevails, with the minimum lot of 14 feet by 41 feet, the percentage is 40. In outlying areas the tendency has been to make wider streets, thus increasing that percentage.

In an address before the National Housing Association, the writer stated:

> In a particular instance it may be very difficult indeed to trace the connection between the physical condition of the house and the relation the total area of the street system bears to the total area of the built-up sections of the city; to say that 984 "X" Street is bad because 50 per cent of the area of the city is devoted to streets instead of a much smaller area; just as it may be difficult to show that a bad transportation system has contributed a definite amount of evil to that house. But it is equally difficult to say of any one death that it would not have occurred if the death rate of the city had been 5 per thousand instead of 15 per thousand. None of us has that wisdom. But we all have wisdom to know that if the death rate is 15 per thousand when it ought to be and can be, and in some places is, 5 per thousand, then 10 lives per thousand are being sacrificed every year, though we may not be able to say this particular life was so sacrificed. And so in housing, if transportation or the street area is not what it ought to be, we will know that evil conditions in housing generally are due to bad city planning though we may not be able to say that the bad housing at 984 "X" Street is due to it.

Both the width of streets and distance between parallel streets are the result of fashion and cause fashion. It is difficult and perhaps it would be academic, to determine which arises first, the habit of erecting a particular kind of dwelling, and making the lot fit, or the habit of laying out the particular lot and making the dwelling fit. In New York, did the 100-foot lot cause the building, or the building the 100-foot lot? Here we can answer. The plasterer who laid out New York above 14th Street with his trowel placed at right angles to the position it should have had, determined the lot depth, and the house had to be made to fit it. But how about elsewhere? What caused the two-story house on the average 14 by 50-foot lot

in Philadelphia? Which came first? Was it the city plan that caused the fashion, or the fashion that caused the city plan?

The inquiry into this subject would be interesting, but it is not so vital, being historical, as the inquiry whether the city plan can turn a bad fashion into a good one. I believe in the long run it can. This appears indeed to be in the proving in England. "Garden cities" are laid out primarily to surround each house or each unit by gardens. More space was required for houses in comparison with the area of streets. The street map was therefore affected and a new system had to be adopted. That new system in turn created conditions that defied old methods of building workmen's dwellings —a defiance that doubtless can be overcome by economic demands— but, nevertheless, a defiance that has for the time being put fashion to flight. I believe that a garden city scheme of streets would ultimately break up the Boston three-decker and then eliminate it, and that it would break up the monotony of the Philadelphia two-story home and then improve it.

The street system has one phase that is unusually interesting and difficult to handle. This is the change that is constantly taking place in the centers or sub-centers of cities. The housing area is continually surrendering to the business area, and the system desirable for the one is not that needed for the other. "The only permanent thing is change." To meet these conditions, the only feasible plan is to secure the main thoroughfares and then to permit the obliteration of minor streets promptly when need arises. Reconstruction will be a continuous need—and a continuous source of great strength and betterment for the city.

There is an object that is aimed at in English town planning that depends for its ultimate success either on the more or less Utopian idea of many small towns or on decided improvement in transportation. This is the fixing of the legal maximum number of houses at twelve to the acre. How great a revolution this would be is shown by the fact that in London there are some areas where the houses are 54 to the acre. In Philadelphia they are over 42 to the acre in the region of the minimum 14 by 40-foot lots on the minimum street of 40 feet width. If this number of houses were to be spread out to be only twelve to the acre, the amount of ground covered would be three and a half times as great—an improvement that would be wonderful. But the cost of transportation would be greater. The

car service would be over a longer route. The long rider would ride farther, and the short rider would also ride farther. The cost of the sewer system, and of all the street works would be greatly increased. I do not mean to say that a decided reduction in the number of houses per acre cannot be secured. We are working toward that end. I merely cite the difficulties, to show how intimately city planning and housing are bound up together.

The sewer system is of course a fundamental, both of city planning and housing. So is the water system. The house is the physical meeting point of the three problems, water supply, housing, and sewage. Water enters, or ought to enter, the house as pure water; it leaves it as sewage. In Philadelphia the largest physical need of housing is the construction of $6,000,000 worth of sewers. All cities should prevent the erection of houses until the water and sewer pipes have been laid. This can be done by direct legislation as an exercise of the police power. In order to avoid unnecessary hardship, in cities where this is not now law, the requirement should be introduced gradually.

Height and open space regulations concern both housing and city planning. If buildings cannot expand laterally they will grow perpendicularly—hence New York. Conversely, if you limit their heights, they will expand laterally—hence they will cover more ground for which the plans of the city must consequently be prepared. Each subject is of vast importance. But space prevents their adequate consideration here. Suffice it to say that, so far as the limitations of the heights of tenements is concerned, that will doubtless be covered by other papers in this series. So far as the limitation of the heights of office buildings and other structures is concerned, that is mainly a matter of city planning, affecting housing conditions chiefly as it affects transportation. If a vast aggregation is to work on an area half a mile square, the greater part of the day-time population of that area will have to travel farther than if the aggregation were spread out, or were broken up into a series of much smaller aggregations. It should be borne in mind also that the living conditions of men and women are just as important in the day-time as at night—in shop, or office, as in home or flat. It is becoming generally agreed that the percentage of lot not occupied by buildings should depend on the height of the buildings. So far as city planning is concerned this will affect the area that the city will cover.

The limitation of the number of houses per acre and of the height to which each may reach is made by the German zoning system to depend upon the distance from the center of the city. The area contained within each successive mile zone is much greater than its immediate predecessor, as it has a much greater perimeter. Hence the distribution of the population by these processes does not in fact increase the transportation difficulties in the direct ratio of distance from the center of the city. The German zoning system has yet to be tried in this country, though acts to legalize it were introduced in the Wisconsin Legislature during the past year. The case of Welch *vs.* Swasey (214 U. S.) in effect upheld the districting of Boston into four zones so far as height regulation is concerned. In Pennsylvania, cities may secure forest belts. News from California, which I have not yet had the opportunity to substantiate, is that a zoning of Los Angeles for certain purposes has been upheld by the state supreme court. The nucleus of the idea is thus already Americanized.

The duty of the housing expert and of the city planner alike is to see to it that the city population of the future, when it is twice as large as at present—a time less than thirty years off—is spread over more than twice the area of the present city. The whole tendency in the opposite direction is toward concentration. It is our duty, and our great opportunity of service, to secure expansion. The introduction of the motor truck, the building of well-designed ornamental elevated railroads in the suburbs, the use of all devices for spreading the population that can be invented, must be brought to bear. There is no reason why success in the solution of this vast problem cannot be secured.

THE TOWN-PLANNING MOVEMENT IN AMERICA

By Frederick Law Olmsted,
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Some appreciation of the possibilities and advantages of town planning has been current in America from early colonial times. The very act of founding a new settlement in the wilderness emphasized both the solidarity of the community—the dependence of the individual upon the success of the town as a whole—and also the importance of planning not merely to meet the temporary circumstances but rather those of the expected future town conceived in the imagination.

It is the combination of these two ideas which constitutes the town planning point of view, as distinguished on the one hand from that of the separate uncoördinated planning of the several fragments that make up a town, and on the other hand from that of living from hand to mouth without any deliberate and far-seeing plans at all.

Unfortunately, the conditions of frontier life at the same time made enormous demands upon the energy of the settlers for meeting their immediate necessities. As a practical result, in those communities where the initiative and control were vested in the settlers themselves, as at Boston, Hartford and New Amsterdam, the time and attention which the people actually devoted to planning for the remoter future seem to have been nearly as scanty as in the later period of more settled and stable conditions, when the possibilities of town planning became less obvious and imagination less active. In the case of settlements where the initiative and control were centralized in proprietors, especially non-resident proprietors, the claims of town planning were not so driven to the wall by the pressure of immediate necessities; and we have in William Penn's Philadelphia plan of 1682 an example of deliberate planning for a town of large size with systematic provision for the streets, public recreation grounds, public market places and wharves required by a population considerably greater than was to be expected within a single generation. It was only a more notable example of a sort of planning of "fiat" towns that has been by no means uncommon throughout our history. Of course, the most conspicuous example of this type, the one planned with the

most liberal estimate of future growth and needs, and upon the whole the best of them all, was Washington, planned in the last decade of the eighteenth century.

Leaving Washington aside, most of our prosperous towns comparatively soon outgrew any plan they may have had at the start and, without the dramatic stimulus to the imagination given by the act of founding a wholly new settlement, it was very seldom indeed that any effective effort was made to face the problems of extension and growth in the town planning spirit.

The town planning movement, as a distinct, self-conscious activity with a literature of its own, is very recent in America. A glance through the titles assembled under this head in the Library of Congress shows only scattering items before 1890, a considerable output during the last decade of the nineteenth century, and quite a river of publications, both fugitive and permanent, bearing dates since 1900. This river is composed of a number of streams of varied origin and character still running side by side without quite losing their identity, and for the most part traceable through independent courses far back of 1890. I can only point out a few of the important landmarks along these converging lines.

Throughout our history, in towns which were outgrowing the effective capacity of their permanent facilities for the transaction of business, especially the capacity of their streets and other parts of the transportation system, the planning of extensions and improvements has been of two kinds, private and collective. The street extensions, with rare exceptions, have been privately planned by or for the owners of land, to afford local means of access to lots, with varying degrees of intelligence as to purely local interests and with only occasional regard for the needs of the community in respect to main thoroughfares. Where the growth was most rapid, in the two cities of New York and Philadelphia, the inevitable defects of private street platting first became conspicuous and first led to strong constructive public action. A brief review of public planning in those two cities will indicate the solid foundations of the recent popular movement.

An act of the colonial assembly of February 24, 1721, provided for "surveyors and regulators" to establish streets and building lines in Philadelphia. The number of these officials was increased both in Philadelphia and the adjacent municipalities and their duties gradu-

ally broadened till the consolidation act of February 2, 1854, which created the department of surveys covering the enlarged city of 129 square miles. This was divided into twelve survey districts, each in charge of a "surveyor and regulator," who together formed the board of surveyors under the presidency of the chief engineer and surveyor of the city. This board, with its predecessors and its successor, the bureau of surveys, has had drastic powers of initiative and control in planning new streets, and I think I am right in saying that Philadelphia is the only American city in which, until recent years, such a permanent representative of the community has exercised a dominant and continuous control over the development of the street system. Its duties have covered the planning of sewers and bridges, but it has not had the authority or until very recently assumed the duty of taking part in any planning for the location of parks or of lands needed for other public functions, or the duty of considering the intimately related problem of facilities for rail and water transportation.

Comprehensive planning in New York proceeded until much later upon the spasmodic method of a "once for all" plan without provision for systematic revision and extension. The celebrated act of April 4, 1807, created a temporary commission of three, with power to lay out streets, roads and public squares. In many respects the plan of these commissioners was a bad one, and it is the fashion, in view of the enormous growth of New York, to belittle their conception of the problem that faced them. In fact, they had a remarkably broad outlook. They felt it necessary to apologize in their report for having provided for a population "larger than was anywhere gathered together in one place this side of China;" and at a time long before the extraordinary urban development of the nineteenth century had proved the need of systematic provision for public outdoor recreation in cities, they interpreted their authority to lay out "public squares" so liberally that during the next three generations shortsighted and selfish land owners were kept busy in procuring the passage at Albany of successive special acts, curtailing and omitting the public open spaces they had provided.

It seems extraordinary with the rapid growth of other American towns, with the example of Philadelphia, and with the less admirable but suggestive example of New York, that comprehensive official planning, at least of the streets, should not have made more rapid

headway. Landmarks in that line of progress are the Boston board of survey act of 1891 and the Baltimore topographical bureau ordinance of 1893, both of which were similar in essentials to the Philadelphia scheme. The failure to cope with the problem earlier is presumably chargeable to the general weakness and corruption of municipal government in America during the nineteenth century.

In New York, parallel with the history of the plan of the commissioners of 1807, there was early created a tolerably strong municipal control of the development of the commercial water front and the adjacent streets through a permanent city department which has from time to time taken a broad view of its duty to plan for the water terminals of the city as a whole, has brought a large proportion of the water front under municipal ownership, and has recently risen to a clear conception of the relation between the water terminals and the railroad terminals as parts of one great transportation unit. Until very recently practically all other American cities, with the exception of river ports which maintained public wharves along the levees, left the development of water terminals to private initiative, under such control as the federal government might exercise in the interest of general navigation.

Sewerage and water supply have been dealt with by New York, and by most other American cities so far as they have faced them squarely as municipal duties at all, as distinct problems, planned independently of any planning for streets or other features of the city, accepting the latter as fixed factors so far as they were definitely determined and ignoring their probable future extensions and changes. Essential as the elements of water supply, sewerage and drainage are to any comprehensive city plan, the planning of them runs on today in many places almost independent of other city planning work, and has had little influence on what is commonly known as the town planning movement.

There is another element of the physical city, the public importance of which began to loom up much later than those mentioned above, not, in fact, until the latter half of the nineteenth century, but which has played a very decided part in the development of town planning. I cannot here undertake even to sketch the history of the modern public parks movement. After a surprisingly brief public discussion, about 1850, the people of New York City made up their minds to have an adequate park, and owing to the bad polit-

ical situation in the city, a state board, called the commissioners of the Central Park, was created to carry the idea into effect. The work of the board was rapid, efficient and popular, and the creation of the park stimulated people's imagination as to the entire subject of the city's development, especially on the esthetic side. The commission and its landscape architects set forth the desirability of other park developments in upper Manhattan and of connecting thoroughfares of a more or less parklike character. At the same time, the growth of the city was beginning at a few places to reach toward the limits of the plan of 1807. In 1860 the Central Park Commissioners were authorized to prepare a plan for the city north of 155th street, with powers like those of the commission of 1807. This was in effect what should have been done many years before, placing upon a permanent board the duty of revising and extending the city plan. Subsequent enactments gave them power to alter and develop the plan in certain other parts of Manhattan Island, and in 1869 the powers were enlarged and extended over Westchester County to the Yonkers city line, and they were given an absolute veto power over practically all public improvements in that district pending the completion of their general plans. Their duties were specifically made to include the design, not only of streets, public squares and places, but sewerage, drainage, water-supply, the improvement of the Harlem River, etc., and bridges, tunnels and means of transit across and under the same.

Chapter 534 of the acts of 1871, continuing these town planning powers in the department of public parks, successor of the Central Park Commission, is important, because it added the duty of planning for railroads "and similar modes of communication and transportation," and also for pier and bulkhead lines. I believe this is the first instance, at least in America, of the official recognition that the planning of railroads is an essential part of the planning of a large city; and the preliminary plan for main thoroughfares in the twenty-third and twenty-fourth wards of New York, prepared under that act by the writer's father and J. R. Croes, which showed not only highways but a system of rapid transit railroads free from grade crossings with the streets, is the earliest city plan I know that squarely attempts to deal with the bigger transportation problems of a city from the public point of view. Up to that time, and for a good many years after, the planning of street railways and rapid transit lines,

as well as of the terminals of long-distance railroads, was done almost wholly by the concerns engaged in operating these public services, little if any in advance of the time when extensions were demanded by increase of traffic and under the handicap of accepting a layout of streets designed without regard to rail transportation and very ill adapted to the purpose.

This plan for upper New York was lost to view in subsequent shifts of administrative authority and in compromises with local interests, but is none the less a great landmark in the development of town planning. It marks a point in respect to planning suburban areas which has not yet been fairly reached in this era of public service commissions and popular interest in the subject.

Out of the town planning work of the New York park department grew the establishment of the commissioner of street improvements of the twenty-third and twenty-fourth wards, in 1891, and out of that, under the charter of 1897 for greater New York, a bureau charged with the completion of the plan of the entire city at least in regard to the streets and parks, a duty which was partitioned in 1902 by a new charter among five separate bureaus for the several boroughs.

From the period of the '60s and '70s, when the minds most influential in this city-planning work were those of Andrew H. Green and Frederick Law Olmsted, there was a narrowing of the conception of city planning in New York, in which a loss of regard for the esthetic aspect of the work was but one element. There was, however, an apparent gain, at the time of the great consolidation, in bringing the entire territory of the city under the jurisdiction of the planning agency. Another turn of the wheel, in December 1903, brought forward a temporary additional commission that was charged with the staggering duty of preparing in one year a "comprehensive plan for the improvement of New York City;" and that made a report, dated December 14, 1904, in which the esthetic element was as clearly over-emphasized as it had been under-emphasized in the current routine planning.

While the park movement that sprang from Central Park, so far as concerns its immediate local influence on city planning in New York, thus spent its force during the '70s and '80s without accomplishing all that it once promised to do, its influence upon the rest of the country was widespread and powerful. Public parks were

undertaken very generally; and particularly in Boston, to which Mr. Olmsted removed in 1880, the conception of a comprehensive system of inter-related parks, parkways and local recreation grounds was rapidly developed. The first local recreation ground, equipped with running track, apparatus, field houses and trained attendants, was developed in Boston in the '80s, and slowly the idea took root elsewhere, bringing forth its most notable fruit in Chicago some twenty years later. In 1892, Charles Eliot's conception of acquiring for the public of a metropolitan community a great system of large outlying reservations took form in Boston, suggested by a study of the accidental availability of state and royal forests and large outlying commons around Paris and London, just as the acquirement of interior city parks had been largely suggested to an earlier generation by the smaller royal parks that happened to have been engulfed by the growth of London.

Throughout the same half-century, while the park movement was spreading, the group of landscape architects which it had developed was also influencing town planning through numerous suburban land subdivisions designed for private companies, in which deliberate effort was made to secure and maintain attractive and picturesque conditions for suburban life. At the same time there had been an enormous development in the numbers and in the skill of architects, with a corresponding improvement in the artistic standards of building, and in the influence of the architectural profession. The idea of applying deliberate design, by skilled designers, with a view to securing a maximum combination of convenience and beauty in the surroundings of daily life, was becoming widely familiar. Municipal affairs, on account of their generally unsatisfactory condition in the midst of general progress, were drawing a constantly greater amount of intelligent study. The political, the economic and the esthetic problems of municipal work were vigorously discussed by many organizations formed in the late nineteenth century of which the National Municipal League, the American Park and Outdoor Art Association, later merged in the American Civic Association, and the Municipal Art Association and Architectural League of New York City were leading examples. During the same period a group of effective writers upon these and kindred subjects began to increase the literature of town planning very rapidly.

On the artistic side, the Chicago fair of 1893 was an immense

stimulus to this popular movement. Soon after this Glen Brown, in preparing his history of the United States capitol, rediscovered, as it were, L'Enfant's original plan of Washington, certain architecturally striking features of which had been entirely lost to view, and he brought the plan as a whole to public attention. The time was ripe for its appreciation as a great work of constructive design, and in turn it further stimulated the interest, especially of architects and landscape architects, in town-planning matters. The American Institute of Architects devoted their convention at Washington, in the hundredth year after the establishment of the seat of government there, to the plan of Washington. The rapid growth of the city had forced Congress to provide, in the early '90s, for the extension of the street plan beyond the original limits of Washington, for which purpose an organization with powers like the Philadelphia bureau of surveys was created; and in 1902 a committee of experts appointed by the senate committee on the District of Columbia made a report upon desirable improvements in the park system of the district, including the development of the neglected central portion of L'Enfant's plan. This report, while dealing with only a very limited part of town planning, had a wide and powerful influence, and may be regarded as the parent of a long series of local reports during the following decade, touching upon town-planning subjects with a strong tendency to emphasis on the esthetic side, especially on parks and the grouping of public buildings in "Civic Centers."

Three more important sources of the present town-planning movement must be mentioned even in this brief sketch.

At the time when the New York park department was working upon the plans of the northern part of the city, with a conception of town planning at least a whole generation in advance of the public opinion of the day, the Prussian government adopted a law enforcing comprehensive city planning in many German cities. They went at it in a systematically thorough German fashion, and planned themselves up to the hilt. In some respects they did it very badly, as people are apt to do when set to work designing things by main force instead of in response to a need felt by themselves. But as the time went on, the cities not only of Prussia but of other German states, which adopted the method, learned by experience and study, and they accumulated an immense store of valuable information, literature and examples. All this could not but have some influence on America

when interest in the subject grew keen, and its influence has been powerful during the last fifteen years. The influence of other European countries has been considerable, especially that of France through the popular impression of Paris and other French cities on American travelers and through the powerful influence of French schooling upon our architects. In England town planning began to come into its own hardly as soon as it did in America, and did so largely as the result of the German example held up to view by housing reformers and others interested primarily in the social and economic aspects of town planning. Its growth there has been vigorous and healthy and sane, and the recent English influence on the movement in America has tended to overcome a passing excess of emphasis upon the more superficial esthetic aspects of the subject.

Another and stronger influence in the same direction has been that of our own housing reformers and social workers, to whom was mainly due the calling of the first national conference on city planning in Washington, in 1909. They are absolutely right in their contention that town planning should first regard the total influence of what is proposed upon the character of dwelling in which the ordinary citizen will live and upon the immediate surroundings of that dwelling, and only second the economy and perfection of the facilities for those public functions that affect the citizen less intimately.

Finally, during the last twenty years the conviction has steadily grown that the entire apparatus for rail transportation in a city—street railways, rapid transit lines, and the so-called terminal facilities by which long-distance railroads exchange passengers and freight with the local transportation services and shippers—should be developed comprehensively as one enormous complex machine in the interest of the whole community which it serves, regardless of the subdivision of agencies employed to construct and operate the parts; and that the planning of the parts of this vast machine should not be left wholly to those representing independent groups of stockholders in the diverse operating companies. Among the fruits of this growing conviction are the public service commissions, the active participation of municipal officials aided by expert transportation engineers in the final shaping of plans advanced by public service companies, and a considerable number of studies in the constructive planning of such facilities undertaken on their own initiative by representatives of the public. One of the most notable of the

latter in its comprehensive character, although not as yet in its practical results, is the report of George R. Wadsworth to the metropolitan improvements commission of Boston in 1909; but the tendency is shown in a series of reports on the traction situation of many cities by B. J. Arnold and other experts.

The rapid growth of the town-planning movement as such is strikingly indicated by the number of official commissions on the city plan, or official bodies bearing some closely similar title, which have recently been created in the United States, as follows: Hartford in 1907; Chicago in 1909; Baltimore and Detroit in 1910; Jersey City, Newark, St. Louis, Pittsburgh, Philadelphia, Salem, Mass., and Lincoln, Neb., in 1911; Trenton, N.J., in 1912; and Cincinnati, O., Scranton, Pa., Schenectady, N. Y., Paducah and Louisville, Ky., Lawrence, Pittsfield, Fitchburg, Waltham, Lowell, Springfield, Northampton, Malden and Adams, Mass., and New Haven, New London and Bridgeport, Conn., in 1913.

If the above general account of the town-planning movement in America is fragmentary and confused, it but partially reflects the multiplicity of the currents which have been converging to form that movement and which are surely destined to combine more firmly and with better balance toward the realization of the purpose that impels them all, the making of our cities more convenient, economical and agreeable for the millions that work and live in them.

THE STREET LAYOUT

By B. Antrim Haldeman,

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The street layout may seem, to the layman and to the citizen who gives little serious thought to the physical development of the community in which he lives, to be one of the most commonplace, uninteresting and unimportant of all the many problems of communal growth which have come to be grouped, for convenience, under the term "town planning;" and yet, it can scarcely be successfully disputed that the street exercises a larger influence upon economic accretion and expansion than any other feature of the town. If there is one class of improvements which is more necessary, which becomes more permanent and unalterable, or which exerts a stronger influence upon the individuality and general physical aspect of the city, than any other, it is the layout of the streets. A map of a city is necessarily a map of its streets and no written description of a city can be visualized or be made fully intelligible unless it conveys a clear understanding of the layout of its streets. The street layout determines, in a very large degree, how the people shall live, how they shall travel to and fro, how they shall work and play; it has a direct influence upon the character of the home and its surroundings, upon the safety, comfort and convenience of the people, and upon the efficiency of government and the public service.

Only recently has there come to be any widespread interest in this subject. In fact, it has been scarcely more than a decade since public officers responsible for the planning of streets began to regard it as a problem worthy of more than the most perfunctory attention, and still later have scientific and technical organizations found in it sufficient importance to warrant their giving space to it in their discussions or their publications. From a condition of obscurity and neglect, as a problem in practical economy worthy of analytic investigation, it has rapidly risen to recognition as a fundamental element in the modern practice of town planning which, quite recently, has reached a position of such commanding importance as to call into existence a new school of specialists to meet the de-

mand for a more scientific and efficient solution of the complex problems which have been created by the intensive growth of great cities.

It is true that streets have existed is some form wherever human beings have congregated in communities since the creation but only in cases where a city has been planned under autocratic authority having in view some special purpose that was reasonably certain of accomplishment has a street layout been established with the intelligent care and foresight that enabled it to properly fulfil its functions and meet all the burdens laid upon it. Even in those cities designed to be the capitals of mighty nations, to glorify the power and vanity of monarchs or to gratify the whims and caprices of kings and princes only so much was planned comprehensively as lay within the immediate needs and purposes of the scheme, and growth beyond those needs and purposes was left to chance.

If we care to trace the history of city building down the centuries we invariably find that during those periods and in those nations where science, literature and art exercised their greatest influences the street layout of cities was more regular and formal than during those periods when the culture and refinement of civilization were at a lower level. The formal, dignified, and in many instances spectacular, planning that characterized the classic period of Greece and Rome suffered a decline during the Middle Ages and the cities that had their origin or achieved considerable substantial growth during the long and stormy period between the fall of the Roman Empire and the rise of the Renaissance present a condition of irregularity verging upon chaos. The Renaissance brought with it a revival of formal planning but the street layout, then as now, resisted innovations more stubbornly than did other forms of urban improvement and it was not until long after the first colonies were planted in America that whole cities began to assume the semblance of great checkerboards. The Renaissance also brought with it, as the natural concomitant of the straight line street, that most monotonous and unlovely conception known as the "row" house which grew out of the invention of giving a row of separate houses the appearance of one vast building through the artifice of a uniform façade extending an entire block surmounted by a mansard roof.

The modern city, no matter what its activities or the impulses of its growth may be, requires a layout of its streets quite different from that of any city of the past. The conditions of urban life and

the needs of urban growth have changed radically with the wider diffusion of industry, education and wealth, and with the increasing tendency of the people to congregate in vast communities. There is little probability of any effective check being put upon the drift of the people to the cities so long as the country fails to provide opportunities for business and social success and for legitimate recreation and diversion relatively equal to those of the city, and if cities are to continue to expand and increase in population as rapidly during the next few decades as they have in the past, new measures for controlling, regulating and directing their physical growth must be established and enforced, and among these new measures none will be more necessary or exert a more far-reaching and beneficial influence than those directed toward more efficient and economic street planning if administered by courageous, skilful and wide-visioned public officials.

Excepting the recent work of the new school of city planners and a few isolated instances of much earlier date, nothing in all the science or art of city building in America, whether it be of much or little consequence, has received such scant consideration as the street layout. Although street planning in Europe seems always to have been esteemed a matter of importance, its history in America is a record of thoughtless, inconsistent and unreasoning acts, and the plans evolved require little more than a hasty glance to arouse a strong suspicion that the street systems they represent were of accidental or mechanical origin; that they were laid out by property owners in the manner believed to offer the best immediate returns in the sub-division and development of individual estates or by public authorities who arbitrarily applied the simplest and easiest method that suggested itself to them and enabled them to plot the largest area in the least time and with the least labor possible; and that in neither case was there any attempt to forecast accurately the future needs of the street or the territory it would help to serve or to investigate the probable efficiency or economy of the general layout.

The city planner who approaches the problem of extending and revising the street system of a city with a view of applying both science and common sense to its solution quickly learns that forecasting the mysterious probabilities of the future is less appalling than the task of correcting the errors of the past. The difficulties in the way of correcting past errors do not lie in the lack of wisdom,

skill, or courage to perform the work successfully so much as in the physical and financial obstacles to be overcome, and in the hesitancy to assume the responsibility for the temporary destructiveness and large initial cost involved in the undertaking.

There are always sufficient data obtainable, if collated in an intelligent and painstaking manner, to give the planner a fairly accurate basis upon which to work out a scheme of replanning which will be fully adequate to correct the evils that have resulted from careless and haphazard work. A thorough and systematic study of the physical condition of a city, of property values, of the distribution of business, industrial and residential areas, of the health of the people, of the mediums and facilities of circulation, and of the volume and directions of the currents of traffic, is of the greatest importance as an aid to efficient and economic replanning. The collection and systematization of data of this kind in a form available for practical use are, in themselves, an undertaking requiring patience, time and skill, but they afford the only rational and safe basis for working out the problems of reconstruction which now confront most of our large cities, and it is possible to reduce them to a systematic process, uniformly applicable to the investigation of the needs of any city.

It does not appear, however, that any fixed rule or principle, based upon practical experience or exhaustive investigation, can be established for planning streets, either singly or as systems, for a new town or for the extension of an old one. Here lies the planner's opportunity to give free rein to his imagination and his individuality, here is the test of his genius, judgment and common sense, here his powers of prevision and of prophecy are brought into service untrammeled by masses of figures and statistics; he is not called to prescribe a cure for an existing ill but to peer into the future and create something that time will applaud or condemn and he must solve his problem without any very tangible data to guide him, unless it be the desire of a client to accomplish some well defined object.

Much of what is considered good modern planning is done by "rule of thumb" in order to produce speedy results, to conform to some ingrained prejudice, or to carry out some favorite practice. The application of new theories, no matter how rational or well grounded they may seem, is often confronted by many obstacles; it

is sometimes difficult to convince those in authority that a radical change of practice is necessary, or even advantageous; long standing custom is difficult to overcome; local conditions and local sentiment, whether favorable or unfavorable to good results, exercise much influence; the depth of lot that has been customary in a community, whether or not it is suitable for the best form of development, is permitted to regulate the distance between streets and certain street widths have become a confirmed habit too deep-seated to be easily reformed; real estate interests often dominate the situation and the profits of speculators and builders must receive first consideration. These and many other influences often hamper the planner and prevent him from establishing the system which his best judgment, after a careful study, points out as the one best adapted to the case before him.

Many street layouts have been put upon paper, and even officially adopted for the purpose of development, which indicate a desire to produce an attractive and mechanically well proportioned plan rather than an effort to obtain really efficient results; in other instances theories have been applied which are popular at the moment but which may ultimately result in conditions which future generations may find just as oppressive and as difficult as those which now confront us. In the present zeal for comprehensive planning there is danger that cities may undertake to execute ambitious and costly plans which look well upon paper and seem to possess much real merit but which have received only superficial study by reason of the limited time and funds placed at the disposal of the planner; such plans may produce no better results in actual practice than those that happen accidentally although they will cost much more.

Much has been said and written in earnest advocacy of maintaining the individuality of towns and the individuality of a town is influenced to a marked extent by the street layout. Individuality is an element that does not yet seem to deserve great consideration in American cities; their rapid and undisciplined growth, the constant wrecking and re-erection of buildings, the conversion of the character and use of whole neighborhoods and the lack of stability and dignity of their domestic architecture have prevented them from achieving much that is distinctively characteristic or worth the effort to perpetuate. For individuality worth preserving we must

revert to the communities that have not entirely lost the atmosphere of colonial days by destroying the last remnants of their colonial architecture and covering their "village greens" with workshops.

Some tendency is being shown in American street planning toward the adoption of the medieval street in some of its forms and also the schemes suggested by the garden cities and industrial colonies of England and Germany. Such layouts approach the ideal for small self-contained and proprietor-controlled communities but their adoption in large and rapidly growing industrial cities, or in cities where there is a constantly shifting ownership and use of land and a periodical, and sometimes radical, change in public policies and administration, should be undertaken cautiously and conservatively. The plea for the medieval street lies in the opportunity it gives for picturesque effect, and picturesque it most truly is when we find it within the rugged walls of an old feudal city, wandering aimlessly between solid rows of quaint and many gabled buildings gray and bent with age, and full of an atmosphere of mystery and romance. Whatever of verity there may be in the plausibly argued contention of the town-planning savants that the picturesque chaos of the medieval towns of Germany and Italy is the perfect result of deliberately worked-out design, and however much we may delight in threading the narrow and devious courses of those quaint and captivating highways and byways, it is doubtful whether any attempt to reproduce them or adapt them to the needs of the modern industrial community under modern social and political conditions is desirable or commendable or could be fully successful; they belong to and are a part of a picturesque and romantic, although stern and strenuous, period of the world's history and should be permitted to remain exclusively characteristic of that period, since any attempt to reproduce them with modern architectural settings will probably result in unsatisfactory imitation at best and is certain to corrupt the well deserved admiration we hold for the pure, original type.

The street layouts of the garden cities, co-partnership tenants and industrial communities of England and Germany have found many earnest admirers and enthusiastic advocates in our own country and there appears to be no doubt that their application to limited and self-contained areas has proved eminently satisfactory. Before such layouts can be safely introduced into the planning of our large

and rapidly spreading American cities, however, it will be necessary for our municipal authorities to have complete control over the laying out of streets and the subdivision and use of private property and to exercise that authority with the utmost discretion and impartiality. Very many difficulties of administration and maintenance, which could scarcely be successfully managed under our present methods of municipal government and individual ownership and control of land, would occur if we should attempt such planning as we find in the garden cities. In those communities the tenants are a selected class, do not acquire actual ownership of land and are always subject to the strict rules of a governing body in the care and use of the property they occupy. This permits the enforcement of a uniform and thoroughly effective system of maintenance; such a system of supervision and maintenance would not be possible in a large community where the owners or tenants, or both, change frequently and where neither may give active aid in keeping up the character or physical condition of a neighborhood. The narrow ways, dead-end streets, alleys, enclosed courts, allotment gardens, secluded open spaces and other features which contribute much to the financial success and physical enticement of the garden cities would, by their nature, make them an easy prey to degenerative agencies and permit their rapid deterioration to slum conditions were it not for the constant vigilance and thorough supervision of the managers or trustees of the estates. Until the same perfection of control and upkeep can be exercised the experiment of applying garden city methods of planning in American cities should be undertaken very cautiously.

Of virtue no less doubtful than the grafting of the feudal street or the garden city layout upon the metropolitan city is the street system where travel never has an opportunity for reaching its destination by a direct route, but must accommodate itself to the necessity of changing its direction at every forward move. No feature of the new street-planning practice is overworked, maltreated or misapplied so persistently as is the curving street. It has a legitimate mission and an undeniable charm when justified by the topography, cast in an appropriate setting, or skilfully introduced either as an incident or a special feature of a general scheme; but when applied indiscriminately and arbitrarily with the sole object of a presumed beauty and without any guarantee that that object will be fully

achieved in the development of abutting property, it loses all force or reason for its creation and becomes less desirable, more wasteful, and more productive of nuisances and misfits than even the despised checkerboard.

All successful street planning is predicated upon the skill and fidelity with which the planner co-ordinates the three fundamental purposes of the plan and makes ample provision for every form of transportation and circulation, provides for the most advantageous development of property for its various uses and creates opportunities for the expression of civic art. The needs of transportation have generally been ignored, or subordinated to the profits of land speculation, but we are beginning to realize that the first requisite for the healthy growth of the modern city is rapid transit and easy and direct routes of communication.

Nothing has contributed so largely to the increase in the importance and usefulness of the street as the rapid development of the forms and mediums of transportation, and street-planning methods have not nearly kept pace with its normal requirements. The twentieth century city is growing much larger and much more rapidly than any of its predecessors and the service required of its streets is vastly greater and widely different from that which was required of the streets a century ago when they were given over chiefly to the use of pedestrians, beasts of burden, and the comparatively few clumsy and slow moving vehicles most of which were only two-wheeled. The character, volume and rapidity of present-day traffic make the adoption of scientific methods of street planning necessary if real efficiency and economy are to be obtained. The old practice of laying out a more or less regular system of streets of uniform width at uniform distances apart and paving them as driveway or sidewalk for their full widths is wasteful of land and imposes an unnecessary cost for construction and maintenance. Instances may be found in every city where certain streets by reason of having better approaches or more direct connections to important points or by passing through more lively or attractive environment carry a great amount of traffic, while adjacent paralleling streets of equal width carry very little; this is particularly noticeable in residential sections and those sections outside the zones of business concentration. It is human nature for people to wish to be among their fellows and even in crowds and whether walking or riding they prefer

to move slowly through a busy thoroughfare rather than seek greater freedom of movement by going a block or two out of their way.

All the great cities that have experienced rapid growth in comparatively recent years have achieved that growth, directly or indirectly, through the agencies of modern industrialism. The tremendous development of industrial and commercial activities during the past half century has been made possible only by the swift progress that has been made in improving and extending the facilities for transportation. The carriers of the world's trade have bent every energy to meet the demands of commerce on both land and sea, but the people, especially in the United States, acting through the officials in whom they have vested the powers of government, have failed lamentably in enlarging and improving the public channels of traffic, the roads and streets. The city is the workshop and the commercial center where industrialism flourishes and from which its products are distributed over all the world. The city inevitably reaps the benefits and profits but loses much of both through its failure to provide proper facilities for transportation, while private capital and private energy are put unsparingly into larger and better facilities for acquiring greater private benefits and profits.

Our cities should have awakened long ago to the fact that the convenience, prosperity and prestige of all their citizens would be enlarged and enhanced by remodeling their antiquated street layouts and planning their additions and extensions with an intelligent purpose of providing ample, direct and convenient means for the circulation necessary to the highest development of their industrial and commercial activities, just as the great industrial and carrying corporations have extended their zones of activity and increased their earnings by reconstructing and enlarging their plants, by constructing new ones, and by throwing obsolete machinery and equipment upon the scrap pile and taking advantage of every new invention and appliance that spelled progress.

There is no stronger competition today than that which exists between cities for the material things that count for national and international greatness, and, except in those rare instances where a city is so located strategically that industry cannot ignore it or traffic evade it, those cities must inevitably achieve the leadership which offers the widest opportunity and the greatest freedom for the highway circulation necessary to the economic development of in-

tensive industrialism and commercialism, and at the same time controls and regulates the layout of streets and the subdivision and use of property in their residential sections in such manner as will guarantee homes of comfort and contentment among healthful and attractive surroundings for the workers whose energy is the mainspring of industrial progress.

THE SOCIOLOGY OF A STREET LAYOUT

By Charles Mulford Robinson,

Author of *The Width and Arrangement of Streets;* Professor of Civic Design, University of Illinois.

It is the triumph of modern city planning that it has learned, and is popularly teaching, the significance of the title of this paper. One who calls to mind the narrow, crowded, tortuous streets in the older parts of foreign cities, realizes how little thought the early builders of cities could have had for "the sociology of a street layout." To them the street was only a way of going, a means of passage. It might be a slit in the wall if so the traffic of the day, perhaps mule-mounted men and burdened women, could squeeze through. That the passage might be sunless, that the liquid sewage of abutting houses trickled down its center, was of no moment, if the broad stones of the pavement gave a foothold fairly firm and one could thread his way, through this and connecting apertures, to his journey's end. What, under heaven, was a street for, but to pass through —like a sickness, a sorrow, or any other trouble?

It means much then, that the sociological significance of the street should be perceived. We still have a great deal to learn with regard to it, and merely as discussion the subject is broader than can be compassed in this brief contribution. Here it can be hoped to do no more than to suggest ways in which the street proves itself a sociological factor. Examples of such influence appear in its effect upon the health of those who live upon it; in its influence upon their economic condition; in its effect on their mental and spiritual attitude, and in its modification of their social relations. Under each of these four general heads, many minor headings must suggest themselves. Yet only hints can be given, lest in the subject's alluring ramifications we lose ourselves amid highways and byways of thought as intricate as was the medieval street plan.

First, then, with regard to health. This was one of the earliest matters considered when the social conscience became aware of its responsibility in the platting of streets. Not all at once, of course, but by degrees, this consideration widened the street, so that sun

and air might get between the rows of houses; it drained the street and put sewage underground; for the sake of safety, it separated footway and carriageway, and paved them both; it lighted the street, and planted trees to temper the heat of summer and the cold of winter; sometimes it provided strips of grass. More lately it has cleaned the streets, has laid the dust, or prevented the making of it, and has greatly quieted the passage of those who use them. There has even come to be regard, when practicable, for the street's direction, so that the house upon its border may have healthful orientation, and that winds of too great violence may not make a funnel of the street.

Once the permanent lines of the street have been established, jealous regard for sanitation discovers the wisdom, or necessity, of relating the building ordinances to those lines, so that the street which has been carefully adapted to a certain kind of structure may not suffer loss of adjustment. The distance between opposite houses is therefore regulated by the establishment of a building line; the height of buildings is, at least in many instances, related, by maximum limitation, to the width of the street; and the proportion of the lots which may be occupied is designated. We are even talking now of restricting the cubic contents of structures to the capacity of the streets on which they are; and already in some cities there is dictation as to the use to which the structures may be put. Quickly we found, that is to say, that the maintenance of a street's sanitary and hygienic virtues was dependent on the regulation of the buildings upon its border. This meant recognition of the street as a site for homes, and not only as a passage.

Nor did concern for the physical well being of those who use the street, and they are especially those who live in it, stop at this. The individual street, however perfect, is necessarily part of a system of streets. Its outlets and inlets connect it with a street organism hardly less complex by nature than is the community whose activity creates it. Hence, the function of the street cannot be to serve simply those whose dwellings are at its edge; though to do only that, it must perform some service to the neighborhood, and must play a part in the life of the town.

We find sanitary considerations affecting, therefore, whole street systems. A single thoroughfare is made broader or narrower, more secluded or more brilliant, according to the sociological duty it should

perform to the town as a whole. Perhaps in a mean and poor environment it is broadened that its strong air currents may freshen a neighborhood; that its tide of life may stifle morbid meditation with hope and inspiration; or that by the directness and facility it gives to traffic, it may greatly widen the available home-building area and lessen the pressure of living. In short, the street has a duty to perform not only in protecting the health of those who live upon it, but in also protecting that of the community. When we talk of the sociology of a street layout, these are functions that we must keep in view, and we must recognize their potency.

The second group of influences which a street exerts upon the lives of those who live about it is, we have said, economic. Here again there is the effect of the street by itself and the effect of the street as part of a system. The degree of its influence under the latter heading varies with the degree of its importance to the system. If it has been platted as a main, arterial highway, designed to carry lines of rapid transit, or by other means to open tracts for building, the measure of its success in doing this is of enormous importance to the economic welfare of the community. A physical inadequacy—due, it may be, to grade, to indirectness or narrowness —might easily add several minutes to the time required to reach a certain section of the town. Such addition might reduce the available building area by hundreds of acres, and raise the normal rent level in every nook and corner of the city. That the item of rent goes far to determine the scale of living needs no explanation. The sociological influence of the street layout is obvious.

But even in the case of a most minor street, a street of no general traffic significance and of interest only to those who live upon it, there still is a connection between the plan of the street—its width and the character of its development—and the economic influence it exerts. It would seem plain, and yet we have only commenced to understand, since illustrative instances have multiplied, that a very expensive street compels costly development of the abutting land, by making it expensive. In other words, excessive street cost—whether this be due to unnecessary width or to a needlessly high type of paving or of furnishing—creates a necessity for high returns. When the people who live on the street cannot separately pay large rents, they have to do so collectively, by herding in apartment or tenement houses.

As a matter of fact it is no uncommon thing for the cost of street development in outlying sections to amount to more than the cost of the land. That is to say, the investment upon which the rents must offer a fair return is doubled by the cost of the street and sewer —and o'ten a large part of the cost is unnecessary. A recent report of the Topographical Survey Commission in Baltimore, where it is usual to pave three-fifths of the normal 66-foot street, i.e., 39.6 feet, points out that if the paved roadway were narrowed from 39 feet (using even figures) to 24 feet, "thereby providing for three streams of traffic instead of five," there would be a saving of $17,600 on each mile of paved roadway, the paving being figured at $2 per square yard. Surely an accommodation for three streams of traffic is as much as most minor residence streets require, while the actual saving would be not only in first cost of construction, but through all the succeeding years in maintenance, in cleaning, flushing, etc. The quotation seems worth making, because of the sociological disinterestedness of its source and because it so plainly cites a conservative example only of the extravagances which may creep into street layouts, with dear results economically to those who reside upon the street. Where people have only a certain definite amount to live upon and capital properly requires return on its investment, the platting of a street is by no means a question of simply the street. Tract owners who have forgotten this fact have paid the penalty of their thoughtlessness not less than have the purchasers and tenants of the lots.

It may also be pointed out that the common practice of making nearly all streets similar, in width and in construction, notwithstanding their varying traffic values, is economically wasteful in other ways than simply in the extravagance of the provision. In adopting a mean standard, which is standardization at its best, there are sure to be some streets which are too narrow as well as some which are too broad. Neither arterial nor non-arterial streets are adapted to their purpose. There is misfit all around. Further, the streets that are needlessly elaborate disintegrate through want of adequate use.

Another very serious indirect feature of such platting, from the standpoint of the economic welfare of those who own abutting property, is that stability in values is discouraged. There is no physical reason why business should take one street rather than another. An enterprising property owner, or group of owners, may draw it

out of one street and into another, with a disastrous destruction of values. On the other hand, business may invade a street of fine homes, reducing values for a long period, not to speak of the social discomforts which come in the train of such a change. If a few streets gain in speculative attractiveness, through the possibility of transition from residence to business, many lose in the extended period which the transition requires, and in fact even before it begins, because of its mere possibility. For it is notorious that a man will pay a higher price for a lot on the sort of street he prefers if he can be assured of the permanence of the street's character.

From an economic standpoint, it appears, therefore, that the layout of the street affects very closely those who own or rent property upon it. There is no point, in fact, where the community touches so surely the family pocketbook, for it may be reflected that practically all our assessments and nearly all our taxes are for the construction and upkeep of the street and of the public utilities below and above it. The old plaint of the pessimist, that nothing is sure but death and taxes, suggests that to ward off the former and reduce the latter would be to mend greatly the lot of humanity. If so, there is given to the platter of streets a golden opportunity.

The third direction in which the street was declared to have a social influence, deserving of consideration quite apart from its traffic function, was in its influence upon the mental and spiritual attitude of those who make use of it. One aspect of this was somewhat baldly expressed in the course of a speech by John Burns, before the international city planning conference in London, in 1910, when he said: "Mean streets make mean people." Most of us can think of so many illustrious exceptions to this dictum, that it fails to carry full conviction. And yet it doubtless is true that the dull, dreary monotonous environment offered by countless streets in almost any city must, in the aggregate, have a very depressing effect. If environments can enliven and inspire, they must also have the power to deaden and discourage. We may not know how far the misery of the very poor, lack of ambition and gloominess of temper, may be due to the cumulative influence of disheartening streets.

We have, however, had pointed out to us, by no less an authority than Jane Addams, that much sin and subsequent suffering are traceable to a veritable, and pitiful struggle for existence by the spirit of youth which the community is starving in city streets. This

reckless struggle represents reaction from, and protest against, an enveloping gloom that is unrelieved. It has been said of the joyous Latin races that they find in the street an out-of-doors room. If the poorer of our citizens can pass only from dismal rooms to sadder streets, we must not wonder that lights and music sometimes lure them into dangerous places, or that the voice of the agitator alone awakes an echo in dull ears. The thoughtlessness that has planned and built some familiar types of city streets has, then, more to answer for than emaciated bodies and purses; it is responsible, in part at least, for minds and souls. Little children born into such streets, are grown old while their lips yet lisp; and the pallor that transforms ruddy cheeked boys and girls, who have exchanged the sunny fields for city streets, is but an index of the light that has faded from their hearts.

There is, be it noted, another side to this. The reverse was aptly expressed in Paul's proud boast. The Greeks had a saying that "to make the city loved we must make it lovely." Most of us have seen, too, the transforming effect of a street improvement upon a neighborhood. To take a dilapidated street, and pave it, clean it, light it, and keep it clean, is to effect a local metamorphosis. Front yards are furbished up, houses put in order, back yards and interiors feel the influence of the new spirit. There is born a self respect that promptly manifests itself in dress and carriage. The improved street has, in short, an improved population.

Higher in the social scale a like change has a like result, though less dramatically. Change a street into a parkway, placed in charge of the park commission and elaborately kept up, and you will see lawns better kept, and landscape gardening making its appearance. Of course the interplay of forces in these changes is complex. The effect is not mental alone, but is partly economic. Yet it is all sociological. It testifies to the power of the street in matters that are not at all connected with traffic.

Finally, it would be interesting to speculate on how much the platter of streets may do for people by so aligning his street as to open beautiful views. He may do this by centering it on a lovely spire, a mountain, or other satisfactory ascent; by carrying it around a hill; or by curving it so that front windows may command a charming street picture, without requiring great width of street or dooryard; or even by so altering the line of walk or curb as to save a noble tree.

It is no slight matter to give a person a beautiful picture to live with, and the street platter may give such a picture to many people. After all, in thinking of the street's mental and spiritual influence, we have to remember that for very many people it is pretty much all of the world they see.

We come to the fourth sphere of a street's influence, its modification of social relations. There have been suggestions as to this effect of the street in the discussion of its other influence. Necessarily, there is some overlapping between the groups, since they are headings based for convenience on only predominating characteristics. Rent changes for instance, have not simply economic significance. To force the dwellers on a given street to choose between taking lodgers, abandoning the single family house for the multiple dwelling, or moving away, is obviously to modify social conditions. Yet this may easily be done when the street plan is so altered as to force up rents. Again, to allow business or industry to intrude into a residence section, or to leave any attractiveness of outdoor life to commercial exploitation, or to fill the breasts of a streets' residents with new love of home, all these events mean social changes.

A quite different, and simple type of this kind of influence was illustrated by a complaint from settlement workers that the depth of mud on a certain street effectually shut off the settlement from its opposite neighbors, and for weeks at a time checked, almost to extinction, intercourse between all the people on the two sides of the street. Significant also, from this point of view, was a recent protest against garden city methods on the ground that the people for whom such communities are planned really prefer to live in a closer proximity, where they can stand at their doors and yet talk to their neighbors. "The method of living in sparsely scattered homes," exclaimed this writer, "is profoundly unnatural. There is no need for every house to be isolated as if the whole world were a fever hospital." That is as it may be. At all events, it is clear that not only the garden city movement, but the whole suburban drift, which the street platters so cleverly accentuate, is causing widespread social changes.

The limits of this article permit no further excursions into its still novel subject. The four leads by which we have sought to test the worth of the thesis promise, with even so brief a trial, rich returns. It would seem to be certain that street layouts do exert a powerful

sociological influence, late as we have been in discovering, or at any rate in acknowledging, the fact. That it will have more and more attention in the coming years, we may be sure. The sociologist is becoming a power; and when he insists that streets are created to live on, as well as to offer channels for traffic, and that with some of them the former purpose far outweighs the latter, his hint will be popularly heeded. Meanwhile, it is to the credit of modern city planning that it has perceived this for itself—before the sociologists have spoken with authority.

SUBTERRANEAN STREET PLANNING

By George S. Webster,
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Although much careful study has been given by trained experts to the preparation of plans for the rebuilding and extension of large cities and the laying out of new towns, and to the development and improvement of street systems so as to provide for present and future surface traffic and to best serve the convenience, health and welfare of the people, but little thought has been given to the subterranean street. In only a very few of our large cities has any attempt been made to plan subterranean streets or to chart the structures which they contain.

Underground circulation is as necessary to modern municipal life as surface circulation and the problems involved in its installation and maintenance have become exceedingly complex and difficult as the demand for such service has increased. Surface traffic may be entirely shifted off of a street temporarily, in case of an emergency, without inflicting any great hardship, but underground service, once installed becomes permanent, and any derangement or interference with it oftentimes seriously affects large areas.

But few of the great multitude of people who traverse the principal thoroughfares in the congested parts of any large city have any conception of the great network of structures which have been laid at an enormous cost under the street surface, all of which are necessary to provide the service so essential to meet the demands of modern business and modern methods of living.

To consider the importance of subterranean streets properly, it is necessary to have a clear understanding of their functions and of what they are required to care for. The structures which they contain may be classified under the following heads:

1. Water pipes, sewers, gas pipes, electrical conduits, steam and hot water pipes, pneumatic tubes, refrigerating pipes and an inconceivable number of other structures of a similar character which will be required in the future.

2. Subway galleries for pipes and conduits.

3. Vaults under the sidewalks.
4. Subways for passenger railway traffic.
5. Tunnels crossing the subterranean streets.
6. Subterranean freight service, to connect with railroad terminals, business houses and industrial establishments.

In the growth of a modern city the number and character of underground structures are constantly increasing and changing and it is probable that the future will see the present ones supplemented by others now scarcely thought of. Therefore, in the placing of sewers, water pipes, gas pipes, electrical conduits, pneumatic tubes, refrigerating pipes and other structures necessary for present service, it is important that the available width of the street be utilized to the best possible advantage. This can only be accomplished through municipal control by some official body with absolute power to finally approve the location of every sub-surface structure and to see that each is placed in the space assigned to it. All structures occupying a street longitudinally should be laid parallel with the street lines; where this is done and accurate records kept showing the location, size and depth of all conduits and pipes, maximum economy of space will be obtained and the location for new structures can be determined with accuracy, so that there will be a minimum disturbance of the street surface. Where the records are platted on large scale maps and each structure indicated by a conventional sign, all future planning for the subterranean street is greatly facilitated.

The lack of records leads to great confusion when new services are to be laid. This is especially true when large main sewers are to be constructed or a system of railway subways installed. In such cases, before contract drawings can be completed or intelligent estimates of cost prepared, it is necessary to make at great expense deep excavations across the entire width of the street at intervals of from 100 to 200 feet along the line of the proposed improvement, to obtain information as to the obstacles that will be encountered. Such excavations in a busy traffic street as a preliminary and frequently made months in advance of the actual construction, are a great inconvenience and annoyance to the public. In many leading cities no department of the municipal government has information as to the number and character of the structures laid in its subterranean streets. Philadelphia has been keeping records of its underground works since 1884 and now has a complete system of plans made on a

large scale, on which all structures are recorded; the cost of preparing these plans and of maintaining a corps of draftsmen to keep them up to date is more than met by the charges made to public service companies desiring plans and information to aid in determining locations for new structures.

Subway Galleries for Pipes and Conduits

The breaking of streets for the construction of, or repairs to underground works is one of the greatest obstacles to their economic construction and upkeep and earnest efforts have been made by city officials to reduce this breaking to a minimum by the adoption of stringent regulations. In Philadelphia the board of highway supervisors refuses to grant permits to open newly paved streets within five years after the paving is laid; Cincinnati has a similar regulation, covering a period of three years, and in both cities provision is made to notify in advance all city departments, public service corporations and abutting property owners of the intention to improve the street, so as to give them opportunity to lay or renew underground structures as may be required, yet with all these precautions it is occasionally necessary to tear up the street surface to repair leaks and breaks and to make emergency connections.

The construction of subway galleries to accommodate many of the pipes and conduits would be of great advantage in preventing the opening of the street surface and its attendant interference with the public comfort and convenience. The building of such galleries has never been undertaken to any extent except in Paris and London. The sewers are used to carry many service pipes and conduits in Paris and about 8½ miles of galleries have been constructed in the newly laid out streets of London. In other cities on account of the cost of building galleries in streets already improved and the re-locating of the underground structures in them, municipal authorities have concluded that the expense was not warranted.

Elaborate plans were prepared for subway galleries of this kind at the time the passenger railway subways were constructed in lower Broadway, New York; and later in Washington street, Boston, and it is to be regretted that the work was never carried out. In the city of Montreal at the present time an extensive system of municipal conduits, for wires only, is being placed under the center of

each sidewalk, cutting off all building vaults and restoring to the city the space outside of the conduits for future structures.

Subway galleries should be constructed in newly laid out highways, through densely built-up portions of the city; they should be owned and controlled by the municipality and the public service companies should be required to occupy them with their service lines; if built while the street is being constructed and before the underground structures are laid, the cost would not be prohibitive and the rentals obtained from the public service companies would no doubt largely pay the interest and sinking fund charges on the cost of construction.

Vaults Under Sidewalks

In the centers of intense activity in large cities, particularly along the important business streets upon which high buildings, department stores and office buildings have been erected and on which traffic is congested, many vaults have been constructed which extend under and out into the highway generally the full width of the sidewalk. These vaults are in many cases practically an extension of the basement of the building into public property and are frequently used as boiler rooms from which hot air is ejected through gratings in the sidewalk to the great discomfort of pedestrians using the street. In other cases, safe deposit vaults, restaurants and barber shops occupy the vaulted space—the property owner does not secure from the city a fee simple title to the ground, but only a permit, which is conditioned upon the city having the right to repossess itself of the space occupied at any time when the public good demands it.

These obstructions are a severe tax upon the cross-section and the capacity of the subterranean street to provide space for structures which are necessary for the general public service, and in order to retain for the public the full advantage of the space beneath the street, it will be necessary for large cities, in their business centers and along the line of main traffic thoroughfares, to refuse to grant permits for, or to allow the placing of, any obstructions either on or beneath the surface of a public highway.

Action to regain surface space on streets was taken by the municipal authorities in New York City within the past two years, and property owners on Fifth avenue and other streets in the congested

sections were required to remove all encroachments and obstructions from the legally opened sidewalk, in order that the public might recover the free use of the portions of the street occupied for private use; similar action may become necessary to regain space occupied by vaults and other underground rooms and the confusion and conflict with owners would be avoided if such occupation was entirely prohibited.

Subways for Passenger Railway Traffic

The increase in the urban population of the United States has been much more rapid than in the rural districts, or in the country as a whole. At the close of the revolutionary war only about 3 per cent of the total population lived in what might be called cities. Today the urban population comprises 46.3 per cent of the total population. The great tendency in all our large cities, especially in America, to concentrate business activity has demonstrated the total inadequacy of the street surface to supply space to meet the problems of passenger transportation. It is therefore found necessary to provide passenger subways or elevated railroads to give the people rapid and cheap facilities for passing back and forth between their homes and places of business or from one section of the city to another.

The building of elevated railroads requires the placing of columns in the street and of heavy foundations into the subterranean street, which greatly reduces its capacity for carrying other structures, and where passenger railway subways are constructed the areas required for the subway and the requisite stations are so great that almost the entire available cross-section of the subterranean street is occupied, making it necessary to remove at great cost all or a large number of other structures to adjacent streets.

The building of railway subways has brought a new use for the subterranean street and to meet its demands an exhaustive study is required not only of the underground conditions but of the surface conditions, for the building of subways on narrow streets lined on both sides with costly buildings requires the underpinning of these buildings and entails very expensive construction work and damage to adjacent property. This in some localities may be avoided by opening a new wide street or the widening of an existing street a short distance from the main traffic highway where property is of less value.

Such a new avenue should be of sufficient width to admit of the subway being constructed in the center thereof and avoid underpinning and damage to property. It is probable that in some cases such new street may be acquired and the subway constructed at approximately the same cost as the subway in a narrow street, congested with surface travel and lined with high buildings. In addition, great advantage would accrue to the public by having this new side avenue to supplement its street system; relief would be given to highway congestion on the adjacent streets and opportunity would be furnished to extend the business areas along new lines.

The demands of subways upon the subterranean streets are such that where a traffic line in one street crosses or connects with that in another the intersection must be enlarged to permit such crossing or connection; such enlargement of intersections should also be applied wherever possible to the street surface so as to relieve vehicular congestion. The uses of the surface and subterranean areas are so closely co-related in respect to the needs of circulation that they should be studied and planned together with due regard for the probable future usefulness of each.

Tunnels Crossing Subterranean Streets

Tunnels constructed by private interests to cross subterranean streets to connect the basement stories of buildings on opposite sides result in blockading the streets to such an extent as almost to prevent their proper use for public purposes, and is an occupation of the streets which should not be permitted unless the tunnel is placed at such a depth as to carry it under the structures laid longitudinally and required to conserve the public welfare.

Where tunnels are required for the convenience of passengers who wish to cross from one subway platform to another, the plans prepared for such passageways should make ample provision for all the structures which are to be placed in the subterranean street, and the locations made subservient to the present and future requirements of general public service circulation.

Subterranean Freight Service

The congestion of pedestrian and vehicular travel on the surface of the important business streets of a great city can unques-

tionably be greatly relieved by providing for the transportation of merchandise and freight to and from the railroad terminals, manufactories and business houses through freight subways placed in the subterranean street. Also the health and comfort of the people require that the waste from houses and much of the débris from building operations be removed without being carried over the street surface; freight tunnels constructed in the subterranean street may be utilized for both the above purposes. Such tunnels have been constructed in Chicago and placed at such a depth below the surface of the street as not to interfere with other sub-surface structures; they connect with the sub-basements of the large business establishments, railroad terminals, post offices and manufacturing establishments, and much good has been accomplished and relief given to the surface of the street, but unfortunately the size of the tunnels in Chicago is too small to permit of the shipment of freight in bulk; hence the improvement has not been profitable, but it has demonstrated that tunnels of sufficient capacity to carry freight without breaking the package can be successfully operated and that they will result in the economical handling of freight and the giving of great relief to the congestion on the street surface.

In order to obtain the maximum utilization of streets in which passenger subways are constructed, it has been suggested that subterranean sidewalks be built connecting the various subway station platforms in such a manner as to make a continuous sidewalk on both sides of the railway tracks and adjacent to the buildings on either side of the street. Fronting on these sidewalks, stores may be opened in the basement of buildings and bulk windows constructed. Such improvements do not appear to be desirable, as they would further increase the number of people daily using the street and would encourage the transaction of business under the surface where ventilation would be poor and unhealthy conditions liable to obtain. The welfare of the people can be much better served by providing other localities for commerce and trade on the surface of the streets and thus extend and make available a much larger area for business activity.

It is highly desirable that all ugly and objectionable traffic and service should be put under the street and that it shall be done in such a way that the fewest possible number of people will be required to conduct it, and it is in the interest of the conservation of the public

health to put nothing under the street which attracts or requires a large number of people to pass any considerable time there.

People interested in city planning have suggested that in the rebuilding of the congested parts of a city the two-story street be adopted, so designed that all pedestrian travel and light traffic would be upon the surface and all freight transportation in the street beneath,—the surface street to be constructed like a bridge roadway and never interfered with except for the proper upkeep and repairs, and in the subterranean street beneath provisions to be made for freight transportation and the whole system of pipes and conduits required to supply the public with the necessities and conveniences of modern urban life.

When one first reads Eugene Hénard's description of "The Cities of the Future," he feels that Mr. Hénard has drawn largely upon his imagination, but upon careful study of the conditions which now exist on the surface and in the subterranean streets and the requirements that will be placed upon these streets in the future by the continued concentration of people in the business centers of our cities, it will be realized that his ideals are not greatly overdrawn.

If healthy conditions are to be maintained and the comfort and convenience of the citizens conserved, it will be necessary to provide for carrying many more of those services which are essential to the comforts of life, in the subterranean streets. The advent of the electrically operated vacuum cleaner, now coming into general use, may result in the placing of conduits in the streets to carry this waste to a central disposal plant. The garbage and ashes from the homes of the people may be removed in a sanitary manner through subterranean channels and the garbage cart and ash wagon may disappear from the surface of our streets. The use of pneumatic tubes, steam heating and refrigerating pipes will be multiplied, and to provide for these added services as careful planning will be required for the subterranean street system as is now given to the surface street system; and every town planner in preparing plans for laying out new main thoroughfares and the development of street intersections must consider the requirements of the subterranean street and include it in his studies as an essential part of the city plan.

CITY PLANNING AND THE PROBLEM OF RECREATION

By John Collier,

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In providing for recreation, if recreation be rightly understood, city planning reaches its apex. So broad a statement needs explanation.

Two ideals have mainly dominated city planning in the last hundred years. The first was the ideal of civic splendor which, in America, became the city beautiful idea. The second ideal was business facility.

America has, indeed, passed beyond these limits, if the campaign against congestion, and policies involving the social use of taxation, be regarded as methods of city planning. But in general, our thought has been pretty constantly focussed on civic splendor, business facility, and the adjustment of city life to what may be called the organic needs including the physical health of the people.

But so far we have not planned cities from the viewpoint of social organization. In social organization are comprehended the psychic and esthetic interests and leisure-time avocations of the people. The dynamic agencies of society must be sought in the psychic, aesthetic and leisure-life interests, and these interests depend on a proper physical basis, just as much as do the business and health interests of a city.

City planning for recreation means the provision of a proper physical basis for social organization.

The word "recreation" is a misnomer and does not adequately convey the meaning which has been put into it by modern usage. Recreation, in an economically modern society, means substantially life itself.

Before the age of machinery, production was carried out on the small-unit basis. Social relations were identical with work relations. The father-son relation was the rule of trade. A single worker, an artisan, controlled many or all of the processes represented in the finished product. He often marketed his own product. Under these

conditions, work was life-enhancing and more vital than anything else. Recreation could justly be viewed as a means of recuperation for work.

The introduction of machinery has caused profound changes in the nature of work, in the meaning of work both to mind and body, and in the social organization of work. Large-unit production has replaced the small unit. Minute specialized movements have taken the place of the large-muscle movements and self-expression of manual work. The worker has necessarily lost all sentiment of identity between himself and his product. Industrial cities have grown like mushrooms, while the population centers have grown to be more nondescript; and while the units of production have been growing larger, work in its meaning to the individual has grown smaller.

In brief, work has become, through the direct or indirect influence of machinery, a greatly reduced part of life, when we view life subjectively.

The change in leisure has been almost as great as the change in work. The old leisure institutions have either passed away, or have shrunken to a point where they no longer have a controlling influence in life. Commercialized amusement has grown to a volume utterly unknown in past generations. Commercialized amusement generally means specialized amusement and amusement which appeals to one sex or age group, not to neighborhoods or to family groups. Commercialized amusement, moreover, has very often an ulterior motive; the saloon has a political motive, for example, the dance hall has often a sinister motive of corruption. The total quantity of leisure has vastly increased and there has proceeded a corresponding reduction both in the variety and the attractiveness of the social institutions through which leisure life has expressed itself during many ages.

It has been said that leisure time is a void to be filled. Such a figure of speech is quite inadequate. It would be more truthful to say that the vital interests of mankind, with all their possibilities and perils, have been forced out of work into leisure, where they continue to operate with all their primal vigor, but without the facilities for expression or the traditions of behavior which are necessary to insure healthful results.

The recreation problem here merely hinted at has been proved to be measurably responsible for many oppressive ills. Among these ills are the increase of juvenile delinquency, the deterioration of

working girls, the saloon influence in politics, and the vast blackmail which depends on our unscientific repressive laws; the loss of control by the educational system over its pupils before they are sixteen years old, the disappearance of neighborhood life in many cities, and, finally, the breaking up of the family group. For the family, deprived of its opportunity to work together, is now forbidden to play together.

City planning must absolutely precede the solution of the problem of recreation.

At present, it can be broadly stated, regarding America:

That no city has enough play area, so distributed that the majority of its people can use the facilities.

That in all cities, political and civic discussion must be enjoyed mainly in private premises or in premises connected with saloons or controlled by persons who do not favor free discussion.

That organized social life, in all cities, must be carried out in premises subject to the same criticism that holds good of political meeting places.

That women, especially, are without provision, either public or private, for their leisure time or leisure interests.

That there are almost no places in American cities where family groups, as groups, are permitted or invited to come in such wise that the leisure life of the members will be a family life.

That 95 per cent of our children have no play spaces except the streets where they violate ordinances and statutes through the mere act of playing, where they are a real annoyance to the public and where their own life and limb are in danger. Recent investigations by the People's Institute, based on previous investigations by the Sage Foundation, prove that 70 per cent at least of all male juvenile crime in New York City is directly due to street play or to the effort to play in forbidden places.

Finally, it must be said that public property, worth several billions of dollars, is going to waste. School properties lie idle during the long summer season and are in use only for about six hours per day when used. The waste through nonuse of playgrounds, school buildings, armories, etc., involves a sacrifice of tax-payers' money amounting to probably a hundred million dollars a year. An intelligent development of these properties would modify enormously, and healthfully, the social environment of all cities without exception.

The City-Planning Program

City planning for recreation means only in slight measure the acquisition of new kinds of properties. It is the existing properties which must be differently planned and differently grouped.

a. Schools. American wastefulness and modern specialization find few better illustrations (or worse) than in the way our public school properties are built and used. The public investment in school properties is enormous. In New York City, the school investment has been $100,000,000 in the thirteen years since 1900. In that same city, where school buildings are used in a relatively intensive way, the recent school inquiry developed the fact that the plant lies idle more than 40 per cent of the available working time. The percentage would be materially larger if the country were taken as a whole.

But the above statement of 40 per cent non-use only partially conveys the facts. It relates to the buildings as they exist, placed as they are in relation to the other physical elements of the city. Most of the schools are without open court yards or auditoriums. Their roofs are generally unavailable for open-air recreational purposes. The school buildings are usually not adjacent to open areas; there is rarely any correlation between the location of schools and of playgrounds. There is no physical correlation between schools, playgrounds, public libraries and baths. If the New York school buildings, in correlation with the other educational and recreative features of public provision, could be replanned with a view to the maximum of varied and integrated use, the human value of the school building would be multiplied several fold. In other words, to criticize the New York school buildings in terms of modern theories of education and recreation would involve a statement, not that they were unused for forty per cent of their available time, but that 70 or 80 per cent of their possible usefulness was being sacrificed.

To translate this statement, which applies to every American city with a few partial exceptions, into terms of a practical program, one would say:

1. Schools should be united or associated with open play spaces, indoor recreation houses and libraries.

2. Where the city has already been built, but where schools, playgrounds or libraries are still needed in congested districts, these properties should, whenever possible, be planted alongside some

companion facility, in such a way that they can supplement one another.

3. Buildings should be planned, or wherever possible, remodelled, in such a way as to provide meeting rooms, assembly halls, dance floors, spaces for indoor team games and, in general, those facilities which the people now purchase dearly from commerce, or get in a scattered way through insufficient public provision.

With the above physical propositions in mind, we can undertake a statement of the reasons why the physical correlation of educational and leisure-time institutions is not merely a measure of economy but is a social necessity.

The average age at which children leave school is not over fifteen years. Most of the socially useful qualities of adult life will be made or marred by the child's experience between fourteen years and twenty. The social nature, even in its biological aspect, is quite largely a growth of the adolescent period.

The school gives up the child. Just at this time, the family also gives up the child. Family influence cannot pursue the adolescent into the shop where he works, into the street or isolated playground, or into the commercial resorts where he must get most of his amusement.

One can hardly overstate the cost to society of this condition. It is a mad waste of social resources and of educational influence. It is a silent menace to our country. This condition cannot be met through any plan of going backward. Neither the family, as it formerly lived within the walls of the home, nor the church as a separationist agency, nor the influence of unconscious community tradition, can be revived in their old forms. They are disappearing institutions. On the contrary, church and family must be brought out into the market-place and the social center. We may hope for no solution for this problem short of the creation of a leisure-time environment, frequented by family and social groups, where new community interests and civic enthusiasms may be engendered to take the place of shattered community tradition and waning ecclesiastical inspiration.

It is of the utmost importance, and it is important in framing a city-planning program, to understand the impossibility of compensating, through specialized institutions of any kind, for the neighborhood, the institutional and family influences which held life together in the past. Public libraries as such, public baths as such, park prome-

nades as such, vocational bureaus as such—all of these things are convenient to the individual but are not socially constructive. They touch life so lightly or so specifically that they cannot influence the standards or habits of the people at large. The habit-forming influences in American communities are at this time much more largely of the nature of commercialized amusement, competitive business and predatory political organization, and they do not form such habits as a progressive society needs.

At present our parks and playgrounds, our libraries, our lecture centers are all specialized and separationist institutions. They separate the members of the family, they separate the individual from his group, they separate age groups from one another, they provide isolated oases in the lives of a minority of individuals, and it can hardly be said that the civic interest functions through any of them. On the contrary, the social center, being primarily a neighborhood institution, with elements of self government and self support, combines the social, the utilitarian, and the civic elements of leisure life. Better one social center than a score of specialized facilities.

If this vision of the meaning of leisure time and its peculiar needs be once clearly grasped, almost anybody can formulate a city plan with reference to recreation.

b. Parks. No country has the extensive park systems of America. Most of our park systems have been planned according to the higher esthetic ideals, in fact, according to aristocratic ideals. We have taken it for granted that any remodeling of park systems to accord with modern and human needs involves a necessary sacrifice of the esthetic elements of the park.

That this assumption is erroneous can be seen by any one who visits any of a dozen Chicago small parks, like some of the Chicago West parks, which have been developed exclusively for social and play purposes yet whose architecture is beautiful, and whose landscape work is classic. Chicago affords another suggestive illustration in its Lincoln Park, where the play area supplements the promenade area, and where the promenade area is insured against vandalism through the very fact of nearby opportunities for organized play.

In planning parks, almost as much as in planning schools, it is important to remember the facts of neighborhood life, of family life, and of the tendency of human beings to play in groups. The playground need not be merely a place for supervised play by children

during the daylight hours. It will be a much more wholesome children's playground if it be likewise a community social center, used in the evenings as well as by day. The playground can be an excellent musical center in the evenings. It can provide for open-air dancing; for open-air moving pictures. An arena with provision for spectators is always desirable, for this will make possible team games, pageants, and other neighborhood events. The limitation of space must always be borne in mind. For instance, where one municipal golf link may now occupy forty acres, there could be placed a hundred tennis courts, archery courts, croquet parks, or similar facilities for games which enlist large numbers of people in team play and team competition.

It is now generally recognized that it is better to have many small parks than an equal area of a large park out of reach of most of the people.

A careful study of the possibilities of minute playspots will always repay the effort. These spots may be no more than 50 feet by 50 feet, and yet may make a life's difference to the child.

c. Other Facilities. All that has been said about schools and playgrounds holds good for libraries, municipal buildings, and armories. The armories represent the climax of wastefulness. They are idle four-fifths of the time, although offering great expanse of both floor and roof, and being paid for, built and maintained by a public which does not believe in war.

Supplementary Policies

The maximum development of the public properties and the physical integration of the facilities will still not provide for the whole leisure life of most of the people. There remain some promising lines of amelioration even in the most congested regions of the great cities. If it is proper to restrict or forbid traffic on resident streets, as is done in many cities, it is certainly proper to close off blocks in tenement districts and convert them into playgrounds, either continuously or during certain hours. Neither on such play streets, nor on regular playgrounds, is it necessary to have costly apparatus. There are many indications that a large part of all desirable juvenile play requires no apparatus, or little apparatus; that most children are inclined to run away from specialized apparatus, and from too much

supervision. It is known from extensive street surveys that at least one hundred educational games are carried on by the children of our great cities without supervision of any kind, and are transmitted from generation to generation of young people in ways little known to the grown-ups. All that is needed to build out of the spontaneous play life of any city an organized and systematic educational play life, is that physical space be provided and that status be given to those who excel in desirable games. This means the promotion, by the city or by play unions, of competitions and systems of honor like the systems which are practiced by the boy scouts, the camp fire girls, and which are modifying the outlook on civilization of millions of boys and girls.

A more controversial suggestion would be, that it is perfectly proper to require owners of tenements to develop their roofs as play grounds, and that it is perfectly proper for the community to regulate and supervise such places.

Conclusion

Finally, were all these policies realized, we should still not be able wholly to redeem the leisure environment in congested districts, any more than we can hope to redeem the physical environment in these districts. City planning for leisure depends for its further reaches of possibility on those other departments of city planning which aim at the annihilation of the modern city as it has become known to us through the human ravages which it works. Fundamental modifications of taxation, a domination by the community over transit in all forms, and similar basic policies, lie underneath whatever is said above.

But let it be remembered, that the carrying out of all these fundamental policies, unless coupled with the true social art of city planning for leisure, might leave us a nation of Philistines living in cities of a prosperous and healthy Philistia.

PLANNING FOR DISTRIBUTION OF INDUSTRIES

By E. H. Bennett,
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Some interesting and instructive articles written by Mr. Graham Taylor, Jr., and published in *The Survey* under the title of "Satellite Cities," cover in a very clear way the conditions which exist in the purely industrial communities which have grown up adjacent to but distinct from the large cities. These articles lay bare the mistakes and faults in street planning, real estate control, housing and social and political development in these communities. They touch on but do not discuss the industrial areas which lie inside of and are a part of the life of the city itself. Neither do they discuss what are purely large industrial communities such as the manufacturing towns of New Jersey and Massachusetts. Little could be added to this study of "Satellite Cities" made by Mr. Taylor.

It is not the purpose of this paper, however, to treat of "Satellite Cities." Our purpose is rather to discuss and determine the forces and tendencies which are at work within the city itself, and which control its industrial development and to try and find, if possible, some way of directing and adjusting these forces and tendencies in such a way that the whole city may develop in the best possible manner.

To take an absolutely unoccupied stretch of country and lay out upon it an industrial area and fit to this industrial area the proper street system, the proper transportation lines and the proper laws of housing, is a matter of comparative physical ease. The real problems which arise in such a case depend for their solution on the ethical and moral sense of the individual or corporation responsible for the development, rather than upon the ingenuity of the architect or engineer who makes the design. Upon the individual or corporation lies the burden of carrying out the design; on him rests the control of the nature of the dwellings which shall be erected, of the political and social organization which shall be developed; his is the responsibility for the actual carrying out of the improvements suggested for transportation and for streets. He has an absolutely free hand in a virgin field in which to work and his falling short is due to his carelessness, to his lack of ethical sense, or to his greed.

In a city, however, the problem is different. The situation is complex. In the place of individual control and responsibility there are community control and community responsibility. Certain fixed elements appear which cannot be removed. All the economic forces which sway industrial development are at work uncontrolled and undirected. These economic forces ignore and set aside consideration of their effect on the living conditions of the workers—of their effect on localities. They bring about industrial development indiscriminately all over the city, paying no attention to the fact that this may change completely the character of a whole neighborhood.

Could these forces be controlled or even directed, an orderly development might be arrived at which would result in benefit to the living conditions of the whole city. There would be an organic whole functioning properly in all its parts. It would be possible to plan improvements for the future for any section of the city and be certain that these improvements would be the proper ones when the time came to carry them out. It would give more stability to land values and would enable assessments for general improvements to be laid with closer relation to the benefits derived than is possible at present.

In planning for industrial areas inside the cities themselves, therefore, what we are most concerned with are the forces which are behind industrial development. The ends to be attained are, of course, to be firmly fixed in our minds. These may be said to be: (a) The developing to a maximum of the industrial potentialities of a city; (b) the provision of proper working and living conditions for the workers; and (c) the proper safeguarding and developing of the city as a whole.

Generally speaking, the utility of land in the city falls into three classes: business utility, industrial utility and residential utility. The areas devoted to these purposes are separated by more or less definite lines and are themselves subdivided according to the specific nature or class of use for each purpose. Business area for instance lies generally at the focus of local transportation routes or in other words at the point of intersection of the strongest lines of local travel. This point is very often at the geographical center of the city which can be reached from all sections of the city with equal facility. The industrial area on the other hand has no one definite location, as has the business area. Depending largely on railroad facilities, it soon becomes scattered throughout all sections of the city forcing its way

from all directions in wedges almost to the business heart. There is generally no control and no concentration other than that offered by the railroad lines. To residential purposes is devoted the rest of the land in the city. This is generally of three classes: fine residential area; general residential area; and tenement area. The first of these preempts those sections of the city which have the greatest number of pleasing and natural advantages. The second, in general, lies along the thoroughfares and highways which have the best transportation facilities and also along such railroads as provide suburban transportation. The third class, the tenement areas, are generally found in the industrial regions and in the pockets or areas that lie between railroad lines and close to the center.

The forces which govern industrial development in the larger city may be classed as follows: (1) Railroad shipping facilities; (2) price of land; (3) labor market; (4) transportation for workers; (5) nature of industry; (6) power; and (7) origin of raw material.

It is the general tendency of industry to seek the points to which they can most easily bring their raw material, and from which they can ship most easily their finished product. The larger the industry the more important that it should have access to all the different shipping facilities in the city—water and rail. Inasmuch as the railroads are known elements in our problem, their location and right of way being fixed and more or less unalterable, we can safely say that in the area in which are concentrated the majority of the railroad lines entering the city and the waterways, if any, that is at the focus of transportation, the great industrial development will take place, and adjacent to that focus the majority of industries will concentrate. If a city, however, is well supplied with belt lines, these belt lines will serve to spread out and elongate this area. They create practically an "elongated" focus for they touch every railroad which enters the community. In a city with belt lines, therefore, we may expect our industrial development to send off from the area of concentration long arms along these belt lines. The increasing price of real estate in the larger cities is a centrifugal force driving industries to the outskirts of the city where land is cheaper. The presence of the belt line spreads this area over a large territory, bringing into the market large areas and keeping the general level of prices low.

The next two forces which affect industrial development are closely related. While industry demands a flexible labor market, workmen

should have the benefit of as constant a demand for labor as possible. It is necessary, therefore, for a workman to live in a locality from which he can reach more than one center of industry. To have an industrial development with the workmen's houses clustering around it creates serious difficulties, unless liberal transportation facilities connect this one industrial region with others and with the center of the city, nor does this act only one way. If there are not such liberal transportation facilities, the workman is dependent on this one industry for livelihood. When a shut-down occurs in the factory or the working force is reduced, a great many of these workmen are left without means of livelihood and without a chance to go to other places where such means can be had. On the other hand, if liberal transportation facilities are provided, these facilities will be patronized during such periods when there is shortage of work in one locality or another, and the workmen desire to go to other centers. If, however, the industries are running at their full capacity, then these transportation lines are without patrons and consequently suffer.

There is a general tendency, which amounts almost to a law of industrial development for industries of a similar nature to group themselves in the same locality. We find the majority of the steel and steel products industries together, of the lumber and wood working trades together. So also is it with the garment factories and the chemical manufacturers—in fact with almost any well defined class of manufacture.

There are evidences appearing, although not yet clearly defined except in a few special manufacturers, which lead us to the belief that there is also a tendency of manufacturing interests to seek the section of the city which is within easiest reach of the source of their raw materials. This is natural and easily understood for the reason that the time consumed in taking freight through and around large commercial centers is becoming greater every year, and industry cannot afford this time waiting for this raw material upon which it depends. The material must be brought to it quickly and with minimum delay. So also is it with the finished product. Transportation facilities for distribution must be provided reasonably quickly, as much of the modern commercial superiority depends upon service.

In nearly all of the cities belt lines are becoming lined with industrial development, so also is the area in which lies the majority of the railroads. The effect of this industrial development is patent in

any city. It fixes definitely the city's structure and scatters manufacturing establishments wherever there is a railroad line. That the individual under existing laws has the right to use his property as he sees fit, no one can deny. The problem, therefore, of the location of industries comes down to one of community control. Until the community can be brought to see the benefits which arise from controlling the forces which direct the location of industries, it is hopeless and impossible to attempt any planning of industrial areas. For their guidance in arriving at such control the following principles may be enunciated:

1. That the industries must be concentrated in an area where there is possible the greatest amount of railroad service.

2. That the existing residential areas must be protected and industries prohibited from locating where they will spoil them.

3. That there must be adequate flexible labor market.

It is impossible, in discussing the relation of workers to industrial development, to ignore the factor that it is necessary for families to be within reach of various lines of work, both inside and in the outlying sections of the city. All members of the household units do not work in the same plant, and some even work in the business section of the city itself. To remove the family as a whole to the outskirts—to the country—would, unless adequate transportation facilities existed which allowed of diversity of occupation, reduce all its members to one dead level of uniformity, or instead would break up its unity. It is useless, therefore, for us even to discuss the probability of opening up new areas for housing workers, unless we can provide them varied employment or many transportation facilities to other sections. This is one of the reasons for keeping intact existing residential areas and for concentrating industrial occupation of land.

So far we have determined what are the forces which control industrial development, and which must be directed in taking care of and in planning for industrial development. There remains to consider the general city good and the forces which demand such recogni tion in the plan of the city. It is impossible to ignore the general welfare and the general needs. This connection between the general city plan and industrial development lies, as has been shown above, in the distribution of the workers, in the provision for transportation and in the preservation of residential areas in the city. That the living conditions of industrial workers in the cities must be alleviated

no one can deny. Individual efficiency can be raised only by doing so. And it is the duty of the community to assume the responsibility.

We come, therefore, to these conclusions that the area for the housing of working people must be in a district from which can be reached both the city and several sections of the industrial area itself. It must be free from industry. It must be healthful, well-built and be provided with proper recreational activities.

Following along the lines discussed above, we should devote to industrial purposes the area in which lies the focus of the railroads. We should relate this area properly to such water connections as exist. This district lies in most cities at the circumference and generally there is one area which has more than another of the requirements to be met. If there were no focus we ought to create one by the construction of a belt line and locate our district where it would be least harmful to the city as a whole.

The residential areas should lie between this industrial district and the center of the city, serving also the demand for workers in the business areas. They should be connected adequately with both of these districts by transportation lines.

In this paper it has been possible only to outline the method of study and some of the larger elements of the problem. The conditions in each city vary so much that only in the main features will they agree. The only factors which we find existing in all cities are the forces—economic and social.

To solve properly the problem there is need of coöperation from all the individuals interested, from the business men, the industrial corporations, the railroad and shipping interests, the social workers and city government. To this end the following recommendations are made:

1. That a responsible body of representatives of commerce, transportation, railroad interests, social workers and city government be brought together to study thoroughly the tendencies in each particular city and to formulate legislation for zoning the city.

2. That power be obtained by each city from the legislature of the state which will enable it to control the development which may take place within its borders and for a certain distance outside of its borders. The city must have control of the area which at some future day it may annex.

THE WATER FRONT AND THE CITY PLAN

By Calvin Tomkins,
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Cities with navigable water frontage possess natural advantages over those served by railroads only. Before the days of the railroad the importance of water routes was better understood than now. As a consequence the railroads at most cities have attempted with varying degrees of success to dominate the water front for the following reasons: (1) To limit competition by water carriers; (2) to control competitive railroad business by controlling the best terminals and to block rivals by keeping them from using natural opportunities, and (3) to extend their operations over joint water and rail routes—ocean, river and canal.

The eagerness of the railroads to secure the utmost volume of business has resulted in the atrophy of most of the important river and canal routes in the country and it follows that the railroads are overburdened with unprofitable coarse freights. This monopoly of the water front by the land carriers—the unwillingness of the railroads to pro rate with water carriers not under their immediate control and the intentionally destructive and wasteful competition of the railroads with parallel water routes—are the principal causes for the neglect of our waterways and public terminals. The cities themselves can remedy the situation in part by developing public terminals for marine use. The questions of pro rating and parallel competition must be left to the supervision of the Interstate Commerce Commission and the public service commissions of the states.

Obstructive railroad occupancy is after all the consequence not so much of the grasping policy of the railroads as of the protracted neglect of the cities to provide public terminals, and to fit the railroad terminals into public organization plans.

Cheap freight rates to and from cities, the economical terminal handling of food, fuel, raw materials and finished products at cities and the substitution of cheap transfers between the railroads, the several terminals of a port, its factories and warehouses, are the ends sought everywhere.

At smaller ports the dependence of city growth upon terminal

facilities is beginning to be appreciated and acted upon. But at the larger ports, and notably at New York, the largest seaport of the world, there is no popular understanding of this fact and the city's needs for schools, sanitation, water supply, pavements, police, etc., force the underlying cause of growth into the background. Not until the rate of city growth diminishes or the results of disorderly planning become too apparent to be longer neglected will officials be freed from the pressure of corporate interests.

The difficulties of port organization at New York have been increased by the dissipation of the dock fund for local city conveniences at a time when it was most urgently needed for port improvements. The greatest danger which now threatens our national port is the lack of funds. This will be advanced as a reason for permitting still further railroad control over its terminals as the quickest and most convenient way to secure necessary betterments. Indeed recent changes in the state law were procured by the city avowedly to facilitate this very purpose.

New York is the most sought for port of the world and is fortunate above others in the fact that its principal terminals can be made self-sustaining, and consequently can be publicly financed without dependence upon the railroads or upon promoting bankers —provided the city has the will and enterprise to act. So potent, however, is the paralyzing effect of popular ignorance upon official action, that, contrary to the practice of the other ports of the world, New York alone is rapidly being committed to a policy of private exploitation and its last unpledged productive asset—the terminals of the port—are soon likely to pass under private control as have already its profitable subway, gas and electrical utilities.

I have gone out of my way to direct attention to the dangers that menace the organization of the port of New York since not only is it the great national port serving the entire country, but conditions here are typical on a large scale of the difficulties encountered at the smaller ports. New York is destined to be the battle ground between public port authority and the designs of the continental trunk line railroads to control other competing lines, the Erie Canal trade, the coastwise trade and finally the over-sea trade through preferential transfers to favored sea ships. This they hope to accomplish by substituting private for public control at the principal transfer terminals of the port.

For more than ten years American cities have been evading the real issue of comprehensive planning by diverting attention to the "City Beautiful." It is only recently that the inter-dependent relations of beauty and utility have begun to be rightly understood. City plans should be based upon fundamental community needs for transportation of goods, power and passengers. This includes the proper correlation of terminals, warehouses, factories, markets, streets, parks, water, gas and electrical services all to be publicly controlled and coördinated, the ultimate intention being gradually to fuse all these separate parts into one inclusive publicly controlled system, adapted to communal living purposes and administered either by corporate agents of the cities or by the cities themselves as experience shall determine. No general rule as to what can be publicly undertaken at any particular time can be laid down since some communities can undertake what others would fail to carry through successfully. The practicability of direct public administration is not based on any social theory, but on the actual experiences of time, place, trials, failures and successes. Great cities have been made possible by modern transportation and cold storage agencies. These regularly supply them with food, fuel and raw materials either for consumption or for conversion into finished products through the activities of dense local populations industrially organized for efficient production. If transportation to and from the cities, or if terminal distributing within them breaks down, the efficiency of city organization is correspondingly diminished. In short, municipal efficiency is directly proportioned to the efficiency of transportation of goods, power and passengers.

The basic principle of port organization is that a port should be developed as a unit, under public dictation of the terms on which private carriers, shippers and consignees shall be served. The port being once conceived as an organic whole, administered by the city for the benefit of all, there can be no thought of remaining in or returning to the chaos of jarring private rivalry and mutual obstruction from which we suffer; or of final dependence on the makeshift policy of separate sub-ports constructed by great private corporations —no matter how perfect each may be in itself or how welcome they may be as coöperators in a city system.

While octroi taxes on city food are not sanctioned in this country, nevertheless many municipalities, and notably New York,

permit its equivalent to be exacted through the instrumentality of badly organized market terminals under railroad monopoly. These invoke wasteful distribution and facilitate conspiracies among middlemen. The railroads do not profit by this but are attracting to themselves a popular animosity which prudence should prompt them to avoid, since it is now no light matter to be held accountable for any part of the increased cost of living.

The use of the motor truck for distributing and collecting purposes depends upon quick despatch at terminals, and the growing importance of this new transportation factor cannot be exaggerated, but its substitution for horse traction will proceed slowly so long as exasperating delays at terminals continue.

A port at which the several parts are properly related to each other will enjoy the advantages of industrial as well as commercial opportunity. The establishment of factories rather than the passage and transshipment of commodities through a port builds up the city. Factory development necessarily follows in the track of cheap transportation and good terminal distribution. Inter-communication between the factories at a port, its docks and all its transportation lines, is becoming essential for successful city competition in industry.

Only a few Atlantic ports can expect to compete even in a small way with the ocean ferry service between New York and every port of the world. But other coast ports as well as the interior cities should try to secure the best rail, canal and coastwise communications with New York in order to obtain for their industries the advantages of this unrivaled, regular, over-sea service.

The exceptional opportunities for manufacturing afforded by the seaports of the country will tend to deflect industry from interior cities to the coast. The phenomenal growth of the world's newest and consequently best organized seaport, Manchester, affords the best example of the advantages of intelligent port planning.

Since New York's growth will continue to be more rapid than its capacity, to organize its growth publicly, it will be advantageous even to New York itself if manufacturing enterprise should be diverted elsewhere. Growth will then be slower and more orderly at the great city. A big city badly organized is a bad city, and the problem of organization continually becomes more difficult and complicated as cities increase in size.

The basic relation of terminals to successful municipal progress thus becomes apparent. Cities exist mainly because they afford cheap and convenient meeting places for people and commodities, and because a centralized population, well served by a highly organized system of public utilities, can convert raw materials into finished products more advantageously than elsewhere. An intelligent popular comprehension of the underlying relations of port organization to city development is necessary to hold officials to their public responsibilities and to counteract the private corporate pressure they are constantly subjected to.

Cities that are fortunate in also being ports should base their city plans upon the port opportunity. Mistakes which exist at most of the older port cities should gradually be rectified and new improvements undertaken with reference to preconceived design. Private terminal improvements should be encouraged when in accord with a general plan, and subjected to such public regulation as may be necessary to fit them into a public system of administration.

Experience is demonstrating that a large city that is also an important seaport cannot successfully mingle its city and port administrations. The truth of this is manifest at New York, where national and port interests have been sacrificed as a consequence of diverting dock funds to city uses.

A small city on the contrary will be prompted by intelligent self-interest to plan and finance port improvements in order to stimulate its growth. I believe that even at the smaller cities a separate port organization exercised through the instrumentality of local commissions will be found desirable. In every instance the finances of the port and the city should be kept separate. Unless this separation of administration and funds shall be provided, popular insistence upon expenditures for city conveniences will almost invariably starve port improvements, since the need for local conveniences appeals much more strongly to the populace than do the indirect advantages of port organization.

The fundamental difficulty of city organization in America is the selfish exploiting interest which a large part of our most experienced and influential citizens have, or imagine they have in their cities. Is the paradoxical query—are our best citizens our worst citizens—either impertinent or inopportune? The experience of New York, at least, affords evidence that the question is in order. No-

where are transit, terminal, gas and electric prizes so alluring and since the Interstate Commerce Commission has restrained the exploitation of railroad stockholders, the attention of speculative promoters has naturally turned to the exploitation of the communal rights and privileges of the cities. New York has fallen an easy prey to such machinations and her present plight should serve as a warning to other cities.

A CITY PLAN FOR WASTE DISPOSAL

By George A. Soper,

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If by plan is meant a detailed program, the reading of this paper will prove disappointing. It is not possible to make a city plan for waste disposal without knowing the city to which it is to be applied. Many things which can and should be done in disposing of the wastes of a large city are quite impossible in a small one, and methods which are suitable for a country village cannot be thought of for a city of even moderate size. This applies equally to the methods of collection and disposal. The composition of the wastes differs essentially, and geographical, climatic and the social characteristics of the population have all a material effect upon the problem.

There are, however, some underlying principles which should be observed in all work of this kind and if by plan is meant a statement of the more important principles concerned in the collection and disposal of a city's wastes, some help may be obtained by reading this paper.

Definitions. By city wastes is usually meant those broken, used and discarded materials which are customarily removed from the houses and streets of cities at public expense. In small towns and in some villages the work of removal is done at the cost of the householders and even in large cities some private scavenging is usually carried on.

The term wastes strictly includes sewage as well as solid refuse, but it is seldom so employed. Nor is snow generally spoken of as a part of the city's wastes, although it is a waste in the strictest sense and may be a very costly one to remove. Dead animals, termed offal, although generally removed at public expense, are seldom included in the term waste. The refuse produced by stables is customarily removed at private cost. Sometimes trade wastes are disposed of at private and sometimes at public expense. Neither the refuse of stables nor of manufacturing establishments is customarily referred to as city wastes.

In the usual acceptance of the term, city wastes comprise street sweepings, kitchen refuse, ashes and rejected papers, fragments of cloth, and metals and wood from dwelling and business houses.

Value in Wastes. Some value exists in practically all forms of municipal wastes, but in most cases this value is not great enough to warrant the pains which it is necessary to take to save the useful materials at the household. Furthermore, such matters are valuable only when in considerable quantity. Only when the salable ingredients are gathered together in large amount can they be disposed of to commercial advantage. Because of the value which lies in certain kinds of waste materials, when in quantity, it is customary more or less thoroughly to sort out the mixed wastes after they are collected with the object of extracting those materials which can be sold. This sorting is usually imperfectly done and unsanitary practices are common in connection with it.

Examples of the waste materials which it generally pays to separate and dispose of by sale are bottles, metals and rags. Frequently there is enough grease in the kitchen waste of restaurants, hotels and private houses to pay for collecting and rendering it. In some cases, private scavengers collect such material without charge, finding their compensation in the material itself. More often, especially in small places, kitchen refuse is kept apart from other wastes at the household and is disposed of by feeding to poultry or hogs. This process is not objectionable when carried on with reasonable regard to the sanitary requirements.

Cleanness is Costly. Speaking generally, it is an expensive undertaking to dispose of city wastes in accordance with the best sanitary principles. It costs money to keep a city clean. It rarely happens that municipal wastes can be rendered inoffensive and inocuous without considerable expense. In some instances cities have been able, by conducting their scavenging departments upon modern business principles, to recover a part of the cost of disposal, but such instances are rare. Successful work of this kind is usually confined to cities of 100,000 inhabitants or more. These alone can afford to pay the salaries necessary in order to obtain the services of the best administrative officers and maintain such a plant and force as are required for thoroughly efficient work.

By far the most difficult municipality to deal with satisfactorily from the scavenger's standpoint is the town of from 10,000 to 50,000

inhabitants. The methods employed for the disposal of the wastes of places of this size are frequently unsanitary and unsatisfactory in the strongest sense of those terms.

Need of Coöperation. A great deal of the difficulty which lies in the way of keeping a city clean lies in the attitude which the average citizen takes with regard to the wastes. It is taken as a matter of course that the wastes should be promptly disposed of, but there are few persons who care to assist in the disposal. Old papers, fruit skins, ashes, garbage and the dead bodies of domestic animals are thrown in the streets, or, what amounts to the same thing, put out in improper receptacles, on the assumption that somebody, whose duty it is to maintain municipal cleanness and order, will remove them. This burden is carelessly imposed by thousands upon a few. To dispose of a city's wastes is an arduous undertaking and every citizen who values cleanness and order in public places should desire to make the work as light as possible. In fact, no city plan for waste disposal can be satisfactory which does not provide that those who produce the wastes shall coöperate in facilitating their removal. Ordinances should be passed prohibiting the littering of streets, providing for the placing of wastes in proper receptacles and the location of receptacles in suitable positions.

Nor will it be sufficient to make rules and regulations without arranging for their enforcement. The magistrates whose duty it is to hear complaints and violations of the municipal regulations should be required to do their duty in helping the city scavengers to keep the city clean.

Continuous vs. Occasional Cleanness. A principle which should be remembered in making a plan for waste disposal is that it is better to keep a clean city clean than to clean a dirty city at intervals. To maintain a condition of cleanness is more expensive than to maintain a condition of dirtiness, but it is nevertheless the ideal toward which it is desirable to strive. The city which has a cleaning-up day once a year, once a month or once a week, as the case may be, is usually a dirty city. The periods of cleanness are brief and serve only to give a glimpse of a state which should be continuous.

It is more important for a city to be clean than is commonly realized. Dirty highways encourage dirty households and dirty households, dirty persons. This relation is very close. It is most apparent in those parts of cities in which the dwellings are crowded

and the population dense. Here many mercantile and domestic functions ordinarily performed within doors are carried on in the streets. It is of the greatest importance that those parts of a city which are most likely to become dirtiest should be kept cleanest. Nothing less than scrupulous cleanliness should be considered satisfactory in the poorest parts of cities. The fact that the streets of a crowded tenement district may be very dirty without attracting notice has nothing to do with the matter.

Disease and Dirt. It is well to remember that wastes sometimes, but not always, are dangerous from the standpoint of disease. No form of infectious illness is produced, or is transmissible, by the odors arising from garbage or decaying animal or vegetable matter. A dead horse in the streets, killed by accident, may produce disgust and even symptoms of nausea, but it is incapable of giving rise to typhoid fever or any other communicable disease. Kitchen garbage does not customarily furnish a suitable culture medium for the propagation of disease germs. Consequently even were such material to be inoculated with the wastes of a sick room, it need not be feared that the disease germs will multiply.

This does not in any sense remove the necessity for promptly and permanently disposing of putrescible material. It merely changes the argument. It places the necessity of proper disposal upon the ground of nuisance, where it belongs. Dirt should be removed because it is dirt. Filth should be promptly and permanently disposed of because it is filthy. Nuisances from undue accumulations of city wastes should be prevented because they interfere with the reasonable comfort, well-being and efficiency of the citizens.

The relation between dirt and disease lies in the fact that carelessness with the one kind of waste leads to carelessness with other kinds and indifference to the harmless sort is generally accompanied by indifference toward that sort which is dangerous.

Dangers to Health. Wastes which are dangerous to health are produced in every city and their existence should not be overlooked by those who are charged with the disposal of the city wastes. In spite of the vigilance of public health authorities, infectious material from patients suffering with tuberculosis, typhoid fever, scarlet fever, diphtheria and many other diseases is occasionally thrown out with the refuse of houses for the city scavengers to remove. In cities provided with sewerage systems, it is rare for the dejecta of typhoid pa-

tients, or, in fact, the infectious wastes of any disease, to be genuinely disinfected before being flushed into the sewers, and in towns which do not have sewers, some of the products of disease are often thrown out under more or less disguise. Not infrequently, employees of the department charged with the duty of collecting garbage and other household refuse are privately paid to take away bedding and other material believed by the householders to be unsafe because of its use in the sick room.

It is essential, that whatever disposition is made of the wastes which are collected, there should be little or no chance that infectious material shall produce sickness. Therefore the collections should be handled or picked over as little as practicable. When this work can be done on a large scale with the aid of mechanical contrivances and under competent supervision, the reasonable objections which can be made to it are in large part overcome.

Such separation as is required for the purpose of facilitating collection and disposal should be made as far as possible at the household. New York divides its household wastes into three parts: kitchen wastes, called garbage; ashes, including metals and glass; and refuse, made up largely of non-putrescible and easily inflammable material. The garbage is delivered to a contracting company which extracts the grease. The ashes and similar material are used for filling in low-lying land.

Methods of Final Disposition. In England, it is customary to collect all the refuse of the houses in one receptacle and to burn the material in furnaces called destructors. Many large and small cities in Europe employ this principle. Frequently a sufficient amount of heat is produced in the burning to raise steam in boilers and so produce electricity for lighting and other useful purposes.

On the continent of Europe, the decomposable wastes of small cities are often made into compost. In America considerable use is made of the principle of burying. Either of these two methods may be carried out without serious objection, provided the amount of waste to be disposed of is not too great and land of suitable location and cost can be secured.

The apparatus, such as destructors, reduction plants, vehicles for the collections and receptacles for temporarily storing the wastes of the households and streets until they can be removed by carts, differ in different places according to local circumstances and especially

with the size of the municipality. For the most part, the scavenging apparatus in use in American and European cities and towns is lamentably crude and unsatisfactory. The carts, particularly, are awkward, heavy, unsanitary and hard both on man and beast. But little progress has been made in developing efficient apparatus or methods of scavenging.

The plan of flushing the pavements of cities has some good and bad points and, on the whole, when properly done is desirable. The best examples of this work are in Europe. Machine brooms are among the most useful types of apparatus for street sweeping. The patrol system of collecting street refuse is excellent in crowded thoroughfares, but should not be necessary elsewhere.

Summary. In the foregoing remarks, attention has been called to some of the essential principles which should be held in mind in arranging for the disposal of the wastes of a city. It is desirable to employ the services of a competent engineer to devise the details. Emphasis should be placed upon the following points:

Coöperation is necessary between those who produce the wastes and those who dispose of them.

Unnecessary litter should be prevented.

Legally enforceable rules and regulations should be formulated and the assistance of magistrates insured to enforce them.

It is important to maintain especially clean conditions in those parts of cities which otherwise may become the dirtiest.

Scientific facts should be recognized as to the causation of disease and the necessity of preventing nuisances because they are nuisances admitted.

It should be acknowledged that cleanliness is costly and that it is a wise, though not inconsiderable, investment for a city to keep itself continuously clean.

It is impossible to make standard plans and specifications for the disposal of city wastes which will apply to all situations.

It is desirable to employ a competent person to study the local situation and then make a plan for the disposal of the wastes. A young man who is familiar with the scientific principles of scavenging should be employed to carry out the plan and work out the practical details as the opportunities and requirements of the situation permit.

SUBURBAN DEVELOPMENT

By Carol Aronovici, Ph.D.,

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The astounding growth of urban communities in the United States and throughout the civilized world that has taken place within the life of the generation just past is at last facing a hopeful reaction. The city has, humanly speaking, proven to be a failure.

Congestion of population and concentration of industrial activity have been over-capitalized and no contingent means have been provided to meet the needs for a normal human development and efficient industrial growth of our cities. These two important factors are now pointing the way toward a hopeful solution of ultra-urbanization of all human activities. The decentralization of human habitation first found expression in the splendid development of our metropolitan suburbs, and now the growing need for industrial expansion, the over-capitalization of city land values and a demand for more healthful industrial conditions are fostering an industrial exodus countryward that presents one of the most hopeful tendencies in modern society.

It is through this exodus that we hope to solve a considerable share of our housing problem, improve living conditions and create a closer coöperation and deeper sympathy between the worker and his work. Pullman, Gary and Fairfield, in this country; the many flourishing garden cities of England and Germany, the rapid growth of suburbs in the vicinity of metropolitan cities and the numerous industrial satellite cities are convincing evidence of the decentralization of human habitation and industrial activity.

An impressive statement and a clear conception of the appalling concentration of population that has taken place in our midst can be derived from a study of the statistics of population of the thirteenth census. Of the total land area of the United States, amounting to 1,903,289,600 acres, only 1,185,795.8, or 0.026 per cent of the total land area of the country, are occupied by the metropolitan cities, which contain 18.59 per cent of the total population of the country, 91,972,666 in 1910. If we consider all cities of the United

States of over 30,000 population we find that they contain 27,316,407 people, or 29.76 per cent of the population of the country, living upon an acreage of 2,335,664.6 or 0.123 per cent of the total land area of the country. In other words, while the total land area of the United States is sufficient to allow each person over 20 acres each, the people in the cities of over 30,000 are living on the average of about 12 to the acre.

While this enormous congestion has been developing a return to the open country and the smaller communities has taken place.

If we consider the communities within 15 miles of the limits of the American metropolitan cities we find constantly growing and prosperous residential and industrial communities which occupy (3,531,736.4 acres) over three times the amount of territory occupied by the metropolitan cities, the satellites of which they are, and accommodate only a little over one-quarter the number of people.

If we consider the cities of 200,000 population or more we find that the cities proper have increased at the rate of 33.2 per cent during the period that elapsed between the census of 1900 and the census of 1910. The outlying districts of the same cities have increased at the rate 43.0 per cent during the same period of time.

These are hopeful signs that should be seriously considered as one means of decentralizing our business and residential life and reducing congestion, if its complete abolition is impossible. The protection of these outlying districts against the repetition of the evils of the metropolitan cities can be secured only through proper suburban planning.

In Pennsylvania, a section of the country with which the writer is especially familiar, this development of the smaller industrial and residential communities is clearly evident from the census figures. When we compare the growth of the larger cities with that of the smaller populational units we find that while the cities of more than 100,000 population like Scranton, Pittsburgh and Philadelphia, have grown at the rate of 28.9 per cent in the last ten years, the communities of from 10,000 to 25,000 have grown at the rate of 42.1 per cent and the communities of 2500 to 10,000 at the rate of 52.6 per cent in the same period of time. The rate of increase in population in the metropolitan city of Philadelphia was only 21.3 per cent or two and a half times less than the communities of less than 10,000 population. These figures are extremely significant from the point

of view of the town planner and the student of the evils of congestion, as they represent a new and far-reaching tendency in the distribution of population.

A close examination of the figures relating to the counties adjoining the county and city of Philadelphia shows that the population of the two counties in which industrial development was made possible by transportation facilities, power, etc., has increased very rapidly in the last forty years. In the case of Delaware County, where conditions for industrial development are especially favorable, the increase was 199 per cent, as against 127 per cent for Philadelphia.

In Montgomery County the increase was 107 per cent in the last forty years, a rate that represents a considerable advance over the counties which have not developed industrially and is very close to the rate of growth of the metropolitan city.

The facts just stated point the way toward the solution of one of our most serious problems, "congestion," but the hope for the solution of this momentous problem is not in the mere shifting of population, but in the far-sighted control of this growth in the direction of constructive community planning. The small communities are quick to imitate the cities in both their good and bad features and while they realize the importance of the growth of population, they are often ill prepared for or entirely ignorant of the responsibilities involved in the educational, physical and moral care of the increasing numbers of human beings.

Health conditions in the smaller cities and towns which have been affected by industrialism are generally as bad or worse than those of the larger cities. The city slum is being transferred into the open country and the barrack-like tenement often stands out in bold defiance to nature's beautiful surroundings. Industries seeking the smaller communities are permitted to locate anywhere, without regard to human or community needs. Doctor Hegemann characterized the congestion in the business and financial district of our cities as "the slumification of business centers." The suburban development of recent years may, in many instances, be justly described as "the slumification of the countryside."

The city, with its congestion, narrow and ill-kept streets, dangerous traffic distribution, lack of play facilities, poor housing provisions, high morbidity rates, has proved wasteful of human resources. The city has mistaken industrial development for prosperity and

increase of population for genuine civic advancement. The individual has been lost sight of except as he adds to the human bulk. Humanizing influences have been relegated to a weak and ill-fitting educational system that wholly neglects the element of local patriotism, which is essential in all community building.

The present age is one of tireless, extravagant and extensive building. Cities are built in a week and hamlets grow overnight. We do not depend upon the past for the beginning of our work and need not depend upon the future for its completion. We are the masters of creation of our cities and towns. If this age is forgotten or condemned for its work, it will be due to our art of building, because that is the only lasting heritage we shall leave that is all ours. Science and art and literature we may have and our share in the chains of progress is being done, but the cities are all our own and must stand the test of endurance, fitness, healthfulness and beauty or be forgotten.

As all evils must sooner or later find their remedy, so our abhorrent methods of city building are finding their remedy in the development of the town-planning idea.

Parks, playgrounds, proper homes, transportation, water supply, amusement centers, art galleries, schools, museums, etc., are essentials of civilized community life and constitute the field of town and city planning. The town and city planner must coördinate these essentials and so humanize them as to embrace the highest ideals of present community development backed by a community patriotism that will stand the test of the highest standard of social well-being.

The cost of community planning may be measured in dollars and cents, but a more accurate measurement is to be found in the rate of infant mortality and the daily deaths and the amount of ill-health and crime that we must suffer and pay for. The well-planned garden cities of England and Germany are teaching us the lesson that health, morals and industrial efficiency are possible of control by proper community planning. Statistics show us that density of population goes hand in hand with frequency of deaths, sickness and crime. On every side we find overwhelming evidence of the value of proper community planning and development and the growing desire for better living conditions among the people. The diagnosis is made, the remedy—town planning—is known and we shall pay a well deserved penalty if we do not apply it.

The suburbanizing of the wage-earner is a great social and economic opportunity. The increase in the population of our smaller cities and towns as well as the growing countryward industrial exodus that is taking place in this country hold out a golden opportunity, and it is for us to say whether this growth will result in a contamination of the open country by the city slums or whether garden communities will look upon the bleak horrors of our urbanized existence and give men, women, and children a new lease on life and industry and chance to serve men rather than to enslave them.

The large cities present a possibility for reconstruction, for palliative town planning, while the younger cities and towns have the open country before them, little to rebuild and readjust, and a great advantage over the congested city slums which they have now the opportunity to condemn to everlasting death by their superior living advantages and their advantage for shaping their future growth to meet future as well as present needs.

The Utopian city of yesterday can be realized in the growing suburbs of our own times and the future will praise us or blame us as we realize or fail to realize the practical ideals that science and art and a living democracy make possible this day.

CITY-PLANNING LEGISLATION

By Flavel Shurtleff,

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As the term "city planning" is now very generally interpreted, any legislation which contributes to the successful carrying out of plans for a city's physical growth should find a place in a comprehensive survey of city-planning legislation. To make such a survey would be rather too ambitious just now when the subject of city planning is so little known to the indexers of legislative records and the material must be searched for under a variety of headings. Moreover, very effective tools for the city planner are ground out of the routine of departmental work. Such was an act passed by the Massachusetts legislature of 1913, which provides that assessed valuations may be introduced as evidence of value in cases where the municipality is a defendant in an action brought to recover compensation for the taking or damaging of land. This act promises to be a valuable help to the municipal departments in charge of condemnation work and is as much a city-planning measure as the legislation with a more prominent city-planning label to which we must confine this survey.

City planning or city building is primarily a question of the municipality's ownership and control of land. Legislation to advance city planning, therefore, will be concerned, first, with such measures as affect the municipality's getting land, paying for it and regulating its use by others; and second, with the creation of administrative agencies with city-planning functions.

City-Planning Commissions

During the last few years there has been notable legislative activity in the administrative field:

Connecticut, in 1907, by special act authorized the city of Hartford to appoint a city-planning commission. This was the first legislation of the kind in the United States. In 1913 a similar act was passed for the city of New Haven.

Maryland, in 1910, passed an act creating a planning commission for the city of Baltimore.

New Jersey, in 1911, allowed cities of the first class to appoint city-planning commissions. Pennsylvania, in 1911, passed a similar act for cities of the second class (Pittsburgh and Scranton).

New York, in 1913, authorized cities and villages to appoint planning commissions.

Massachusetts, in 1913, made mandatory the establishment of local planning boards in cities and towns above 10,000 population.

New Jersey, in 1913, amended the act of 1911 in several important details.

Pennsylvania, in 1913, created an additional executive department in cities of the third class to be known as "the department of city planning," and established the first suburban metropolitan planning commission in the United States for the vicinity of Philadelphia.

Ohio, in 1912, adopted an amendment to its constitution which allows cities to manage their own affairs, and the way is open for including in city charters a plan commission as one of the administrative agencies. Cleveland and Dayton have already taken advantage of this opportunity—Cleveland by a clause in the charter making mandatory the appointment of a city-planning commission; Dayton by a permissive clause.

The Massachusetts legislation is unique in putting the stress on the human side of city planning. The local planning boards are to "make careful studies of the resources, possibilities and needs of the city or town, particularly with respect to conditions which may be injurious to the public health or otherwise injurious in and about rented dwellings, and to make plans for the development of the municipality with special reference to the proper housing of its people."

Connecticut legislation is unique in making the city-plan commission one of the agencies which may exercise the power of excess condemnation. The city may buy and hold real estate for establishing parkways, park grounds, streets, highways, squares, sites for public buildings and reservations in, about, along and leading to the same, and after the completion of such improvements "may convey and give good title to any property thus acquired and not necessary for such improvements, . . . and may for the purposes of this section act through said commission."

Aside from these differences, the powers given the plan commissions are much the same. They are directed to prepare plans more or less comprehensive for the systematic development of the city and usually are directed further to act in a mildly advisory capacity by investigating and reporting on such questions as the design and location of public buildings, and the location, alteration and extension of streets, parks and other public places. It is as if the legislature were convinced that the growth of the city should be directed and the work of the various municipal departments should be correlated, and that this task was for a new agency, but that it was entirely at a loss how to direct the energies of the proposed agency and therefore merely set it loose on the job with but little guidance. This characterization is not true of the Pennsylvania act for third-class cities or of the section in the Cleveland charter making mandatory a city-planning commission. The first specifically provides that:

> Clerks of council shall, upon introduction, furnish to the city-planning commission, for its consideration, a copy of all ordinances and bills, and all amendments thereto, relating to the location of any public building of the city; and to the location, extension, widening, narrowing, enlargement, ornamentation, and parking of any street, boulevard, parkway, park, playground, or other public ground; and to the relocation, vacation, curtailment, changes of use, or any other alteration of the city plan, with relation to any of the same; and to the location of any bridge, tunnel, and subway, or any surface, underground, or elevated railway. The said commission shall have the power to disapprove any of the said ordinances, bills, or amendments, which disapproval however, must be communicated to councils, in writing, within ten days from the introduction of said ordinances; but such disapproval shall not operate as a veto.
>
> All plans, plots, or re-plots of lands laid out in building lots, and the streets, alleys, or other portions of the same intended to be dedicated to public use, or for the use of purchasers or owners of lots fronting thereon or adjacent thereto, and located within the city limits, or for a distance of three miles outside thereof, shall be submitted to the city-planning commission and approved by it before they shall be recorded.

Under the Cleveland charter a commission of even greater power might be created.

> There shall be a city-plan commission to be appointed by the mayor with power to control, in the manner provided by ordinance, the design and location of works of art, which are or may become, the property of the city, the plan, design, and location of public buildings, harbors, bridges, viaducts, street

fixtures and other structures and appurtenances; the removal, relocation and alteration of any such works belonging to the city; the location, extension and platting of streets, parks and other public places, and of new areas; and the preparation of plans for the future physical development and improvement of the city.

Here are the first suggestions of how the new correlating agency is to succeed in its delicate task of keeping a gentle but controlling hand on the policy of those municipal departments whose work affects the development of the city plan.

Excess Condemnation of Land

Among the measures affecting the municipality's ownership and control of land, excess condemnation, or the taking by a municipality through its power of eminent domain of more land than is needed for the actual construction of an improvement, has been urgently pressed upon the law-making bodies as the most vital need in connection with city building. As a financial measure it has been urged that its use under proper conditions would allow the city to recoup much of its outlay in an improvement by the sale of surplus land at a higher price. It has also been pointed out that only by a larger right of condemnation can the city control the use of land abutting on parks, parkways or widened thoroughfares and thus secure the full commercial as well as the esthetic return from the improvement.

In 1904 the legislature of Massachusetts ordered an investigation into European methods of taking land and as a result of the report by the commission appointed, it passed the first legislation in which was incorporated the principle of excess condemnation, limited narrowly, however, to giving the city the power to take "by right of eminent domain the whole of any estate, part of which is actually required for the laying out, alteration or location by it of any public work, if the remnant left after taking such part would from its size or shape be unsuited for the erection of suitable and appropriate buildings and if public convenience and necessity require such taking."

Ohio, in 1904, and Maryland, in 1908, adopted the excess condemnation principle in legislation for the protection of parks, parkways and approaches to public buildings and only for these specific purposes.

The Virginia assembly of 1906 gave power to municipalities to take more than was necessary "when the use of the land proposed to be taken would impair the beauty, usefulness or efficiency of the parks, plats or public property, or which by the peculiar topography would impair the convenient use of a street or render impracticable without extra expense the improvement of the same."

Connecticut legislation on the subject has already been noted under the discussion of plan commissions.

By the acts of Pennsylvania in 1907, cities are allowed to acquire by appropriation private property within 200 feet of parks, parkways and playgrounds. Up to 1912 there was no use made of any of this legislation, but in that year Philadelphia appropriated land in excess of actual needs in connection with the Fairmount Parkway. The question of the constitutionality of the act was raised and the lower court decided that the city could make the taking, but the supreme court of the state overruled this decision, holding that the act was unconstitutional.

Because of the doubtful constitutionality of excess condemnation acts, the legislatures of New York, Massachusetts and Wisconsin passed resolutions referring to the people the question of adopting an amendment to the constitution containing the principle of excess condemnation, and the people of Massachusetts and Wisconsin have already adopted that amendment. The New York amendment was defeated, but another has since been passed by the legislature and was accepted by the people in the fall of 1913. It is interesting to find that the sweeping language of the first New York amendment providing that when private property is taken for public use by a municipal corporation "additional adjoining and neighboring property may be taken under conditions to be prescribed by the legislature by general laws; property thus taken shall be deemed to be taken for a public use," has been greatly modified and follows closely the language of the Massachusetts amendment, providing that cities may take "more land and property than is needed for the actual construction in the laying out, widening, extending or relocating of parks, public places, highways or streets; provided, however, that the additional land and property so authorized to be taken shall be no more than sufficient to form suitable building sites abutting on such park, public place, highway or street."

Assessment for Special Benefit

The peculiarly American method of distributing the cost of improvements is by assessment on the property specially benefited by the improvement. Originally employed chiefly to defray the cost of street improvements, such as surfacing, grading, curbing, etc., it is now the very general practice, except in some of the New England and Southern States, to include some or all of the cost of land taking as one of the items of improvement cost which may be assessed, whether the taking is for a street widening or extension, or for parks or parkways. The principle has been most thoroughly tested under the park laws of Minnesota and Indiana and in the provisions of the charter of Kansas City, Mo., relating to parks.

In Ohio, the supreme court long held that special assessments to pay the cost of land taking violate the state constitution, but in 1913, a constitutional amendment was adopted which makes the law of Ohio uniform with that of the rest of the United States.

Condemnation Procedure

The legislation which has brought very helpful changes in methods of condemnation procedure is of the sort that was described at the outset of this article and easily escapes attention. We have already noted the legislation in Massachusetts which allows the introduction in evidence of assessed valuations in condemnation cases. The same legislature directed that condemnation cases should be advanced for speedy trial, thus eliminating one cause for the great delay in putting the city in possession of land taken by eminent domain. In the same year Oregon passed legislation expediting the possession of land by the municipality in condemnation cases, and minor improvements in condemnation procedure were brought about by legislation in Maryland, Kansas and Missouri.

Municipal Regulation of Private Land

There has been but little legislative activity in the field of regulation of privately-owned land by the municipality, apart from the provisions concerning the height of buildings adopted in Boston in 1904 and 1905, and in the federal capital in 1910. The Boston regulations prescribe an arbitrary limit of 125 feet for all buildings in

the city and establish two building zones in each of which buildings have an arbitrary maximum height and are limited further by the width of the street on which they are located. The Washington regulations have developed to a greater degree these same principles. It is worth while enumerating some of them:

Section 5. No building shall be erected, altered or raised in the District of Columbia in any manner so as to exceed in height above the sidewalk the width of the street, avenue or highway in its front, increased by twenty feet.

No building shall be erected, altered, or raised in any manner, as to exceed the height of 130 feet on a business street or avenue as the same is now or hereafter may be lawfully designated, except on the north side of Pennsylvania avenue between First and Fifteenth streets, northwest, where an extreme height of 160 feet will be permitted.

On a residence street, avenue or highway no building shall be erected, altered, or raised in any manner, so as to be over 80 feet in height to the top of the highest ceiling joists or over 85 feet in height at the highest part of the roof or parapet, nor shall the highest part of the roof or parapet exceed in height the width of the street, avenue, or highway upon which it abuts, diminished by 10 feet, except on a street, avenue, or highway 60 to 65 feet wide, where a height of 60 feet may be allowed; and on a street, avenue or highway 60 feet wide or less, where a height equal to the width of the street may be allowed.

From this casual survey it is evident that a start has been made in every field of legislative activity affecting city planning. With the increase in number and experience of city-planning commissions we shall expect both helpful amendments in the legislation creating the planning agencies and a greater body of precedents to facilitate the execution of city plans.

FINANCING A CITY PLAN

By Nelson P. Lewis,

Chief Engineer, Board of Estimate and Apportionment, New York City.

It seems rather odd that intelligent people living in rich and growing cities should have been so slow to realize that the orderly development of such cities requires something more than a scheme of rectangular blocks of certain conventional size and shape with an occasional open space and a few extra wide streets thrown in. They are, however, beginning to understand that something more in the way of a plan is needed, and that the problem is one to the solution of which the most expert skill, the widest experience and the most careful study of economic and social conditions must be devoted. This awakening was first evidenced by efforts to correct defects in cities as they already existed. This required courage and involved enormous expense, often so great that the task seemed hopeless, and not infrequently interest waned and disappeared. Curiously enough, the idea that if old defects could not be corrected a repetition of the mistakes could be avoided was slow to take hold. With all the talk about and interest in city planning, most of our cities have gone ahead consistently repeating their old blunders and failing to profit by them. Having found that the correction of mistakes was costly, perhaps they thought, if they thought at all, that the avoidance of further mistakes would also be expensive, or at least that a good plan which would make intelligent provision for future development would cost more than the kind of plan with which they were familiar. That such a plan would be worth more, is not a debatable question. But would it cost more? It need not, and it might cost less.

To discuss the relative merits of different kinds of treatment is beyond the scope of this paper, which is to deal only with the question of how the expense of carrying out a proper plan is to be met. In considering this question, the cost of carrying out a plan will be considered, not the cost of its preparation. Considerable money may be spent upon the preparation of a plan, but it will be trifling in comparison with the cost of carrying it out. Let me say in passing that continuous study of the past growth of the city, of the movement

of its population, the changing of land values, and other details of this character, will often prove of more real value in determining the plan for future growth than the inspiration of experts called in for the occasion who are expected to solve the problem in offhand fashion and submit a solution within a month or so. Emphasis may be placed upon one general principle which should control the development of a plan for future growth, for it will have an important bearing upon the manner in which the cost of carrying it out is to be met. That principle is this: The plan should include a general system of arterial streets which will permit easy movement from any part of the city to any other part; it should recognize the vital necessity of transportation by water or rail or both, as the case may be, and should provide for the creation and expansion of railway and shipping terminals and the connection of different terminals and for the development of manufacturing plants which can be readily served by these transportation lines; it should provide for open spaces for healthful recreation, not concentrated in one part of the area under consideration, but so distributed as to be within easy reach of the future population; it should so arrange the main thoroughfares that public or semi-public buildings may be so placed when the time comes for their erection that they will be not only convenient of access, but that they can be seen, assuming that they will be of such a character that they should be seen and not be hidden away. So much the plan should include and little, if any, more. The precise location and dimensions of every subordinate residential street should not be placed upon the plan at this time. The larger the areas between main streets, the more readily can they be adapted to such detailed planning as seems best when the time arrives. The more latitude allowed for variety of treatment within such areas, the more attractive and the more livable will this part of the city be. In most American cities the conventional lot unit is a rectangle 25 feet wide and 100 feet in depth. Is that the most rational and the most economical unit for this purpose? It has become a habit, but is it anything more? Will it be considered the most advantageous size and shape of lot twenty years from now? It is at least doubtful. Why, then, fill in the details of the plan to such an extent as to force upon the next generation a development which may prove undesirable and uneconomical? The natural drainage areas will control to a large degree the location and direction of the main streets.

The main sewers which will be built in them will provide for a certain estimated population and a certain proportion of impervious area, and this will not be materially affected by the kind of subdivision which will ultimately take place. Meanwhile, individual developers of real estate may plan and carry out improvements according to their own ideas and to meet the public demand, provided always (and this proviso is of the utmost importance) that their plans for such developments shall first be submitted to and approved by some authority which shall exercise a wise discretion and be clothed with ample power to enforce its requirements.

In considering the manner in which the cost of carrying out such a plan is to be made, namely, the cost of the acquisition of the land needed for streets, open spaces, parks, sites for public buildings, etc., and of the physical construction and improvement of the streets, one fundamental principle may be laid down, and that is that the burden of cost shall be in proportion to the benefit. In trying to apply this general principle we are at once confronted with a great variety of conditions. In the small town—and no town is so small that it does not need a plan—the creation of a public square about which or in which the chief buildings, including, perhaps, the churches, are to be grouped, is of general interest and benefit to the entire community. All public activities, and even recreation and amusements, will center there, and it will be conceded that the town itself should properly pay the expense. The most valuable property will be that fronting upon this square, so that if its creation results in special benefit to the surrounding property, that property will bear a correspondingly large burden. If the main street of the town needs a widening, straightening or extending, the benefit will again apply to the entire community.

But the town grows and becomes a city. Other main streets must be provided, other centers of activity or recreation are needed. These new projects will still result in some general benefit but in a large measure of special benefit. The effect upon the property in their neighborhood will be proportionately greater and more exclusive than in the case of the first village green or town square. The entire community will doubtless feel the benefit of the new improvement but in less degree, as it tends to create a new centre and diffuse, rather than concentrate, business and other activities. The town can still afford to contribute toward the expense, but the fair proportion to

be assumed by it will be less in proportion to the amount of special benefit resulting to the particular locality. The ability of the town or city to contribute toward the expense of such undertakings will vary in different cases, depending upon the other burdens which it may have assumed or to which it may have pledged its credit, depending upon whether the city is deriving substantial revenue from privileges granted to public service or other corporations or individuals, depending upon whether it is conducting certain activities at a profit or whether they are being conducted at a loss for the benefit of the public using them, and depending especially upon whether the city has already borrowed to such an extent that an issue of further obligations would be likely to impair its credit. Again, it remains for the town or city to determine, if it is to pay all or a portion of the cost of any particular improvement, and even if its credit is such that it can borrow the funds necessary, whether it will issue its bonds for a long term of years, or whether it will carry out the improvement on a cash basis by providing for it in one or more tax levies or by short-term bonds which will be retired soon after the completion of the work.

A large city is really a group of towns or smaller cities which have grown together. While there are certain great projects that are commonly deemed to be of general interest, there are few which do not involve some special benefit to a particular locality. If a new park is to be created, it needs no argument to prove that the propererty in its immediate vicinity will acquire a fixed character and that its value will be substantially increased. If a new and important public building is to be erected, there will be much interest in the selection of the site, and as soon as it is determined it will have a marked influence upon the property in its neighborhood, and it would not be difficult to give instances where, before the building was completed, the value of the surrounding property had at least doubled, especially if the public building is surrounded by considerable open space. If the city were, as some of our great cities now do, to construct a new rapid transit line bringing hitherto vacant lots within easy access of its business center, or if it were to provide a new waterway permitting docks and basins to be created in hitherto inaccessible swamps or lagoons, the effect upon these suburban lots and useless swamps can readily be foreseen. Now, if the property in the neighborhood of the new park, the new public building, the new rapid

transit line or the new waterway is to be increased in value by some act of the city, and if the owners of this property are to be enriched by this act, is it fair or just that these owners shall contribute no more per unit of assessed value toward the cost of the improvement which is to enrich them than do the owners of other property more slightly if at all, affected? To determine the precise amount of benefit will be well nigh impossible, but the recognition of the fact of the benefit and of the obligation to pay a special share of the cost in return for that benefit seems only a question of elementary justice.

In case of local streets having a width of 60 feet or less, it would be difficult to show any but local benefit, as such streets are designed to furnish light, air and access to the abutting property, and that property could fairly be required to pay the entire cost of the acquisition and improvement of the street.

A word as to the expense of acquiring streets. This is one of the most serious burdens placed upon the urban property owner, and it is difficult to understand why the taking for street purposes of a strip of land needed to give access to lots fronting upon the proposed street should involve payments at city lot prices for the land so taken when, unless it be taken, both it and the abutting lots would be nothing but acreage property. The city of Liverpool has had since 1908 a law which enables the city to take land for street purposes up to a width of 36 feet without compensation, while if the municipal authorities determine that in the case of a principal street 80 feet is required, no compensation need be made except for land taken in excess of 80 feet. This law, however, applies only to cases where the land to be taken and that which will abut upon the new street are in the same ownership and the owner will simply be furnishing the land to provide access to his own property.

But we are getting ahead of our story. In the case of main streets, which should be the first ones to be laid out and acquired, it is assumed that these will be of generous width for the reason that they will be used for neighborhood business and will accommodate neighborhood and even through traffic. The benefit derived from them will, therefore, be somewhat more than local, and the expense of their acquisition and improvement could be distributed over a somewhat greater area. In some cases there may be such general benefit as to justify the assumption of a part of the expense by the entire city.

To determine the exact proportion to be assessed upon the frontage, the part to be spread over a larger area, and the portion, if any, to be taken by the city at large, will often be difficult. The plan proposed by the writer, which appears to have met with quite general approval, is to assess upon the immediate frontage the entire cost of acquiring local streets up to a width of 60 feet. A street more than 60 feet wide will undoubtedly be somewhat more valuable to the abutting property, and the owner of that property should not, therefore, be relieved of all expense of acquiring a width greater than 60 feet. A fair division would be to assess upon the frontage that proportion of the cost of the wider street represented by the ratio of 60 feet plus one-fourth of the excess in width over 60 feet to the total width of the street, provided, however, that when the abutting property shall have been assessed for the equivalent of 80 feet in width of any street, no further local assessment be levied. A secondary area of benefit could properly extend half the distance to the next wide street, but the assessment should be decreased as the distance from the street increases.

The suggestions already made obviously apply to the location of new streets in territory slightly, if at all, developed. Sometimes a new main street will follow an old road which must be widened, involving damage to buildings, and a more generous treatment is needed. In applying the rule above given, it has been suggested that in such cases it would be fair to estimate separately the value of the land to be taken and the damage to the buildings and to add to the width of the street to be acquired a percentage equivalent to the ratio of the estimated building damage to the estimated land cost, obtaining an equated width of street to be used as above in determining the amount of frontage assessment and the amount to be placed upon a larger district.

But sometimes it will be necessary to cut through new and to widen old streets in the built-up portions of the city. In such cases the width of the street may not be an index of the local or general benefit which will follow. It may be that the cutting through of a 60 foot or even a 50 foot street will result in little local and of large general benefit. In these cases the amount of local assessment might fairly be determined by the land value only, the damage to buildings being included in the assessment to be spread over the larger area of benefit, or even in some cases to be assumed by the entire city. Such

projects might sometimes be in part or wholly financed by buying all of each parcel disturbed or one or more entire tiers of lots and selling the frontage on the new or widened street. The damages paid for taking portions of lots are likely to approximate the actual value of the whole plot, although the owner may be left with a remnant which he could sell for more than the value of the entire lot before the improvement. For the city to take advantage of the increase in value caused by its own act seems only fair. This would, of course, involve a larger capital outlay, and it would also require the right of excess condemnation, a right which is possessed by very few cities in this country and which appears to be reluctantly granted by state legislatures. But this is a big subject worthy of a special article, and cannot be discussed in this connection.

The aim of the writer is simply to make it clear that the cost of carrying out a rational city plan is not prohibitive and is within the reach of almost every city if the fundamental principle of distributing the cost according to benefit is consistently adhered to. A policy which is manifestly just will ultimately win popular favor provided it is consistently followed. The details of the plan for distributing the expense will vary in different cities, and no plan should be adopted until it shall have been carefully worked out and tested as to its fairness. Even then there will inevitably be special cases which will require special treatment, but efforts to secure special treatment for cases which are not exceptional, unless it be as to the position and political importance of the owners of the property affected, should be stoutly resisted, however powerful may be the influences exerted to that end.

In a paper presented to the Fourth National Conference on City Planning held in Boston in 1912, the writer laid down a few general principles which he believed should govern the distribution of the cost of city improvements. He has seen no good reason to modify them, and they will be repeated as the conclusion of this discussion.

1. Where there is local benefit, there should always be local assessment.

2. The entire city or the metropolitan district should bear no part of the expense unless the improvement is in some degree of metropolitan importance and benefit.

3. Assessments should not be confined to the cost of acquiring and improving streets, but should extend to any improvement which

will increase the value of the neighboring property, and should be apportioned as nearly as possible according to the probable benefit.

4. A workable policy once adopted should be consistently adhered to.

5. The determination of a policy and its application to each case should be entrusted to a permanent technical bureau or to a board composed of men especially qualified, whose terms of office should so overlap as to insure continuity of policy and purpose.

RIVER-FRONT EMBANKMENTS

By Leslie W. Miller,
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To the urban river the embankment is an absolute necessity; unrecognized, it is true, in the case of most cities until so late as to make its realization needlessly difficult and costly but none the less sure of ultimate recognition for all that. The most obvious reason for the neglect of the river fronts of most American cities is doubtless public apathy, pure and simple, and apathy from which a good many other things suffer as well as waterways, but a fundamental misconception of what is charming and desirable in waterways generally is, I believe, partly responsible too.

The beauty of the naturally winding stream with its banks untrammeled by any artificial restraints, and even of the estuary with its tides in ceaseless ebb and flow, is dinned into us so persistently in our early years that it is very hard for us to get over the feeling that our first and last duty to so obviously natural an object as a river is to let it alone, and on the whole there is hardly anything that we are taught to dread so much, and to avoid so scrupulously, in topography as in conduct, as the artificial. It all comes back, of course, to the fact of the overlapping or the confusion of the conflicting claims of city and country. You can have natural beauty in the country and the artificial easily becomes the impertinent it is true, but the city is distinctly and unreservedly a product of human ingenuity and artifice and the more frankly its true character is expressed in its constructions the better. The river has as much right to come into the city as the people have, but like them it should leave its rustic ways behind; no more meanderings, and no more mud banks. Urbanity in rivers, as in men, means tidiness and culture, and culture means restraint and adaptation to environment.

I put the esthetic reason first because it is evidently the most cogent in spite of the reluctance of many well-meaning advocates of civic betterment to accept this conclusion and the tendency among people generally to underestimate its claims, but the sanitary and economic reasons are just as sound and, in some quarters, more read-

ily admitted. The neglected urban river promptly degenerates into an open sewer, as everybody knows, and even if the remedy of intercepting sewers does not necessarily imply embankments the civic prudence that provides the one is pretty sure to suggest the other, especially where the sanitary improvement will naturally follow lines that involve a good deal of river bank reclamation and that obviously coincide with desirable parkway extensions. Besides, the public health is not concerned exclusively with what is underground, the sewer is all right but so is the open sunshine and the enterprise that builds the one will demand the other. Now the river bank is the natural place to take the air the world over. The water courses provide, always and everywhere, the most accessible and inviting of pleasure grounds, and the saddest mistake that the growing town ever makes in the way of wasting its resources through want of foresight is its neglect of the river which almost universally runs by it or through it.

It is usual to blame the railroads for the squalid water fronts that are far too common in American towns, but this is a lame excuse and, as a matter of fact, there ought to be a good lesson rather than a cause of complaint in the present perfectly natural and, as far as it goes, perfectly proper development of the waterways as commercial thoroughfares. The railroads did well to appropriate the river banks to their own uses; the only trouble is that the cities have done ill in not seeing to it that their rights were respected and their interests advanced as well as those of the railroads, by the kind of treatment which the river banks received. Even where it does not go underground as it usually will in following the embankments of great cities, a railroad is not necessarily an eyesore and a nuisance, by any means, and as electricity replaces steam there will be less and less excuse for such objectionable qualities as we have been accustomed to regard as their inevitable accompaniments. A very little experience with such supervision as is already exercised by art juries and art commissions has taught us that bridges, viaducts, etc., may be real architectural embellishments just as well as unsightly blemishes if the public will insist on having its rights respected and a decent regard for appearance recognized as a legitimate factor in the designing of such structures. Few sights are more disheartening than the ragged edges, of which the river front is sure to be raggedest and most unkempt, of the vast majority of American towns which are fortunate

enough to have any railroad facilities at all. But it is worth remembering that this untidiness has nothing to do with the necessities of the case and that in countries where these things are better understood and the demands of good taste more respected, the railroad and its adjuncts constitute not only unobjectionable, but very often indeed, exceedingly impressive features of the place.

It is coming to be so here in the case of the passenger terminals of the great cities and it is hardly conceivable that the advantages of a dignified treatment of so potent a force in modern civilization will long be limited to a single feature or to a few exceptionally favored localities. The railroads have not only appropriated the river banks, they are rivers themselves; they have contributed enormously to the growth of the towns they skirt—in unnumerable instances they may almost be said to have actually created them—and they have a right to a good and prominent place in their plan. It is all wrong that they should look as they often do, as if they were sneaking in by a back door apparently ashamed of themselves and the part they play in the economy of the place, when they might come in with all the pomp of conquerors. No, there is no need of the squalid railroad environment on the river bank or anywhere else and the fact that the railroad is already there cannot be accepted any longer as an excuse for neglect and unsightliness in what ought to be the most attractive part of the city. But, in all great cities at least, and in many of the smaller ones too, for that matter, this means that there will be embankments with the railroads underground, as they are in Paris and London. It may, I think, be regarded as settled that the subway is indispensable, for the urban embankment is nothing if not a parkway, and the parkways with railways in them or over them are almost unthinkable, but underground is the best place for the railroad anyway, whenever you can afford it, and this is one of the times when you have got to afford it. It would be a mistake, however, to regard the expense of such an improvement as an extravagance. Considered as an investment pure and simple, nothing pays a city better than this kind of reclamation of what is bound to be about the best part of it, if it is not treated in such a way as makes it about the worst. It is curious how the very names by which they are known indicate which of these two characters has been developed in a particular locality. Water front spells dignity and charm almost anywhere while waterside has come to be a synonym for

much that is most unspeakable. The river, which is largely responsible for the very existence of the city, is sure to play a prominent part in its life and it is almost inevitable that where its neighborhood is not treated with becoming respect it should promptly degenerate into a slum. Now, all esthetic considerations aside, slums do not pay. Even on the lowest possible ground of dollars and cents, the reclamation, or conservation, of its river banks presents as good an opportunity for profitable business as a city can have. Money must be spent of course—all improvements mean capital invested—but in the long run nothing pays like judicious improvement. The civic betterment, which the present day is so much occupied in discussing, is chiefly concerned with three things uniformly neglected in the early days of almost every center of population and earnestly striven for when civic consciousness is at last awakened. None of the three, housing, circulation or recreation, will take care of itself. The character of residential sections, the adequacy of avenues of communication, and the provision and proper location of parks and playgrounds are all things which if secured at all are the result of deliberate and arbitrary interference on the part of the constituted authority of the municipality with the "natural" tendencies which unregulated individual interests are sure to develop.

The river embankment question embodies so obviously and in such even proportions all three of these phases of the civic betterment problem that it may fitly serve as the type, and not unfairly be made the test, of progress in the development of civic ideals.

The embankment is first of all a parkway, but this implies an avenue, if not of commerce then of recreation, possibly, and even preferably, under certain conditions, both. Certainly the promotions of such forms of commercial distribution as belong of right to the riverside, and provision for which by means of commodious and attractive quays would almost of necessity form a prominent feature of the wall which fixes anew the actual margin of the stream, should be recognized as a most important factor in the whole proposition. Curiously enough this is one of the features of the subject that is least understood and such active opposition as the improvement is likely to encounter usually comes from the dread of injuring—after the railroads—the commercial activities which make more or less use of the localities in question. This is all a mistake of course. The quays which will form an essential feature of the embankments will

take much better care of the traffic that belongs to the water than is possible under the unkempt conditions that precede the improvement and the active life of this increased traffic will always constitute one of the chief charms of the results attained.

And the neighborhood itself, what of that considered as a place to live? Are not the advantages that will accrue to it from the real estate assessors' point of view the most obvious and compelling after all? We have fought very shy of the urban housing question so far, contenting ourselves mainly with schemes for relieving congestion, which means planning and hoping to induce people to live as far away from their work as possible. This is well enough as far as it goes, and it must be admitted that the progress which rapid transit has made in recent years has enabled it to go pretty far, but however far this idea is carried and however extended the suburbs may become, it must not be forgotten that urban life means condensed population and while it is quite true that thousands of citizens will be able and ready to live at an indefinite distance from their places of business, the millions who do the real work will never have either the means or the inclination to do so, and the problem of city housing will still remain substantially the same problem that it has always been.

This means that the city is not to be made habitable by schemes to take the people out of it. Places for them to live must be provided in the city itself or the question of urban residence is not faced at all. Now urban housing of a condensed population means flats and family hotels; it cannot possibly mean anything else. And to talk about substituting cottages in Arcadia for homes in the city is simply to beg the whole question. City housing properly speaking then is successful to just the extent that it can be kept central and no city can afford to have waste land in its centrally located portions. The river embankment is sure to be central; if properly treated it is sure to be attractive, and the fairly big buildings in which the real townspeople of the city of the future will certainly live cannot have a better location than that which the embankments will provide.

Materially, then, as well as morally, from the point of view of the resident as well as that of the trader, for the sake of convenience and utility as well as of beauty and the public health, no city can do better than take care of its water fronts and no fairer measure of its civic consciousness and civic pride will be available than the spirit in which it improves the opportunities which the river embankment affords.

TOWN-PLANNING LIBRARY[1]

By John Nolen,

Landscape Architect, Cambridge, Mass.

The actual achievements of American cities in city building, in the sense in which that term is used in Germany, or in laying out and constructing garden suburbs, as the English town planners define them, is as yet relatively slight and unimportant. The promise for the future, however, is bright, because we realize that changes in our cities and towns, if they are to be far-reaching, must spring from the people, and be at bottom an expression of the life of the people. We do not want mere experts' cities unless these various experts—engineers, city planners, landscape architects and architects—show themselves capable of expressing and interpreting the best impulses and highest conceptions of business men, of citizens, and of fathers and mothers and children for true city planning, and make cities that will serve the needs, physical and spiritual, of the people.

By what steps are we likely to get results? One of the principal is to recognize that changes in our practice can be brought about only by changes in public opinion. We must find more ways and better ways of forming intelligent public opinion, and of giving it effective expression.

One of the most useful and available methods of arousing, informing and directing public opinion is through the public library. Each city or town should have a representative collection of books on this subject, made easily available to the casual reader as well as the student. While such a library need not be large, it should give comprehensive surveys of the subject from different points of view, and cover all the essential elements.

Town planning in the modern sense is so new and vital a topic that much of the best material is in current periodicals, reports, and proceedings of national associations. Books, with few exceptions, are not up to date. The advances in the profession are being made by men who are too busy to formulate their results in a volume.

[1]The title of this paper should be understood as including all subjects allied to town planning, such as housing, sanitation, etc.

A town library ought to give clear and definite general surveys of city planning from a number of professional viewpoints; it ought to give the reader an opportunity, for example, to know how city planning is viewed by the engineer, the architect, the landscape architect, the health expert, the sociologist, the publicist, the legislator and the city administrator. To this should be added, perhaps, the view which might be called that of "the man in the street."

The view of the engineer is particularly well expressed in the German treatises on the subject, especially by Dr. Stübben and Dr. Robert Wüttke. There are also valuable articles and reports by Nelson P. Lewis, B. A. Haldeman, Frank Koester, F. L. Ford, J. R. Freeman, Bion J. Arnold and Calvin Tomkins. A useful volume from this point of view is entitled, *Sanitary Roanoke*, by Emerson and Whitman.

From the point of view of the architect the two most valuable general surveys are those of H. Inigo Triggs, *Town Planning, Past, Present and Possible*; and Raymond Unwin, *Town Planning in Practice*. The writings of D. H. Burnham and E. H. Bennett, Arnold W. Brunner, J. M. Carrère, Grosvenor Atterbury and Robert S. Peabody are also of value.

Among landscape architects the reports and papers of Frederick L. Olmsted give a systematic and up-to-date survey of city planning, its scope and methods. The volume on the life and work of *Charles Eliot, Landscape Architect*, gives much that is valuable, although it does not discuss the more recent developments in town and city planning. *Replanning Small Cities*, by John Nolen, contains six typical studies, from the point of view of the landscape architect, of six representative American cities, all with a population of one hundred thousand or under. The books by Charles Mulford Robinson—*Modern Civic Art, The Improvement of Towns and Cities*, and his reports, are all of great value from this point of view. Mention should also be made of a modest little primer entitled *Landscape Architecture*, by H. W. S. Cleveland. One of the most complete reviews is that of Mr. Thomas H. Mawson, entitled *Civic Art: Studies in Town Planning, Parks, Boulevards, and Open Spaces*.

City planning from the point of view of the health expert can be understood and appreciated by consulting such books as *Sanitation and Sanitary Engineering*, by William Paul Gerhard; *The Health of the City*, by Hollis Godfrey; *Civics and Health*, by William H. Allen; *Municipal Engineering and Sanitation*, by M. N. Baker.

There are many books and many writers that approach town and city planning from a point of view which may be termed that of the sociologist or publicist. Important among these are Frederick C. Howe, Charles Zueblin, Sylvester Baxter, E. E. Pratt, Dr. S. M. Lindsay, ex-President Charles W. Eliot, Joseph Lee, Jane Addams, Walter D. Moody, Patrick Geddes, Ebenezer Howard, and Canon and Mrs. S. A. Barnet.

From the point of view of business men, there are comparatively few books. Among the best is that of Richard M. Hurd, *Principles of City Land Values*. Mention should be made, also, of the writings of Dr. E. E. Pratt of New York University, and papers by H. D. W. English, formerly president of the Pittsburgh Chamber of Commerce. Especially interesting is the address which he prepared for the National Municipal League, entitled *The Functions of Business Bodies in Improving Civic Conditions*.

Legal conditions are often the determining ones in city-planning movements; therefore the point of view of the lawyer and the legislator is one that should not be overlooked. The two men in this country who have written most frequently and most ably are Andrew Wright Crawford and Flavel Shurtleff, both active in the National Conference on City Planning. Among English books may be mentioned especially *A Practical Guide to the Preparation of Town Planning Schemes*, by E. G. Bentley, and S. P. Taylor. In German the most useful volume is the *Kommunales Jahrbuch*, by H. Lindemann and A. Sudekum.

Much of the best material giving the views and recommendations of city administrators is to be had only in annual messages of mayors of various cities, and in other city documents. Mayor W. A. Magee of Pittsburgh and ex-Mayor John E. Reyburn of Philadelphia, have both written on the subject. Mr. Thomas Adams of the local government board, England, has prepared a number of valuable treatises and papers on the British town-planning act.

The point of view of the man in the street can be had from the writings of B. C. Marsh of New York, especially his *Introduction to City Planning*; Charles Zueblin, Sylvester Baxter, and G. D. Gallup. The latter has formulated a number of interesting statements for the Boston Chamber of Commerce. The papers of T. C. Horsfall, of England, are also important contributions, from this point of view.

In addition to the general surveys covering in a more or less general way the whole subject of town and city planning, but from special points of view, a town library ought to contain a few of the more important books dealing with each of the essential elements of town planning. These essential elements may be stated, for convenience, as follows: (1) the approaches to a city; (2) waterfronts; (3) city streets; (4) public buildings; (5) parks, parkways and playgrounds; (6) housing—garden cities and garden suburbs; (7) transportation.

The following is a brief list of books or articles dealing somewhat directly with each of these subjects:

1. Approaches
   - Modern City Gates. Huger Elliott.
   - The Terminal—The Gate of the City. W. Symmes Richardson.
   - The Problem of the Modern Terminal. Samuel O. Dunn.
2. Water fronts
   - A Study of Some Representative European Ports. F. L. Ford.
   - Holiday Study of Cities and Ports. R. A. Peabody.
   - The Port of Liverpool; Its Rise and Progress. Published by the Mersey Dock and Harbor Board.
   - The Port of Hamburg. E. J. Clapp.
   - Reports of the Dock and Harbor Board. Boston.
3. City Streets
   - Width and Arrangement of Streets. C. M. Robinson.
   - The Planning of City Streets. B. Antrim Haldeman.
   - Street Traffic Regulations. William P. Eno.
   - Shade Trees in Towns and Cities. William Solotaroff.
   - And especially the papers, treatises and reports of Nelson P. Lewis, chief engineer of the board of estimate and apportionment of New York City.
4. Public buildings
   - Der Städtebau nach seinen künstlerischen Grundsätzen. Camillo Sitte.
   - Papers by Arnold W. Brunner.
   - The Modern School House. Prof. A. D. Hamlin.
5. Parks, parkways and playgrounds.
   - The Writings of F. L. Olmsted, Sr.
   - Reports by Olmsted Brothers.
   - Charles Eliot, Landscape Architect. C. W. Eliot.
   - Public Park Facilities in the United States. John Nolen.
   - American Playgrounds. E. B. Mero.
   - Amerikanische Park Anlagen. Werner Hegemann.
   - Proceedings of the American Society of Landscape Architects.

6. Housing. Garden cities and garden suburbs.
   Housing Reform. Lawrence Veiller.
   Model Tenement House Law. Lawrence Veiller.
   Proceedings of the National Housing Association. Bulletin of the Bureau of Labor. G. W. W. Hanger.
   Report on Model Houses. George N. Sternberg.
   Garden Cities of Tomorrow. Ebenezer Howard.
   Town Planning in Practice. Raymond Unwin.
   Practical Housing. J. S. Nettlefold.
   The Housing Handbook. W. Thompson.
   Housing Up To Date. W. Thompson.
   Handbuch des Wohnungswesens und der Wohnungsfrage. Dr. Rudolph Eberstadt.
   Housing Survey. Carol Aronovici.
7. Transportation.
   Papers, Treatises and Articles by M. R. Maltbie; Bion J. Arnold; H. C. Wright; E. P. Goodrich.
   Street Traffic Regulations. W. P. Eno.
   Proceedings of the National Conference on City Planning, and the American Society of Civil Engineers.

Among the proceedings of national associations which should be included in a town-planning library are the following, most of which have already been mentioned. National Conference on City Planning; American Society of Civil Engineers; National Housing Association; American Civic Association; American Institute of Architects; American Society of Landscape Architects; Royal Institute of British Architects.

The most valuable and complete check list of references on city planning has been recently published by the special libraries association, being compiled by the division of bibliography, Library of Congress, and the department of landscape architecture, Harvard University.

The publications giving most attention to city-planning topics regularly are: *The American City*, New York; *Landscape Architecture*, New York; *Town Planning Review*, Liverpool, England; *Garden Cities and Town Planning*, London, England; *Der Städtebau*, Berlin, Germany; *Engineering News*, New York; *Municipal Journal*, New York; *American Architect*, New York.

The above list is not in any sense complete, and others would probably make different selections. It is believed, however, that the list as outlined would prove a useful one for a town or small city

library which wished to appeal to and provide for the general reader. The only large classification that has been omitted is the list of town- and city-planning reports, about a hundred in number, prepared by various engineers, architects and landscape architects for particular cities. Such a list can readily be had. From the list given, it would be comparatively easy for the librarian or the reader to follow any subject more in detail, and to get additional references.

BOOK DEPARTMENT

NOTES

AMERY, L. S. *Union and Strength.* Pp. vi, 327. Price, $3.50. New York: Longmans, Green and Company.

BARKER, D. A. *The Theory of Money.* Pp. vii, 141. Price, 40 cents. New York: G. P. Putnam's Sons, 1913.

In many particulars, this small volume follows the traditional treatment and may be viewed as a good summary of current theory—as perhaps its author intended. This has been carried so far in the first chapter that the enumeration of the functions of money seems to ignore its use in bank reserves, except by implication. Ample atonement is made for this, however, in later chapters.

In his discussion of the quantity theory, which he accepts in a modified form, the author does not fully agree with the conclusions of Professor Fisher and others, especially as to the cause of the "more or less definite ratio" of deposit currency to reserves, finding the reason not in the necessity of keeping a reserve, but in the force of custom. The argument on this point, as on others in the book, is supported largely by mathematical formulae rather than by statistical data.

No matter what may be the reader's theory of money, he will be surprised at the assertion (p. 9) that "the money commodity of modern commerce is a fairly stable one as regards its value." The statement (p. 40) that banks in the United States must keep their reserves in "gold" is a rather obvious error, since even national banks include silver and greenbacks in their reserves, while the state banks use also the national bank notes.

BARNARD, W. G. *Regulation.* Pp. 124. Price, $1.00. Seattle: Regulation Publishing Company, 1913.

The author of this book believes that the United States is standing on the threshold of a new era, an era even more wonderful than the mechanical era. This new era is to be one of political progress, and will be ushered in by the discovery of a remedy for the politico-economic problems of the time. This remedy is regulation. As part of its program there are to be established numerous government boards: A national land board to fix a tariff of maximum land rents and of maximum prices for raw materials; a national wage board to fix a tariff of minimum wages; a national profit board to fix a tariff of maximum profits; and a national money board to fix a maximum interest rate and to issue a new paper currency as a substitute for the gold standard, the gold then to be sold to the people at the market price.

BOWMAN, ISAIAH. *Forest Physiography.* Pp. xxii, 759. Price, $5.00. New York: Jno. Wiley and Sons.

Professor Bowman's *Forest Physiography* is a good example of the steadily advancing movement for the harnessing of the sciences. Some years ago physiography had some resemblance to its great tool, the waterfall. It was beautiful to look upon (if you saw it), interesting to contemplate, but it turned no wheels, or at best but a very few. This book is physiography made useful for particular needs. In the introduction the author says:

"The title, *Forest Physiography,* does not imply a book on forestry but rather a book on physiography for students of forestry; and, as nearly as has seemed advisable from the nature of the subject, it has been prepared for their special needs. It is hoped, however, that the book may be of service to historians also, and to economists, since a knowledge of the physiography of the United States has heretofore depended upon one or two short and general chapters on the subject, or upon a study of hundreds of original papers and monographs."

A 105-page discussion of soils, is followed by 600 pages of description of the physiographic regions into which the author divides the United States.

If one wishes to know the character of the surface of any part of the United States, and also how it came to be as it is, this is the book to consult. It is profusely illustrated with pictures and maps, but perhaps the sociologists and historians will at times find a slight excess of technical physiography.

BRISCO, NORRIS A. *Economics of Business.* Pp. xiv, 390. Price, $1.50. New York: The Macmillan Company, 1913.

This is a practical work, quite devoid of theoretical discussion. It covers a group of topics that should appeal particularly to students in engineering schools in a way that should be really helpful to them. The material is so organized that its scope could readily be extended and its detail worked out more intensively by any good teacher. Within its range are included the following topics: management, cost accounting, efficiency methods, buying and selling, money and credit, trademarks and patents.

BRISSAUD, J. *A History of French Private Law.* (Translated by R. Howell, et al.) Pp. xlviii, 922, with map. Price, $5.00. Boston: Little, Brown and Company.

BROUN, A. F. *Sylviculture in the Tropics.* Pp. xviii, 309. Price, $3.00. New York: The Macmillan Company.

This is a technical book for foresters, but the wide experience of the author in forest service of India, Ceylon, and Sudan, makes the book bristle with facts of interest to geographers and economists. Chapters on soil, climate, the influence of man and the domestic animals, the influence of forests on climate and of plant and animal allies and enemies, are of wider interest than the technical remainder of the book. It repeats for the tropics the too well-known but insufficiently heeded temperate zone story of deforestation and soil destruction.

CHAMBERLIN, FREDERICK. *The Philippine Problem.* Pp. xiv, 240. Price, $1.50. Boston: Little, Brown and Company, 1913.

This book is not merely a statement of the Philippine question; it is a brief against granting political independence to the Filipinos. The book opens with a statement of the Philippine question as it existed in 1898, before the occupation by the United States. This chapter gives the salient facts in regard to the geography and peoples of the Islands and the conditions under the Spanish régime. The chapters following review what has been accomplished since 1898—the work of education, sanitation, disposal of the Friar lands, public improvements, commercial development, and so on. The final chapter is a statement of the problem as it exists today. This chapter gives a clear, concise, and generally, though not always, convincing statement of the agreements against granting political freedom. The author is not blind to the difficulties and dangers of continued control by the American Government, but he is strongly of the opinion that the evils under existing conditions are much less than they would be under any other arrangement.

DAVIS, BENJAMIN M. *Agricultural Education in the Public Schools.* Pp. vii, 163. Price $1.00. Chicago: University of Chicago Press.

Probably the best part of this book is a bibliography in the back in which the author tells something about 202 publications, some of which seem very enticing to one interested in education. The book is partly historical and partly descriptive, aiming to cover the forces that work for agricultural education. There are fourteen chapters in all, including one on the United States Department of Agriculture, United States Bureau of Education, periodic literature, text-books, etc.

The book succeeds admirably in doing what it sets out to do—orient the person who wants to start in to learn something on a subject of vital importance to the welfare of the nation. Considering the wide range of subjects covered, it is difficult to understand why he omitted the county demonstration agent, the most suggestive and possibly the more effective of all the agencies now making for agricultural education.

DEIBLER, F. S. *The Amalgamated Wood Workers' International Union of America.* Pp. 211. Price, 40 cents. Madison: University of Wisconsin.

This book is in two parts, the first of which deals with the history of the various wood workers' unions; the second deals with the formation, structure, and policies of the Amalgamated Wood Workers' International Union of America. The former traces the close relation between the power and attitude of the unions and the development of the wood working industries. The union discussed is particularly interesting, as it is international as well as an amalgamation. Moreover it covers a very important industry. The study is careful and thorough and is interestingly written.

FERNOW, B. E., HOWE, C. D., WHITE, J. R. *Forest Conditions of Nova Scotia.* Pp. xi, 97. Ottawa: Commission of Conservation.

The conservation forces of Canada are ahead of some of their American brethren in that they can get their reports printed. The commission of con-

servation at Ottawa publishes a book on the forests of Nova Scotia, by Messrs. Fernow, Howe, and White, which seems to be a fine example of what a Domesday book of forests should be. It gives descriptions, explanations, recommendations, illustrations, and a large size wall map locating all the forests of various classes.

FISHER, IRVING. *The Purchasing Power of Money.* Pp. xxiv, 502. Price, $2.25. New York: The Macmillan Company, 1913.

The second edition is a reprint of the first with the following changes: (1) Correction of occasional misprints; (2) addition of data for 1910, 1911 and 1912 in the tables on pages 304, 317, and the diagram between pages 306 and 307; (3) a change in figure 1 (p. 13) to make it conform to the facts for 1912; (4) changes in the table on page 147 with accompanying text to make the data correspond to the facts for 1912; (5) the insertion of an addendum on pages 492-493, giving the revised figures for deposits subject to check as calculated by Prof. Wesley Clair Mitchell; and (6) an appendix to the second edition (p. 494 ff.) on "standardizing the dollar."

GIBBS, MRS. PHILIP (ed.). *First Notions on Social Service.* Pp. 80. Price, 6d. London: P. S. King and Son, 1913.

This is a series of manuals edited by the Catholic Social Guild, the introduction of which is written by the editor. The first article is a brief record of social conditions in England, by the Right Rev. Mgr. H. Parkinson; the second is entitled civic administration and local government, written by Mrs. V. M. Crawford; the third, some questions of the day simply explained, by the Rev. Joseph Keating; the fourth, social work for boys at school and after, by the Rev. Charles Plater; and the fifth, social work for girls on leaving school, by Miss Flora Kirwan.

GLOCKER, T. W. *The Government of American Unions.* Pp. vii, 242. Price, $1.00. Baltimore: Johns Hopkins Press, 1913.

In 1901, the United States Industrial Commission in vol. XVII of its voluminous reports, gave an excellent summary of trade union organization. In the volume here under notice, Dr. Glocker gives a scholarly and more intensive analysis and description of much the same material. The net impression, however, remains the same: that of the extreme democracy of the constitution of trade union organization.

GOODRICH, JOSEPH K. *Our Neighbors: The Japanese.* Pp. 253. Price, $1.25. Chicago: F. G. Browne and Company, 1913.

The first of this "Our Neighbors" series is similar in general plan to the justly popular books on *Town Life* which have helped make the people of other lands known to the American public. Mr. Goodrich was at one time professor in the Imperial College at Tokyo and writes from an intimate knowledge of the Japanese people. The book is divided into short chapters written in simple but excellent style. About one-fourth of the book discusses the nobility and its history, and equal space is given to word pictures of the chief occupa-

tions of the islands. These are by far the most interesting of the author's chapters. The descriptions of the standard of life of the common people and of the present enthusiasm for education are brief but exceptionally well done. The discussion of the folk lore and religion and of the people in Japan's outlying possessions the Loo Choos, Formosa and Korea occupies more space than would be expected in so small a volume.

ILBERT, SIR COURTENAY P. *Methods of Legislation.* Pp. 80. Price, $1.00. New York: George H. Doran and Company.

Sir Courtenay Ilbert's long connection with the drafting of bills for the British parliament has made him the leading authority on the form of legislation. He outlines the chief formal characteristics which it is aimed to include in British acts and the chief steps through which they pass to become laws. The contrasts between the methods of handling legislation in America and Europe are pointed out. A select list of works in legislation is given in the concluding pages. The essay is an excellent survey of practice and of the difficulties confronted by legislative draftsmen.

LETHBRIDGE, SIR ROPER. *The Indian Offer of Imperial Preference.* Pp. xii, 171. Price, 2/6. London: P. S. King and Son, 1913.

India's fiscal system includes a tariff of 5 per cent *ad valorem* on all imported goods, both British and foreign, except a few specified commodities. Any industry "protected" by this duty is subjected to an equivalent countervailing excise duty—a provision thus far applied only to cotton goods produced in Indian power-mills. The author urges that permission be granted India to increase her income which has declined through the loss of the opium revenue, by the adoption of a system of preferential tariffs with the United Kingdom and the colonies.

LEVY, HERMANN. *Economic Liberalism.* Pp. xi, 124. Price, $1.25. New York: The Macmillan Company, 1913.

This is a translation of the original German edition of 1902. Its reappearance in new form is justified by recent tendencies in England reflecting the new spirit in social thought and action. This new attitude runs counter to the basic ideas of the economic liberalism that had its birth in the seventeenth century. A prime purpose of the essay is to show the relation of these early ideas to contemporary development and to trace their reaction on the economic and social legislation of their own day. The author's concluding paragraph is illuminating:

"The general effect of all these various phenomena is to deepen the conviction that in England today the old more than ever clashes with the new. Any year may bring the decisive point. In whichever direction, however, the stream finally sets, and whatever may be the changes in the relation of class to class and in the social and economic condition of England, the significance of the economic liberalism of the past for certain features of English industrial life remains. Economic liberalism taught England to believe in the rights and greatest possible development of the individual; to regard each

man as equal before the Law, and to display toleration towards the opinions of others whether in politics or in religion; to place the same social value on all professions, and to respect what other nations and races hold holy. To other nations these and other characteristics of Liberal culture are still novel and unfamiliar. The Englishman will not lose them even under a new social system, for they have become an integral part of his national character."

LEWINSKI, JAN ST. *The Origin of Property.* Pp. xi, 71. Price, 3/6. London: Constable and Company, Ltd., 1913.

LIPPMAN, WALTER. *A Preface to Politics.* Pp. 318. Price, $1.50. New York: Mitchell Kennerley, 1913.

No sustained logical argument is attempted in this book. It is a thought-provoking running comment on the lifelessness of our political life. The author is well read and writes in a peculiarly trenchant style. Though there is abundant evidence of sympathy with the aims of the Progressive party there is no narrow partisanship. The importance of resourcefulness, willingness to act on conclusions forced upon us by the facts of every day life, the need for constructive effort in addition to analysis and the necessity of making our reforms run with human nature and not against it are the chief points emphasized. Comments and terse criticisms which jar our confidence in well established principles are found in every page. The author has not tried to sketch a "program;" he demonstrates that we need one.

MCCULLOCH, JAMES E. (ed.). *The South Mobilizing for Social Service.* Pp. 702. Price, $2.00. Nashville: Southern Sociological Congress, 1913.

This volume contains the papers presented at the Southern Sociological Congress held at Atlanta, April 25–29, 1913. The range of topics covered may be indicated by the main heads: conservation of national efficiency, public health, courts and prisons, child welfare, organized charities, race problems, church and social service.

For the information of those who have not heard of the meeting, it may be added that this was called by southern men to discuss southern problems, although a good number of outsiders were invited to preside in the convention. The meeting was large and enthusiastic, and was considered by those of the South as a very significant indication of the development of the social spirit in the South. Those interested in southern questions will find therefore a large amount of useful material in this volume.

MAIN, JOHN. *Religious Chastity.* Pp. xix, 355. Price, $1.50. New York: Macaulay Company, 1913.

This work (anonymously published by Elsie Clews Parsons), presents a particular phase of ethnology dealing with the treatment of widows, their sacrifices and hardships. The priestess-wife of the countries in Asia, Africa and among the early American Indian tribes is dealt with at some length. The book is well written, full of references, and contains a splendid bibliography.

MANN, J. E. F., SIEVERS, N. J., and COX, R. W. T. *The Real Democracy.* Pp. xi, 276. Price, $1.50. New York: Longmans, Green and Company, 1913.

This book is a series of essays prepared by three members of the Rota Club and is a combination of one-sided political and economic theory, pungent criticism of present-day conditions, and rhetorical writing. The general thesis running through the book is that land and capital should be distributed among at least a majority of the citizens, such citizens forming an association acting under standards set by the state, the state also enforcing such of its rules as may be contained in its approved constitution. This type of industrial state is considered the "real democracy." Present conditions are objected to because property is in the hands of too few; socialism is objected to because it would give the state entire control of industry. A considerable portion of the book is given to the rival social theories of Bernard Shaw and Hilaire Belloc, the authors being enthusiastic followers of the latter. Students of political and social science may read the book with interest but will take issue with many statements and conclusions.

MARRIOTT, J. A. R. *The French Revolution of 1848.* (2 vols.). Pp. xcix, 679. Price, $2.00 each. Oxford: Clarendon Press, 1913.

MONTGOMERY, LOUISE. *The American Girl in the Stockyards District.* Pp. vi, 70. Price, 25 cents. Chicago: University of Chicago Press, 1913.

The second part of the study in the Chicago stockyards district amply fulfills the promise of part I. After a careful statement of the kind of work done by American girls in the stockyard, the study concludes that the educational standard of the district is the minimum required by law; that a great majority of the families feel an obligation to send their children to parochial schools for a part of their training; that, unusually enough, a larger proportion of boys remain in school than girls; that both boys and girls must go to work because of the small wage of the father; that the school is not meeting the needs of the girls in the district, and that therefore they are taking positions; and finally that the girls who complete the elementary schools are in a much better position from a wage-earning standpoint than the girls leaving before finishing the eighth grade. The conclusion which the study draws regarding the educational system is worthy of the serious attention of all educators.

MORGAN, JAMES. *The Life Work of Edward A. Moseley.* Pp. ix, 378. Price, $2.00. New York: The Macmillan Company, 1913.

Mr. Edward A. Moseley who, from the organization of the Interstate Commerce Commission in 1887 until his death in 1911, was the secretary of the commission, took an active and important part in the development of the federal control of railroads. Aside from his routine work as secretary, his special interest was in the promotion of safety. This book, which was written by a personal friend of Mr. Moseley, after describing his early private

life, gives a detailed account of his efforts to provide railroad equipment with safety devices, to establish the liability of the employers for deaths and injuries to employees, to limit the hours of service on trains, and to avoid labor disputes by mediation and arbitration.

PIGOU, A. C. *Wealth and Welfare.* Pp. xxxi, 488. Price, $3.50. New York: The Mamillan Company,

Complicated analysis, linking theoretical with practical problems at every point and never ignoring even obvious detail, is the dominant quality of this thoroughgoing treatise. Its central problem is the tracing of the general relations that prevail between economic welfare on the one hand, and the size and distribution of the national dividend on the other. The national dividend is viewed as the annual flow of those goods and services that can be brought into relations with a money measure. The conclusions that will command general interest are these: "(1) other things being equal, an increase in the size of the national dividend will probably increase economic welfare; (2) other things being equal, an increase in the absolute share of the national dividend accruing to the poor will probably increase economic welfare; and (3) other things being equal, a diminution in the variability of the national dividend, especially of the part accruing to the poor, will probably increase economic welfare."

These are comforting corroborations of commonly accepted views; but their elaboration and the analysis of underlying factors are meant only for minds trained to patience and to close reasoning. The book is really for the elect.

RIPLEY, WILLIAM Z. *Railway Problems.* Pp. xxxiv, 830. Price, $2.50. Boston: Ginn and Company, 1913.

This is a revision of the first edition of Professor Ripley's collection of reprints which appeared in 1907. In recasting the collection, several articles have been omitted, and a number of substantial additions have been made. Chief among the new articles included are (1) early American conditions, by H. G. Pearson; (2) the commerce court decision on unreasonable rates; (3) the Nevada Railroad Commission case on transcontinental rates; (4) how the states make interstate rates, by Robert Mather; (5) The Union Pacific—Southern Pacific merger dissolution, by S. Daggett; (6) the Minnesota rate case, and (7) the regulation of rates under the 14th amendment, by F. J. Swayze.

ROBERTS, ELMER. *Monarchial Socialism in Germany.* Pp. 200. Price, $1.25. New York: Charles Scribner's Sons, 1913.

The author has given us short pen sketches on the social experiments of Germany. In remarkably short chapters he has told of the German trust attitude, the efforts to protect and assist labor and the methods for developing the export trade. The chapters on labor efficient, labor exchanges, and unemployment insurance are particularly suggestive. For those who have followed the German experiments, this book will furnish a valuable summary of developments in various lines; for those who do not know of the newer attitudes, the chapters will form an interesting starting point.

Although the author points out in his chapter on state vs. red socialism how these developments have been given to the people from above, he seems not to grasp the essential point. Bismarck inaugurated these reforms in order to continue the present autocracy and not to promote democracy in Germany. Social legislation was not so much the result of fear of the people as it was to increase in the people their loyalty to the crown. The author does not tell us of the growing mass of criticism that is being aimed at these experiments, not only because of details of administration, but because they are being used to defeat the cause of democracy. It is unfortunate that both sides of the picture are not presented—nevertheless the book is interesting and worth while.

ROSE, J. H. *The Personality of Napoleon.* Pp. v, 382. Price, $2.50. New York: G. P. Putnam's Sons.

SHELTON, WILLIAM A. *Railway Traffic Maps.* Price, $3.00. Chicago: La Salle Extension University, 1913.

Perhaps the most valuable maps contained in this book of maps are those showing the location of some of the leading freight traffic associations, i. e., the Canadian, New England, Trunk Line, Central, Southeastern Mississippi Valley, Southeastern, Associated Railways of Virginia and the Carolinas, Southwestern, Transcontinental, Trans-Missouri and Western Trunk Line. It also contains a map showing the territories of the classification committees, of the eastern percentage system of making rates, and the transcontinental rate zones. The various rate maps and diagrams which it contains are presented in convenient form for the use of the traffic student.

SMITH, J. RUSSELL. *Industrial and Commerical Geography.* Pp. xi, 914. Price, $4.00. New York: Henry Holt and Company, 1913.

STEBBINS, HOMER A. *A Political History of the State of New York, 1865-1869.* Pp. 447. Price, $4.00. New York: Longmans, Green and Company, 1913.

THOMPSON, SLASON (compiled and edited by). *The Railway Library, 1912.* Pp. 470. Price, 50 cents. Chicago: Bureau of Railway News and Statistics, 1913.

The 1912 issue of *The Railway Library* contains the usual section on American railway statistics. It also contains interesting statistics of European railways, and a large number of reprints of articles and speeches on matters of current interest to American railroads by prominent railroad men and others interested in railway operation and regulation. In addition to the discussions on various phases of American railroading, it contains descriptions of railroads in Australia, France, Canada, Germany, and England.

TOLMAN, WILLIAM H. and KENDALL, LEONARD B. *Safety Methods for Preventing Occupational and other Accidents and Disease.* Pp. xii, 422. Price, $3.00. New York: Harper and Brothers, 1913.

The author claims that by foresight, care and education, industrial accidents may be reduced 50 per cent. After a discussion of the general philoso-

phy of safety, neglected factors and the working place, he presents a large number of suggestions on inexpensive and necessary safety methods. These are detailed under definite headings such as cutting and grinding tools, fire, transportation, mines and mining, etc. The third part of the book deals with industrial hygiene and the prevention of unnecessary waste due to industrial disease. The last part is devoted to a discussion of educational factors for the increase of safety, such as industrial education, training future workers, the American Museum of Safety. The book is illustrated with photographs and drawings which emphasize the mass of valuable suggestions for those interested in reducing the avoidable accidents and diseases of industry. It should be widely read by manufacturers, superintendents, and workmen.

VAN LOON, H. W. *The Fall of the Dutch Republic.* Pp. xii, 433. Price, $3.00. Boston: Houghton, Mifflin Company, 1913.

WALLE, PAUL. *Le Pérou Economique.* Pp. xvi, 387. Price, 9 fr. Paris: E. Guilmoto, 1913.

WALTON, PERRY. *The Story of Textiles.* Pp. 274. Price, $3.00. Boston: John S. Lawrence.

This volume was written primarily for the textile man. It is a brief survey of the textile industry and deals largely with its development in England and America. It is a pioneer work dealing with the origin and growth of the industry as a whole. The author's idea of the social significance of the industry is well expressed in the conclusion.

"The textile industry is so highly competitive and the development of machinery has produced such excellent work with but little skill that the textile mills of New England have become great training schools in industry for the most recently arrived immigrants from the less resourceful nations of the whole world; while in the South the industry has lifted to a plane of greater comfort and efficiency the natives who even before the war were completely poverty stricken. Not only have the mills trained the employees and their children so that former textile employees now form the part of our great middle class which operate our industries everywhere, but they have also furnished the means by which they and their children have been fed, clothed, and educated" (p. 251.)

The volume is well written and handsomely illustrated. Mr. John S. Lawrence, for whom this book has been prepared and by whom it is published, is a partner of the firm of Lawrence and Company, one of the largest commission houses for the distribution of textile products in America.

WANKLYN, W. McC. *London Public Health Administration.* Pp. 59. Price, 50 cents. New York: Longmans, Green and Company, 1913.

The chief purpose of this volume to its American readers is to act as a stimulus to secure similar digests of our own laws. In very abbreviated form, it gives a synopsis of the public health authorities of London, their powers and duties. It would be well if we had such information in convenient form in our American cities.

REVIEWS

BLAND, JOHN O. P. *Recent Events and Present Policies in China.* Pp. xi, 482. Price, $4.00. Philadelphia: J. B. Lippincott Company.

In judging the Chinese republic, Mr. Bland has gone beyond opinion; venturing into the hazardous region of prophecy he risks a prediction that the Republican government, "as the offspring of unexpected opportunity, out of sudden chaos, accidental in its birth, is doomed to early demise" (p. 152). By implication, he denies the possibility and utility even of a parliament for the present generation (p. 45). "An inevitable reaction will restore the ancient ways, the vital Confucian morality and that enduring social structure whose apex is the dragon throne" (p. 108). "The Yellow River changes its bed, but the waters are still muddy." "Many such storms have swept across the deep waters of this people's soul, without altering its outlook on life, or reducing its capacity for atavistic resistance to change. Mongols, Manchus and native rulers have had their little days and gone their ways, leaving the Chinese people firmly fixed in their old traditions, their old beliefs" (p. 44).

In this there are discernible two propositions: (1) That the chief events of Chinese political and social life for some decades past—the greater knowledge of foreign countries acquired by the Chinese in peace and disastrous war; the reluctant but general admission by Chinese leaders that great modification of the national government and national life is a necessity; all the changes which have in effect been undertaken—all these things have no different and no deeper significance than a Mongol raid or Manchu invasion; (2) that China is unlike other nations in being doomed to remain forever stationary. Regarding the validity of this the reader will decide for himself.

As to the possibility of representative government, the necessities of the whole case at hand might well seem, not remotely and improbably to permit, but imperatively to demand some sort of participation by the public at large. Popular acquiescence and indifference have served the purposes of the old régime, but in the growing competition of international politics, something more than passive tolerance is needed. A reaction to some sort of monarchy is quite conceivable, but a ruler who attempts entirely to dispense with the control and therefore the aid of influential and representative elements throughout the nation will find himself powerless against foreign foes and impotent in attempts at domestic reorganization. A reform of the finances (for example, an increase of the land tax), is impossible without some representation of local feeling; the maintenance of a real army requires an appeal to the sense of patriotism—especially in a country like China, where the people are too intelligent to love war.

Toward the whole revolutionary movement in China, Mr. Bland is severely critical. There is, he says, (p. 19) a lack of leadership; a general prevalence of ambition and selfishness, even though there are a few ardent and unselfish spirits (p. 12) (as though sincere patriots were ever a majority in any revolution); a lack of religious inspiration (p. 19) (but how much of this has there been in the political crises of Europe and America for generations past?); a lack of ideals (yet plans for local improvement, for libraries, hospitals, sanitation,

are said to be too fine for realization) bribery and peculation in office continues (could one expect them to vanish at once?); this dishonesty is worse than before (though reputable journalists not extremely pro-Chinese, have pointed to concrete indications of improvement).

A quantitative estimate of moral factors is scarcely practicable; the only certainty in the facts discussed by Mr. Bland is that China goes blundering on in true human fashion through an experience common to all nations without exhibiting demonstrably much more or less wisdom or unselfishness than other nations before her.

As to the opium reform, Mr. Bland thinks that the reformers are "emotionalists;" that (p. 452) some stimulant or narcotic is a necessity of human nature (as much as disease or pain); that (pp. 451–452) the opium habit is not a great evil; that (pp. 424, 427, 430) Britain has not forced the importation of opium upon China. Yet he speaks (p. 438) of the British government "consenting to a cessation of exports from India to China on certain conditions." If the Chinese had been free to act at will in the matter, there would of course have been no question of Britain consenting. Diplomatic pressure does not always take ostensibly the form of a threat, and in this instance, all informed persons knew that within the present decade the Chinese submitted to this indignity because they feared to resist.

A. P. WINSTON.

Pearre, Md.

BRACE, HARRISON H. *The Value of Organized Speculation.* Pp. xii, 290. Price, $1.50. Boston: Houghton, Mifflin Company, 1913.

This volume on the services and functions of stock and produce exchanges attempts to present, in a sane manner and without exaggeration, the place of such markets in the sphere of modern industry. Its practical viewpoint, fairness of attitude, and elaboration of argument, have much to commend them, in view of the usual superficial treatment of the subject.

The book is divided into four sections, the first containing a description of the features and organization of such exchanges, the second discussing their effect upon prices, the third considering their relation to business in general, and the fourth presenting the effects of abolishing such markets in their present form. While it is believed that the material contained might have been better organized, this is the best defense of present-day exchange methods which can be found in a single volume.

After devoting the major portion of the book to a description of the services rendered by such exchanges and pointing out the fallacies often entertained with respect to them, the author concludes that the risk or hazard which is inherent in all business can be insured against in only three ways: (1) by permitting organized speculation to bear the risk, as at present; (2) by permitting monopoly, which guards against risks by controlling production and the making of prices; (3) by permitting unorganized speculation in place of the present organized form. Organized speculation, in his opinion will always exist, its evils are not inherent but are present because of perversion of its true purpose, and the reforming of exchanges should be the concern, not so much of legislatures, as of the commercial statesmen within the exchanges, to

whose interest it is to see that exchange methods conform to the best business standards. Whether the reader agrees with the conclusions or not, it will at least be interesting, after hearing general complaints of present methods supported by no particular evidence, to examine the exhibits of the defense, as here presented, and place himself in a position to give an intelligent judgment.

R. RIEGEL.

University of Pennsylvania.

DAHLINGER, CHAS. W. *The New Agrarianism.* Pp. v, 247. Price, $1.00. New York: G. P. Putnam's Sons, 1913.

The moving power of this discussion is in its attempt at a classification of the industrial consciousness at present investing that sphere of economic activity which centers about agricultural production. Agriculture has lagged so far behind the methodology of "industry" that our economic, political and social equilibrium has been seriously impaired, and the opinion is widespread that the evils arising out of this lack of adjustment have their source in "fundamental errors in the structure and functioning of government."

The argument of the author "is an elaboration of the contention that the complaints of public and private shortcomings, while attributable in part to many causes, are yet primarily the result of the unequal progress being made between agriculture and industry and commerce, with a discussion of measures for bringing agriculture to a parity with them, and an account of what has been accomplished in this direction in other countries" (Preface).

The "measures" by which the proposed adjustment is to be accomplished may be arranged, on the principle of their application, in two classes: one applying to the agricultural producers as individuals; the other to the civic unity, state and nation, of which the agricultural group is a part. As to the first, the author's recommendations may be summed under his appeal for improved business methods on the farm,—"Better business" in the marketing, purchasing and financing of the agricultural operation.

The second order of measures are national in extent, and may be characterized as the industrialization of agriculture in the full historical sense of that expression. The amazing development of the "industries," so-called, and their influence in legislation, have resulted in inequality of social opportunity. The American farmer finds himself isolated. He is expected to furnish the sinews of progress and even of existence, but may not command the organized forces of regulation in his own behalf. He is a contributing member only of the social organization, not an active one. And this denial of participation results in making agriculture uninviting to the ambitious man seeking an opening, a heartless and unsocial drudgery to the man already in it, and in a consequent neglect of the only true and substantial source of national wealth. And thus the problem of agricultural progress becomes a social problem of national significance, and its solution must be approached through education, legislation and the propagandism of the economist; it is a problem that calls at once for the highest order of statesmanship and for thoroughgoing business efficiency on the part of the agriculturist.

FRANK P. BYE.

West Chester, Pa.

ESTEY, J. A. *Revolutionary Syndicalism.* Pp. xxxvii, 212. Price, 7s. 6d. London: P. S. King and Son, 1913.

In this conscientious, scholarly and impartial study, Dr. Estey has given us one of the best reports of revolutionary syndicalism that has appeared. Although the historical study which precedes the analysis of syndicalism and its methods is exceedingly careful and accurate, the chief interest lies in the latter half of the book. Here are discussed syndicalist practice, the syndicalist state, the failure of the general strike and the limitations of the method of revolution. Under the heading syndicalist practice are discussed the general strike, sabotage, anti-militarism and external pressure. It is the general strike that receives the greatest consideration, because it is by this means that syndicalists hope to take over the present capitalistic system. The author traces the various attempts that have been made and examines critically the failure that has in each case resulted. He feels as does Sorel that the general strike can never be more than a dream and that it can never be successful. Dr. Estey feels that with the failure of the general strike must fall the entire scheme of revolutionary syndicalism. He shows, moreover, how it is gradually weakening and how the more recent conventions of the C. G. T. have leaned rather toward the methods of reform than to those of revolution. In spite of its repeated failures, in spite of the weakening of its power, it has accomplished much. "Its insistence on the practical application of the great motto of the international—'the emancipation of the laborers must be the work of the laborers themselves'—has engendered a habit of self-reliance, a courage and an optimism among the workers, that can only be a cause for general gratification." "It has succeeded in arousing the consciousness of the most apathetic workers." Dr. Estey has made a valuable and enlightening contribution to the literature of syndicalism.

ALEXANDER FLEISHER.

Philadelphia.

GALLOWAY, LEE. *Organization and Management.* (Vol. II of Modern Business Series, edited by Joseph French Johnson.) Pp. xix, 504. Price, $3.50. New York: Alexander Hamilton Institute, 1913.

In this book the author purposed to show all the forces that influence modern business. In order to do so, he divides the work into two parts, the first dealing with organization. This term is used to cover an economic and sociological survey of the history of man from the savage state to the present social structure, and also includes a summary of the theory of factory location, and a discussion of markets, exchanges, the export business and consular service. In short, part one deals with all those things which affect a business outside its own walls. In part two, the author goes inside the factory and discusses in minute detail the theory of management.

The book would be valuable only to a business man who had no training in economics or sociology. It is too technical for general reading, and not enough specialized for a student of economics, so it has a limited scope of usefulness.

The author is primarily interested in scientific management; and should

have confined himself to that subject. Part one is too full of quotation and too little original, whereas part two speaks with authority. The work is poorly planned, for much that belongs in part two only, is treated in both sections with very little change of viewpoint in either. Covering such a broad field, the volume cannot take high rank in any particular department.

R. MALCOLM KEIR.

University of Pennsylvania.

GEPHART, W. F. *Insurance and the State.* Pp. xiii, 228. Price, $1.25. New York: The Macmillan Company, 1913.

Owing to a growing realization of the importance of insurance to the community, the subject of state regulation of the life and fire insurance businesses has assumed increasing importance. This discussion, coming at a time when the European countries are making life insurance a function and even a monopoly of government, and when, in our own country, fire underwriters' associations and fire rates are subject to much criticism, is certainly a timely one.

The topic is discussed in three sections, the first dealing with life insurance, the second with fire insurance and the third with social insurance, including industrial accident insurance, old age and invalidity insurance and unemployment insurance. While the facts contained are not new, the writer presents in this volume a consideration (from a practical rather than theoretical viewpoint) of the obstacles to state ownership and management of the insurance business. Although it is believed that some portions of the subject have been inadequately treated, such as, for example, the subject of fire rates, there is presented on the whole a very complete summary of the arguments for and against state ownership and control.

It is probably true that those best acquainted with the insurance business look fearfully upon government ownership and control. Gephart presents logical arguments in support of the policy of state regulation rather than control, so far as any definite recommendations can be discerned, for the volume is primarily a presentation of the problems which arise in the consideration of the question rather than an explanation of a remedy for evils which may exist.

In the portion dealing with social insurance the advantages and disadvantages of the state assumption of the business are discussed. While the author recognizes many benefits which would result from such assumption, his conclusion is that the form of government in the United States is not particularly favorable to this plan of operation, however successful it may have proved abroad.

R. RIEGEL.

University of Pennsylvania.

GILSON, J. C. *Wealth of the World's Waste Places and Oceania.* Pp. xiii, 327. New York: Chas. Scribner's Sons, 1913.

In part I the author aims to present a popular account of the chief physical, industrial, historical and political facts of the world's waste places. By "waste places" he means such parts of the earth's surface as our arid Southwest, the

Sahara desert, Greenland, and the Chilean desert, whose claim to the term "waste places" is based on their inability to produce foodstuffs in large abundance. Part II attempts a similar task with regard to Oceania.

This book consists of a number of interesting but secondhand scraps of information about the regions described. Its chief weakness is its failure to follow a thought consecutively. The author cannot resist the temptations of a sidetrack and confuses the reader by constantly dragging him from the main thought. Although the nature of the book unfits it for the college teacher, its veracity and spotty bits of interest may commend it for supplemental reference work in geography in high schools. Despite the vagueness as to geographic location and the haphazard arrangement of material, there are many facts which will appeal to the popular reader.

JOSEPH W. WILLITS.

University of Pennsylvania.

HANEY, LEWIS H. *Business Organization and Combination.* Pp. xiv, 483. Price, $2.00. New York: The Macmillan Company, 1913.

This work is a concise and clear analysis of the evolution of modern business organization through all its various stages, together with a discussion of the evils arising from modern corporate organization and the author's theory of how these evils can be remedied.

The book has that most commendable virtue of being one for which many people have been long wishing; and the logical method of presentation, the excellence of definition and classification, the avoidance of unduly technical language, and the care employed in the selection of illustrative material are some of the appealing characteristics which make one feel that the work is well fitted to supply the need for which it was written.

The first part deals with the different types of business organization—the individual entrepreneur, the partnership, the joint stock company, the corporation, and the various simple and complex conbinations which have been so prevalent in the United States in recent years—giving in each instance the essential features of each type, a brief history of its development, and its advantages and disadvantages from economic and social points of view. The next part describes in detail the structure of a corporation and the main events in its life history; and the last part deals with the corporation problem. The chief feature of Prof. Haney's theory of a solution of the problem is a system of public regulation, by means of which the processes of capitalization will be simplified, the stockholders will retain a fuller measure of power as well as of interest, and natural monopolies will be controlled by an administrative body having powers similar to those possessed by the Interstate Commerce Commission over transportation companies. Professor Haney also advocates the restriction of the use of the corporate form of organization, and urges as a substitute for it in smaller business concerns a limited liability association similar to that now common in Germany.

An appendix presents some source material in the form of a list of agreements and other articles employed in the organization of business enterprises.

T. W. VAN METRE.

University of Pennsylvania.

LIEN, ARNOLD J. *Privileges and Immunities of Citizens of the United States.* Pp. 94. Price, 75 cents. New York: Longmans, Green and Company, 1913.

This treatise is admirable in form and expression. It brings together the decisions of the United States supreme court interpreting the enigmatical phrase, "privileges or immunities of citizens of the United States," as used in the fourteenth amendment. The author is not so much concerned with setting in array the rights connoted by the term, as he is in demonstrating the consistency and correctness of the supreme court's definition of the term.

Here we take issue with Dr. Lien. In the famous slaughter house cases the court limited the application of this term to the relatively few federal rights which correspond to federal powers, and refused to apply it to the fundamental civil rights which before the adoption of the amendment were under the sole protection of the states. But these federal rights were already amply protected. It was certainly the purpose of the framers of the amendment to bring the fundamental civil rights under the protection of the federal government. The court by its decision practically eliminated one clause from the amendment. Our author therefore absolutely fails to give a correct estimate of the period of centralization which enacted the amendment, and of the period of reaction which annulled by interpretation one of the most important provisions of the amendment.

A minor criticism may be directed to Dr. Lien's extravagant devotion to an imported vagary, namely, that sovereignty is indivisible, in spite of the obvious division of sovereignty in this country. He goes so far in the worship of this foreign fetish that he calls states "commonwealths," and not the sovereign states that they are.

CHARLES H. MAXSON.

University of Pennsylvania.

MARSHALL, LEON C., WRIGHT, C. W., and FIELD, J. A. *Materials for the Study of Elementary Economics.* Pp. xvii, 927. Price, $2.75. Chicago: University of Chicago Press, 1913.

Professor Bullock's *Selected Readings in Economics* (1907) and Professor Fetter's *Source Book in Economics* (1912) were attempts to collect, in a form easily available for students, subject-matter illustrating economic principles, to be used as collateral reading in conjunction with a text book. *Materials for the Study of Elementary Economics*, the joint work of three members of the department of political economy at the University of Chicago, is a book of the same type. It aims, by presenting concrete case-material embodying economic laws, "to acquaint the student with economic principles as they are manifested in the tangible facts of economic life." It is, however, much more comprehensive in character than the two earlier works. Bullock's *Selected Readings* and Fetter's *Source Book* made no pretense of attempting to present selections on all the topics ordinarily covered in an elementary course. While no such claim is made for the *Materials for the Study of Elementary Economics*, such would appear to be the purpose of its authors. They have included as many as two hundred and sixty-seven selections, and these

are arranged under twenty headings which practically cover the field. The headings are as follows: Introductory; wants and the means of their satisfaction; natural resources as economic factors; human beings as economic factors; capital goods as economic factors; the organization of industry; examples of modern capitalistic organization; markets and trading; value; money and prices; credit and banking; international trade and foreign exchange; tariff policy; rent; wages; labor problems; interest; profits; public finance and taxation; some programs of social reform.

It is significant that though there are selections on agricultural topics scattered throughout the book, yet no separate heading is given to agriculture. Such treatment of an industry which employs more persons than any other occupation is striking, yet it accords, in the main, with the practice of most of our text books on economics. Among the chief omissions are selections on crises, child labor, government and municipal ownership.

A few of the selections are probably too difficult for the elementary student, as, for example, the proposal for a compensated dollar, and especially the discussion of the method whereby, under this plan, loss to the government by speculation would be prevented (p. 476).

Barring these minor criticisms, the selections, as a whole, are very well chosen, and the book admirably serves the purpose for which it was designed.

ELIOT JONES.

University of Pennsylvania.

MOORE, HENRY L., *Laws of Wages*. Pp. viii, 196. Price, $1.60. New York: The Macmillan Company.

That Professor Moore has made a notable contribution to the literature of economic statistics there can be no doubt. That he has been equally successful in breaking the path for a science of "statistical economics" is less certain. And it is with reference to this second criterion that the book really challenges criticism. Moreover, it may be said fairly that none but rigid and exacting critical standards are appropriate to the purpose. This is not only on account of the deservedly high reputation of the author, but also because the book itself aims at a very high mark and must be judged with reference to the standards which it sets for itself.

Taking a leaf from the logic of the exact sciences, the author suggests that the theorems of pure economics are but "hypotheses" and need to be put to the test of statistical verification before they can be regarded as "scientific laws." Now there is no reason why Professor Moore should not use economic theorems as hypotheses, if he so chooses. Indeed, the conclusions of *a priori* economics are bound to be of some service to the economic statistician in helping him to select fruitful lines of inquiry from among the infinite variety open to him. In other words, debatable economic theorems may suggest certain questions which the statistician may profitably ask of his material. But other profitable statistical questions arise in other ways. Everyone who has had any extended experience in handling statistics will, for example, know the way in which new and sometimes profitable hypotheses are suggested by unexpected trends or apparent incongruities in the figures themselves. The field of economic statistics

is distinctly a broader and richer field than that of Professor Moore's "statistical economics." Professor Moore, it should in fairness be said, does suggest that one of the objects of statistical economics is "to supply data for the elaboration of dynamic economics," which latter field is, I suppose, to be taken as defined by Professor Clark.

But when Professor Moore goes so far as to urge that the so-called laws of economics are merely hypotheses the present reviewer feels bound to record his disagreement. Fully to state the grounds of such disagreement would involve traversing at some length well worn paths in the field of the logic of scientific method. Here there is room only for the statement of the opinion that the theorems of pure economics, if reached in accordance with the rules of logical inference and interpreted with due regard to the limitations implicit in the premises, have a right of their own to rank as "scientific laws."

The unfortunate results of Professor Moore's determination to put his work in a definite relation to economic theory may be found in particulars, as well as in the general scheme of his work. Take for example what Professor Moore offers as statistical tests of the "subsistence" and "standard of life" theories of wages. He shows, in a piece of good statistical work, that there is only a small correlation between the variations of the cost of subsistence and the variations of wages among the different départments of France, while wages and the standard of life (as indicated by the *prix de pension*) exhibit a marked correlation. This is important statistical work, and it is well done, but what has it to do with the particular theories of wages named? Neither of these theories was a theory of local variations in wages, nor was either of them a theory of "market wages." Both were theories of "normal" or "natural" wages and implied the working out of long-time tendencies. An American banker given to writing on economic topics in an address before a scientific association a few years ago attacked one or another of the theories relating to the "general level of wages," and cited in support of his case the fact that wages in the Orient are only a fraction of what they are in Europe and America! This was clearly absurd, but Professor Moore's conclusions imply a precisely similar reasoning. Nor is it clear that the fact that there is correlation between wages and the relative amount of machine power with which the laborer works has any bearing upon the "productivity" theory of wages.

A number of critics have already taken Professor Moore to task for assuming that because the frequency distributions of both wages and (presumably) of ability approach the "normal" type, it must follow that productive efficiency and wages are correlated. Taken rigidly, this is, of course, a *non sequitur*, and yet may we not admit that in the absence of any other explanation of the "normality" of the distribution of wages, Professor Moore's figures add some strength to the general impression, founded upon common observation, that productive efficiency and wage-getting capacity are in some measure correlated, even if not so closely as might be wished.

The mere fact that wages are distributed "normally," so far as it is true, may not of itself point to the presence of any particular principle. But the distinctly skew distribution which Professor Moore finds in American wage statistics raises a problem. Professor Moore's assumption that the wage

earners under consideration may be divided into two "non-competing groups" enables him to fit his curve to the statistics very neatly, but involves, admittedly, an artificial simplification of the facts. The factors that might bring about such a result (*i.e.*, larger average differences in the wages received by the better paid laborers than in those received by the poorer paid) are manifold. The long training required for some of the better paid positions; a (resulting) skew distribution of acquired, as contrasted with native, ability; the general fact that the paths of least resistance lead to the poorest paid occupations; the premium on efficiency among manufacturing employees arising from the fact that the amount of fixed capital employed must often be proportioned to the number of employees; these and other considerations suggest themselves in addition to those cited by Professor Moore.

I think it not an unfair judgment that Professor Moore is more interested in the niceties of the mathematical method than he is in either his sources or his results. His sources, it is true, are chosen with care and discrimination, but there is lacking any critical discussion of their representative character, the degree of confidence that may be felt in their accuracy, and their general adequacy for the purposes in hand. Moreover, Professor Moore's interest in technique sometimes leads him to take roundabout and difficult paths where shorter ones would lead him more easily to the same results. His use of Pearson's solution of the Galton difference problem in his discussion of the relations of wages to ability is probably a case in point. A striking instance is afforded by his choice of a method for ranking the various causes of strikes "according as they are the origin of strikes that are likely to succeed, to succeed partly, or to fail." Most statisticians would be content to rank such causes according to the per cent which successful (and partly successful, and unsuccessful) strikes make of the strikes called on account of a given cause. Professor Moore thus describes his own procedure: "If the percentage deviations of the actual figures in the subcontingency groups are computed from independent probability, then the magnitude and signs of the percentages will supply indices of the rank of the causes." Now it happens that this "percentage deviation from independent probability" is equal to the simple percentage multipled by a constant and decreased by unity. That is, Professor Moore's ranking of causes is precisely that which would be given by the use of the simple and obvious method! This is not an isolated example of a certain pedantry of method which may be found in the book.

The present reviewer cannot concede that the book has all of the significance which it seems to claim for itself. He wishes that Professor Moore had called the book, "Essays in Economic Statistics," or something of the sort. But there is very little accomplished work in the field of economic statistics which can be ranked with Professor Moore's in the combined qualities of conscientious workmanship and brilliant analysis.

ALLYN A. YOUNG.

Cornell University.

MOZANS, H. J. *Woman in Science.* Pp. xi, 452. Price, $2.50. New York: D. Appleton and Company, 1913.

H. J. Mozans, in his *Woman in Science*, gives us a most comprehensive survey of the scientific activity and attainments of women. Primarily inspired to his investigation by extensive travels in Greece and Italy, the author begins with the learned women of ancient Greece—Hypatia, Sappho, and Aspasea, and of somewhat less widespread fame, Gorgo, Andromeda, and Corinna—and passes on from them to the women of ancient Rome, the women of the Middle Ages, when education was largely confined to monasteries, the women of the renaissance, and the women of subsequent and modern times. He shows during each of these epochs the advantages and opportunities offered to women in each country, and indicates where their achievements were least, and where greatest. He very conclusively proves that where opportunity was great, achievement was likewise great, and vice versa. "In every department of natural knowledge," he states, "when not inhibited by her environment, woman has been the colleague and the emulatress, if not the peer, of the most illustrious men who have contributed to the increase and diffusion of human learning." He analyzes most carefully the biologic capacity of women for scientific pursuits, coming to the conclusion that the reputed difference in intelligence between men and women is due not to difference in brain size or structure or innate power of intellect, but to education and opportunity. He then goes carefully through the historical development of each science, beginning with mathematics, going on through astronomy, physics, chemistry, the natural sciences, medicine, and surgery, archæology, and invention, and shows the instances, extent and value of woman's contributions to each science. He concludes with the prediction that increasing education and opportunity for women will bring about ever-increasing participation in the advancement of science.

NELLIE SEEDS NEARING.

Philadelphia.

RUSSELL SAGE FOUNDATION (ed. by). *San Francisco Relief Survey.* Pp. xxv, 483. Price, $3.50. New York: Survey Associates, Inc., 1913.

Relief work in the time of disaster has usually been a chaotic experience. That it has come to be, in America at least, an orderly experience with the sure touch of the efficient worker behind it is largely due to the lessons learned by the leaders in the relief work following the San Francisco fire in 1906. In the *San Francisco Relief Survey* we have a valuable statement of the methods which were used at that time with some equally valuable comment on their results. The book omits many of the dramatic features of the catastrophe itself. It confines itself to those phases of its aftermath which will be suggestive to any other corps of workers facing responsibility for the rehabilitation of a group or a community smitten by sudden or widespread disaster.

The book is divided into six parts representing as many phases as the work described. They are: Organizing the force and emergency methods, rehabilitation, business rehabilitation, housing rehabilitation, relief work of the associated charities and the residuum of relief. There is a final brief

summary of the lessons taught in this Relief Survey. The six sections have six different authors, each of whom was active in some part of the San Francisco relief work.

It is to be hoped that national disasters like that in San Francisco in 1906 will grow fewer. The experience of Dayton in 1913 shows, however, that we cannot disarm yet. No human experience combines such a mass of misery, such an outpouring of money and sympathy, and such a paralyzing of the restraints and the routine of everyday life. The days which follow a great disaster call for the best we have of organization and efficiency. The very atmosphere of disaster works against organization and efficiency, however, and unless a detailed scheme of procedure tested by successful experience is ready at hand a deplorably wrong start is likely to be made.

One of the results of the San Francisco relief work was the development of a new department in the National Red Cross for handling relief problems in times of disaster. This new department has proved its efficiency many times over—most recently at Dayton, Ohio. The volume under review appeared just as this most recent disaster occurred. Those who may be called upon to face similar situations will find it invaluable.

PORTER R. LEE.

New York School of Philanthropy.

SAKOLSKI, A. M. *American Railroad Economics.* Pp. xii, 295. Price, $1.25. New York: The Macmillan Company, 1913.

We shall probably never have a satisfactory work, of convenient size and adequate scope, even one covering only those phases of transportation which readily come under the heading of *American Railroad Economics*, the title of Dr. Sakolski's new book. Irritating omissions and sketchy outlines, at points where a rather exhaustive consideration seems required, inevitably recur in books of this sort, in which brevity is a chief aim.

Especially do we feel the limitations of space imposed on the author in his chapter on traffic statistics, where the futility of such data as locomotive-miles traveled and ton-miles of freight moved is set forth convincingly enough. But criticism of conventional statistical indices should have been followed by the suggestion of others that would be more enlightening. A few indicated subjects of fruitful statistical inquiry would have been welcome. The author might at least have named several groups of roads, merely as examples, situated under conditions sufficiently alike to permit an approximate determination of the relative efficiency of the several members of any one group by comparing their respective operating ratios. A writer may very properly forswear historical narrative as far as possible; but it is difficult to see why the recently changed conditions of governmental regulation during the past decade should be discussed so briefly. The widened powers and activities of the Interstate Commerce Commission, if they were to be noticed at all, surely deserved a more detailed treatment than they have been given.

As Dr. Sakolski's work stands, it will be useful only in connection with extensive reading in periodicals and official reports. The chapters on rail-

road securities and on the different divisions of railroad accounts perhaps will make the book worth while as a supplementary text in a college course. At any rate, the obvious gaps and abridgments may stimulate uninformed readers to make further investigations, since the author imparts to the topics he touches an interest which should provoke a desire for fuller knowledge on the part of his readers.

A. A. OSBORNE.

University of Pittsburgh.

WOLFF, HENRY W. *Coöperation in Agriculture.* Pp. ix, 378. Price, 6d. London: P. S. King and Son, 1913.

Success in coöperation is like success in any of the professions, depending upon the earnestness, the experience and even the schooling of the coöperators. Systematic instruction by teachers is therefore supplied in various countries where the nature of coöperation is best understood. "Indeed, sound coöperation without education placed in the forefront is unthinkable. . . . In Germany there are special courses of lectures everywhere in every province—courses of two days, of three or four days, up to four weeks." Among others, a six months' annual course of training for revisors (that is auditors of coöperative accounts) a special *seminar* in coöperation at the University of Halle, and a great variety of courses for women . . . . so with variations in Belgium, Russia, Poland, etc.

The supreme importance of the individual coöperator, the self-reliant man, constitutes an argument against aid by government or by private patrons, which "spoil the main material." In Italy *classe rurali* formed by the priesthood have declined 25 per cent in four years. The French government-aided agriculturist refuses to accumulate reserve funds or to assume serious liability. In Germany and France there is an open revolt against government assistance. "Who pays, governs." "A government cannot possibly know what is wanted in coöperation."

Thus Mr. Wolff's doctrine: as to description, he has assembled a great quantity of information relating to coöperation throughout the world; probably no other similar book on the subject contains so much information, although it is from the limits of space necessarily lacking in detail.

A. P. WINSTON.

Pearre, Md.

WOMER, PARLEY P. *The Church and the Labor Conflict.* Pp. x, 302. Price, $1.50. New York: The Macmillan Company, 1913.

Bad proof reading, mis-statement of titles, mis-spelling of names, erroneous dates—these do not enhance the value of Dr. Womer's book. In fact, these palpable errors cause one to question the accuracy of the quotations with which the book abounds. The volume contains nothing new—nothing, in fact that has not been printed before. This is not in disparagement of Dr. Womer's skill in weaving a dozen interesting chapters out of numerous quotations, plus the author's point of view, which indicates his wide reading on the subject of

his theses. However, one rather regrets that so many of the quotations, especially of figures and statistics, are out of date. One is curious to know, also, why no reference is made to the Syndicalist movement. Surely the author is not unaware of the antagonism of this movement to the trades union movement and to the socialist propaganda. Yet this newer movement among the wage-earners is nowhere touched upon. In fact, he speaks of "two contending parties of the labor conflict," when, in fact, there are at least four. The chapter on labor courts is perhaps the most interesting in the volume. The author may have had a clear conception of "the new social order and the rise of a true Catholic Church," as he has entitled his last chapter, but if so he has failed to communicate it to the reader. While Dr. Womer has added to the number of books on the subject of the church and labor, yet his volume cannot be regarded as an original contribution of large value to the literature in that field. A second edition of the book assuredly should not be issued until it is carefully and critically read, not alone by an expert proof reader, but by one conversant with the recent books—many of them from the Macmillan press—on this, subject.

W. B. PATTERSON.

Philadelphia.

WOODS, ROBT. A. and KENNEDY, ALBERT J. *Young Working Girls.* Pp. xiii 185. Price, $1.00. Boston: Houghton, Mifflin Company, 1913.

This "summary of evidence from two thousand social workers," the initial coöperative investigation of the new and energetic National Federation of Settlements, is not, as the sub-title might indicate, a lengthy statistical report; for it was inspired, no doubt, by Miss Addams, the first president of the federation; and her brief foreword strikes the keynote of the book—the seeking to learn the effect of city industrial life upon the young. In any case the emotional appeal of Miss Addams's wonderful work, *The Spirit of Youth and the City Streets,* which has been one of the few products of the social movement in America deserving the name of literature, here bears the fruit in an intensive, practical study of the complex, baffling problem of the adolescent girl in changing city home and workshop.

Mr Woods has delivered in a plain, but absorbing way the results of the stimulating interchange of the ideas of an earnest energetic group of social workers. Significant indeed in the book is the sane realization that new industrial conditions form the real basis of the girl problem; the clear analysis of the breakdown of family relations under those conditions; and the calm deliberation upon efforts to be made to strengthen family solidarity and restore the natural moral functions of the family group. In some of the chapters considering the question of character building in the girl, perhaps too little emphasis is given to the need of hastening the change in social institutions like the school—that they may come really to fit our girls for the new life—and too much to the older idea of the influence to be exerted upon individuals by settlement workers and club leaders. But the crucial problem of recreational needs is reviewed in a comprehensive way from a broad social

viewpoint, and here at least the change of the bad environment is clearly insisted upon.

With the study of the even more perplexing problem of the city boy already under way, the Federation of Settlements is making a definite and invaluable contribution toward rendering articulate, and applying practically for the welfare of youth, our new knowledge of city life.

F. D. TYSON.

University of Pittsburgh.

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REFORM IN ADMINISTRATION OF JUSTICE

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METHODS OF SELECTING AND RETIRING JUDGES IN A METROPOLITAN DISTRICT.[1]

By Albert M. Kales,

Of the Chicago Bar and Professor of Law, Northwestern University Law School.

Justice is not administered by an executive head planning how a large number of employees shall do clerical work or tend machines. Its ultimate source is in the operation of the mind of the judge upon certain facts presented to him in a judicial investigation. The power of the state to preserve order and settle the rights of parties is subject to be invoked in one way or another, according as the judge's mind reacts and operates. Clearly, therefore, the way in which the minds are selected for this important public duty and the way they are retired are of the first importance to the due administration of justice.

It may be that in some frontier or sparsely settled rural districts where extra-legal government does not exist, judges are in a degree really elected by the people. It may be that in such communities the electorate does actually pick out that one among the lawyers whom it wishes to act as judge.

There may be other communities which are well satisfied with the results obtained by special judicial elections at which the candidates are nominated by petition only and where the ballot is in form non-partisan. An analysis of conditions in such communities will usually show that extra-legal government by politocrats is very weak or non-existent and that the power of selecting and retiring judges really resides in the lawyers subject only to the approval of the electorate.

In a metropolitan district, however, where there is a large population and a governmental plan which reduces the most intelligent inhabitant to an extreme degree of political ignorance as a voter, and the establishment of extra-legal government by politocrats is

[1] This article will appear as chapter xvii in the author's book entitled *Unpopular Government in the United States*. University of Chicago Press. It is printed here by permission.

thus secured and fostered and becomes the real government, the judges, though the electorate regularly votes to install them in office, are not in fact elected at all. They are appointed. The appointing power is lodged with the politocrats of the extra-legal government. These men appoint the nominees. They do it openly and with a certain degree of responsibility under the convention system. They do it less openly and with less responsibility when primaries are held.

If you wish to test the soundness of these conclusions inquire your way to a judgeship in such a district or listen to the experiences of the men who have found their way to a judgeship or have tried to obtain the office and failed. In almost every case the story is one of preliminary service to the organization, recognition by the local organization chief and through him recognition and appointment of a nomination by the governing board of the party organization. Those who do not go by this road do not get in. The voter only selects which of two or three appointing powers he prefers. Whichever way he votes he merely approves an appointment by politocrats.

The judges in a metropolitan district where the extra-legal government rules and where elections for judges are held, are not subject to a recall merely. They are subject to a progressive series of recalls. They are subject to recall by the politocrats who sit upon the governing board of the party organization. These may refuse a nomination at the time of an election. If the judge secures the nomination he may be recalled by a wing of the organization knifing him at the polls. He may be, and frequently is, recalled by reason of an upheaval upon national issues. In the case so rare that it is difficult for one with a considerable experience at the bar in a city like Chicago to remember it, a judge is actually recalled because of popular dissatisfaction with him. If there now be added the recall by popular vote at any time during the judge's term, we shall have presented the politocrats with a continuous hold upon the judge. Their power may at any time be used to initiate recall proceedings against him, and the individual without any real popular following will have but little chance against the tremendous power of a successful political organization. The recall of a judge by popular vote at any time will give a like opportunity to a particular faction of the political organization to attack a judge it does not

want. Such a recall will likewise give to a party which has a chance of sweeping all before it in a national election an opportunity to initiate a recall of some at least of the judges of the opposite political party. Of course, the recall election will also give the electorate at large an opportunity to retire a judge at once in the rare case where there is a real popular uprising against him. It does not take any great degree of intelligence to estimate whether such a recall by popular vote will be of greater advantage to the extra-legal government by politocrats or to the electorate at large.

The plain truth is that in a metropolitan district the selection of judges by some sort of appointing power cannot by any possibility be avoided. The position of a single judge out of as many as thirty and upward in a district containing an electorate of a hundred thousand and over is too hidden and obscure to enable any man who is willing to occupy the place to secure a popular following. The man who has a real hold upon a majority of so numerous an electorate will inevitably be led to a candidacy for governor of the state or senator of the United States, if not indeed for President of the United States. Another obstacle to the actual choice of judges by so numerous an electorate is that the determination of those fit to hold judicial office is unusually difficult. It would be a problem for a single individual who had an extensive personal knowledge of the candidates and had observed them closely for a considerable period in the practice of their profession. For all but the most exceptional judge in a metropolitan district the power which places him in office and retires him from office will be an appointing power, although there be in force the so-called popular election of judges. So long as extra-legal government by politocrats is the real government, that appointing power will be lodged in the politocrats who wield the power of that government.

There are many who sincerely believe that the ideal functioning of the electorate in a metropolitan district where the extra-legal government is strong may be restored if judges are elected only at special elections, where a judicial ballot is used which omits all designation of parties and upon which the names of candidates are placed by petition only, and the name of each candidate is rotated upon the ballot so that it will appear an equal number of times in every position. The object of such legislation is to restore a choice by the electorate by depriving the extra-legal government of its

predominant influence in judicial elections. The means adopted to deprive the extra-legal government of its influence is to take from it the use of the party circle and the party column. It may safely be predicted of such legislation that it will not cause judges to be the actual choice of the electorate, nor will it eliminate the influence of the politocrats in judicial elections.

The supposition is that if the influence of the politocrats can be eliminated the electorate will necessarily make a real choice. But the electorate does not fail to choose simply because the politocrat has taken that choice from it. On the contrary the politocrat rules because the electorate regularly goes to the polls too ignorant politically to make a choice of judges. That ignorance is due to the fact that the office of judge is inconspicuous and the determination of who are qualified for the office is unusually difficult even when an expert in possession of all the facts makes the choice. The proposed method of election does not in the least promise to eliminate the fundamental difficulty of the political ignorance of the electorate. If, therefore, it succeeded in eliminating the influence of the extra-legal government the question would still remain: who would select and retire the judges? There is no reason to believe that the electorate would make any real choice. Electors would be just as politically ignorant as they were before. They would be just as little fitted for making a choice as they were before. The elimination of extra-legal government does not give to the electorate at large the knowledge required to vote intelligently. Who, then, will select and retire the judges? The newspapers might have a larger influence, but they would probably be very far from exercising a controlling influence or uniting in such a way as to advise and direct the majority of the voters out of an electorate of several hundred thousand how to vote for a large number of judges. Special cliques would each be too small to control a choice and combinations would be too difficult to make. The basis of choice would, therefore, be utterly chaotic. There could be neither responsibility nor intelligence in the selection of judges. The results reached would depend upon chance or upon irresponsible and temporary combinations. With every lawyer allowed to put up his name by petition and chance largely governing the result, the prospect is hardly encouraging.

There is no reason to believe, however, that any such disorgan-

ized method of choice would be tolerated. The most potent single power in elections would end it. That power would be the extra-legal government. Its organization would be put to greater trouble in advising and directing the politically ignorant how to vote, because it would have been deprived of the party circle and party column. But the advice and direction could and would be given and followed. Each competitor for the power of the successful extra-legal government would have its slate of candidates. Each would prepare separate printed lists of its slate to be distributed at the polls and the voters would for the most part, as now, take the list of that organization he was loyal to or feared the most, and vote the names upon it no matter where they appeared upon the ballot. Thus the appointment and retirement of judges by the extra-legal government would, after perhaps a period of chaos and readjustment, again appear. Perhaps it would be even stronger as a result of reaction and deliverance from the chaotic conditions which it relieved.

It is impossible to escape the conclusion that in a metropolitan district with one hundred thousand voters and upward, the selection of judges by the electorate is practically impossible. It is equally certain that the judges in such a community must be selected by some appointing power. The real and only question is: what is the best method of appointment?

No method could be worse than that which we now employ. Appointment by the politocrats of the extra-legal government is so obscure, especially when effected by primaries, that they are under no responsibility whatever in naming judges and they have no interest whatever in the due administration of justice. Indeed, the situation is worse than that, for they may have positive reasons for wishing a type of man from whom they may expect certain courses of action which will actually be inimical to the efficient administration of justice, particularly in criminal causes; or they may be interested in filling judicial offices with those who have done more in the way of faithful service to the organization than in the way of practice in the courts.

From time to time, therefore, suggestions have come from members of the bar of ways and means for reducing the influence of the appointing power of the politocrats. It has been suggested that the bar association should be given power to place upon the official

ballot a bar association ticket upon which might appear candidates who had been nominated by any of the other political parties. This would give the candidates approved by the bar association and also by any other political party considerable advantage over those appearing in only one-party column. To that extent it would throw a greater influence into the hands of the lawyers. The question, however, has arisen whether this would result in a greater power in an unbiased bar association to select good judges, or in the lining up of lawyers in groups which were controlled by the leaders of the politocrats. The effort is frequently made to provide that all judges shall be elected at a special judicial election. This course may prevent the recall of judges because of an upheaval on national issues. It does not, however, interfere with the appointment of a nomination by the politocrats in the first instance. Even when the nominations are all by petition and the party circle eliminated and the names of candidates rotated upon the ballot, resort must still be had to the extra-legal government to escape absolute chaos and selection by mere chance.

Nothing of great value can be accomplished until it is recognized that the judges in a metropolitan district are certain to be appointed and that the only proper appointing power is one which is conspicuous, legal, subject directly to the electorate, and interested in and responsible for the due administration of justice.

This principle may be worked out in a variety of ways.

When the state executive as now constituted is given power to appoint directly, or to appoint indirectly by designating the nominees to be voted upon, the principle is worked out in one way. There are, no doubt, serious objections to either method of executive appointment. The governor of the state is, of course, in the midst of politics. He is also in the midst of a legislative program and the temptation is very strong to trade judicial places for the progress of administration measures in the legislature. Then the governor is not particularly responsible for the administration of justice, that being a matter of the judicial department rather than the executive. But this much can be affirmed, that any mode of appointment by the governor, since it is conspicuous and legal, and since the governor is directly subject to the electorate, carries with it a measure of responsibility which is not found where the appointment is secret and by the politocrats of the extra-legal government. Appointment

by the governor is better than the present misnamed plan of popular election.

It might be suggested that the power of appointment could be lodged in the highest appellate tribunal of the state, the members of which had a term of considerable length, but were subject to election. This again is, no doubt, open to objections. But again, it could not possibly be a worse method than the one now employed. Judges of such courts are more easily than governors made responsible for the due administration of justice. They would have stronger motives than the governor for appointing men who could best carry on the administration of justice. No body of men in the state has a better opportunity for determining the character and ability of lawyers, since they examine the work of lawyers continually with most minute care.

It has been suggested that vacancies in the judiciary should be filled by the appointment of the chief justice of the metropolitan district. He in turn should be chosen by the electorate of the district at fairly frequent intervals—viz., every four or six years—and in him should be vested large powers to oversee and direct the mode of organizing and handling the business of the court.[2]

[2] The following extract from the letter of Mr. Charles H. Hartshorne, of Jersey City, N. J., to the author dated November 4, 1912, explains the plan of administering the chancery jurisdiction in New Jersey: "The constitution of New Jersey provides that 'The court of chancery shall consist of a chancellor.' The chancellor is appointed by the governor with the approval of the senate, for a term of seven years. He is usually reappointed, though it is an open question whether this office is an exception to the custom that judicial officers of the superior courts shall be reappointed, regardless of their political affiliations, so long as they are capable of giving efficient service. That custom has resulted in our having upon the bench of the higher courts, judges who have served for very long periods—twenty-five years and upwards.

"A number of years ago, the work of the court of chancery having become too great for one judge to dispose of, a statute authorized the appointment by the chancellor alone (without confirmation by any other authority) of a vice-chancellor, as assistant. By further statutes, the number of these was increased to seven. The court now consists of a chancellor and seven vice-chancellors, who sit separately in different parts of the state. The vice-chancellors are appointed for seven-year terms. That bench is generally regarded as the strongest in the state and has given entire satisfaction to the bar and to the public.

"The vice-chancellors hear interlocutory motions in nearly all cases under a standing rule of the court, but they conduct trials and final hearings only

The objection which will at once be raised to this is that it presents an opportunity for the politocrats to obtain vast power by securing control of the chief justice. It is not difficult to demonstrate that the lodging of the appointing power in the hands of a responsible and conspicuous chief justice controlled by the politocrats would be much less inimical to the administration of justice than the appointment of judges in secret and without responsibility by the politocrats directly. The chief justice would, of course, only fill vacancies occurring during his short term. The guarantee to the public that such vacancies would be filled with fairly efficient men lies in the fact that enormous responsibility for the due administration of justice is focused upon a single man. Every complaint of inefficiency and impropriety comes home to him. Such a man cannot carry on the work of the court without the most efficient judges that he can possibly secure. This leads necessarily to the procuring as judges of members of the bar who have, in a successful practice in the courts, had a proper service test. Assuming that such a chief justice were the recognized deputy of the politocrats he would be driven by the necessities of the case, by the conspicuousness of his position, and the force of public opinion, to do his utmost to persuade the politocrats to permit him to appoint efficient men. That would produce an appointing power far better than the secret and utterly irresponsible method of direct appointment by the politocrats, which now exists. A much more desirable result than this, however, is to be expected. Such a chief justice would be so important and conspicuous an officer and his power so great, that in his nomination and election the desires of the electorate as a whole

upon an order of reference from the chancellor. After trial they write the opinion of the court, which is usually reported, and advise the decree, which is then signed by the chancellor. No appeal lies from their decree to the chancellor, but all such decrees may be appealed directly to the court of errors and appeals.

"Theoretically, the vice-chancellors are merely referees who report and advise the chancellor, the decree being made by him upon their report. In actual practice however, they are members of the court of chancery, in fact (but not in form) making the final decree of that court.

"The system has worked very satisfactorily in respect to the character and attainments of the members of that bench, but the work of the court in populous cities is a good deal in arrear. This is due to the volume of business having outgrown the number of vice-chancellors."

would have to be much more fully considered than is the case where the politocrats appoint to a nomination and seek the election of an obscure member of a bench composed of thirty members and upward.

All fear of the chief justice having too much power and falling too much under the influence of the politocrats and extra-legal government may be dissipated by making adequate provision for his retirement. The chief justice would, of course, be subject to impeachment. He might also be retired by a legislative recall by a vote of three-fourths of the members of the legislature after an opportunity for defense and for cause entered upon the journals,[3] or by the governor upon an address of both houses of the legislature.[4] The fact that the chief justice held office only for a short term would in fact subject him to a recall by popular vote at the end of each period. To this might, with perfect propriety, be added the recall of the chief justice and election of his successor by popular vote during the regular term. Surely such safeguards are ample to protect the electorate from any abuse of the appointing power conferred upon the chief justice.

A chief justice who is retired at the end of his term by failure to be reëlected should, however, have the right, if he so chooses, to remain one of the judges of the court upon the same footing as an appointed judge and subject to assignment to duty by his successor. This is proper because the election goes only to the matter of his political position as the chief justice exercising an appointing power and administrative powers with respect to the organization of the court and the way its business is handled. The electorate has nothing to do with his fitness to decide litigated causes. Furthermore, the fact that a failure to be reëlected will not send the chief justice back to the practice of the law, which he has given up, will insure greater independence on his part while holding office as chief justice. It will also be an act of fairness to him, since a profession once given up during six or eight years for a place upon the bench is difficult and frequently impossible to recover. In addition to this it is best for the administration of justice itself that ex-chief justices who cannot regain their position in practice and are pitiful reminders of former greatness, should not be left derelicts at the bar. But if

[3] Illinois constitution 1870, art. vi, sec. 30.

[4] Massachusetts constitution, ch. iii, art. 1; 38 and 39 Vict. ch. 77 (Jud. Act 1875), sec. 5.

a chief justice upon failure to be reëlected chooses to take his place as a judge in the court, he should not be permitted again to be a candidate for chief justice. It will not do to have in the court the rival of the sitting chief justice with a motive for making trouble.

The principal objections to the appointment of judges have been that they necessarily hold for life and become arbitrary and exercise judicial power in a manner distasteful to the lawyers, their clients and a majority of the electorate. It will usually be found on analysis that the objectionable exercise of judicial power by an appointed judge is due to the fact that appointment means a life tenure. Hence the real objection to the appointment of judges as such is that when appointed they have held office for life. The entire objection, therefore, to appointment may be met by limiting the tenure of the appointed judge and by a variety of provisions for his retirement. He would, of course, be subject to impeachment. He might very well in addition be subject to some mode of legislative recall such as was proposed for the chief justice. His term may be limited to five years or seven years, thus requiring a retirement at the end of each period unless a reappointment is made. The judge appointed by the chief justice may even be subject to recall by popular vote according to one or the other, or both, of two plans. The appointment might be for a probationary period—say three years—at the end of which time the judge must submit at a popular election to a vote on the question as to whether the place which he holds shall be declared vacant. This is not a vote which puts anyone else in the judge's place, but a vote which can at most only leave the place to be filled by the appointing power. Such a plan must necessarily promote the security of the judge's tenure if at the popular election his office be not declared vacant. After surviving such a probationary period his appointment should continue for—let us say—six or nine years. At the end of that time the question might again be submitted as to whether his place should be declared vacant. If thought necessary further to protect the electorate from the bogey of an appointed judge, he might be subject to recall at any time upon the petition of a percentage of the electorate. But this recall, like the other, should be only upon the question of whether the judge's place should be declared vacant, leaving the vacancy, if created, to be filled by the appointing power. The danger in the existence of both these plans of popular recall is that they may be used with more effect by any extra-legal govern-

ment of politocrats than by the electorate at large. It is highly improbable that the electorate would find it necessary or advisable to use either mode of recall. The presence of either mode would, therefore, furnish a means whereby an influence of the politocrats upon the judiciary could be continuously maintained.

It is, however, a grave mistake to suppose that judges exercise their judicial power in a distasteful and arbitrary manner merely because they hold for life or during good behavior. An arbitrary or disagreeable course of action by a judge arises principally from the fact that he is subject to no authority which can receive complaints against him and act upon those complaints by way of private or public criticism and correction of the judge. The best protection against arbitrary and disagreeable actions by judges is a duly constituted body of fellow judges who hold a position of superior power and authority and to whom complaints as to the conduct of judges may be brought and who may investigate those complaints and exercise a corrective influence. When a considerable number of judges in a metropolitan district are provided with a chief justice and organized for the efficient handling of a great volume of business, the means of securing the exercise of a corrective influence over their conduct at once appears. Such a court must be organized into divisions for the purpose of handling specialized classes of litigation. In a metropolitan district like Chicago there should be an appellate division with from six to nine judges sitting in groups of three, a chancery division of six judges with a corps of masters, a probate and family relations division with at least four judges and a corps of masters and assistants, a common law division with fifteen to eighteen judges and a corps of masters, a municipal-court division with thirty-three judges. The chief justice should be the presiding justice of the appellate division and each of the other divisions should have a presiding justice with large powers over the way in which the work of each division is handled. The chief justice and the presiding justices of divisions should form a judicial council or executive committee, with considerable powers over the way the court as a whole was run. To such a judicial council there should be committed the power to remove from office any judge, other than the chief justice, and to reprove, either privately or publicly, or transfer any such judge to some other division of the court for inefficiency, incompetency, neglect of duty, lack of judicial temperament, or conduct unbecoming a gentleman

and a judge, for the good of the service, or to promote its efficiency. The power of removal by the council should only be exercised where written charges had been filed and after an opportunity has been given to the judge to be heard in his own defense.

The existence of a judicial council composed of the chief justice and the presiding justices of the different divisions of the court, each one responsible for the way in which the work of his division is handled, suggests also a practicable way in which to stimulate efficiency at the bar, provide a service test for candidates for places on the bench, and subject the appointing power of the chief justice to a slight but reasonable control. The judicial council should be given power to appoint upon an eligible list for each division of the court twice as many members of the bar as there are judges in the division. The chief justice in appointing judges to a place in any division of the court should be required to select from this eligible list on the occasion of every other appointment at least. The operation of such a plan would be to place in the hands of the presiding judges of divisions an express authority to suggest what members of the bar practicing before their divisions respectively would make satisfactory judges for each division. It would also operate to stimulate the efforts of lawyers and promote competition to secure places upon such eligible lists by specialization in practice before particular divisions. This would develop an expertness in the handling of litigation which does not now exist on the part of any considerable number of the bar.

We may then conclude that in a metropolitan district with a hundred thousand electors and upward judges cannot be elected. They must be appointed. If an election is attempted it is a failure and appointment results. The worst method of appointment is the secret and irresponsible appointment by politocrats. The most promising is the conspicuous and legal appointment by a chief justice elected at large in the district at frequent intervals. Every objection to such a plan and every prejudice against it may be met by provisions for the retirement of the chief justice and his appointees by impeachment, by legislative and popular recalls and by the power of the judicial council to discipline and remove any judge other than the chief justice. It is even possible under such a plan to promote efficiency by securing an eligible list of men whose experience in practice under the eyes of the judges insures excellence in appointment.

THE RECALL OF DECISIONS

By Moorfield Storey,

Boston, Mass.

The United States and each state in the Union is governed by a written constitution, which limits the powers of the officers who conduct the government and defines the rights of the citizen. The Constitution of the United States also draws the line between the powers of the federal government and the powers of the several states. It is inevitable that questions should arise between state and nation, between the states and their citizens, and between individuals as to the construction of these constitutions, and some man or body of men must decide these questions or our system breaks down. Hitherto they have been decided by the courts, but it is now proposed that from their decisions an appeal should be taken to the people. Is this a reasonable proposal?

It will be conceded generally that the law which controls us all should be certain so that every man can rely on it and govern himself accordingly; that courts should be no respecters of persons but should treat rich and poor, popular and unpopular alike, and that in order to secure such courts the judges should be wise, upright, courageous and impartial. No lover of justice can dispute any of these propositions.

It must also be remembered that constitutions are laws adopted by the people as a whole to define the power of their rulers and to protect and secure the rights of minorities and individuals. Power can always guard itself and needs no protection, whether it rests on tradition, on military force, or on mere numbers. It is the weak and not the strong, the few and not the many who are in danger. The successive victories of liberty in the long contest against tyranny have always resulted in securing for the citizen some constitutional safeguard like Magna Charta, the Act of Settlement, the various provisions which are found in all our written constitutions, or the amendments adopted after the Civil War. The words which secure religious liberty, the right of petition, or the freedom of the press are not necessary to protect the man who agrees with the majority

of his neighbors, but him who disagrees—him who is a Catholic in a Protestant country, him who would petition for the abolition of slavery when its friends control the government, him who would preach some doctrine which the majority disapproves. As Mr. Hornblower has put it, "Civilization consists in subordinating the wishes of the majority to the rights of the minority." The protection which our constitutions give to the life, liberty and property of every citizen is a protection against abuse by the officers chosen by a majority of his fellow-citizens, and there are few of us, whether laborers or capitalists, who would feel safe were these constitutional safeguards taken from us. In a word a constitution is a law adopted by the people to protect each citizen against oppression by a majority of the people themselves or by the officers which this majority chooses. This is its main purpose.

These propositions are fundamental, and unless we would do away with constitutions altogether and make the majority of the moment omnipotent in dealing with our lives and property, any discussion must proceed upon this basis.

The recall of decisions may be limited to those decisions which involve a construction of the constitution, or it may include those which lay down a legal rule that concerns the public generally, or it may extend to all decisions. If the principle is once established, no one can say to what class of decisions it will not be extended. Its more intelligent advocates insist that it will be used only to amend state constitutions by reversing decisions which hold particular statutes inconsistent with such constitutions, but they cannot control the movement thus inaugurated. It is easy to set a fire which the incendiary cannot extinguish.

Why should we adopt this new political nostrum? We have gone on for a century and a third under the existing system. It has carried us safely through the formative period when the government was young, through periods of financial disaster, through the great Civil War and the critical days of reconstruction, through fair weather and foul in a way which has excited the admiration of mankind, and we have all been proud of it as the most successful instance of self-government on a great scale and under most diverse conditions in the history of mankind. Why should we change? What is the ground of complaint? If our opponents are driven to precise statement it will be found that the system as a rule has worked to the

entire satisfaction of the people, but that in a few states and in a few cases courts have made decisions which are not palatable to these advocates of change. This may be admitted, for all men are fallible, and under any system it is impossible to satisfy everybody. But shall we for a few mistakes destroy a system which as a rule works well?

Let us go a little further. The recall of decisions, at first limited by its author to the recall of decisions made by state judges in construing state constitutions, has now been given a wider scope and is advocated by its friends on the ground that all courts defeat the will of the people when they declare an act unconstitutional, and that it is dangerous to give a few men so great a power. These critics work themselves into a frenzy over the danger to free institutions arising from the courts, and as one writer expresses it:

> If we the American people are not willing to let the federal judiciary prove to be our Frankenstein monster, uncontrollable and destructive, we must uphold and act upon the doctrine of Thomas Jefferson, the great American whose democracy was pure and undefiled. He wrote to Jarvis: "It is a very dangerous doctrine to consider the judges as the ultimate arbiters of all constitutional questions. . . . . The constitution has erected no such single tribunal. . . . . It has made all the departments co-equal and co-sovereign with themselves."

This may seem like a convincing statement to some, but let us analyze it and see if there is really danger that the federal judiciary will prove "a Frankenstein monster, uncontrollable and destructive."

No one will doubt that a constitution, in every case which we need consider, imposes some limits on the powers of the legislature and the executive. There are some things which neither can do. For example the legislature cannot interfere with the freedom of religious worship, and the governor cannot order a man killed without a trial. When we approach the border line questions arise which it may be difficult to decide. If we concede that the legislature may determine for itself all questions as to its own power, and that the passage of an act is a decision that it has the power to pass it, there ceases to be any limitation on the legislative power. If the governor may insist that he has power to do whatever he chooses to do, and that no one can question it, the constitutional limits on his power lose all their force. These propositions admit of no dispute. There is no alternative save the decision of such questions by the court.

Let us next ask what the judges do when they decide an act unconstitutional. They do not issue a decree when the law is passed setting it aside and staying its execution. Unless the question is raised in some litigation they express no opinion, but when a case comes before them in which one party claims a right under some statute, and the other says that the statute was one which the legislature had no power to pass, they deal with the issue thus raised. It being conceded, as it must be, that the legislature of the day has no power save that which the people gave it by the constitution, the question before the court is, "What is the people's will?" Their will as expressed in the constitution must prevail for that is the fundamental law, and the court in interpreting the constitution and applying it to the statute, so far from defeating the people's will, is endeavoring to carry it out. In so doing it is the court, not the legislature, which best represents the people.

I cannot state the proposition as well as Chief Justice Marshall stated it in Marbury *vs.* Madison:

> If two laws conflict with each other the courts must decide on the operation of each. So, if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution, or conformably to the constitution, disregarding the law, the court must determine which of these conflicting rules governs the case. . . . . Those, then, who controvert the principle that the constitution is to be considered in court as a paramount law are reduced to the necessity of maintaining that courts must close their eyes on the constitution and see only the law. This doctrine would subvert the very foundation of all written constitutions. It would declare that an act which, according to the principles and theory of our government, is entirely void is, yet, in practice, completely obligatory. It would declare that, if the legislature shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is in reality effectual. It would be giving to the legislature a practical and real omnipotence with the same breath which professes to restrict their powers within narrow limits. It is prescribing limits and declaring that these limits may be passed at pleasure.

It is always certain that the losing party and some others will quarrel with the decision, and it is possible that the interpretation which the court gives to the words of the constitution may not be approved by the majority of the people. They may say, "If that is what the constitution means, we do not like it." Is the court an uncontrollable monster from whose decree there is no relief? On the contrary the people have only to change the constitution by amend-

ment, as they have done several times recently with the Constitution of the United States, and are constantly doing with the constitutions of the states. The people can wipe out the whole constitution, can adopt socialism or even anarchy, can obliterate all rights of property, all freedom of speech if they wish, and the courts are of all men the least able to prevent it. The courts tell the people what their law means, and the people if they are dissatisfied have full power to make a new law which will satisfy them better.

Let us take another step and examine Jefferson's theory that each department of government may construe the constitution for itself, and its decision be binding. Does anyone really think that the quiet and generally elderly gentlemen who compose our courts, and who have no power to enforce their decrees save as the executive aids them, are more dangerous Frankensteins than an uncontrolled President, or a lawless Congress would be? Are three Frankensteins safer than one? The judiciary is notoriously the weakest department of our government. Its power comes from its wisdom and its character, and is purely moral. Not so with the executive and the legislative branches which control the purse and the sword.

Questions of constitutional interpretation must arise between Congress and the President, as in the time of Andrew Johnson. More conflicts may come in the future, and if each can interpret the Constitution finally, there is no way out of the conflict. It is not safe to let a headstrong president define his own powers at pleasure, or a legislative majority in times of popular excitement legislate at will. Some one must decide such questions, and the only possible arbitrators are the courts. If they are shorn of their power, there is no constitutional limit upon executive or legislative power—in short there is no constitution. If they make law which the people do not like, the people can change it after due deliberation. The ultimate power is with them. This is democracy pure and simple.

Jefferson's three Frankensteins, or even one of them if the President is the one, may well mean civil war as might have been the case when the Hayes-Tilden controversy arose. The Frankenstein that can send the troops and ships of the United States to prevent Colombia from asserting its rights in its own territory, or can send soldiers to quell a riot in any city, is a far more dangerous Frankenstein than any court in the United States. Shall we, with this in view, abandon the ways which we and our fathers before us have trodden so long in safety?

But it is conceded by the advocates of the recall that the people have the power to amend the constitution and so change any interpretation of its provisions by the courts, but they say it is a cumbrous process, that it is slow in its operation, that its outcome is uncertain, and that it is difficult to draw an amendment which is entirely satisfactory, a difficulty encountered in New York in the effort to change the constitution so as to impose on employers a liability for accidents to employees.

If the process is slow, it is because the founders of this government wisely decided that it should not be too easy for a popular majority to change the fundamental law which regulates the powers of the governor and the rights of the governed. There is no one who has not had occasion to realize the wisdom of "sleeping on" a proposition before acting. Our system makes the people "sleep on" a proposed amendment before adopting it, and this spells safety. There are few if any constitutional changes which cannot safely wait the sober second thought of the voters, and if in any state the process of amending the constitution is bad, the process itself can be changed by amendment.

It is said that of many amendments proposed only few have been adopted. The fault is not with the process of amendment but with the amendments themselves. There has been no difficulty in carrying amendments which the people wanted. The difficulty has been with those that the people did not want, and that this difficulty exists is an argument in favor of the present method. As for the difficulty in drawing an amendment, what stronger argument can we have against the proposed change? If skilful men with ample time at their disposal cannot express in writing what they mean, is it not clear that their minds are not in accord and that they do not know what they want, or perhaps that they recoil from the amendment when they see it in black and white? If we cannot reduce the law to a written statement, where shall we be left by a popular election recalling a decision, and what will the law then be? It is impossible to foresee the extent of the resulting confusion.

The arguments against the recall of decisions are numerous. In the first place how would the process affect the certainty of the law, which is most important, as was stated at the beginning of this article? Today we find the law in the text of the constitution and the statute. We are aided in its interpretation by the history of

the provisions in question, and by the decisions of eminent and able judges and the precedents which their labors have established, and with these to help him the lawyer who is called upon to advise a client as to his right can with some confidence tell him what they are. If the recall of decisions is adopted he must say, "This in my judgment is the law as the court will lay it down, but after its decision the other side may start an agitation for a recall and no one can tell what the result of a popular election will be." The client will be as much at sea as would be the patient if he found that the remedies prescribed by his doctor were subject to be changed, if the public after hearing various quacks decided by a majority vote that the diagnosis of his doctor was wrong.

Let us pursue the client's difficulties a little further, and suppose he is sued. Shall he settle the claim or not? His lawyer must say that "while in the courts you will win, you must incur the expense of defending yourself there, and afterwards of conducting a popular campaign before you are safe. What that expense, or what the result of the election will be, who can tell?" If it be said that the recall is not to affect the judgment so far as the rights of the parties to the case are concerned, what is the position of the losing party, bound by a judgment which as to the public and all other parties is held by the people to be wrong? There is then one law for the unhappy man who raised the question and incurred the expense, and another law for all his fellow-citizens. Suppose the amount in a case is small but the principle involved affects a great many: must the persons interested form a party and raise a campaign fund to sustain a decision or reverse it at the polls? The imagination fails to grasp all the possibilities and uncertainties of law made in such a way.

It is conceded also that the law should be no respecter of persons. Suppose a constitutional fight is claimed by a Rockefeller in a dispute with some laborer, can we be sure that the people will not decide against Rockefeller's contention because he is rich, and can afford to lose his case? This is the reasoning which juries often use in deciding suits for personal injury, and their logical processes are those of the community at large. Suppose next year a poor man claims the same constitutional right against a rich neighbor, will not the poor man be likely to prevail for the same reason, and then which election makes the constitution? Is one popular election to settle rights for all time, or may it be overruled by the same voters or their descendants at another election?

Again the courts in deciding often leave questions open for future consideration, and it is doubtful how far their decision is intended to go. Will not the same or greater doubts be left by popular elections? Our opponents say that the opinions of the court are "only literature, impressive, helpful, more or less persuasive, but not of themselves law." Yet it must be confessed that they state the rules which the courts will follow in like cases; that they tell us what the law is, and guide us in other cases. What shall take their place when a decision is recalled? Shall we interpret the result by the speeches of irresponsible orators on the stump, or by appeals made in campaign documents? What a vista of hopeless confusion and uncertainty the suggestion opens!

Moreover when the question is presented to the voters whether they wish a particular law to stand although it violates the constitution, they are really asked whether they want to override the constitution in this case. It is only an abuse of terms to call it amending the constitution, for it is not suggested that the provision of the constitution violated in that case is to be treated as absolutely repealed. To illustrate my meaning, let me call attention to the constitutional rule that no man can be deprived of life, liberty or property save by due process of law. When a number of lawyers were trying to frame an amendment to the constitution of New York which should make possible an employer's liability law of an extreme character, and were contemplating their completed work, one said, "This does not seem to me entirely satisfactory." "No wonder," replied another, "what we have done in substance is to make the constitution provide that no man shall be deprived of his property save by due process of law except employers of labor." The story may be true or false, but it is clear that while no one would probably advocate the repeal of the general provision, he might very well support a particular law without recognizing that it violated that provision. Laborers might be willing to deprive their employers of rights which they would insist on preserving for themselves, just as the labor unions object to any combinations of capitalists that may tend to monopolize trade or prevent competition, while they strenuously insist that they shall have the right to form combinations against their employers with the same object.

When the constitution is amended under the present system each voter has a chance to consider how he would like the new rule

in his own case, and to forecast the contingencies to which it might apply, knowing that he cannot make a rule which will affect others without its affecting him also. But in deciding whether to recall the decision in favor of a rich man he will not realize that he is making law for himself, nor if the election only validates a particular statute will it perhaps affect him. If the recall is adopted, there will be no settled rule which the majority of voters may not set aside in a given case at pleasure.

Again if the majority can recall a decision and so by a majority vote amend the constitution, where is the protection now afforded minorities and individuals? The very object of the constitution is to restrain the power of the majority and to protect the rights of the individual against its tyranny. This object is defeated if a majority of the voters is given the power to invade these rights at pleasure. It is not necessary to speak of the feelings aroused by differences of religion, or wealth, or the antagonism between labor and capital, though all are very easily aroused. Consider only the effect of race prejudice, today the most dangerous influence at work in our midst. Only a few years ago I heard an eminent Hebrew in New York say that the lives and property of his race were safe nowhere save in England and the United States. The Dreyfus case was then shaking the government of France, and the expulsion of the Jews from Russia and their treatment in other countries were fresh in men's minds. It is possible that a similar feeling might be raised against them in parts of the United States, for we are of flesh and blood in no way different from other men, and in that case how safe would they be with no constitutional protection? Ten millions of our fellow-citizens, our equals before the law in every respect, are now suffering outrages and indignities of all kinds in every part of the country because their skins are darker than our own. They are denied the right to vote, they are denied in some places the right to live where other citizens may live, their lives are taken without due process of law. The constitution affords them their only protection. Can their rights safely be left to be dealt with as pleases a majority of their fellow-citizens in many states? To ask the question is to answer it.

Lastly we may be sure that while men are men disputes between them will constantly arise, and somehow, by somebody, they must be decided. As civilization has advanced, the old-fashioned ways of

settling those questions by might, by wager of battle, or various ordeals have been abandoned, and instead it is agreed that the best way of settling all controversies is by submitting them to impartial men, who after hearing the parties shall decide what is right. Even in the international field, enlightened men of all nations are agreed that the settlement of questions by the majority on the battlefield must cease, and that such disputes must be adjusted by The Hague tribunal or some like body of trained jurists. It would be absurd to propose that an election should be held in which the contending nations should vote and a majority decide, for that would make Russia supreme in Europe and the smaller nations would be placed at the mercy of their larger neighbors. What is so manifestly absurd as a method of settling questions between nations is hardly less so if applied to disputes between individuals. It is clear that in an international controversy each voter would stand by his own country, and therefore an election would be a farce. Is it not equally clear that if the constitutional or other question involved in a decision were of such popular interest as to suggest the recall, the voters in deciding it would stand by their own class, their own color, their own party, their own locality, just as Russians would stand by Russia and Frenchmen by France? That if the election for example turned on a decision as to the respective rights of labor and capital, or any like question on which feeling was strongly aroused, the result would be influenced by prejudice and sympathy, and that the feeling not the reason of the voters would determine the result? So far from having their rights fixed by an impartial tribunal, the parties would be sent from that tribunal to fight out their differences at the polls, and the strong side, not necessarily by any means the right side, would prevail. It is not right, but might which would decide the contest, and thus in cases of the greatest importance to the public our whole method of deciding controversies by disinterested men would be abandoned, and instead, the result of a contest between the parties, in which the most numerous would win, would be registered as law. We struggle to get juries in all important cases made up of men who can have no prejudice or opinion on the questions involved. If the recall prevails the tribunals which make our law will be governed by prejudice. Can anything more inconsistent with the orderly administration of justice or anything more contrary to all civilized procedure be imagined?

In a word we labor to secure wise, courageous and impartial judges trained for their work by years of study and experience to decide the disputes which arise among men, and it is proposed that from the decisions of such men an appeal shall lie to the people, an appeal from knowledge to ignorance, from impartiality to prejudice, from ripened experience to inexperience, from the serene atmosphere of the courtroom to the declamation and passion, the noise and the dust of the hustings.

But it may be said that in a different way the people can accomplish the same result since they can amend the constitution. That is true and I would not take away or fetter this absolute power. But its exercise is now regulated in such a manner as to insure deliberation, and as far as possible to present a general rule and not a particular case for consideration. Even in courts "hard cases make shipwreck of the law," and this danger would be increased a hundred fold if the people were given power to decide in each case whether or not to uphold the constitution. There is power enough now, and it is properly guarded. Let well alone.

Nor is the process of amendment slow or difficult. Between 1880 and 1911 the people of Massachusetts have adopted twelve amendments to the constitution of the state. This necessitates the adoption of the amendment by two successive legislatures and its ratification by vote of the people, but in no case has the process occupied two years. It may be doubted whether amendment by the recall of decisions would be more expeditious. It certainly ought not to be, and if other states have more cumbrous methods, they can adopt the Massachusetts rule. To be sure in Massachusetts elections are annual, while in most states the legislatures are chosen biennially. The annual session was abandoned because the people did not like to have the legislature so often in session, in fact did not trust their representatives thoroughly. The biennial session may delay the process, but it is strange that communities which in this way have shown their distrust of legislative action should now assume that if a law which such a legislature has passed is held unconstitutional, the people's will is defeated. Is the legislature, that cannot be trusted to meet every year lest it abuse its power, so infallible an interpreter of the people's will that our whole constitutional system must be changed and our constitution in fact abolished in order to give its laws more immediate effect? If skilful draftsmen cannot

write an amendment to the constitution which satisfies them, will the constitution be amended better by the loose language of a statute drawn as most of our statutes are? Such will not be the judgment of intelligent men.

Senator Root has stated the question admirably in the following words:

> We must choose between having prescribed rules of right conduct, binding in every case so long as they exist, even though there may be occasional inconvenience through their restraint upon our freedom of action, and having no rules at all to prevent us from doing in every case whatever we wish to do at the time. . . . . A sovereign people which declares that all men have certain inalienable rights, and imposes upon itself the great impersonal rules of conduct deemed necessary for the preservation of those rights, and at the same time declares that it will disregard those rules whenever in any particular case it is the wish of a majority of its voters to do so, establishes as complete a contradiction to the fundamental principles of our government as it is possible to conceive. It abandons absolutely the conception of a justice which is above majorities, of a right in the weak which the strong are bound to respect.

In a word it abandons our whole theory of constitutional government. It is difficult to believe that the people of the United States are ready yet to adopt this suicidal policy.

CONSTITUTIONAL GROWTH THROUGH RECALL OF DECISIONS

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Seldom has a political theory received so little unprejudiced consideration as the "recall of decisions." Bench and bar and the lay public have confused the idea with the recall of judges; have repeated catch phrases, such as—"the appeal from the umpire to the bleachers;" and largely overlooked the substance of the proposal—an improved method only, for the exercise of a fundamental power reserved to the people, to make, to amend, and to interpret their constitutions.

The lack of a clear understanding of the proposal, rather than any vicious intention to misrepresent, is responsible for many unfair arguments against it. Lawyers, who should be better informed, repeat the stale misstatements of their professional brethren; and laymen, who have acquired a wholesome distrust of the advice of the bar, may be thereby unduly prejudiced in favor of the proposition.

It is possible that a presentation of the idea in words of one syllable may serve a double purpose in helping to clarify the real issue both for members of the bar and for the interested public. In order to simplify the exposition so far as possible, the present consideration will deal only with the recall of a limited class of "police power" decisions.

Why and When Necessary

In a certain class of important cases there may be, under the constitution of every state in the Union, a conflict of authority between the legislature and the courts.

Under the constitution the legislature of a state claims the power to pass a certain law—a law not prohibited by any definite words in the constitution.

Under the constitution the supreme court of the state claims the power to declare that particular law void.

Who is to decide between these two claims of power?

The court may decide the case before it, but the court cannot decide the conflict in opinion between itself and the legislature.

Controversy has arisen between two arms of government of equal authority. No one can be assured whether the will of the people has been thwarted or upheld. A prudent regard for maintaining respect for the law and retaining confidence in the institutions of government requires a final adjudication of the controversy, which shall assure the supremacy of the will of the majority, as speedily as is consistent with intelligent consideration.

Clearly the only power superior to both the courts and the legislature lies in the people who made the constitutions which give the two conflicting bodies their authority.

Clearly the people can only exercise their power directly through the ballot box.

The truth of these conclusions is not to be disputed by any student of constitutional law or political science.

Controversy arises only over the question: How shall the people exercise their power to determine what the law shall be, when their representatives in the legislature and on the bench disagree?

The established method has been by amendment of the constitution.

The proposal made by Theodore Roosevelt before the Ohio Constitutional Convention was that in a certain limited class of cases a better method would be the "recall of decisions." This he has more recently described as the "review by the people of judge-made laws."

Neither of these terms, each being a definition of procedure, quite describes the purpose of the popular vote, which is—the decision by the people of a controversy between their courts and their legislature.

The courts are the guardians of the people's fundamental law —the constitutions. The legislatures are the makers of the people's ever-changing law—the statutes. Both the preservation of the principles of the fundamental law and the right to develop those principles in the changing statutes are essential to our form of government. In harmony they express the will of democracy. In conflict the law of the land becomes confused and uncertain.

In order to measure fairly the value of the new method for popular decision of such conflicts, one must have in mind the merits and demerits of the old method which it is sought to improve.

Why Constitutional Amendment is Inadequate

In the first place the point of the proposal can be kept most clearly in mind by considering only the application of the "recall of decisions" to cases where the extent of the police power is the decisive issue.

The Progressive national platform has limited this doctrine and expressed the party position in the following language:

> That when an act, passed under the police power of the state, is held unconstitutional under the state constitution, by the courts, the people, after an ample interval for deliberation, shall have an opportunity to vote on the question whether they desire the act to become a law, notwithstanding such decision.

To understand the reason for this limitation one must know what the "police power" is—a subject quite vague in the minds of laymen and none too clearly understood by many lawyers.

What the Police Power Is

When a people write a constitution they create the machinery of government. They establish a legislature to make new laws and to change old laws, in order to express the developing ideals of business and social morality. They designate and provide for the election of executives to administer these laws. Lastly they establish courts to decide controversies over private rights and over the powers and duties of public officers. A constitution gives certain powers to public servants and prohibits certain other powers and therefore contains both grants of authority and limitations of authority.

When the supreme court of a state upholds or denies the power of the legislature under the state constitution to pass a law, the decision will fall into one of two classes. It will be based on either:

(1) Definite power granted or denied in specific words
or
(2) Broad power granted or denied in general terms

} in the state constitution.

The Present Consideration of the Recall of Decisions Deals Only with the Second Class of Cases

A few examples of the type of constitutional provisions involved in the first class may be taken from the Constitution of the United States:

Power definitely granted.	The Congress shall have power . . . .
	To lay and collect taxes. . . . .
	To coin money. . . . .
	To establish Post Offices and Post Roads.
Power definitely prohibited.	No bill of attainder or ex post facto law shall be passed.
	Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.

When a legislature exercises such a power definitely granted or prohibited and the supreme court interprets such definite language, there is no conflict of authority. If there is difference of opinion, even the legislators themselves will yield to the greater wisdom of the court in interpreting constitutional or statutory language. Nor would the average citizen care to act as a court of appeal.

In such a case the supreme court explains and enforces the constitution. If the language of the constitution no longer represents the will of the people the appropriate action to be taken by the people is to amend the constitution by altering its language.

But an entirely different situation is presented when constitutional questions arise in that twilight zone between broad powers granted and broad powers denied, in general language.

The most shadowy realm of all is between two provisions here quoted from the national Constitution but found in substance in practically all state constitutions:

Power broadly granted.	The Congress shall have power . . . .
	To provide for the common defense and general welfare. . . . .
	To make all laws which shall be necessary and proper for carrying into execution the foregoing powers.
Power broadly prohibited	No person shall be deprived of life, liberty or property, without due process of law.

Between the above quoted granted power and prohibited power lies the great twilight zone of the "police power"—the power of the state to pass and enforce laws which are neither specifically authorized nor prohibited in the state constitution, but which are in aid of the general welfare.

If, for example, the state supreme court believes that a ten-hour law for women is necessary for the general welfare that law will be upheld as a proper exercise of the "police power."

If, however the state supreme court does not believe that such a law is necessary for the general welfare, the law will be held unconstitutional—as depriving women of "liberty" (the right to sell their labor for more than ten hours) without "due process of law."

The difference therefore between laws which are constitutional and unconstitutional, between what is "due process of law" and what is not, in such cases involving the "police power" does not depend upon any language in the constitution. These cases are decided solely upon the opinion of the court as to whether the law is necessary for the general welfare and hence authorized by the "police power."

As Mr. Justice Holmes of the United States supreme court has written, the extent of the "police power" depends upon "the prevailing morality or strong and preponderant opinion" of the time.[1] Therefore a conscientious court will endeavor to express the will of the majority in its opinion. An obstinate, narrow-minded court will deceive itself as to what the "prevailing morality" demands. But in either case the decision will be based upon the opinion of the court concerning what laws are required in aid of the general welfare. If the court holds the law "unconstitutional," there are two conflicting authorities—the legislature and the court—one holding the law necessary to the general welfare, and the other holding the law not necessary to the general welfare. And there will be not one word in the constitution requiring either body to make or to annul the law.

Under those conditions it is simply pettifogging to say that "the judges are forced to their decision by their oaths to support the constitution." The legislators who passed the law took the same oath. Neither the legislators nor the judges would violate their oaths by reversing their action.

[1] Noble State Bank *vs.* Haskell, 219 U. S. 104, 111.

When, however, the "conscientious opinion" of a court voices the individual conscience of the judge in opposition to the expressed conscience of the people the fulfillment of the oath to preserve the constitution may be seriously questioned.

As stated in the beginning, there is in these "police power" cases a conflict between two arms of government and only the people who made both can decide which is right. Furthermore—since the whole question at issue is: What is demanded by the prevailing morality?—how could the correct answer be more surely ascertained than by taking a well-considered vote on the question?

The established method since this republic was formed for obtaining this vote has been to submit an amendment to the constitution covering the question at issue. There are two strong reasons why this method is inadequate and unsatisfactory in dealing with "police power" cases.

1. Amendment of the constitution is a slow, cumbersome process; not adapted to the need for settlement of a conflict between authorities over what is "constitutional."

2. There is nothing in the constitution to be amended.

Taking these points up in order:

1. Amendment is a Cumbersome Process

Careful deliberation in amending the grant of a power or the prohibition of a power is the part of wisdom. The fundamental law should be as solid as the foundations of a building—only to be rebuilt with great labor and caution. But in disputes between the courts and the legislature over the police power there is no fundamental question involved. The "police power" builds in the superstructure of government. The foundations remain unchanged, regardless of whether the court permits the legislative masons to put on another story or to remodel the interior.

Excessive deliberation is exasperating to a people determined to right industrial and social wrongs. If the court's opinion of the prevailing morality is correct, the sooner it is sustained the better. If the court's opinion is incorrect, the sooner it is reversed, the sooner will popular antagonism to the court subside—and respect for the law be restored. Of course a reasonable period of consideration is necessary in order that the popular verdict may express a conviction and not a transient emotion.

2. Amendment is an Inappropriate Process

The strongest reason for a popular referendum on a "police power" decision is that there is nothing in the constitution to amend. There is no language to be altered, no new principle to be established. The legislature has the right to enact laws to promote the general welfare. The legislature has no right to take life, liberty or property without "due process of law." So it is and so it shall be. There is nothing for the people to amend in either the grant or the prohibition of power. It is also highly desirable that these two broad principles should not be qualified by a mass of formal exceptions.

The legislature and the courts have disagreed as to whether one particular law is necessary for the general welfare—is demanded by the "prevailing morality."

The people do not wish to change their constitution if they disagree with the supreme court. They simply wish to furnish conclusive evidence to the court of what the constitution as it is written authorizes, when interpreted in the light of the "strong and preponderant opinion" of the present generation.

Chief Justice Winslow of the supreme court of Wisconsin has written well and forcibly:[2]

> When an eighteenth century constitution forms the charter of liberty of a twentieth century government must its general provisions be construed and interpreted by an eighteenth century mind surrounded by eighteenth century conditions and ideals? Clearly not. This were to command the race to halt in its progress, to stretch the state upon a veritable bed of Procrustes.
>
> Where there is no express command or prohibition, but general language and policy to be considered, the conditions prevailing at the time of its adoption must have their due weight, but the changed social, economic and governmental conditions and ideals of the time, as well as the problems which the changes have produced, must also logically enter into the consideration, and become influential factors in the settlement of problems of construction and interpretation.

A long list of decisions of state courts may be cited holding certain laws (largely "social and industrial justice" laws) unconstitutional as not "due process of law" and decisions by the United States supreme court holding similar laws constitutional as being "due process of law."[3]

[2] Borgnis *vs.* Falk Company, 147 Wis. 327. 1911.

[3] Address on the "Recall of Decisions" by Albert M. Kales, before the Illinois Bar Association, April, 1912.

Let us assume that the people would agree with the United States supreme court. Is it not a cumbersome, inept method for executing the popular will to require that in each of these cases an amendment to the constitution must be submitted to the people of the state and approved by popular vote and then that the legislature must reënact the same law previously passed? What is the logic of this long and laborious process? Why should a new clause be added to the constitution when no change in its language is necessary? Why should the complicated and expensive legislative machinery be again called upon to remake a law when the very vote of the people proves that the law was constitutionally enacted the first time?

The crux of the whole question is obtaining an expression, by popular vote, of "the prevailing morality or strong and preponderant opinion."

Why then submit the question as: "Shall the constitution be amended so as to empower the legislature to pass this law?"

The legislature has passed the law.

The supreme court has rendered an opinion that the law is not supported by the strong and preponderant opinion of the people.

The logical question to submit is:

"Did the legislature in passing this law represent the "prevailing morality or strong and preponderant opinion of the people?"

If the people answer "No," the opinion of the supreme court on this very question is sustained—because the court was right.

If the people answer "Yes," the opinion of the supreme court on this very question is overruled—because the court was wrong.

In cases involving the "police power" of a state the review by the people of a decision would be logical procedure to attain a logical result. Amendment of the state constitution in such cases is an illogical means to an illogical end.

Compare the two in parallel columns:

In cases where a state supreme court is of opinion that the "police power" of the state does not authorize the legislature to pass a certain law. Assume that the "strong and preponderant" opinion of the people favors the law.

PRESENT METHOD BY AMENDMENT OF CONSTITUTION		PROPOSED METHOD BY RECALL OF DECISIONS	
Probable Time	*AN ACT*	*AN ACT*	Probable Time
1 year	(1) Passed by legislature. (2) Approved by governor. (3) Held "unconstitutional" by state supreme court.	(1) Passed by legislature. (2) Approved by governor. (3) Held "unconstitutional" by state supreme court.	1 year
2–5 years	(4) Constitutional amendment passed by legislature (once or twice) or initiated by the people.	(4) Petition for review of decision. Same purpose as constitutional amendment but more accurately expressed and more expeditious.	2 years
3–7 years	(5) Constitutional amendment adopted by popular vote.	(5) Act approved and decision reversed by popular vote. *Becomes a law.*	
4–9 years	(6) The same act again passed by legislature. (7) The same act again approved by governor.	(6) Unnecessary duplication. (7) Unnecessary duplication.	
5–10 years	(8) The same act held "constitutional" by state supreme court. *Finally becomes a law.*	(8) Only needed to correct errors in 6 and 7 which are omitted —hence useless.	

Comments on diagram. Step 4. Under present method this procedure may take one year on direct initiation or immediate legislative action or possibly four years where the constitution requires that an amendment be passed by two sessions of the legislature or even ten years or more where a constitutional convention alone can amend. The sole purpose of the action is to submit the question to a popular vote. If the people are going to approve, why delay them? If they are going to disapprove, why delay them? Only those interested in sustaining minority government can find any virtue in preventing expressions of majority opinion. Furthermore there is something peculiarly inappropriate in the form of amending the constitution to change something which is not written in the constitution at all, but which appears in an opinion of the supreme court.

Steps 6 and 7 are simply waste effort. The legislature and the governor have gone through the travail of creating a law—only to see it smothered by the court. Why create a similar law if the old one can be revived?

Step 8 gives the supreme court the ungracious task of reversing itself, with all the incentive naturally incident to that painful process to find technical flaws in the manner in which its opinion has been set aside.

When one contemplates the possible delay of ten years in correcting the mistake of the supreme court in interpreting the prevailing convictions of the time—one understands the reason for a deep resentment in the community against "judge-made law." A partly corrupt legislature is lashed by public opinion into passing a "general welfare" law over the protests of special interests. Then the supreme court, deaf to the prevalent voices of social reform, annuls the law. The whole bitter struggle must be fought over again: a constitutional amendment passed once or twice (many states require the passage twice), the law passed again, perhaps loaded with new "jokers" so that the court will again declare it void.

The struggle for social justice under such conditions is a disheartening battle against overwhelming odds.

To wait ten years for a law to fit the new needs of a rapidly changing civilization is often to make a farce of government. In ten years the automobile, once a rarity in the streets, dominates the traffic, wireless telegraphy remakes conditions of sea travel, the phonograph, the trolley car, the aeroplane, moving pictures, a score of new and important factors affect the daily life of the people. All industry undergoes like changes. New problems, responsibilities and community interests come upon us and must be reckoned with and the law must change to meet them.

The statement has been made that more fundamental changes in the industrial and social order occurred between A.D. 1800 and A.D. 1900 than in the thousand or even two thousand years preceding A.D. 1800. Have the constitutions changed to meet the new needs?

In *The American Commonwealth*, Mr. Bryce, commenting on the difficulty of amending the Constitution of the United States points out (p. 373) the results of a too rigid fundamental law in language which might well be applied to state constitutions which although more readily amended also require more frequent revision.

Since modification or developments are often needed and since they can rarely be made by amendment, some other way of making them must be found.

The ingenuity of lawyers has discovered one method in interpretation, while the dexterity of politicians has invented a variety of devices whereby legislation may extend or usage may modify the express provisions of the apparently immovable and inflexible instrument.

Amendment by construction, like executive non-enforcement of unpopular laws and indirect taxes, is a method of self-delusion which belongs to a passing school of politics. Fooling oneself is a rather stupid game and the American people show many signs of a present-day willingness to look facts in the face, to discuss the disagreeable truths of poverty and inefficiency as well as to orate about "prosperity" and the "land of the free and the home of the brave."

Our constitutions are human products with human imperfections and need constant improvement. Our judicial decisions, be they ever so honestly made, are the products of the education and environment of ordinary human beings—called judges. The ermine may require respect for the office but it does not guarantee the wisdom or social conscience of the wearer.

In the end faith in democracy requires a trust in the superiority of the ultimate judgment of the whole people over the immediate judgment of a few of the people. There is no reply to Lincoln's assertion that the people are the rightful masters of both their constitutions and their courts, except the denial of the capacity for self-government, which in itself is a repudiation of the constitutions and the courts of democracy.

Those who would enshrine the judiciary as "sacred" from the control of the people are not believers in democracy. And frank reactionaries freely state their conviction that the people must be "saved from themselves." By whom? Plainly, not by themselves.

There is in the end but one honest choice: either government is to be of the people, by the people and for the people, or of a few, by a few and for a few. History records no instance of permanent government of the few for the many. The benevolent rulers of one generation beget the hated tyrants of the next epoch. The "free and independent judiciary" enthroned above the will of "transient majorities" may all too easily become the reactionary, oppressive oligarchy that sets aside the legislative enactments of sovereign states, that coerces executives to refuse obedience to the expressed will of the people.

Summary

Where the legislature and the courts disagree as to what the "prevailing morality" demands, the people alone can decide the controversy. In this way alone justice can be secured.

Amendment of constitutions is a cumbersome, inappropriate means for deciding conflicts between the legislature and the courts over the extent of the "police power."

The "recall of decisions" is a logical means since there is nothing in the constitution to amend, and the only question involved is: Did the court or the legislature correctly represent the "prevailing morality or strong and preponderant opinion" of the people?

The final issue between those intelligently favoring and opposing the "recall of decisions" is the world-old issue between democracy and oligarchy. Some believe in a divine favoritism in capacity for government. Others put their faith in the self-governing instinct of all mankind. To accept the sanctity of a judicial decision requires belief in the superhuman quality of the judge or in the inspired quality of his opinion. To accept the superiority of the crystallized opinion of all the people over the judgment of a few of the people requires faith in humanity itself.

There is the issue. The battle lines are drawn for the future, as in the past, between the conservative, fighting to retain the things that are, trusting to the wisdom of old counselors; and the progressive, pressing forward to what may be, with confidence in the greater wisdom of coming generations.

THE GRAND JURY OF THE COUNTY OF NEW YORK

A Personal Experience

By George Haven Putnam,

New York.

I have served on the grand jury for something more than a third of a century, and during the later years of this period my service has usually been that of a foreman, as the judge and the district attorney always prefer to secure as foreman a juror who has had previous experience.

The institution of the grand jury goes back many centuries and is doubtless of Saxon origin. The earliest reference in English legal history to an "accusing body" apparently possessing the function of a grand jury, dates from the time of Henry III when each county had its own accusing body. In these earlier days, the conclusions of the jury were arrived at without any examination of witnesses; the presentments being based upon the personal information of the jurors. The twelve jurors (the number originally fixed) were sworn to "speak the truth;" and as they were all selected from the immediate vicinage where the events occurred or the conditions existed, their conclusions were assumed to be based upon direct knowledge of the facts. This requirement, which has not been essentially changed during the later centuries, constitutes the essential difference between the requirements for a grand jury and those that are, at least at this time, in force for the making up of the petty jury. The petty jurors, who have the responsibility for the final decision of the case, are, under the routine now in force, supposed to come to the trial with blank minds. It is assumed that all the knowledge that they secure of the matter at issue is to be obtained from the evidence and arguments presented in the court. They are, in fact, instructed by the court that their decision must be arrived at without consideration for, or the influence of, any other facts or information than have been presented in the course of the trial.

The grand jury as now constituted comprises, including the foremen, twenty-three members, and sixteen of these constitute a quorum. A true bill can be found, or a decision in regard to any matter

at issue can be arrived at, only with the vote of not less than twelve jurors out of a quorum of not less than sixteen. The persons to serve as grand jurors are selected from the list of trial or petty jurors by a board comprising the presiding justice of the appellate division of the supreme court in the first department, the mayor, an associate justice and two justices of the court of general sessions. The commissioner of jurors serves as the clerk to said board and produces for their action the lists of jurors. This board also fills vacancies in the list. The persons selected are supposed to be men accepted as possessing standing and character in the community. It has proved possible, however, at times when the control of the city government was in the hands of Tammany Hall, to secure the acceptance in the list of grand jurors of men who could not properly so be described. It has been charged in fact that in years past men have been placed upon the grand jury for the particular purpose of protecting certain persons whose business and whose operations were opposed to the interests of the community and were likely to come under investigation.

The grand jury list or panel was for a number of years restricted to one thousand names; but in June, 1910, the panel was increased to twelve hundred. If one thousand jurors were required to carry on without hindrance or delay the business of the grand jury for the city of twenty-five years back, a panel of not less than three thousand names should be instituted in order to provide, without undue burden upon this special group of representative citizens, the necessary facilities for taking care of the routine business and to leave time free for the general supervision on the part of the jury of the operations of the city departments and for such special investigations into the work of the municipality and into alleged abuses as they may find occasion for. Twelve hundred men are not sufficient to give due attention to these two classes of responsibilities in a county containing more than three millions of people. During the past few years, it has been necessary to keep two grand juries in session each month, and not infrequently has there been requirement for the work of three juries sitting at the same time.

The service of a grand jury continues as a rule during the calendar month, but if at the end of the month the jury has on its hands any unfinished business, an investigation, for instance, in which a portion only of the witnesses have been heard, it is customary to

hold the jury in session for such further time as may be required to complete each case that it has undertaken. The sessions of the jury are held daily, except Saturdays, but if a jury is continued in existence for the completion of unfinished business, it is not as a rule necessary during a second or third month to hold daily sessions.

Grand juries are sometimes called for the purpose of conducting a special investigation, and in that case they are held for periods extending from one month to five. The foreman is selected by the court after the twenty-three names have been drawn from the clerk's box. The foreman has authority to excuse certain members of the jury from day to day as long as he retains for the work of the day not less than the quorum of sixteen. The wise foreman will, however, refuse to excuse more than three men for any one day. It is difficult to ensure adequate attention for certain classes of business or to feel assured that justice has been done in important cases, unless at least twenty men out of the twenty-three have listened to the evidence. There is, of course, also always the chance that owing to temporary illness, or to some urgent requirement, one or more jurors may be called away in the course of the day's session.

The fee of two dollars is no greater than that accorded to the members of the petty jury, and the foreman, who is called upon to give a very much larger amount of time and skilled labor to the work, receives the same compensation as the other members. The foreman is expected to report earlier than the hour fixed for the session, in order to consider with the district attorney the business to be taken up. He is often called upon to remain after the session has closed, for the purpose of examining papers and of giving judgment in regard to witnesses to be called for the next day's session. The responsibility rests chiefly upon the foreman of initiating any special business to be taken up by the jury, and it is the foreman also who is expected as a rule to prepare the text of presentment or of reports on special investigations. A compensation of not less than $5 a day would be in order if only to indicate the difference between the requirement made upon his time and attention as compared with what his associates are expected to give.

The grand jury sits as a part or division of the court to which it is attached, and by which it has in fact been constituted. This court is either the general sessions or the criminal division of the supreme court. Its room has, therefore, the character of a court room, and

the foreman is expected to enforce the same dignity of procedure as is proper in a court when the presiding judge is present. Upon the foreman rests the responsibility of administering the oath or the affirmation to the witnesses, and the examination of the witnesses, except in the cases in which the foreman decides to place this in the hands of the district attorney, is conducted by the foreman. This routine calls for the active attention of the foreman during the whole of the session.

The business of the grand jury room in the county of New York is carried on quite largely in language other than in English. There are at this time from 70 to 100 different languages and dialects spoken within the county, and the proportion of trouble of one kind or another that comes upon our foreign citizens appears to be decidedly greater than that with which those of English or American birth are concerned. The grand jury has, therefore, subject to its call the interpreters attached to the court, men who are able, with a few exceptions, to compass the series of languages in which evidence is given. Many of these interpreters have served for a number of years, and their capacity and trustworthiness are vouched for by the court. Each interpreter must, before his statement can be accepted in a case, be sworn for the service of the month. There is risk that the interpreter may, instead of putting the question exactly as given by the foreman and of presenting a precise rendering of the reply of the witness, take the matter somewhat into his own hands. He has often talked with the witnesses before coming into the jury room, and he has his own definite opinion as to the nature of the case. This opinion may in the majority of cases be well founded, and I have, as foreman, not infrequently had occasion to express my obligation to the interpreter for suggesting a line of inquiry that had not occurred to me.

It is, however, undesirable to allow the interpreter to manage the case, and it is, of course, important also to bring home directly to the consciousness of each juror as far as possible the precise statements submitted by the witness. In past years, I have also had occasion to doubt the trustworthiness of interpreters who have been appointed under the recommendation of Tammany officials, and I have found that they were managing cases in a way that was not conducive to justice. I have made it a practice, therefore, as foreman, to utilize whenever possible the service of some member of the jury

for questioning witnesses who could not make their statements in English. It is very seldom that a group of twenty-three New Yorkers does not include men who are conversant with German, French and Italian. In a city which contains one million Jews, we are also often able to secure from a juror the service of Yiddish. I have been able myself to manage inquiries in German when I was doubtful of the trustworthiness of the interpreter, and I always take pains in any case to check off the accuracy of the interpreter's reports in German and in French. I was puzzled once, however, with a language that was outside of the abilities of either the jury or of the court interpreters. A case was brought to us in which the person under charges and all the witnesses were reported as Chaldeans, that is to say they came from the lower Tigris. No gentleman on the jury would undertake Chaldean, and the several official interpreters gave up the task at once. I adjourned the case and sent to the police captain of the precinct where the Chaldean colony was situated, asking him to send up to the jury room a Chaldean who could speak English and for whose trustworthiness he could vouch. An hour later, my Chaldean citizen appeared and took charge of the case. I signed the indictment in due course and I only hope that it was the right person who was presented for trial. The Chaldean citizen, with his service first in the grand jury room and a fortnight later in court, was in position to clear off any old score that he might have had against a fellow countryman.

The time of a grand jury which has not been drawn for any special emergency is taken up chiefly with the routine business that comes in through the office of the district attorney. The complaints upon which the jury acts are in a majority of cases shaped before the magistrate or police justice. The district attorney takes note of the witnesses who have given testimony, or whose names have been specified in the proceedings before the magistrate, and he has these witnesses subpoenaed to appear before the grand jury. The responsibility rests upon the office of the district attorney of selecting and shaping the cases to be considered by the grand jury in such manner that witnesses shall not be called upon to give their time for more than the one day, usually the one morning. There are too many instances, however, owing either to incorrect calculation as to the time required for an individual case, or to heedlessness in which witnesses are called upon to sit in the witness room several

days in succession before their testimony can be taken. A careful foreman will take pains from day to day to make a personal examination of the persons that are waiting in the witness room and will himself take action to prevent as far as possible the hardship of needless detentions. A foreman will sometimes hold a jury for fifteen or thirty minutes after the usual time of adjournment rather than to subject to a call for another day witnesses who have passed their whole morning in the witness room. The foreman will take pains to assure himself through reports from the office of the district attorney that the cases shall not be presented in the chronological order, but in the order of their actual urgency, and the urgent cases are, of course, those in which the persons under charges are also under arrest, and those in which the detention of witnesses (for instance, women with babies) involves hardships. The bail cases should always be held over until the jail cases have been disposed of.

Attention should also be given to securing promptly the evidence of witnesses who are in the house of detention, or who, not being residents of the city, have been held under subpoenas, when they want to get away to their homes or on their own business. It is sometimes advisable to take testimony from such witnesses in advance of the time when the district attorney is prepared to shape the case for final consideration. It is only necessary when the case finally comes up for completion, either to have the stenographer read the testimony given a day or two back, or for the foreman to recall to the jurors the substance of the same. Whenever the urgent jail cases, and the most important of the bail cases have been disposed of, so that there are no arrears on the calendar, the jury is free to give attention to the other division of its duties, namely, the inspection of city institutions or an investigation into the work of city officials and the management of city departments.

The foreman sometimes finds it desirable, for this purpose, to arrange for a personal investigation of city institutions, such as the Tombs, the prison and asylums on Blackwell's and Ward's Islands, etc. It is sometimes wise to utilize for such investigations the entire body of the jury, while occasionally for some special investigation time can be saved by detailing one or more sub-committees upon whose report the jury can take action. Such investigations are sometimes made under the instructions of the court, but are often undertaken at the initiative of the jury itself. It is the duty

of any individual juror to bring to the attention of the body any abuses of which he has personal knowledge, or which have been brought to his attention by responsible citizens, and if the time of the session permits, the jury will take prompt action on such a complaint. A juror bringing into the jury a complaint or grievance of which he has personal knowledge will be sworn as a witness. From time to time, as before mentioned, a jury is appointed with instructions in regard to specific investigations, and such a jury is freed from the routine business of jail cases or of bail cases.

A number of years back, I served as foreman of a jury which sat for five months, and which was charged with the duty of investigating the management of certain of the city departments. It was at the time when the organization known as the county democracy was under the direction of leaders like Judge Henry R. Beekman, who were endeavoring to overthrow the control by the Tammany leaders of the Democratic votes of the city. Among the men who were active in the county democracy was Hubert O. Thompson, who during the period in question secured office as head of the department of public works. My relations with Thompson in the committee rooms of the county democracy became somewhat strained when as foreman of the grand jury, I found occasion to take proceedings against his management of the public works. It was under Thompson that the city's money was squandered in the county court house, and it was chiefly as a result of malfeasance shown in connection with the county court house contracts that we finally found it necessary to frame an indictment against him. He skipped his bail shortly after and fled to the West Indies, and the committee rooms of the county democracy lost the value of the service of this particular reformer.

I may mention here as an illustration of the kind of evidence that was brought out in the history of the court house, the record of the contracts for painting the inside of the building. Thompson was under obligation to put up for competitive bidding all contracts for work amounting to more than $1,000. He divided up the painting surface into sections so that the cost of each section need not exceed $1,000. He went through the form of taking competing bids and awarded the contract for section number one to a pal of his own whose bid as recorded proved to be substantially lower than that of his competitors. The work on this section, including the

charge for the scaffolding, was in fact done below cost. The second and the remaining sections were treated in the same manner, but in each case the other bidders found it necessary of course to include a charge for their scaffolding. The canny friend of Thompson whose scaffolding had been more than paid for in the compensation for sections one and two, was able to make a lower price for all the succeeding sections than was possible for his rivals, but even with this low price he got paid for his scaffolding almost as many times as there were sections in the building. It is not surprising that at the end of his operations in the court house he was willing to paint the commissioner's house without any charge.

The grand jurors find themselves not infrequently in doubt in regard to the credibility of a witness. The witness does not, at least in these preliminary proceedings, have to stand any cross-examination, and the jury should, of course, guard itself against the risk of basing an indictment upon evidence that does not impress them either as coming from a responsible person, or as being fairly well confirmed by corroboratory statements. I remember one case during the Thompson investigation in which an ex-employee of the department gave evidence which was decidedly important if true. I found after the witness had left the room that a number of the jurors had doubts as to his veracity. I noticed that the man wore a grand army button, and I said, "I think I can check the man's general truthfulness." I called him back and inquired about his army service.

"Where were you?"

"Chiefly in Virginia, sir."

"What battles were you in?"

"Well, sir, I was at Bull's Bluff, and in the battles of the peninsula, and all round."

"Who commanded at Bull's Bluff," I asked.

"Well, sir, Colonel Stone thought he commanded, but the gentleman on the other side did most of the commanding that day." It was evident to me that the fellow had been at Bull's Bluff, while his answer showed a capacity for discrimination and judgment that strengthened my belief in his testimony.

The jury depends for its legal advice upon the office of the district attorney, although it is also at liberty to make application for any special counsel to the judge of the court in which it has been

impanelled. It is the practice of the district attorney to place at the disposal of the grand jury of the month one of his assistants who takes charge of routine business. In case, however, the month brings up cases varying in character, or if in the arrangement of the work of the office, the preliminary shaping of cases has been divided between several assistants, the jury may have a different legal adviser from day to day, or from hour to hour. The purpose is that as far as possible the case shall be shaped for the grand jury by the assistant who will have the personal responsibility for its management in the trial later. It is for the jury, and as a matter of routine for the foreman, to decide whether he will retain in his own hands the questioning of the witnesses or will ask the assistant district attorney to take charge of the matter. With hardly an exception, a suggestion on the part of the district attorney or his assistant that, having full knowledge of the history of the case, he can manage the questioning more effectively and with some saving of time, is at once accepted by the foreman. The foreman may, however, even then find it desirable, in order to be sure that the matter has been fully presented to the jury, to supplement the questions asked by the district attorney.

I had the opportunity of utilizing the grand jury for the defense of the reputation of my old commander, General Grant. The general had thought himself fortunate in being able to arrange to place his two sons in Wall street in association with a clever but unscrupulous financier, Ferdinand Ward, who was known at that time as "The young Napoleon of finance." In the firm of Grant and Ward thus constituted, the general himself became a special partner with an investment that represented practically all of his savings. The new firm carried on business for a year or two, and secured by subscriptions from various citizens, Wall street men and others, the use of a large amount of money for "investment" in a series of mythical "contracts." Ward represented to the investors that, through the influence of his special partner, the firm had been given certain special advantages for securing government contracts, but that it was, of course, not possible under the circumstances, to specify what the contracts were. The money thus secured was thrown away in South American speculations, and when the firm stopped business, the assets were practically nil.

I found that the city had money on deposit with the Marine

Bank, the president of which, Fish, had taken an active part in Ward's speculative undertakings and had made to inquiring investors false statements about the deposits of Grant and Ward in the Marine Bank. This connection of the city depository with the firm gave the grand jury the opportunity of inquiring into its operations. I had the opportunity of examining the two sons of Grant who impressed me as somewhat obtuse men who had not shown proper intelligence in protecting the good name of their father. I also examined Ward at some length, and as he was at the time under conviction with a prison sentence and had nothing more to lose, his testimony was given with full frankness and with some sense of humor. He prided himself on his ability in inducing experienced men of business and officials like the city chamberlain to put money in his hands into a blind pool. I was able, as a result of his testimony and that of the two young Grants, and after an examination of the correspondence with the general, to make clear, in a presentment on the affairs of the firm, that General Grant had been entirely innocent of any knowledge of the mythical government contracts and that he had been kept carefully ignorant of the misuse that was being made of his name.

It is natural, under the routine that has grown up, that the office of the district attorney should assume the general direction of the work in the grand jury room; that is to say that the district attorney himself, or one of his assistants should determine from month to month and from day to day what work the jury should take up and what witnesses should be called. This routine is, however, merely a matter of convenience and does not mean that the district attorney has any authority to determine the action from the grand jury.

The jury, that is to say practically the foreman, sends for his legal adviser when he has need of him and if the jury decides to initiate certain business of its own, and is prepared to take the responsibility of completing such business without the aid and without the presence of the district attorney, it is within its rights in so acting.

I had the opportunity some years back of making a test of this matter of the relative authority of the grand jury on the one hand and the district attorney on the other. I was, as foreman, carrying on an investigation into the work of certain of the city author-

ities, and more particularly, in regard to the relations between the police department and the law breakers who were securing police protection.

The notorious Devery was at that time chief of police and G. was the district attorney. Mr. G.'s leading assistants were Mr. U. and Mr. M. Among the law breaking concerns that we were investigating were the pool rooms, and at the head of the pool room business stood Mr. F. F. and Devery were brothers-in-law, and there were indications of a brotherly arrangement between the two, as a result of which it was very difficult to secure police evidence or police action against any of F.'s pool rooms.

I may recall here a noteworthy example of conflict of evidence. Two citizens who had volunteered evidence in connection with our investigation of the protection given by the police to law breakers, one of whom was a clergyman in good standing, reported that between the hours of two and three on the morning of a certain Sunday, they had found a notorious saloon in the tenderloin open and carrying on an active business. The saloon had an illuminated sign hung at right angles directly across the sidewalk a little above the head of passers. When the place was closed, this sign was dark. These men testified that noticing as they passed the illumination of the sign, they went into the saloon and saw drinking going on with men and with women present. One of them, in order to comply with the rather exacting provision of the law, took pains himself to purchase and to taste a glass of spirits. I examined later the roundsman, who was on beat in this street in the hour in question, the sergeant who with a fresh patrol relieved the roundsman, the captain of the district who had been carefully cautioned some little time before that the law was not being enforced and who reported that as a result of this caution he had made during the proper hours a personal inspection of the suspected places, and finally the inspector, who reported that he also had after caution been interested in going over the territory in this district. Roundsman, sergeant, captain, and inspector all swore that they had been on this block between the hours of two and three, and that the saloon complained of was dark and to all appearance fully closed. The grand jury reported charges against both inspector and captain. They were not removed but they were cautioned, and transferred to a district that was less "profitable" than the tenderloin.

The jury came to the conclusion that the influence and the machinery of the district attorney's office were being utilized to protect the law breakers and to render difficult, if not impracticable, the collection of final or legal evidence against them. They believed there was a "leakage" in the district attorney's office of information in regard to our proceedings. I sent subpoenas direct (that is to say, not through the office of the district attorney) and I wrote letters direct to certain witnesses whose testimony was desired. I also received from certain public-spirited citizens proffers of testimony, and in a number of cases, these offers were connected with the request, or practically the condition, that they should not be called upon to testify in the presence of the district attorney, or any of his assistants. The risk of interference with a man's business or even with the comfort of his residence, if his name came on to the black list of Tammany, which meant, of course, the black list of the Tammany police in his own district, was serious.

On one morning early in the month, I was taking testimony from one of these witnesses who had volunteered information. The district attorney came into the room without first sending inquiry, or even without knocking, and he brought with him one of his assistants. My witness was one of those who wanted to keep his evidence, for the time at least, confidential, and I promptly sent him out of the room. I then explained to the district attorney that we were completing certain business that had been initiated by ourselves, and that we had not at that time requirement for the service of any one of our legal advisers. The district attorney replied, "I have a right to have knowledge of your proceedings, and for that purpose, I propose to remain while this evidence is being submitted."

The foreman: "We have decided, however, that we can do this business more effectively without your presence and I request you to withdraw."

The district attorney: "I decline. I have a right to be here."

The foreman: "We believe that you are in error in that contention, and that sitting here as a court, we have a right to control our own premises. I direct you to withdraw."

"I refuse," said the district attorney, "and you will find that you do not know what you are talking about."

Thereupon, I took the jury downstairs, put the question up to the court, and the district attorney and his assistant followed. "Your

honor," I said, "the grand jury is carrying on certain investigations of its own, and has made no requirement for the service of advisers from the office of the district attorney. The district attorney is interfering with the procedure of our business, and is, therefore, delaying our work. We understand that we have the authority to control our own premises, and that the district attorney is to come to us only when we have sent for him. We ask your honor to decide whether our understanding of our rights in this matter is correct."

"What has the district attorney to say?" inquired the court.

Mr. G. then went on to explain at some length how his ancestors had raised the first American flag on Manhattan Island. The court finally interrupted him. "That is not to the point, district attorney. I am waiting to hear your reply to the point raised by the foreman." Mr. G. then began a narrative as to how near he had been to being present at the battle of Gettysburg. The patience of the court became exhausted, and the district attorney was told to sit down. The court then delivered judgment in favor of the contention of the grand jury. "Gentlemen," he said in substance, "you are correct in your understanding. You occupy your premises as a division of this court and you have a right to control your court-room and your time as, under the provisions of the law, seems to you best. If you are prepared to take the responsibility of initiating work and of arriving at decisions without the counsel of your legal adviser, you are within your rights in so doing."

We returned to our room, and in the course of the following weeks made good progress with our investigations. One conclusion at which we arrived was that the district attorney's office was being used to protect wrong-doers and to interfere with the operations of justice and I made a presentment to such effect. The result of such presentment, after two sets of investigations by the governor of the state (at that time Theodore Roosevelt), was that Mr. G. was removed from office. The governor directed me to come to breakfast with him so that he might secure the full particulars on which our charges were based. He took pains to report to me later that he never could have succeeded in getting rid of a district attorney, whose office represented the worst of the Tammany methods, if it had not been for the information contained in our presentment. I understood that the issue had not before been raised in the county of

New York, and that the precedent that had been thus established was of importance. A week or two later I received a letter from a foreman of a grand jury sitting in Providence asking for the details of our action. He wrote again at the end of the month that their jury had been conducting a similar municipal investigation, and that they had been able to bring it to a successful conclusion only when, under the precedent established by us, they had gotten rid of their district attorney. The district attorney took the ground that the presentment of the grand jury was an impertinence in itself, and that the shaping of such a presentment to the court was outside of the function and the authority of the jury. He made application to the court to have the presentment expunged from the records of the court. This application came up in the month succeeding the work of our grand jury, and was submitted to a judge who had been elected on the Tammany ticket and who was supposed to be not out of sympathy with the policy of protecting Tammany officials.

The late Wheeler H. Peckham, a leader of the bar who was always ready to render unselfish service to the community, volunteered to defend the action of the grand jury. He explained to me that there was no precedent for such an application as had been made by the district attorney, and he presented to the court a carefully prepared argument to the effect that the grand jury had acted within its rights and that the presentment properly belonged on the records of the court. The judge decided in favor of the application of the district attorney, and the presentment was, I believe, duly "expunged from the records." One result, however, of the publicity given to the matter was that the purpose and character of the presentment were brought to the attention of the press in the city and throughout the state, and the essential portions of it were brought into print in a large number of papers. If it had not been for the application of the district attorney, very few citizens would have known that such a presentment had been made.

During the rest of the month, our relations with the office of the district attorney were naturally strained, and I found it advisable to take the counsel that I needed from the judge. I was still in perplexity in regard to my subpoenas and correspondence, because in so far as the letters were written by the stenographer assigned to our room, information about them was promptly given to the

district attorney by whom the stenographer had been appointed. I finally took one of my daughters, who was a clever stenographer, to the judge's house in the evening and had her sworn in as a special stenographer of the court for that month. From the rooms of the grand jury, I took home notes, on the basis of which I dictated letters through the evening. My girl typewrote the letters, sitting up for the purpose until late hours; and in the morning I took down the typewritten sheets and after they had been approved by the grand jury, I signed and dispatched them. We succeeded in getting in this way valuable evidence which would never have come to us through the district attorney's office, and as a result of our action a number of the police officials were brought to trial. One of the sheets typewritten by my daughter came into the hands of the district attorney, and he thought that he had then secured a real ground of complaint against the foreman. I was summoned to court to meet the charge submitted by the district attorney that I had broken my oath and had permitted the business of the grand jury room to come to the knowledge of some outside party. As evidence of this charge, one of the letters typewritten by my daughter was held up in court with the word that the typewriting had not been done by the official stenographer. "What have you to say?" asked the court of the foreman. "Your honor will recall," I replied, "that early in the month your honor swore in for the use of the present grand jury a special stenographer, and I am able to state that no papers or correspondence connected with the work of the grand jury have been in the hands of any but the regular stenographer and the special stenographer appointed by the court." The district attorney was taken aback and was very much annoyed. At the end of the session, the jurors gave me a dinner and a piece of silver, and they sent to the special stenographer, whom they had never seen, but who had, as they realized, rendered good service to them and to the city, another piece of plate filled with roses.

Shortly after the completion of the work of this particular jury, I was called upon for service in the committee of fifteen, the operations of which extended over two years.

The information secured in my experience on the special investigations of the grand jury was of immediate service in connection with similar work undertaken by the committee of fifteen, a committee which came into existence in 1900, and the operations of which con-

tinued for two years. This committee arrived at a series of conclusions in regard to the relations between the police and the other municipal authorities and the law breakers. It was clear to us that the Tammany officials had been interested in securing enactment in Albany of strenuous laws for the suppression of bad houses and of gambling and pool rooms, and for the restriction of the sale of liquor, for the purpose of being in a position to sell at substantial prices the privilege of breaking the prohibitions of such statutes. We estimated that in the year 1900 not less than $2,500,000 had been collected through the police officials from the managers of bad houses, of gambling houses, of pool rooms, and from the dealers in liquor as consideration for "protection" by the police. Each person, roundsman, sergeant, captain, and inspector, through whose hands the collections went, was entitled to retain as commission some portion of the dirty money. I had occasion later, when Mr. McClellan was trying to secure a reëlection, to make a summary, printed in the *New York Times*, of the bad appointments for which during his first term he had been responsible. I pointed out that the man he had appointed as chief of police had been shown up by the Lexow committee as having received while inspector weekly payments from bad houses. Instead of demanding an investigation, the inspector had promptly resigned from the force. His return as chief of police constituted, as I pointed out, an insult to the city, and naturally tended to the demoralization of men for whose discipline he was responsible. The result of my publication was a suit for libel brought by the official in question for damages of $50,000. It took me three years to bring this suit to trial, and the plaintiff offered to compromise for $25,000, for $10,000 for $5,000, and finally for $1,000. I refused to make any payment which would imply that my charges had not been well-founded. I finally succeeded in getting the suit brought to trial, with the result that the jury gave a verdict for the defendant, but the proceedings cost me something over $1,200. The information upon which the investigations of the Lexow committee were based was in large part the result of the presentment of the preceding grand juries.

In our undertaking to trace the relations between the police and crime, and particularly to break up the operations of the infamous cadet gang, we found ourselves from time to time confronted by one of Mr. G.'s chief assistants. I had here corroboratory evidence of

the relations of the office of the district attorney with the law breakers, with whose business we had been interfering. Fortunately, conditions have very much improved since the time, some twenty years back, of this special jury experience. I doubt whether it would have been possible at any time since that date for the law breakers of the city to secure any help or protection from the office of the district attorney, and during the past ten years, and particularly the last four years, the operations of this office have been managed with exceptional efficiency, as well on the ground of good judgment as of initiative and courage.

My own experience gives me ground for the following recommendations in regard to the work of the grand jury:

1. The panel should be increased promptly to not less than two thousand, and preferably twenty-five hundred names.

2. More thorough supervision should be given to the examination of the men selected for the list with reference not only to the fact that they are decent citizens, but that they have in their careers given evidence of such general capacity as would make their judgment serviceable in the grand jury room. There are still examples, although it is fair to say that at this date there are comparatively few, of men who under some personal influence have been included in the grand jury list, whose capacities are not up to the requirements of the post. Some of these men, through stupidity, and others through perversity, interfere with and delay the proceedings.

During the operations of the committee of fifteen, we had occasion to make a raid early Sunday morning on a notorious house in a down-town police district. The owner of the house was, as we found a little later, a member of the grand jury at that time in session, before which jury our charges against the arrested man were to be submitted. Under the report of the committee, the person in question was dropped from the grand jury list.

3. There should be a reshaping of the business to which the grand jury is called upon to give its attention, and it should be freed from the necessity of passing upon a long series of cases which do not require the judgment of twenty-three citizens. In London, county magistrates, or police justices, have the final disposition of a large number of the smaller issues which, under the routine in New York, after taking time in the magistrate's court with witnesses and officials, call for further time in the grand jury room from the same

witnesses and from twenty-three citizens before being finally passed upon in the court of general sessions, with the requirement for a third service from the same witnesses, and with the expenditure of valuable time on the part of more officials.

A body which has in its hands the authority to investigate into the workings of the city government and to call before it for the purpose the highest city officials, and which in criminal proceedings is charged with the responsibility of decisions in the most serious class of crimes, ought not to be called upon to give time (the time of twenty-three men) to passing upon a quarrel between a couple of intoxicated men, or to reaffirm a fact which has already been established by satisfactory evidence that a citizen had a pistol in his pocket, or to take action in a long number of simple cases in which the party under charges has already pleaded guilty.

A number of these cases, particularly the smaller ones, such as the enforcement of the laws against concealed weapons, ought to be finally passed upon, without appeal, by the police justice. The cases, excepting those of the highest crime (in which there is occasional risk of an hysterical and untrustworthy confession), under which the defendant pleads guilty, may properly go directly to the court. If in criminal proceedings, the grand jury had to do only with cases of serious misdemeanor or with cases of possibly smaller moment, but in which the evidence was complex, the hours so saved could be well expended in a closer supervision of the work of the city departments and of the operations of city officials, and in carefully considered recommendations for the improvement of municipal methods and the removal of abuses of one kind or another.

The grand jury is, in my judgment, a most valuable institution. It constitutes the only means by which citizens who are not in office can bring to bear directly, and with a measure of authority, their criticisms or inquiries concerning the methods of action of the officials that they have put into office and of the government the cost of which they are sustaining. While the term is but brief (as a rule it does not exceed thirty days), during such term the twenty-three men represent directly the highest authority of the citizens of the community and their authority and responsibility can be, and has been, exercised in the defense of the rights of citizens and in furtherance of the interests of the city.

The difficulty that suggestions or recommendations, however valuable, arrived at by one grand jury are apt to be overlooked or to fail to secure adequate attention on the part of succeeding juries, has in the past prevented certain investigations from being initiated which could not be completed within the time available. The attempt is now being made to remove this difficulty. Certain public-spirited members of recent grand juries have come together in a continuing committee, which, while possessing no official authority, has the power and the opportunities that belong to direct knowledge and experience, and to unselfish public interest. This committee is in a position to impress upon successive grand juries and upon the community the importance of one undertaking or another which may be put in train and for the proper carrying out of which continuity of action is important. Such continuing committee, made up of active and public-spirited representatives from the grand jury panel, can render intelligent service and can do much to strengthen the efficiency of the work of successive juries.

THE POLICE AND THE ADMINISTRATION OF JUSTICE

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It is a far cry from the stately black robed justices of the United States supreme court to the lowliest administrators of justice in this country. Nor is the difference in dignity greater than the difference in authority, for to my mind the lowliest administrators of justice in this country are not the police court magistrates, or "squires," but the policemen themselves, though as such they are not authorized by statute or by-law, not to mention the constitution. When administering justice in this fashion the police derive their powers from the common need and common consent of those to whom and for whom they are administering it.

I am assured on every hand by police officers that the number of cases which they try, decide, and settle without any strictly legal right to do so, contrary to the letter of the rules, and at the risk of charges being preferred, or of a suit for damages, is many times larger than the number which is or could be brought into court. These cases are the result of everyday happenings, so trivial that a police court judge would rebuke a policeman for bringing many of them into court, yet so important to the principals that if not settled somehow they would add immeasurably to the bitterness of life, and very frequently lead to really serious offenses when the parties attempted to settle the matter themselves. The ordinary policeman has no power to act without a warrant or some other writ in a civil case, but in the foreign quarters of our cities, if some poor fellow comes up to a policeman with the startling statement that he has been robbed of his trunk, investigation will usually show some disagreement between a lodger and a landlord about the customary payment of 10 cents for the rent of a bed for a night. The policeman's protestations that he cannot act in the matter are meaningless to the disputants; and at the end of five or ten minutes of argument, flattery of the officer, and personal descriptions of each other, the trouble will finally be settled to the moderate satisfaction of everybody by the officer's shrewd guess as to the rights of the case. To have thrashed the matter out in court

would have taken a half hour, cost the men a day's pay, if not also lawyers' fees, and perhaps not have settled the matter rightly after all.

Again some little children come to the policeman about midnight to announce that a man is killing somebody in their block. As the place is approached it certainly sounds that way, but really the neighborhood is being aroused by two half drunken oafs shouting wildly at each other across an areaway, and ably supported by their several women folk and the whimpering of about a dozen children. The policeman's command to stop the noise is met with a profane order to get out of the house if he has not got a warrant. The reply to that is to drag the legal expert downstairs, and arrest him for drunkenness. The next morning the fellow has sobered up enough to remember that if he does go to court he may lose his job, or he may get a fine, and that if he should prefer charges against the policeman he would have to walk a chalk line the rest of his days, so he usually forgets that his "house is his castle" and is glad to be released by the probation officers, as having been arrested for "safekeeping," or some similarly vague charge. The important facts, however, are that a fine brawl was prevented, and that the several hundred tired people within earshot got to sleep. Elsewhere in the city, a short chase and a swift kick will adjudicate some case concerning stolen apples far more effectively than the juvenile court and the simple statement to respectable parents that their son has broken Mrs. ————'s window throwing snowballs ends that matter.

On a busy route a policeman could not even write up his reports of such cases. In settling nine out of ten of them he probably exceeds his legal powers, but he furnishes rude justice more cheaply and more efficiently, because more seasonably than the courts could. If a person well acquainted with the ordinances of a large city, walks its streets for five minutes he can see from one to a dozen violations of them. So can the policeman, but the latter must decide, first, whether the matter is worth taking up at all; second, whether he has power to interfere; thirdly, whether it would be better for him to try settling it off-hand, to arrest the offender, or to apply for a summons. The number of civil suits for false arrests against policemen shows that their decisions are frequently disputed, but the number decided against them is comparatively small, despite the disgusting tendency of juries to "soak the cop." The wonder is, considering the legal training of the policemen and the multitude of ordinances, that they

make so few mistakes. That there is danger in the practice is indubitable, but the ease with which complaints are made to police superiors, the ever present resort to the courts, and the policeman's constant fear of making false arrests keep the danger at a minimum. Such police work in some continental European countries is legally recognized and the policeman can impose and collect fines on the spot for petty offenses, or as in Prussia have his superior officer send a polite note informing you that you have been fined a few marks. How excellent a means to check spitting on the sidewalk, or throwing paper on the street!

That the use of such discretionary power by policemen is necessary and wise, I do not doubt. It cannot be governed by strict rules, for its very existence is due to the rigidity and ponderosity of the regular judicial machinery. It must be left to the experience, diligence, and common sense of the policeman, and the only way in which the superior officers can increase those qualities is through the training which the new men receive. The efficiency of a police department depends largely upon the respect with which it is regarded by the populace and this respect rests in a very large degree upon the ability and tact with which such small happenings are handled.

A different story is to be told when the policeman does appear in court. There the man who has been selected as physically and mentally alert, who has seen thousands of cases, has given testimony in hundreds, who is through his experience accustomed to noting facts and circumstances in the midst of excitement, that would escape an ordinary person at any time, and, more important still, to remembering them some time afterwards, such a man is opposed usually by persons whose testimony is fallible and hazy enough in any event, and in the case of defendants very often deliberately perjured; yet equal credence is frequently given by judges in many cases. The lying defendant is all the bolder because he is aware that he will scarcely ever be made to repent of perjury in a police court while the slightest slip by a policeman will practically mean the prisoner's discharge, and all too often a public reprimand by a judge with his eye upon the newspaper reporters and reëlection. Where judges and district attorneys can be moved by political influence a deliberate offender is often discharged upon such manufactured evidence to the disgust of the conscientious officer who will be taunted with his failure by the defendant's friends. Is it remarkable then, that policemen, being human and knowing how per-

jury and influence permit offenders to escape justice, forget the ideal of complete impartiality and emphasize the facts against a prisoner? The natural result of such a vicious circle is that the public feels the policemen are incompetent witnesses, determined to get convictions at any cost, and very ignorant of the law; the policeman thinks the judges are wrong-headed, blind, or worse, and usually becomes discouraged and willing to let a case drop at a suggestion from the eternally busy and overworked district attorney. This phenomenon is widespread and from every policeman whom I have questioned the answer has been that the treatment given by the courts to their own servants, the policemen, is such as to discourage earnest, persistent, conscientious police work, and to encourage the people at large, especially the rougher element, in the belief that it is not at all hard or dangerous to win a victory over a policeman by deliberate perjury.

The lessons to be derived from these observations are important. If we are to permit any men to wield such wide discretionary authority, if we are to subject any men to the sneers of offenders and newspapers and still expect them to give full, unbiased testimony, we must first select a very high grade of men; we must secondly train them thoroughly; thirdly, make them feel that real public opinion is behind them, and that no influence sinister or otherwise will keep their superior officers from backing them to the end in a just cause. That is a very large task and one which in its entirety no American city has yet attempted, although many foreign cities have done so successfully, for example London and the great provincial cities of England. Some of our cities attempt no part of it. They take any hulk of a man with political influence and not too bad a record, and swear him in as a protector of the public peace. His pay is never very much, insignificant at first when the expenses are heaviest, and the chances to make money or to receive presents remarkably easy and numerous. His superior officer gives him a shield, keys, revolver, club, and book of rules, tells him to patrol a route, try to keep out of trouble if he can, but if he must "mix in" to "land the first wallop," and to ask any questions of his "side partner" or sergeant. Such is his training course.

The best type of man for making a good policeman is the skilled laborer, mechanic, or craftsman; men of perhaps high school education; men on the whole steady and with minds already trained to careful work. Fifteen years ago this was the type of man appear-

ing as candidate where examinations were held; now it is the teamsters, street car employees, and other unskilled laborers who largely predominate. Such men are not usually of very large mental calibre, and are very often lacking in respect for mental training.

The cause for the change is the pay. When a man enters the police force as a probationary patrolman he gets about $2 or $2.50 a day, a ditchdigger's wage; he must buy a costly uniform, and he is not sure of final acceptance. In New York and Boston alone of our large cities is the maximum pay as a patrolman over $3.50 a day while the much boasted pension is frequently very precarious. In Washington, the national capital, for instance, the full pension has not been paid in years. What is there, then, in such a proposition to tempt a skilled laborer from an eight-hour day at union wages? I feel strongly that probationary patrolmen everywhere should receive not less than $3 a day, and that some provision should be made so that they could pay for their uniforms on easy terms. It would be better still to provide them with an outfit for the season in which they join.

European cities find it advantageous to train men from one to four months before permitting them to do police work on their own responsibility. The course is physical as well as mental and in some cases very thorough. It embraces law from the policeman's standpoint, gymnastic drill, court work, and practical hints about police duty. I am glad to say that Chicago, Philadelphia and several other cities have started police schools and under the guidance of such men as Captain Martin Ray much good can be expected from them.

To make the men feel that their superiors are behind them heartily is a matter largely of personality and consistent effort, but it would be helped very much if superior officers would try openly to make details and extra duty fit in well with the convenience of the men, and watch over their comfort in other little matters, as well as being more open to suggestions and more ready to give advice in a pleasant manner to their subordinates. After a few years under a police system animated by a spirit such as this, I feel certain that the air of mutual distrust between the public and the policeman would disappear to be replaced by that confidence and pride in the "big brothers of the poor" which should be one of the rewards of a service at all times arduous.

THE USE OF THE PARDONING POWER

By William W. Smithers,

Of the Philadelphia Bar; author of *Executive Clemency in Pennsylvania.*

The phrase "abuse of the pardoning power" is an untechnical vernacular expression frequently used by newspaper writers in criticizing an act of executive clemency. The words import condemnation for improper if not dishonest action by an executive in respect to either a particular case or group of cases or general official policy. That presidents and governors have pardoned those who should not have been liberated is admitted, for the purely human factor cannot be eliminated. Human institutions will always lack perfection because they must be administered by imperfect human hands. While perhaps caprice and immoderate compassion have at times prompted unwise action there is no notable case of corrupt use of the power during recent years. The cases that have called forth seemingly justifiable popular disapproval have generally been those in which the executive has erred through misconception of grounds or because of deception practiced upon him. Exercise of the power is the most difficult of the executive and perhaps of all governmental functions. Its very nature invites or at least affords ready opportunity for the most unreasonable invective, calumny and innuendo. This is mainly because of the broad nature of the jurisdiction, the impossibility of review and, especially, because of the superficial knowledge of the subject among laymen and the meager special study given it by even the bench and the bar. The fundamental and important truth is that clemency is a distinct jurisdiction which is far removed from that of the courts. This is commonly overlooked or not sufficiently considered. The American theory of democratic government is now, and was at the outset, stamped with the recognition of the people as the source of all power and the delegation of that power with proper restrictions to clearly separated legislative, judicial and executive departments. The executive department is clothed with all the discretion of the people as a collective sovereign otherwise undelegated and is the least restrained of all the branches. No man or other branch of government can supervise, direct or review an executive's

actions, he is not subject to mandamus, injunction, *certiorari*, writ of prohibition or even subpoena in respect to his official conduct.[1] In this vast reservoir of discretionary power the federal and several state constitutions have expressly placed the prerogative of clemency—in some instances with restrictions, in others without limitation. It is significant that it has never been overlooked in any scheme of government since the dawn of history. It is born of the realization that human institutions administered by human agencies must always have a *residuum* of imperfection; that tradition has been as universal and constant as the most basic of nature's laws and as little modified by the vicissitudes of governments. In this country while the people have delegated their legislative power to assemblies and deposited a general corrective force in the courts, in matters pertaining to the life and liberty of citizens, they have conferred an additional power and laid a specific command upon the executive, intended to be used and obeyed despite and above the law, the legislature and the judges. It is the self imposed check and cautionary protest of the multitude against unanticipated and cruel consequences of governmental deficiencies. It is now conceded under American constitutions that an application for clemency is of legal right, whether based upon a claim of innocence or excessive punishment, and that a moral duty is imposed upon the executive to afford relief if a rational interpretation of all the data marks the case as entitled to remedy by the higher justice. It is not a question of guilt or innocence alone. Every circumstance pertaining to the event and the individual is relevant in *foro clementiae* which is untrammeled by rules of court procedure, legal maxims and evidential formalities belonging to the judicial branch of the government.

Practically all the state constitutions in substance contain the clause: "The supreme executive power shall be vested in the governor, who shall take care that the laws are faithfully executed."[2] Among his unenumerated "supreme executive" powers is that of clemency, which requires him to relieve from the regular operation of the laws those whom he may deem, in his wise and merciful discretion, the people intended should be exempt from the application of a particular law or the consequences of the rigid procedure of courts. He can no more honestly withhold a pardon in a proper

[1] *Opinion of Justices*, 120 Mass., 600; Hartranft App., 85 Pa., St. Rep. 433.
[2] Const. Pa., art. iv, sec. 2.

case than he can refuse to call out the militia when the preservation of public peace demands it. His oath to "take care that the laws are faithfully executed" includes the declaration that he will maintain the constitution which confers upon him the pardoning power. Every law involving the restraint of individual liberty or forfeiture of property as a penalty for crime is passed subject to the constitutional provision concerning clemency which must therefore be considered a part of the enactment.

The exercise of this discretionary, exceptional and unreviewable jurisdiction undoubtedly presents grave difficulties. The unhampered and uncontrollable nature of the power, its emanation direct from the people whose best general sentiment it should always reflect, the lack of formality in its procedure and its general effects upon society and individuals make the lot of its depositary no enviable one. This is especially so in states having the "one-man power." It is now generally conceded that some advisory body should hear applications and make recommendations to the executive before he acts, thus securing regularity, publicity and careful consideration.

Whether the power be vested in one or many, however, the governing principles, as well as the source and nature of data that should control, are matters of highest importance, quite frequently misconceived by the executive and generally not appreciated by the public. Every depositary of the power should remember that it is intended to be a supreme and plenary supplement to the inadequacies and imperfections of ordinary governmental procedure so far as it affects individual liberty. On the other hand, he should firmly determine to exercise it only when in obedience to a rational interpretation of common public sentiment the case by reason of inherent special circumstances raises a persuasive presumption that it was intended by the people to be excepted out of the general terms of the punishing statute.

There is no doubt that decision is capable of being rendered upon precise and unassailable grounds, since clemency is a definite jurisdiction with guiding rules productive of rational and just results from all standpoints.

When the executive has gathered all the data pertaining to the offender, the violated statute, the offense, the trial and the punishment, the important question arises whether the case calls for relief. If it is one that a dispassionate mind of honest intent is constrained

to believe would not have been included in the terms of the violated statute when it was enacted had the legislature known the facts or been imbued with later accepted views, then it is exceptional, and clemency should be extended so far as the exceptionality warrants.

In matters touching public policy, dealing with youthful offenders, habitual criminals, rehabilitation of "occasional" culprits, etc., the common experiences of life and the generally accepted views on criminology will not only justify action but frequently represent general public sentiment in advance of its being enacted into laws.

It is under this phase of the extraordinary jurisdiction that criticism is just now particularly noticeable. The whole country is engaged in reconciling the old and new theories concerning crime and criminals. It cannot be doubted that depositaries of the pardoning power have been very much affected by the revolution which for thirty years past has been remoulding the whole body of criminal law and awakening the social conscience to a new sense of responsibility for the existence of crime and the necessity of securing more adequate protection against malefactors. It has now culminated in the overthrow of that primitive and purely instinctive system which for some five thousand years was tried and found to be ineffectual. There is a general acceptance of the theories of criminology and penology which have been evolved by and proven to be consistent with the moral and intellectual advancement manifested in all other phases of community life.

The fallacy of the traditional vindictive punishment of criminals is recognized, the belief in its deterrent effect is exploded and the attempt to diminish crime by statutes fixing a definite penalty for a specified offence is admitted to be futile. Formerly, the symptoms of social distemper were never studied with a view to learning and eradicating the causes. Now, however, the doctrine is generally accepted throughout the civilized world that infliction of pain should be eliminated from criminal law as unnecessary and unwarranted and that criminals, being morally defective, are wards of the state, to be cared for in order to reform them if possible and in any event to prevent their becoming a menace to society. All of this is being widely and earnestly applied under the admonition: *Study the criminal rather than the crime.*

There remain, however, many constitutional and statutory evidences of the old theory, indicating that the present time is one of

transition. It is shown by the fact that Congress and legislatures still endeavor to create virtue and honesty by positive law while almost in the same hour they enact statutes based upon the individual study and treatment of malefactors irrespective of their offences, and create commissions to inquire whether certain industrial conditions or social relations tend to either physical impairment or moral degeneration.

The depositaries of the pardoning power have not escaped the influences of this general revolution. Until the laws are changed, the people can look for action consistent with modern ideas only to those who hold the great exceptional jurisdiction. None should shrink from exercising the pardoning power in furtherance of what is now a general public sentiment which promises much for the individual and for society. Only in this way can the will of the people be fulfilled and their good be promoted during the period of adjustment by legislative enactment. If the power of pardon is being abused today it is in the failure of executives to act upon their own motion and apply the rational theories of criminology to the many prisoners throughout the country who were years ago incarcerated under the system of rigid impersonal and mechanical criminal laws. An intelligent investigation would reveal that many inmates of prisons could and ought to be set free because able and disposed to take up their primary duties of contributing to the common weal and behaving with due regard to the rights of others. So, too, many might be discovered who would always be a menace to society and thus data be secured for recommending proper protective laws before their liberation. In any event there would be the opportunity for study of the criminal and for adopting such remedies as would tend to diminish crime.

No executive is bound to wait until an application for pardon is presented to him. His constitutional duty is to exercise his power rationally in all exceptional cases, for the state needs the coöperation of every normal citizen in the community life. In some states through penitentiary officials this work is already going on and in others the governors have had special investigations made and have liberated many prisoners.

There have been many instances when executives have felt impelled to utilize the untrammeled jurisdiction of clemency for applying these rational principles of criminology which by the slower

methods of legislation will in time be entrusted to the ordinary channels of the judicial branch of government. It cannot be done in a day, a year, nor in some states even in a decade, but it will be accomplished. The readjustment is going steadily forward and there is little doubt that in the near future the people of this great nation will at last fully emerge from the cloud of antiquity, discard the old cruel, useless and futile criminal laws and procedure and adopt sane, humane and rational measures for the protection of society from its defective members and provide for their proper care and reformation. Then every crime, when its perpetrator is discovered, will mean special study and treatment of the culprit according to enlightened methods and ends, and the pardoning power will change from an active function into an interesting historical tradition.

UNIFORM LEGISLATION IN THE UNITED STATES

By Walter George Smith,
Of the Philadelphia Bar.

Notwithstanding the advantages connected with the principle of local self-government, which finds its expression in the federal system, modern developments of commercial and social life have brought about obvious and grave evils. It is a commonplace that the form of government devised by the great men who drafted the Constitution of the United States was brought into being under conditions more dissimilar from those of today, so far as they related to trade and commerce, than those conditions themselves were to the period when Rome governed the world. A population less by a million or more than that which now crowds Manhattan Island and the shores of New York Bay, scattered along the Atlantic coast, with its outposts just beginning to cross the Alleghenies, constituted the people of the United States. They were for the most part of pure English descent, and the common law of the mother country was administered substantially without other change than the differences of a new country made necessary. The industries were mainly agricultural and maritime, and the disputed questions of state or federal jurisdiction, while of momentous importance, were indefinitely fewer than those which now command public attention. None the less, so well marked are the political principles upon which the federal constitution is based, so wisely had they been evolved in the minds of the early statesmen from the precedents afforded by the history of human government, that with comparatively few amendments they have been adapted to the needs of the states during all the memorable years from 1789 till the present day. The political systems of other nations that were contemporary with our own in 1789 have all passed away or been so modified that we may truthfully say that, while we are the youngest of the great nations, our government as it stands today with its checks and balances, its reserved rights of the states and delegated powers of the general government, is the oldest now existing.

The time has come, however, when acknowledged evils, not ap-

parent when our population was small and the mastery of the hidden forces of nature had not revolutionized habits of life, are pressing for solution. The apparent simplicity of conferring on the general government the full jurisdiction over matters of interstate commerce allowed by the letter of the constitution or which by interpretation can be brought under the spirit of its language, has led a large and constantly increasing number of political thinkers to advocate further amendments that will give jurisdiction in matters of more intimate local concern.

Needless to say, unless this tendency towards the magnifying of federal jurisdiction and minimizing of the states shall be checked, we shall find ourselves under an imperial system which, whatever be its advantages, is essentially bad and fraught with danger to American ideals. There would seem to be but one antidote for the evil of exaggerated federal jurisdiction and that rests in the principle of uniform legislation by the various states. Wholesale and many branches of retail business have long since ceased to operate within a single state, and if it cannot find relief from the divergent laws of the different states on the same subjects, it will demand and will receive the boon from a changed constitution.

Competent publicists have expressed the opinion that the machinery of the federal government is already clogged and overweighted. There are dangers to be apprehended from the further reducing of state jurisdiction which need not be enlarged upon. No citizen, proud of the success of our representative republican system, can witness its decay without sorrow and foreboding. The constitutional checks and limitations are the best if not the only safeguard of the rights of a minority and the surest defense against sectional legislation. If then it be possible to preserve them and yet permit the widest expansion of commercial activity, there can be no doubt that it is a patriotic duty to do so.

It is believed that the history and accomplishment of the Conference of Commissioners on Uniform State Laws will show the possibility of attaining substantial uniformity in many matters of commercial and social importance. The conference reflects in many ways the sentiment of the legal profession and, though a distinct body, is itself an outcome of the efforts of the American Bar Association to fulfill one of its declared objects, "to promote the administration of justice and uniformity of legislation throughout the Union."

Following the appointment of a committee composed of one member from each state by the association in 1889 to meet in convention and examine the laws of the different states, especially those relating to marriage and divorce, descent and distribution of property, acknowledgment of deeds and execution and probate of wills, with a view to bringing about uniformity on these subjects, the legislature of New York in 1890 authorized the governor to appoint three commissioners by the name and style of "Commissioners for the Promotion of Uniformity of Legislation in the United States" to ascertain the best means to effect an assimilation and uniformity in the laws of the states, and to consider whether it would be practicable to invite other states to send representatives to a convention to draft uniform laws to be submitted for the approval and adoption of the several states.

Year by year since 1890 such a convention has been held. The commissioners have organized themselves into a permanent body with a constitution and by-laws, executive officers, and standing and special committees. All of the states, territories and possessions of the United States are represented, more than one-half by virtue of legislative authority and the others by the exercise of gubernatorial discretion. In 1913 there were present commissioners, representing thirty-five states and territories. The conference meets annually some days before the sessions of the American Bar Association and at the same place. Its members are almost entirely lawyers, and their work is customarily but not necessarily submitted for approval to the Bar Association through its committee on uniform state laws.

The method adopted for drafting the more lengthy acts offers every possible safeguard against hasty and slipshod legislation. The subject having been decided to be appropriate for uniform legislation by the conference, is referred to the proper committee with authority to employ an expert. The expert in due time submits his draft to the committee which, after careful revision, reports to the conference a tentative draft of an act. In some cases acts have been printed and reprinted with annotations and explanations several times, have been in all cases submitted to lawyers, professors, business men and corporation officials. Public meetings are held by the committees, and finally the draft act is approved and sent to the different states, through their respective commissioners, for adoption.

The most successful of the efforts to attain uniformity has been in the case of the negotiable instruments act. It was drafted by John J. Crawford, Esq., of the New York bar, an expert on the subject. He had for a basis of his work the English bills of exchange act of 1882, which had been the law of Great Britain and her various colonies for many years. In preparing this act the English draftsman merely sought to put in the form of a statute the law as found in the decisions of the courts, and where there was a conflict of decision to adopt the doctrine supported by the weight of authority. The act, after repeated redrafts, was finally offered for approval in 1896, and has since been adopted without much amendment in forty-six states, territories and the District of Columbia.

The Warehouse Receipts Act

This act was drafted by Prof. Samuel Williston, of Harvard Law School, and Barry Mohun, Esq., of Washington, D. C., an author of a work on warehouse receipts. This bill has met with acceptance in thirty states. The commercial importance of warehouse receipts and bills of lading has developed a systematic theory in regard to them, which had its origin in the custom of merchants. As stated by Professor Williston:

> The fundamental doctrines of the mercantile theory are the complete assignability of the document if it runs to order, and the complete identification of the document with the goods it represents. Both these doctrines are contrary to the ordinary common law principles.

The passage of this act makes goods in the hands of a warehouseman impossible of attachment, without the surrender of the receipt, or its being impounded by the court. Thus full negotiability is given to warehouse receipts, excepting that title does not pass where they fall into the hands of a thief. In view of the enormous values of all sorts of merchandise held in storage, the effect of adding these documents of title to the bankable paper of the country can be appreciated at a glance.

The Uniform Bills of Lading Act

This was finally adopted by the conference after five separate drafts had been printed and revised. Bills of lading are divided

into two classes, a non-negotiable or "straight" bill, in which it is stated that the goods are consigned or directed to a specified person, and a negotiable or "order" bill, in which it is stated that the goods are consigned or destined to the order of any person named on the bill. By this act the order bill becomes completely negotiable.

As was said by the chairman of the committee, Francis B. James, Esq.:

> By this act an "order" bill of lading is recognized as part of the currency of commerce, a piece of commercial paper, passing freely from hand to hand, so that a man may discharge his debt with a bill of lading as well as with cash, either in his relations to his banker or any other creditor.

and he quotes from Logan McPherson:[1]

> It is not only a certificate that merchandise is in transit, but a first lien upon that merchandise, in a way a title to ownership, and as fulfilling this function, negotiable. For example, a grain dealer bringing a car load of wheat at the western field may, and in the vast majority of cases does, deposit the bill of lading covering that car in a bank as security for a loan to its value. If that car goes through to a port where it is sold for export, the loan may not be paid and the bill of lading lifted until the grain is transferred from the car to the vessel. There is a similar procedure in the case of other commodities, with bills of lading covering raw material to the factory and finished product from the factory. The order bill of lading thus contributes to that fluidity of the circulating medium, that celerity in the transfer of merchandise, which are striking achievements and essential requirements of current civilization.

This act has already passed in eleven states and has been well received by the commercial community.

The Transfer of Stock Act

The scheme of this act is to deal with certificates of stock so that they become the sole and exclusive representative of shares of stock in the corporations which issue them, so that they may pass freely from hand to hand, and a bona fide purchaser for value of a duly endorsed certificate becomes at once the owner of the certificate and of the shares represented thereby. The essence of the act centers in section 8, which provides:

[1] *Railroad Freight Rates*, etc., p. 190, quoted 16 Pa. Bar Assocn. Rept. 114.

> Although the transfer of a certificate or of shares represented thereby has been rescinded or set aside, nevertheless, if the transferee has possession of the certificate or of a new certificate representing part or the whole of the same shares of stock, a subsequent transfer of such certificate by the transferee, mediately or immediately, to a purchaser for value in good faith, without notice of any facts making the transfer wrongful, shall give such purchaser an indefeasible right to the certificate and the shares represented thereby.

This act after four years of preparation was approved by the conference in 1909 and has thus far been passed in nine states.

The Uniform Sales Act

The last of the more important commercial acts prepared by the conference. This act, also drafted by Professor Williston, is based upon the English sale of goods act drafted by M. D. Chalmers, an eminent English judge and jurist, who also drafted the bills of exchange act upon which the negotiable instruments bill is based. Judge Chalmers says of his act:[2]

> Sale is a consensual contract and the act does not seek to prevent the parties from making any bargain they please. Its object is to lay down clear rules for the cases where the parties have either formed no intention or failed to express it.

As has been shown by Professor Williston, it is an advantage for any subject to be reduced to simple rules, and is convenient both to business men and to lawyers. This reason has induced England to pass various commercial acts, and in our country the reason is accentuated by our divergent jurisdictions. The mercantile view has been adopted in this act as relates to documents of title, giving them the fullest negotiability rather than the restricted view of the common law. The act has passed in eleven states.

The five acts, known as the American uniform commercial acts, are the most important outcome of the deliberations of the conference, and their acceptance by so many states shows the commission was not mistaken in selecting them for uniform codification. They have besides, with the exception of the stock transfer act, all been approved by the National Civic Federation.

[2] Preface to sale of goods act, 1893.

The Execution and Probate of Wills

Acts have been prepared upon this subject which when adopted will remove dangers that have not infrequently resulted in defeating the obvious will of the testator leaving property in different jurisdictions. Nine states have adopted the act relating to the execution of wills without the state.

Of equal importance with the commercial acts, though the object in view is much more difficult of attainment, is uniformity in certain matters of social importance. The scandal arising from the divergent laws of the different states, especially on the subject of jurisdiction, brought about the enactment of legislation in Pennsylvania which resulted in a congress being held in Washington in 1906 to correct some of the evils and anomalies of the existing divorce statutes. This congress met at the invitation of the governor of Pennsylvania and its expenses were paid from the treasury of that state. It drafted the uniform divorce law.

Uniform Divorce Law

This would correct the more obvious evils of the existing system and especially the extraordinary situation presented in an occasional case where a divorce is held valid in one state and invalid in another, with the result that a man may be legally married to two wives and have two sets of legitimate children because neither jurisdiction recognizes the validity of the other's judicial decree. The uniform divorce act prepared by the congress was considered by the conference of commissioners as being so excellent a measure, especially as it embodied the principles of divorce reform enunciated by the American Bar Association, that the act was accepted by the conference and approved as one of its own. This act does not attempt to regulate details of procedure, and such details with but few exceptions are left to the different states to formulate as they may deem proper. The principal exceptions are those relating to open public hearings and the publicity of records of divorce cases which the states are urged to embody in their laws. No attempt has been made to bring about uniformity of causes for divorce, it being felt that each state could regulate this matter in accordance with the prevailing public sentiment; but on the general subject of the jurisdiction of the courts to grant decrees of absolute divorce and the recognition

or effect to be given in one state to decrees of divorce obtained in another, careful legislation is recommended.

The sections relating to jurisdiction require a bona fide residence of one of the parties in the state for two years before the bringing of an action, except in case of adultery and bigamy when the cause of action arose in the state, and a like term of residence of one of the parties when either has become a resident of the state since the cause of action arose, providing that in the latter case the cause of action must have been recognized in the state in which such party resided at the time the cause of action arose as a ground for the same relief asked for in the action.

Migratory divorces are cut up by the root and the scandal arising therefrom will be practically eliminated by the provision that "if any inhabitant of this state should go into another state, territory or county in order to obtain a decree of divorce for a cause which occurred while the parties resided in this state, or for a cause which is not a ground for divorce under the laws of this state, a decree so obtained shall be of no force or effect in this state." This is the law of Massachusetts.

When jurisdiction has been obtained in accordance with the provision of the act and a decree has been entered, then it is provided that "full faith and credit shall be given to a decree of annulment of marriage or divorce obtained in another state when the jurisdiction of the court was obtained in the manner and in substantial conformity to the conditions prescribed by this act."

It is not claimed by the advocates of the uniform divorce act that its passage will materially diminish the number of divorces, but it will remove much of the scandal connected with them and is the best that can be done so long as public sentiment favors absolute divorce under any circumstances. It is a mosaic made up of existing provisions of the laws of many of the states and has been adopted in principle in New Jersey, Delaware, Wisconsin, and is substantially the law of Illinois. There has been a mistaken impression that it contains notional provisions, the outcome of merely theoretical knowledge on the part of its draftsmen, but in point of fact not one of its provisions has been untried.

The Uniform Marriage Act

This act leaves to each of the states that adopts it the selection of the persons who may celebrate the marriage ceremony. Its central thought is that no marriage may be validly contracted until a license has been issued, and then that the parties must declare in the presence of at least two competent witnesses other than the officiating person that they take each other for husband and wife. A period of five days must elapse between the application and the granting of the license. Marriage according to the rules of special religious societies is provided for. Common law marriages will be abolished by all of the states that adopt this act. They are no longer valid in a dozen or more of the states. This act too is based upon the existing laws of various states. Its draftsmen have sought to avoid the mistake of making marriage difficult and at the same time have sought to surround it with every practicable safeguard.

The Evasion of Marriage Act

This provides that marriage celebrated between citizens or a citizen of the state in any other jurisdiction contrary to the laws of the domicile shall be null and void. The passage of this act will be necessary in order to prevent the evasion of the laws of any state passing the marriage act, as otherwise citizens could go into other jurisdictions, marry and return to their domicile, thus avoiding its requirements.

The Wife Desertion Act

This act was inspired by the law of the District of Columbia which has been in successful operation for several years. It provides for the trial and sentence of wife deserters and parents who leave their children in destitute circumstances, with provisions that make it possible for the court to suspend sentence if the offender is willing to work outside of jail, and if not he is compelled to work in jail and his earnings are turned over for the support of the deserted wife or children, as the case may be. The substantial provisions of this act have met with general acceptance.

A Uniform Child Labor Act

Embodying the best principles that study of the subject has educed. It has been adopted by the conference and has been used as a model in various of the states.

Workmen's Compensation

This difficult subject has also been carefully studied and a tentative act covering the best learning on the subject has been drafted.

This sketch of the work of the Conference of Commissioners on Uniform State Laws can give but an imperfect idea of its activities. It is absolutely non-political, sufficiently conservative, and, considering that the bills recommended by it have no greater sanction than their own excellence, their general acceptance has been very encouraging. It is believed that this plan of obtaining uniformity has passed far beyond the experimental stage. As the legislatures of the different states get a better realization of it, they will appropriate adequate sums for its support. At present all of the commissioners work without compensation, and a large proportion of them pay the not inconsiderable expenses attendant upon their presence at the meetings at long distances from their homes. Many of the states, however, not only pay the expenses of their commissioners, but a proportion of the expenses of the conference itself. These contributions, together with the aid of the American Bar Association, have enabled it to meet the very moderate requirements of expert fees, printing bills and other necessary demands.

At a time when the critical spirit of inquiry is searching the very foundations of our civilization, and the boldest schemes for attaining Utopian conditions find fanatical advocates, a sober spirit should be cultivated especially among those who are charged with the responsibility of legislating for the community. It is necessary, of course, that legislation should meet changing conditions, but the general principles upon which such legislation should be drafted have been settled by the experience of many centuries, and those who would seek to prove them to be based on false principles should have the burden cast upon them at every stage of argument. Men are not made moral by legislation nor by secular education. Every measure of change or reform should be submitted as far as possible to the passionless examination of experts. It is believed that the work of the Conference of Commissioners on Uniform State Laws shows the value of such methods.

ORGANIZATION OF THE BAR

By Herbert Harley,

Secretary of the American Judicature Society, Chicago.

Lawyers have made a spirited fight against the recall of judges. They will soon have to face a popular demand for a limitation upon the right of advocacy which will mean for most of them neither more nor less than the recall of lawyers.

Over-contentiousness is the all-inclusive definition of present difficulties in the administration of justice. Contentiousness has exceeded all reasonable bounds because of encroachments upon the authority of an elective judiciary and because of the lawyer's tremendous personal interest in litigation. Most litigation is conducted by lawyers attached to a few clients upon whose favor they are in large part dependent for their living. Often the lawyer's interest exceeds that of his client. Ordinarily his allegiance to his client is greater than his loyalty to the court. It is an instance of practice in conflict with theory.

The line of argument is short and straight. To many minds it leads directly to the conclusion that the way to judicial efficiency lies in attaching the advocate more closely to the court and severing his intimate relationship with his client.

To accomplish this it is proposed that advocacy be restricted to an "official trial bar," the members of which would be paid solely from public funds.

At present the lawyer's connection with the court is one of extreme tenuity. His relation to his client becomes constantly more intimate. All large interests keep lawyers just as they keep accountants, auditors, purchasing agents, and so forth. The proposed change simply goes to the limit on the other side. It makes the lawyer's relation to his client perfunctory, his relation to the court of the most intimate sort.

It is a curious fact that the proposal that an official trial bar be created as a sort of poultice for weak-backed courts comes from the bar itself. The idea will have vastly more support from individual lawyers, it is already evident, than has the judicial recall.

That it will take well with the radical press is a foregone conclusion. In fact one of its first appearances in two-column editorials evoked the expression "Free Justice" which well may become the slogan for this radical wing.

It may be assumed that the greater part of the bar will scent danger and rebel against this threatened swing of the pendulum to the opposite end of the arc. We already hear them citing Pliny and Tacitus and declaring that the idea of a trial bar is no new thing.

What sane middle ground is there for the conservative lawyer? He will admit that today the lawyer has too great a stake in decisions but insist that the almost complete removal of personal interest would make courts weaker at a time when they should be stronger.

Efficiency in the administration of justice implies control by the courts and self-discipline on the part of the bar. The former alone could not suffice for the lawyer has many functions over which the court can have no direct supervision. There must be built up for both counselor and advocate a powerful inhibition against the violation of ethics. Much stronger courts could compel outward compliance with necessary rules. But real reformation of the bar must be of the very spirit of the institution. It must begin within and work out. It must be the result of a new and larger self-interest, a self-interest which embraces the entire profession.

The bar has its share today of conscientious members. How is the conscience of the sensitive to become the conscience of the entire bar? Only one way is possible. It must come by welding all the lawyers of a state into one closely knit organization. Given a genuine organization the sentiment of the majority will speedily control the conduct of all.

There are three reasons for having any organization of lawyers. First, for political purposes, employing the word in its larger meaning; it embraces discussion of proposed legislation, the development of procedural law, and possibly the exercise of influence with respect to the selection of judges. Second, for social intercourse. For both of these needs organization must be on a voluntary basis.

Third, for the government and self-discipline of the bar, including admission to practice, standards of education, suspensions, and involuntary retirement. Such purely fiscal work as the reporting of decisions, or any other work which affects equally every member, may be properly included in this classification. But for this third field voluntary organization is wholly ineffective.

The bars of the several states and of the Union have existed long enough to prove what can be done through voluntary organization. They take care well enough of the social and political needs. They fail sadly in the third field, that of self-government. Voluntary organization must always be partial organization. At the present time it does not extend to more than one-fourth of the entire active profession.

If there is to be self-government of the bar there must be organization of an authoritative sort on a democratic basis. There must be no member left out of the sanctuary. Membership must be inseparable from the privilege of practicing law. For every lawyer one vote in the government of the bar must be the simple, broad, principle of association.

All that is necessary is to incorporate the bar of a state, provide simple machinery for executing the majority will, and give to the organization certain reasonable responsibilities, such as determining educational requirements, conducting entrance examinations, fixing standards of ethics, and enforcing them by suspension or removal.

A minimum of effort is required of the membership for it can be provided that officers and a board of governors shall be elected by mail and that they shall report all their doings fully. The expense can be kept very low.

There are too many lawyers by far. In most states we have left competition to regulate numbers as if nobody were concerned but the lawyer. Unrestricted competition has its share of blame to meet for it has made tenderness of conscience a burden and bluntness of conscience an asset. It has put a premium on sheer will power and has handicapped intellect.

While old practitioners, many of them competent to grace appellate courts, have to do the work of beginners to make a living, the latter are subjected to a starvation test. There is a form of riddance but it is blind. It weeds out the good with the bad. It puts a premium on sharp practices. Too often those who refuse to stultify themselves are forced out and just as often those who make terms with their self-respect are rewarded by success.

Open competition implied by easy admission makes it a topsy-turvy profession. There is a survival of the fittest but the specifications of fitness are wrong. There is absolutely no danger from the standpoint of the public that there will ever be a shortage of

lawyers. If there were but one-third as many as now, that one-third, assisted by non-licensed apprentices, would readily supply all needs.

There is but one way to restrict the number of lawyers and that is to make the examinations for admission more difficult. Applicants cannot be given a moral grading, though of course some attention must be paid to morals to bar the few who are evidently unfit. It is in after years, under the pressure of competition, that the conscience becomes dulled. If it be true that wickedness is after all only stupidity, the lawyer obtained by intellectual selection can better be relied upon to maintain the honor of the profession than if the attempt were made to plot the moral curve of each applicant in advance.

Selection of new material will always be the large duty of the profession, but just at present the elimination of the unfit, or their sufficient disciplining, looms big. One of the things all self-respecting lawyers have desired is means for ridding the profession of those who bring discredit upon it. If the power existed it would need to be exercised but seldom. The problem has proved altogether insuperable for our voluntary bar associations with their limited membership and frequent change of officers. The vantage lies with the rascal. The worthy lawyer shrinks from the uneven conflict. His self-interest bids him pass on the other side. Were he linked up by law with the shyster and made responsible as the fellow members of an organization must be responsible for one another, his self-interest would lie in enforcing compliance to reasonable standards.

Just as sure as the majority of the profession is afforded a means for expressing its will with respect to its membership, just so certainly will this majority raise the standard of all to its own standard.

At present the lawyer has little to gain and much to lose by vigilance work. Rational organization will invert the terms of the equation.

The present organizations of the bar comprise the American Bar Association and forty-seven state bodies, besides those formed in the District of Columbia, in the island possessions, and those existing as city or county organizations. In all of them membership is voluntary and loose. There is but little working affiliation between these bodies though the similarity of structure is striking, and

the American Bar Association does act *in loco parentis* to the state bodies.

If it be assumed that the present associations remain unaltered to fill the rôles for which they are well calculated, and organization proceed independently on the thorough, democratic, and corporate basis, there will be little or no need of the coördination of all the state bar incorporated bodies. The need for coördination between the states, through the mediation of a central national body, is on the social, political, and voluntary sides. There is at present a strong indication that such coördination will soon exist. It is afforded by the need for recasting the American Bar Association, due to its rapid growth, which makes the present unwieldy form conspicuously inefficient. This need is reflected in a resolution adopted at the Montreal meeting of 1913 which created a committee charged with the duty of recommending changes in the constitution.

Thorough coördination with the state bar associations implies the control of the business of the American Bar Association by a congress of delegates representing the state bodies on a proportional basis.

The need for solidarity was emphasized by the recent fight against the judicial recall. The coming struggle against the recall of the lawyer from his quasi-judicial position as advocate will further call for solidarity. At present the bar has only an opportunity for agitating. Even this right is lost if the bar be seriously divided on a proposition. It is absolutely necessary that it have a means for settling questions of discipline in the only way that questions can be settled, by voting and by holding the minority to the result of the polling.

This genuine organization is likely to come about as a local movement, in one state after another. To have the idea accepted by the American Bar Association and encouraged by this parent body, would go a long way to facilitate its adoption. The American Bar Association has concerned itself with uniform legislation for the states; has framed a code of ethics; established a comparative law bureau; fathered an association of law schools, and done other things calculated to benefit the public, including the campaign against the judicial recall, but itself it has thus far not sought to benefit directly.

The need for solidarity and self-government in the bar is one of the reasons for the organization in 1913 of the American Judicature

Society, the only lawyers' organization devoted frankly and exclusively to the promotion of efficiency in the administration of justice. The society proposes to draft a model act for the organization of the bar. Other model acts, looking to the reorganization of metropolitan and state courts on an efficiency basis, will be drafted, submitted to a selected council of representative lawyers in all the states, and then be presented in final form to the people and their legislatures.

Popular interest in judicial reform has outstripped popular experience and knowledge. The question is foremost among national problems. Public opinion has been aroused to such a degree that action of some sort is imminent in many states. But the bar through its voluntary associations has reacted in feeble and uncertain terms to the popular demand, or has set itself in opposition to flagrantly unwise propositions. There is obvious insufficiency of counsel based upon comparative study. The organizers of the American Judicature Society, embracing some of the most eminent minds in the profession, hope that the organization may prove to be the logical response of the bar to the present insistent need for guidance.

CRIME—FROM A STATISTICAL VIEWPOINT

By John Koren,

President of American Statistical Association, Boston, Mass.

Let no one be deluded by the superscription. It is not intended to exhibit a statistical picture of the conditions of crime in the United States. That demands an extensive knowledge of the facts which no one may profess to have. The humiliating truth is that statistics of crime, in the proper sense of the term, are largely an unfamiliar commodity in this country. This does not signify indifference about crime matters. We talk a great deal about them. Statutes are piled upon statutes in effort to prevent and punish criminality. Huge and costly experiments are undertaken for the reformation of offenders. There are even some who fearlessly, if not always wisely, seek to probe the crime question in its causative relations. Yet the fundamental facts in regard to the whole situation are lacking; we are not in position to take adequate stock of the problems we set ourselves to meet.

In general the purposes of criminal statistics are: (1) To furnish a measurement of the volume of crime during a given period; (2) to present the facts in regard to the different manifestations of criminality and the different classes of criminals; (3) to exhibit the judicial methods by which crime is dealt with; and (4) to serve as a basis for intensive study of specific phases of the crime question. The ultimate aim is to acquire a solid body of facts upon which to base intelligent action. Now let us examine in some detail the available statistical evidence about crime and see how far it meets the modest requirements stated.

For the United States as a whole, the decennial census enumeration of prisoners is the main source of knowledge. But no matter how painstaking such an enumeration is and how intelligently the results are presented, only that portion of crime comes under view for which men are finally convicted and sentenced to imprisonment. Manifestly, such a census reveals nothing in regard to the thousands who, although found guilty, escape further penalty through the payment of fines, by suspension of sentence, by being placed on proba-

tion, etc. Nor do statistics of prisoners afford the slightest inkling of the multitude of criminal cases coming before the courts in which the accused are not convicted; yet these must be considered in any effort to measure crime quantitatively. The truth that a country-wide census of prisoners does not provide the facts needed is particularly forced home when the census report through various untoward circumstances is published several years subsequent to the period of time it covers. Statistics of prisoners have their important place, of course, but are diminishing in value unless supplemented by other information, owing to the modern tendency of substituting new methods of dealing with crime for incarceration.

The field of criminal statistics does not promise a richer harvest within the area of single states. Most commonwealths have nothing to offer beyond wholly inadequate returns of prisoners to be found in institutional reports or brought together in some publication of a state board. Here and there effort is made to supplement such fragmentary information by certain facts obtained from the records of the criminal courts. But the scheme followed is either so crude or the facts are so badly put together that the whole output is of little use. One reason for this is that the duty of collecting and publishing statistics of crime is placed where it does not belong. Why, for instance, should it be assumed to be the proper function of a secretary of state, as in Ohio and New York, or of a board of charities, as in Pennsylvania? Only two states have so far provided special machinery for the purpose. Illinois has its new bureau of criminal statistics which, however, has only been in operation a short while. In Indiana, the long established bureau of statistics should prove equal to the task because it is backed by ample authority in law; but it suffers from that inefficiency which is almost necessarily associated with an office demanding technical training and skill, but whose head is elected by the people like any other political candidate!

With rare exceptions, the criminal courts do not attempt to enrich our knowledge about the crime situation. Apparently, they do not feel the need of informing themselves by bringing together and studying the results of their own work, much less do they recognize the general utility of enlightening the public with the facts. One court forms such a notable exception to the general rule that it deserves special mention, namely, the municipal court of Chicago.

Once in a while, under stress of special circumstances, officials may be forced to institute a statistical self-examination, as, for example, in the case of the municipal courts of Boston, and the results are singularly illuminating.

But, by and large, officials of the criminal courts seem to regard it as something akin to impertinence that students should wish to utilize their records as an educational means about matters of crime. Anyhow, these precious sources of the most fundamental knowledge generally remain sealed.

In a well-ordered community, the statistics derived from the records of the criminal courts should be supported by those pertaining to the work of prosecuting officials; but how reluctant these elective functionaries are to take the public into their confidence is well known. Very few of them vouchsafe as much as a superficial account of their work in the form of an annual report. Exceptionally, the report of an attorney-general may be found which, in obedience to some statute, presents fugitive and undigested facts about criminal prosecutions in specified criminal courts. They are raw totals, not qualified statistics.

There remains to be considered one other possible source of information of a general nature about the conditions of crime, namely, the records of the police. These are ordinarily translated into tables given out in annual reports, but not always. There are cities in this country of more than 200,000 population which do not publish any police reports whatsoever, or do it irregularly, or are content with a few typewritten pages of tables that are hardly intelligible even to the initiated. There is, of course, no standard for our police reports. Many of them are so questionable as to matter and so impossible as to form that they are robbed of the most primitive utility. An exceedingly small number offers material so complete that it can be used and interpreted without misgivings.

Let us therefore admit however reluctantly that statistics of crime in the true sense of the word we have not. This condition may not deter adventurous minds from parading figures purporting to show the "movement of crime" and many other things. If they are content to argue on such slender evidence as prison reports, newspaper clippings and the like, let them take the responsibility. No one who has mastered the rudiments of the application of the statistical method to the general crime problem can have the temer-

ity to venture far-reaching deductions on the strength of available information.

What underlies the situation? Merely indifference to the importance of knowing elementary facts about one of our greatest and most difficult social problems, or have we here only another instance of official neglect? To put the blame upon the federal government for not producing acceptable statistics of crime has become a habit even with some people who should know better. Doubtless, the government should be far more active than it is; but under our dual form of official existence, a bureau like that of the census is greatly handicapped in collecting criminal statistics. Not commanding any of the sources of information, it must depend upon the material available in the different states. For example, the federal government cannot compel returns in a specified form from the various criminal courts (the most important means of knowledge), and since such returns are not centrally assembled by the states, it is confronted by the enormous and almost prohibitively expensive task of sending its own agents through the length and breadth of the land to collect the facts where they are originally entered. An added difficulty is that the records to be consulted are often imperfect, have not in any sense been standardized, thanks largely to the diversity of criminal codes and court systems, and seldom meet a modest minimum requirement in regard to raw material from which criminal statistics may be obtained.

But when all allowances are made for the inactivity of federal and state authorities, let us say honestly that the root-difficulty is that we do not fully appreciate how necessary to intelligent legislative and practical endeavor it is to have systematically collected and thoroughly sifted facts about one of the most pressing and obvious problems common to the whole world. Is this not rather characteristic of us as a people? A learned man discoursed the other day upon the predominance in this country of the feminine type of mind, one manifestation of which is a disregard for fact, or at least for the painstaking assembling and comparative examination of facts. To be sure, it is a national habit to demand the facts about all manner of things and conditions. But we show little patience about working for them. Or we want to use facts merely as a spring-board from which to jump at conclusions, or facts are sought that shall point a theory. Perhaps this is what led Dr. Crothers to make

his celebrated remark about statistics as "the most useful fertilizer for the product known as fallacies."

The writer has no delusions about the magic of statistics as a solvent of our problem. It is merely a method of finding out about things; and the burden of this article is that we are not yet thoroughly alive to the necessity of knowing the facts about the crime situation. While this condition prevails, little is accomplished by examining what there is of statistical material unless it were to puncture the spurious articles which too often pass current. There are, however, distinctly hopeful signs. The topic of criminal statistics has come much to the fore in recent years. Organizations like the American Institute of Criminal Law and Criminology are actively pushing it forward. Best of all, the bar and the judiciary are beginning to recognize the need of systematic information about their own work. Mention was made above of the recent establishment of a bureau of criminal statistics in Illinois. Massachusetts is considering a law charging its efficient bureau of statistics with the duty of gathering criminal judicial statistics. In other states, the subject is receiving more or less attention.

At least it has become recognized that we cannot be content merely with returns from prisons, and that we must look to the records of the criminal courts as the best sources of knowledge. To be sure, even when these are fortified by police and prison reports, they do not provide a perfect instrument even for measuring crime quantitatively; but they can be made to meet all practical requirements. They should help us to an understanding of the different manifestations of criminality and of the different classes of criminals. Above all, the immediate need would be met for accurate information about the instrumentalities whereby we seek to repress crime, foremost among which are the criminal courts themselves. Are the systems and methods in vogue wholly adequate? Do our long-standing theories upon which they rest prove themselves by the results? It is not asking over-much that such simple questions should be answered.

Of the different items that go to make up competent criminal court records there is not space to speak in detail, except to say that such records must give an account of the judicial process and of the human element in each case. It is more worth while to emphasize that the situation will not mend if we rely solely upon the federal government to provide us with statistics of crime. Each state must see to it

that the federal government is placed in position to do its work. The collection of vital statistics furnishes an analogy. Not until each state passes an adequate law for the registration of births, marriages and deaths and makes it effective, can the federal bureau in charge gather for that state vital statistics. The federal government can, however, pave the way by instigating legislation, by directing attention to the subject and by affording practical demonstrations.

A consideration of the wider applicability of criminal statistics, how necessary they are to different intensive studies, etc., is beyond the scope of this article. First let us acquire the elementary facts and then it will be timely to speak of their refinements. Meanwhile, the most necessary, if somewhat disagreeable task, is to hammer it into the consciousness of those concerned with the crime question that we grope blindly so long as we are without the guidance of accurate knowledge, not only about the extent and manifestations of crime, but about the very means by which we try to stop it. The European finger of scorn has long been pointed at us, even if in polite disguise, for our neglect to inform ourselves in this respect. True, we labor under difficulties from which other countries are spared, but it is frankly humiliating that we do so little to overcome them.

There is much crass ignorance about crime, and some are prone to grow hysterical over it. But does the popular notion about a rampant criminality in this country, about ineffective means of repressing it, of a prostitution of law whereby offenders escape, square with the evidence? It is vital to know the truth. Some day we shall arrive at the dignity of exhibiting it in orderly array, and no longer be dependent upon a newspaper for statements in regard to the rate of homicide in the United States. Meanwhile, one can at least write safely about crime from a statistical viewpoint without producing any statistics!

CRITIQUE ON RECORDING DATA CONCERNING CRIMINALS

By William Healy,

Director, Juvenile Psychopathic Institute, Chicago.

To a student dealing with the practical aspects of criminalism it appears quite patent that almost no assistance towards solutions, general or in the individual case, is to be derived from the type of data officially recorded concerning criminals. And not only in the attempt to discern actual means of halting or forfending criminal careers is this inefficiency of accumulated fact perceived, but also it is evident that the people of the law, whether engaged in the administration of police, penal or court affairs, feel themselves in nowise influenced by the statement of collected figures. In fact the criminal law itself has not been modified to an appreciable extent by any growth of learning or experience that one might expect to find centering about actual observation in its own field. In this certainly there is wide divergence from latter-day advance in other arts, sciences and professions.

This astonishing lack of impulse to progression from observational data does not characterize our country alone. The German scholarship which in recent years has been deeply concerned with proposed reform of the entire criminal code, finds almost no reason to even refer to such data as may be found, and the discussion still nearly all turns upon theoretical considerations—it is the philosophy of ethics, of crime, of punishment, even as conceived by the ancients, which is thrashed over and over. The fact is that data at all adequate for showing the road to better things, notwithstanding European supremacy in statistics, are still lacking, there as here.

One might well consider if our remarkable national innocence of criminal statistics is not considerably due to a vague, half-formulated and rather shrewd conception of *cui bono*. We have not been so slow about undertaking studies of many other matters of public welfare, or of vastly less costly departments of governmental administration. Realized or not, however, it is the truth that the collection of mere general figures concerning conclusions leads almost no distance along

the road to betterment of the situation. Since nationally we have nothing but the barest census statistics—those only by decades—and nothing much better in local reports, let us look at the carefully worked-up English judicial statistics, readily obtainable by all readers, and published for each year. There we find matters set forth which ought to arouse immense public interest, but yet which entirely fail to do so. Partly, one might think, because of no showing that things are not as they have been for generations past, but probably mostly because the figures do not show the slightest indication of any solution of the difficulty, such as at least might be suggested by comparative statistics relating to labor, agriculture, transportation, and so on.

Letting alone the collection of figures in this *Blue Book* by localities and courts and months and crimes, which cover many large pages, and which are of use, if at all, mostly for administrative adjustment, some larger issues are clearly presented. Take the question of *recidivism*, to my mind one of the three or four cardinal points of criminalism. We have this set forth in startling array, and as we would like to see it worked up for America. But what does this recidivism mean, and from these naked statistics what possible clue is there to what can be done about it?

From such figures questions of efficiency may well be raised, efficiency of court procedure, of penal and reformatory institutions. Of course it is on just such statistics as these—20 per cent of 168,000 prisoners convicted upwards of ten times previously—that efficiency studies may be urged, but no fair answer is in anywise forthcoming from the mere statement. Take your Elmira Reformatory "graduates," and study the outcome of efforts made during their institutional life. What do individual findings or total figures mean, if no account is taken of causes of either earlier or later success or failure, if no estimation is made of the qualities of the human material that was treated? No judgment in the realms of criminology is possible without knowledge of mental and physical capacities and stresses, as well as the bare facts of law breaking.

Fundamental for the development of that systematic recording of data concerning criminals which shall prove really valuable in indicating any way out of the costly failure of our present methods, is the assuming of a business-like and scientific attitude towards the whole matter. Where such tremendously varying units are the ac-

tive members producing the given result, the individual characteristics and possibilities of groups into which they may be classified must be made the subject of study, if one is to determine the cause and probability of success or failure. This is the method of today in scientific and industrial fields. The fact of failure and cost we know, not so well as we should know it if we had statistics, but the bare fact affords only a peep into the problem.

If we made a business-like approach to criminalism we should first ascertain who and what proportion among criminals have the innate ability to meet ordinary social conditions without falling by the wayside, and who have not. Then proceeding from that practical line of demarcation, all sorts of studies might be made of why those fail who have the innate capacity to succeed; and, particularly, inquiry might be made concerning what might be done about individuals or groups to prevent or deter. If England, for example, was to undertake such a studious survey of the individuals who make up its criminal class, and particularly its youngest offenders—following in this the recent recommendations of Goring and Ruggles-Brise, based on the splendid scientific work of the former, who shows the emptiness of considering the criminal as a type—it would do more to show the way to clearing the courts than centuries of yearly presentation of statistics.

What is needed to be known about criminalism is causes, and these are only to be ascertained by individual study. Causes in general have been theorized over, and all to little end. Seeing through the futility of theory, and dogma, and laws based on ancient preconceptions, we can only look forward to development of a scientific study of the salient particulars of criminal genetics as they may be actually found in the lives of men, especially through the sizing up of the criminal himself.

Nothing can possibly be of such value for the establishment of sound general social measures, doing justice to the offender and protecting society, as these estimations of the essentials of the problem, which even common sense would seem to dictate.

If data are worth accumulating at all they should bear practical fruit. To go on getting the type of facts that have thus far been officially registered, simply because they can be fairly readily obtained, irrespective of any ultimate value, is an archaic proceeding long proved unavailing in this field. More facts on the same lines

is heaping Pelion on Ossa—it is a new type of fact that the situation demands. Careful research is required and there perhaps rests the crux of the situation.

At the time of our developing, four years ago, a schedule for recording data (for the purposes of our own institute primarily, and then as a bulletin widely distributed by the American Institute of Criminal Law and Criminology) we could find no center where facts adequate for the understanding of individual cases and causes were being registered. At present there are a number of places in this country where studies concerning individuals and genetics are being gradually accumulated, but the public demand for such has not awakened. In a second bulletin issued last year by the same American institute, in which we dealt with the more practical phases of recording data, the problem of uniformity of record was discussed. Until the need of making adequate studies of offenders and causes is realized there can be no uniformity—not even a minimum schedule will be of use, for no statement can sufficiently explain for practical adjustments, which does not include competent estimation of the capacities of the individual.

We have been purposely avoiding in this discussion the important recording of data for identification. That belongs to another field; it is first of all a police affair, but it inevitably underlies the development of much scientific and reformatory work. Your intelligent professional criminal will tell you this, and that the situation, as far as society *vs.* the professional is concerned, is largely impotent, because he is today one man in Illinois and another in Pennsylvania tomorrow, and no one is the wiser.

One of the best representatives of this professional class of students of practical criminalistic affairs, asserts confidently that until the central government undertakes thoroughly to study criminalism, and to record important data thereupon, neither constructive nor disciplinary measures effective enough markedly to mitigate many types of criminalism will be possible. This is also our opinion.

THE EVOLUTION OF OUR CRIMINAL PROCEDURE

By Samuel Scoville, Jr.,
Member of the Bars of Philadelphia and New York.

Criminal procedure in this country is passing through its age of unreason.

Our forbears were a grim and hasty folk "readier to ban than to bless," who had to fight hard and endure much for their scanty possessions in the Northland. They accordingly brought down into west-over-the-sea, the Viking name for England, an exaggerated regard for property and a contempt for human life. This is reflected in their laws. Under them a man's life was not worth more than two shillings nor as much as a sheep, a pig, or a hay-stack. On April 21, 1824, at Bury St. Edmunds, Thomas Wright and Robert Bradnum, both aged 26, were hung for stealing a live, fat pig. In 1833, a little boy nine years of age pushed a stick through a broken window and pulled out some bright-colored paints worth two pence. He was condemned to death for burglary. On April 25, 1839, William Cattermole was hanged at Ipswich for setting fire to a stack of hay. Cutting down a young tree, impersonating a pensioner, stealing linen left out to bleach, defacing a county bridge, and two hundred and nineteen other offenses were punishable by death until 1837.

The procedure was as harsh as the laws. Indictments were drawn in a language which the accused could not read, and frequently he did not know with what crime he was charged until the day of his trial. He was not allowed to testify in his own behalf. His witnesses were not allowed to be sworn and their evidence naturally had but little weight. If accused of treason or felony, his counsel could not even address the jury. When, in spite of such tremendous odds, an accused man had enough ability and natural eloquence to combat successfully the able lawyers for the crown, and persuade a jury to acquit him, the members of this jury might be fined and imprisoned. This happened in the case of Sir Nicholas Throckmorton, who was prosecuted for high treason in 1554. Single-handed against a hostile judge and the best lawyers in England, he fought for his life and won. The jury who acquitted him were

severely punished. This was fatal to his brother who was tried later and who on the same evidence was convicted by another jury which had heard of the fate of the first. If the accused was convicted of murder, he had no right of appeal. If acquitted, the crown might take an appeal. The Norcott trials in 1628 showed the horrible injustice of such a system. In that year a woman named Jane Norcott was found lying in her bed with her throat cut while a bloody knife was found sticking in the floor. Her mother, sister and brother-in-law, who slept in an outer room, testified at the inquest that no stranger came in during the night to the best of their knowledge. On the strength of this statement, they were suspected of murder. The first coroner's jury brought in a verdict of suicide. This was not satisfactory to the court at assizes and after thirty days, the body was disinterred and a second inquest held. On this inquest, a verdict of murder was found against the defendants and they were tried at Hertford before a petit jury and acquitted. The judge was dissatisfied with this verdict and accordingly recommended that the infant child of the dead woman should be made plaintiff in an appeal of murder against its father, grandmother, aunt and uncle and the appeal was tried accordingly. Before a second trial, the four defendants were compelled each of them to touch the dead body and witnesses testified "that when the four accused laid their hands on the corpse, the brow of the dead which before was a livid and carrion color, sweat. That the sweat ran down in drops on the face, and that the corpse opened one of its eyes and shut it again repeating this three times, and likewise thrust out the ring finger three times and pulled it in again and that the finger dropped blood on the grass." On this evidence, the defendants were convicted and hanged.

The punishments were as bloody and as barbarous as the procedure. In cases of treason the convicted man was partially hanged, cut down and disemboweled and while still alive his entrails were burned before his eyes. Women guilty of the murder of their husbands were burned at the stake. Coiners were boiled alive. Suicides were buried at crossroads with a great stake driven through the heart.

In this welter of blood and punishment, with all the odds against an accused, the judges began to insist upon the observance of every technicality. Precedents and principles were evolved which had the force of actual statutes. The crew of a vessel were hung for the murder of their captain whose body could not be found. They pro-

tested their innocence to the last. Later the supposed victim came back, alive and well. A woman and her two sons were hanged for the murder of a farmer on the confession of one of the sons who claimed that the body had been secreted. The day after the hanging, the farmer arrived home. From these and similar cases arose the rule in regard to the *corpus delicti*, which obtains today, that either the death or the wrongful act must be proved by direct evidence. No man can be convicted on circumstantial evidence as to both.

Chief Justice Fortescue, when traveling the western circuit in England, in the seventeenth century, saw a woman condemned and burned for the murder of her husband. At the next assizes he heard a servant confess the murder. The judge's horror-stricken comment became part of the common law from that day. "One would much rather that twenty guilty persons should escape the punishment of death," he wrote, "than that one innocent person should be executed."

Since the accused could not testify himself at all nor his witnesses be sworn, the judges put the burden on the prosecution of proving entirely every detail of its case, unhelped by presumption or probability. This, they reasoned, was the least they could do for men who were not allowed to defend themselves. Out of this practice grew the presumption of the innocence of a person accused of a crime. This presumption is not based on any logic and has been adopted arbitrarily. Human experience shows that usually things asserted are so. The percentage of falsehood is inconsiderable. All human society is built on belief. The mere fact that a charge has been made against a man would naturally put the burden on him to disprove it. Yet in all English-speaking countries, an accused is presumed to be innocent. This presumption attaches from the beginning and follows him through each stage of the proceedings. He may be found guilty by a committing magistrate and a grand jury, yet he comes to trial a presumably innocent man. He may be convicted by a judge and jury, yet his case must be argued in one, two, and sometimes three courts of appeal as if he were innocent in spite of the fact that at least twenty-seven men have found him to be guilty. This is not so on the continent of Europe. There a man accused of a crime must overcome the presumption which naturally attaches to the accusation. He would not be accused if he were not guilty is the natural reasoning. Today, in addition to this presumption of innocence which is protection enough, we are still conducting our

criminal courts under out-worn technicalities which were devised to save innocent men but which now are used only to shield guilty ones and which have been abolished in England, the country where they originated, for over thirty years. A few instances taken at random from the digests will illustrate the truth of this assertion.

In Texas not long ago, a man was tried and convicted of robbery. There was no question either as to his guilt or as to the fairness of his trial. On appeal it appeared that the indictment specified the crime as having been committed in the town of Groveton, Texas, omitting the name of the county. In spite of the fact that there was only one Groveton in the state of Texas and that no question in regard to the indictment was raised at the time of the trial, the case was reversed. The same thing happened in Massachusetts. A man was convicted of burglary in Westminster, Worcester County, Massachusetts. The name of the county appeared at the head of the indictment, but later on was omitted, being simply referred to as "said county." On appeal the judgment of conviction was reversed.

In many states the letter of the law has been invoked to save convicted criminals, said letter being one that was omitted from the indictment. In Alabama a murderer gained a new trial because a copying clerk left out the letter "l" in the word "malice." In North Carolina another murderer was saved because the letter "a" was left out of the word "breast." In West Virginia a horse-thief was released because the indictment ended in the words "against the peace and dignity of the state of *W.* Virginia," instead of "against the peace and dignity of the state of *West* Virginia."

In Missouri a criminal convicted of a revolting crime against an orphan child was released by the supreme court because the word "the" was omitted by a copying clerk in copying the words "against the peace and dignity of the state."

In Missouri, Leo Judd was sentenced to imprisonment for two years for illegal registration under the name of Charles Cohn. On appeal the case was reversed because the name "Cohn" was in the last part of the indictment spelled "Cohen." In Delaware a man was arrested for stealing a pair of shoes. During the trial, it appeared that both shoes were for the same foot. The case was dismissed because the stolen shoes did not constitute a "pair."

In another state a criminal was convicted of the larceny of a

certain number of eggs. On appeal the judgment was reversed because, said the learned judge, "there is nothing in the indictment to show what kind of eggs these were." "They might," went on the imaginative judge, "have been adders' eggs in which case there could be no property rights in them and the defendant could not have been guilty of larceny."

The supreme court of California held that the indictment which set forth an assault by means of a heavy stick was fatally defective because the means of injury were not described with sufficient precision. The masterly reasoning of the supreme court of California is worth quoting:

> Describing a stick as heavy imparts no certain information. The term is relative. A stick which in the hands of a boy or feeble person would be considered heavy, in the hands of a robust person would be deemed light. Aside from the use of the term "heavy," there is no description in the information as to the definite weight, strength or size of the stick, or other characteristics showing that it was a means likely to produce great bodily injury.

All of the above cases are instances where technicalities which were formerly needed as helps against overwhelming odds, have been retained although now the odds are all against the prosecution. The wonder now is not that so many guilty men escape, but that under our present system any guilty men are ever convicted. Where they have money enough to employ the most able counsel and to take advantage of every delay and technicality available, they practically never are convicted, as in the Thaw case. There a man was guilty of a cowardly and deliberate murder of a prominent citizen under circumstances which brought the attention of the world to the occurrence. In spite of his crime, he escaped safe and unsound into an asylum. As this article is being written, he is now on the point of obtaining his liberty even from that nominal restraint. To quote from the argument of Mr. Jerome, the district attorney who tried his case: "This trial has left a trail of ignominy, disgrace, filth and scandal behind it that has been absolutely appalling." Such a record would not have been possible in England with its common-sense procedure.

In Atlanta, Eugene H. Grace has just died from a gunshot wound which he claimed was received from his wife who, according to his story, shot him while he was asleep to recover his insurance and who refused to send for a doctor when he awoke in agony with

a bullet wound near his spine. On the trial, he was not permitted to testify against her, since, under the laws of Georgia, a man cannot testify against his wife even if she has attempted to murder him.

As a reaction against the lack of the right of appeal to a prisoner, a convicted criminal now has practically an unlimited right of appeal. This involves interminable delays. On March 24, 1910, Albert Wolter killed Ruth Wheeler, a fifteen-year-old child, in New York. He was convicted of murder in the first degree. On April 22, 1910, an appeal was taken and execution delayed thereby until January 29, 1912. In the same state, the Patrick case took two years and three months, the Smith murder case, a month less than four years, and the Sexton homicide trial two months less than three years. By-products of this failure of our criminal procedure have been the murder of 131,940 people in twenty years and the conviction of 1.3 per cent of the murderers, 3413 lynchings in about the last quarter century and the institution of "third degree" methods with prisoners in most of our large cities.

It may be fairly stated, however, that this nonsense age of criminal procedure is passing. We are now going through a transition period of sentiment. In Pennsylvania, practically no prisoners serve their sentence out. They are always either pardoned or paroled. In fact the Board of Pardons of Pennsylvania frees so many prisoners every year, that it has been suggested that it be renamed "the court of general jail delivery" instead of the court of oyer and terminer which now possesses that title. Its most recent performance was the release of one McMahon who had deliberately shot and killed a man and whose attempt to pose as a hero was ended by a sentence to ten years' imprisonment. He was released after serving two years and five months. In September, 1913, two prisoners named Haight and Jordan were paroled from the Eastern Penitentiary of Pennsylvania. A few weeks later they committed burglary in New Jersey and have since broken jail and escaped.

In South Carolina, Governor Blease, the advocate of lynch law, up to July 10, 1913, had pardoned 721 convicts and just before Thanksgiving freed 100 more.

Governor Patterson of Tennessee pardoned 956 criminals, and 152 of them were murderers. In New York, Haines, who was guilty of a particularly cold-blooded murder has been pardoned, and is now writing reminiscences of his murder for the yellow journals.

Eight years ago in one of our central cities, a man committed murder and was sentenced to be hung. Such a flood of sentimental appeals poured down upon the governor that his sentence was commuted. Six years later he was pardoned. Six months after his pardon, this criminal murdered a man who had befriended him, his friend's wife and three children in order that he might rob his house of $200.

There are indications, however, that the age of common sense in criminal procedure has dawned in this country.

The criminal court of appeals of Oklahoma was asked to set aside an indictment because of the omission of the word "the," and wrote in part as follows:

> We know there are respectable authorities holding to the contrary, but this court will not follow any precedents unless we know and approve the reasons upon which they are based. It matters not how numerous they may have been or how eminent the court by which they are prosecuted. Now that our criminal jurisprudence is in its formative period, we are determined to do all in our power to place it upon the broad and sure foundation of reason and justice so that the innocent may find it to be a refuge of defense and protection and so that the guilty may be convicted and taught that it is exceedingly serious and dangerous to violate the laws of this state.

Wisconsin has been added to the judicial "white list" by the recent case of Hack *vs.* the State. In that decision the supreme court of Wisconsin over-ruled a number of its former decisions, refused to follow the supreme court of the United States and held that a defendant, by remaining silent, waived his right to arraignment and plea. The court wrote in part as follows:

> Surely the defendant should have every one of his constitutional rights and privileges, but should he be permitted to juggle with them? Should he be silent when he ought to ask for some minor right which the court will at once give him and then when he has had his trial and the issue has gone against him, should he be heard to say there was an error because he was not given his right? Should he be allowed to play his game with loaded dice?

Again in New York, whose murder trials have been notorious for delay a new light has shone. Anyone who can remember the Molineaux trial, the Fleming trial, the Nan Patterson trial, the Patrick trial, the Barbieri trial and a score of others, will recall that weeks were spent in selecting a jury. In the recent trial of Police

Lieutenant Becker, Recorder Goff took charge of the trial in the same way that an English judge does, and in almost a day brought about a revolutionary reform not only in the selection of a jury within two days, but also by his refusal to permit delays, evasions and petty technicalities.

The supreme court of the United States in the case of James H. Holt, who was sentenced to imprisonment for life for manslaughter, has recently held that no criminal case should be reversed on account of technical errors committed during the trial unless it appears that they affected the merits of the case. This is in line with the statute which the American Bar Association has been trying to have passed as a federal statute for the last six years and which holds as follows:

> No judgment shall be set aside or reversed or a 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 case, it shall appear that the error complained of has injuriously affected the substantial rights of the parties.

Again and again this measure comes up to Congress with the whole weight of the American bar back of it. Each time that conservative and courteous body grants elaborate hearings, treats the committee of the American Bar Association having the matter in charge with the utmost courtesy (the writer speaks with knowledge as a member of one of them) and—smothers the measure in committee or side-tracks it. When that measure is finally passed, common sense will be statutory.

Another indication of better times is the organization of municipal courts. In Chicago, Buffalo, Washington, and finally Philadelphia these courts have been established on common-sense principles and with common-sense ideals. As to what they mean to a community in their criminal jurisdiction can best appear by a quotation from a letter from Judge Harry Olson, the chief justice of the municipal court of Chicago to this writer in regard to the work of the Chicago municipal court:

> During the past three years our court has entered final judgments in 197,324 criminal and quasi-criminal cases. Eighty per cent of them were disposed of within twenty-four hours of the arrest. There were sixty-eight

appeals and writs of error and only 44 per cent of them were reversed. Here is a striking illustration of speed and finality in the administration of criminal justice in a great city.

In the last analysis, the matter of common sense in our procedure and the reform of existing abuses is a matter of the personal equation. We do not need new laws nearly so much as we need new men who here and there have the courage of their convictions and who are brave enough and wise enough to break away from out-worn precedents and to establish new ones.

REFORM IN CRIMINAL PROCEDURE

By William E. Mikell,
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Criminal procedure is the method fixed by law for the apprehension and prosecution of a person who is supposed to have committed a crime, and for his punishment if convicted.

The perfect code of criminal procedure would be one so framed that under it all guilty persons would inevitably be convicted, and all innocent persons accused of crime would be acquitted.

But since a perfect code is impossible, the best that can be done is to make a code that will serve to convict the maximum number of guilty persons and at the same time allow the minimum number of convictions of persons who are innocent.

It would not be difficult to frame a code that would convict every person guilty of an offense, the changing of a single presumption—that everyone is presumed to be innocent until his guilt is proved beyond a reasonable doubt—would serve to increase immensely the number of persons who would be convicted. Such a code, however, would result also in the conviction of many innocent persons. A code that would bring about this result would be intolerable. It has often been said that "it is better that ten guilty persons should escape than that one innocent person should be convicted." Perhaps the proportion might even be increased with truth. It may be doubted if any code would be tolerated under which it would be possible that for every ten guilty persons who escaped punishment one innocent person would be convicted.

It is commonly believed that criminal procedure is static, and that we are today practicing under the rules formulated several hundred years ago. Nothing could be further from the truth. It is a far cry to the time when a prisoner was not allowed counsel; when he was not allowed a copy of the indictment; when his witnesses were not allowed to be sworn; when he and his witnesses might be brow-beaten by the judge with impunity; when he had no right of appeal from an unjust conviction; when the jury were coerced into a conviction by amercement. Indeed a study of our jurisprudence

will show that the changes that have taken place in criminal procedure are greater in number and more far reaching in importance than in civil procedure. Nor is it true, as is sometimes asserted, that the changes that have taken place have all been in favor of the prisoner. Many of the rules that one hundred years ago shielded the person accused—rules that were themselves the outgrowth of the harshness of earlier rules—are today obsolete as a result either of statute law or of judicial decision. It is a rare thing now to find an indictment quashed because of the misspelling of a word, or the use of an abbreviation; acquittals because of slight variance between the indictment and the proof are much less frequent now than formerly; indictments at least for some crimes, are much less cumbersome, than was required fifty years ago. The doctrine of the waiver of rights formerly regarded as inalienable, has been much and beneficially extended; the plea of former jeopardy has suffered a wise curtailment, and many other changes adverse to the accused have been and continue to be made. Nevertheless much remains to be done in the United States in the way of reform. There can be no doubt that there is a widespread popular belief that the courts are not as effective as they might be in the administration of the criminal law and that the public suffers therefrom. This being so it is not surprising that popular writers and speakers should seek to fasten the liability therefor, nor perhaps that they should fasten it on the judges, who render the decisions complained of. There is a plentiful lack of knowledge in the country as to the function and powers of the judicial office. It is true that some of the decisions which are held up to the ridicule of the public could have been avoided, and a different decision justified under existing law, but a decision criticised can rarely be shown not to have been justified under existing law. Moreover there can be no doubt that the judges have much oftener stretched existing law to the verge of breaking their oath to punish criminals, than to protect them. What is really needed for the proper administration of criminal law is not reform of the judges, but reform of the law they are sworn to administer.

With forty-nine jurisdictions, including the federal government, each with its own code of criminal procedure we find, as might be expected, much lack of uniformity, with corresponding degrees of efficiency in the administration of the criminal law in the different states. No state, however, has, as yet, undertaken to draft a com-

plete code of criminal procedure. The so-called codes of procedure that have been enacted cover only a small part of the whole field, so that the judges are driven, in deciding most of the questions that arise, back to the precedents of the common law with all its technicalities born of a time when the judges, averse to inflicting the harsh punishments the law annexed to crimes, were inventing technicalities as a means of softening the rigors of the criminal code. Not only have our legislators not enacted complete codes, but such parts of codes as they have given us are in most cases unscientifically drawn. Most of our codes are mere patchwork consisting of sections enacted from time to time to meet some particular conspicuous failure of justice, such sections not infrequently having no reference to and often conflicting with other portions of the same code. What is needed is a scientifically drawn code covering the whole field of criminal procedure, *i.e.*, criminal pleading and practice, and procedure proper. Such a code should begin with the arrest of the suspected person and cover every step in the subsequent procedure necessary for his prosecution to the final determination of the cause. A much less comprehensive work than this, however, would purge our criminal jurisprudence of most of the grave micarriages of justice that are now justly charged against it. The decisions that of recent years have been the most fruitful of criticism are due to the rules of law governing the indictment. The indictment might be called the palladium of liberty of the criminal. It is certainly the fetich of criminal procedure. If the existing rules of law governing indictments could be recast much would be gained for the cause of justice.

Much ridicule is directed, and with justice, to the senseless verbosity of the indictment, the useless repetitions of words and phrases, the circumlocutions, and technicalities inherited from an age when these things were accounted for righteousness. Undoubtedly much would be gained from a mere cutting away of these excrescences, for the very multiplication of words held necessary to the validity of an indictment adds to the chances of mistakes and omissions which will render the indictment invalid. But more than this is needed even in relation to the law governing the indictment. An indictment is a written accusation of crime made by a grand jury. In theory it is supposed to be prepared by laymen, since lawyers are not summoned as jurymen, and yet no layman that ever lived, and few lawyers not specially trained, could frame an indictment for the majority

of crimes that are tried in our courts every day; and the law reports are full of decisions overthrowing indictments prepared by legal experts, because some of the legal jargon that a technical age required is omitted, or badly stated, or because in the attempt to incorporate all that is necessary, too much has been written in. The courts have said than an indictment to be valid must (1) charge an offense, (2) must state the circumstances in such a manner as (a) to apprise the accused of the cause and nature of the accusation against him, (b) to enable the accused to prepare his defense, and (c) to enable the accused to plead the indictment in bar of a second accusation for the same offense. This seems a reasonable requirement until we discover that to charge an offense does not mean charge it in ordinary language so that the accused may know exactly of what crime he is accused, but in the technical sense; setting out all the so-called "elements of the crime."

An indictment may perfectly apprise the accused of the offense for which he is to be tried, and yet be held invalid because some technical word is omitted which is said to be necessary to describe an "essential element" of the offense. Thus no matter how clearly an indictment apprised the accused that he is to be put on trial for murder, arson, robbery, rape, and a score of other crimes, if the act charged is not stated to have been done "feloniously" no conviction can be had. The word "murdered" is necessary in an indictment for murder, "took" in an indictment for larceny, and "burned" in an indictment for arson, no matter how clearly the words used show what offense the accused is indicted for. And not only must the correct technical word be used but it must be used strictly grammatically. Thus where a man was indicted for that he "did knowingly sell a certain piece of diseased meat" and was convicted, the Massachusetts court reversed the conviction on the ground that the crime was selling diseased meat, knowing that it was diseased; that knowledge that the meat was diseased was an essential element of the offense and must be alleged, and that the allegation of knowledge in this indictment applied to the sale—"he knowingly sold"—not to the fact that the meat was diseased. In a recent case in Mississippi an indictment for burglary charged that the accused "the storehouse of one X then and there unlawfully and feloniously break and enter." After a trial and conviction the supreme court reversed the conviction because the word "did" was omitted before the word

"unlawfully." Under the same rule an indictment charging a man with adultery or fornication must specifically allege that the woman mentioned was not the wife of the accused; if it does not it is void even though her name clearly shows that she is not his wife. Thus in a Massachusetts case, an indictment charged that Peter Moore did commit the crime of adultery with one Mary Stuart—she the said Mary Stuart then and there being a married woman, and having a husband alive. After conviction the judgment was reversed. The court said, "We suppose it pretty clear to common apprehension, what the grand jury meant by this averment, but the difficulty is that the precision and certainty required in criminal pleading for the security of the accused will not admit any thing to be taken by intendment. An averment that one had committed the crime of adultery, without alleging how and in what manner would be clearly insufficient. The purpose of an indictment is to allege and set forth those facts which constitute that crime; and, for that purpose it must appear that the woman, with whom the illicit connection is alleged to have taken place, was not the wife of the accused." Therefore, though the name of the woman was stated to be Mary Stuart and that of the accused to be Peter Moore, it was held that no crime was charged because Peter Moore and Mary Stuart might conceivably have been husband and wife, and the grand jury may have indicted a man for adultery with his own wife.

Another rule applicable to indictments that causes unnecessary trouble is the fault in pleading known as repugnancy. This fault consists in alleging two repugnant allegations in the indictment and is fatal. An illustration of this occurs in a recent case in Texas. In this case the indictment was for larceny. All the elements of the offense were charged correctly except that it was alleged that the accused took "twenty ten-dollar bank bills, each of the value of twenty dollars." It was entirely immaterial to the constitution of the crime whether the bank bills were ten-dollar bills or twenty-dollar bills, but the allegations being repugnant the court felt obliged to reverse the conviction.

A rule of pleading known as "duplicity" is another fruitful cause of miscarriage of justice in that it requires judges to hold indictments invalid where this fault occurs. In a recent case in Nebraska one was indicted that he did "unlawfully, sell, give away *and* vend spirituous liquors." It was a crime either to sell, or give away

such liquors, and the accused was duly convicted. The supreme court, however, reversed the conviction—properly under the existing rules of law—on the ground that the indictment containing as it did only one "count", charged two offenses, and was therefore uncertain. On the same principle in a recent case in England an indictment was quashed which charged a person with driving a motor "at a rate of speed *or* in a manner dangerous to the public."

The rules of criminal procedure that bring about the unfortunate results such as those above mentioned as well as numerous others that limitations of space make it impossible to treat of, were framed at a time when other existing rules placed the accused at such a disadvantage that they were necessary for the protection of innocent persons unjustly accused, and thus they kept the balance even. They have remained in force though the necessity for them no longer exists, and persons admittedly guilty escape through their operation. They could be abrogated by statute without sacrificing the amount of protection that a wise code should afford to the innocent person unjustly accused of crime.

What legislation there is, and it is not negligible in the United States, is all in the direction of reform. But no state has progressed as far in this direction as Canada and New Zealand. The codes of these countries offer a useful object lesson to us. The American Institute of Criminal Law and Criminology is doing valuable work in an effort for reform; and the legislative research fund is preparing a code of criminal procedure which it will offer for adoption by any state that desires to recast its code.

STATE INDEMNITY FOR ERRORS OF CRIMINAL JUSTICE

By Edwin M. Borchard,

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We hear occasionally of cases in which a person proves his complete innocence of a crime for which he had previously been convicted and imprisoned. These accidents in the administration of the criminal law happen either through an unfortunate concurrence of circumstances, or from perjured testimony, or are cases of mistaken identity, the conviction having been obtained usually on circumstantial evidence.

A few recent cases will serve as illustrations. A person named Toth was convicted of murder in Pennsylvania and sentenced to life imprisonment, in spite of his continued protestations of innocence. After having served twenty years of his sentence his innocence was established beyond a doubt. He was released from prison a physical wreck. The law could only give him his liberty; the legislature declined to grant him compensation for the wrong the state had committed, and finally Andrew Carnegie saved him from starvation by paying him a small monthly pension. The famous Beck case in England arose through mistaken identity in conjunction with negligence on the part of the English police and the English courts. Beck served seven years on a serious charge and was then released only because the real offender fell into the hands of the police and the mistake of identity was established. There are numerous cases of this kind. Judge Sello of Germany in a book recently published collects a great number of them from various countries of the world.

The matter with which we are now concerned is to ascertain whether the state, by simply opening the jail door, has completely fulfilled its obligation toward these unfortunate victims of the errors of justice. Let us see what the state has done in these cases. It has taken the man from his daily occupation by mistake, either because circumstances appeared against him, or because he looked like the real criminal, or from some other mistaken reason. The state must of course prosecute those who are suspected of crime; but when the facts subsequently show that it has convicted and imprisoned an

innocent man, does not the state owe that man compensation for the special sacrifice he has been compelled to make in the interest of the community?

Our law begins with the assumption that the state can do no wrong and it is therefore apt to be indifferent when by its own wrong it has injured an individual citizen. With the progress of time, however, the state has come to compensate for many of its wrongs, and the federal government and practically all the states now freely subject themselves to suit at the hands of injured individuals. It was for this purpose that the federal court of claims was established. Again, the state freely admits that, for certain interferences with private rights for the public interest, compensation to the private individual must be made. Thus when his private property is taken for a public use, such as a public building or a road, compensation is made. This is a fundamental idea in our constitutional law and has existed for centuries. Yet when the liberty of an individual is taken for the public use—and the preservation of the public peace through the administration of the criminal law is a public purpose at least equally as vital to social welfare as the erection of public buildings—the right to compensation is apparently overlooked. Why? Dean Wigmore in an editorial on this subject has said:

> Because we have persisted in the self-deceiving assumption that only guilty persons are convicted. We have been ashamed to put into our code of justice any law which *per se* admits that our justice may err. But let us be realists. Let us confess that of course it may and does err occasionally. And when the occasion is plainly seen, let us complete our justice by awarding compensation. This measure must appeal to all our instincts of manhood as the only honorable course, the least that we can do. To ignore such a claim is to make shameful an error which before was pardonable.

Let us briefly state the two main theories which underlie such compensation. The first is the theory of eminent domain which we have just mentioned, that is, that the owner of private property which is taken for public use shall be duly compensated. In this case private liberty, a right at least equally as sacred as that of property, is taken for the public use. And here we may note a fallacy in a contention which has been advanced against this analogy. This contention is that when property is taken the community is enriched and on a well-known legal principle, the doctrine of unjust enrichment, the state must pay; whereas when liberty is taken the state is not

enriched. The fallacy consists in this fact—that the compensation paid does not represent the benefit secured by the state, but the loss inflicted on the individual. The analogy to eminent domain is therefore apparent.

The other theory is the same as that which supports workmen's compensation, which has now received legislative expression in practically every progressive state and is gaining ground constantly. The principle is this—that in the operation of any great undertaking, such as the management of a large industry or the administration of the criminal law, there are bound to be a number of accidents. In other words, among the thousands that are annually convicted some will be wrongfully convicted through mistake. We have recognized, in certain spheres of activity, that it is unfair to the individuals injured that they alone should bear the entire loss resulting from the accident, and therefore society distributes the loss among its members. Where the common interest is joined for a common end—maintaining the public peace by the prosecution of crime—each individual member being subject to the same danger (erroneous conviction), the loss when it occurs should be borne by the community as a whole and not by the injured individual alone.

In moving for this amendment of the criminal law we are guided not solely by our sense of justice, but have, as models, the legislation of practically every country in western Europe. Germany, France, Austria, Portugal, Denmark, Norway, Sweden and Switzerland now have elaborate statutes governing this subject and will in all probability soon be joined by Italy and Holland.[1] Ever since the French Revolution, reformers and criminalists have sought to bring about this amendment of the criminal law, and from 1886 on they have seen their efforts crowned with success in one country after another. Why should we in the United States lag behind any longer? The justice underlying the compensation is apparent. In overcoming practical objections, to which we shall now address ourselves, we again have before us the examples furnished by the countries of Europe.

We must distinguish two classes of injustice of the character under discussion. The first is the detention of an erroneously accused innocent person extending up to his acquittal. An injustice has here been

[1] See Senate Document 974, 62d Cong., 3d sess., "State Indemnity for Errors of Criminal Justice" by Edwin M. Borchard, with an editorial preface by John H. Wigmore. Washington, Government Printing Office, 1912, 33 p.

done undoubtedly, in that the accused has been unjustly detained and put to the trouble and expense of defense against a criminal prosecution. Massachusetts, by an act of June 22, 1911 (ch. 577), authorizes compensation for lost income to acquitted or discharged persons confined in excess of six months while awaiting trial.

Yet the case of unjust detention pending trial is left aside for the present, in order that we may deal with the much more flagrant injustice of a conviction of an innocent person followed by sentence and imprisonment. Where the facts show that the conviction has resulted through no demerit of his own, certainly the state owes the victim compensation for the grievous wrong that he has been compelled to suffer. Most of the European countries provide for indemnification in both cases, that is, detention pending trial which results in acquittal, and the still harsher case of unjust conviction and imprisonment. We propose to deal now with the practical features of compensation in the case of erroneous conviction.

A right to relief of this kind might be abused if it were not strictly limited. We propose therefore so to limit the right to compensation that its benefits could be obtained only in cases of the grossest injustice and most deserving relief. Here again we may learn much from European laws.

It is clear that we can not compensate every acquitted person. In fact under our lax administration of the criminal law and the possibility of technicalities producing injustice, we know that many morally guilty persons are legally acquitted.

We would first, therefore, compel the unjustly convicted person claiming the right to relief to prove that he was innocent of the crime with which he was charged and not guilty of any other offense against the law. And here, he must satisfactorily show one of two things: that the crime, if committed, was not committed by the accused, or that the crime was not committed at all. This at once eliminates from consideration a vast class of possible claimants.

In the second place, the loss indemnified shall be confined to the pecuniary injury, that is, loss of income, costs for defense and for securing his ultimate acquittal or pardon, and similar losses. It is true that the pecuniary injury is in these cases the smallest element of loss; the damage to reputation and the mental suffering are by far the greater injuries. To compensate this moral injury, however, might entail severe burdens on the state treasury and open the way

to speculative claims. For this reason it might be better to exclude from all possibility of claim the moral injury suffered. In any event, we would limit the amount of the relief to $5,000, as the highest sum recoverable.

Again, certain other limitations must be provided for, either specifically, or by being taken into account by the court awarding the compensation. For example, the accused must not by censurable conduct of his own have caused his arrest, prosecution or conviction; thus, the concealment of evidence, the making of a false confession or any similar reprehensible act should operate as a bar to the claim. This follows the well-known maxims that a claimant must come into court with clean hands, and that no one shall profit by his own wrong. As the award of an indemnity is to be discretionary, the court should take into consideration all the circumstances of the case which may defeat or in any other way affect the right to and the amount of the relief.

Finally, the action must be brought within a brief period of his release from imprisonment; six months would be a reasonable time to allow.

There may be some difficulty in the matter of procedure, although this can easily be adjusted. We consider the court of claims, or similar state court having jurisdiction of claims against the state, as the forum appropriate for this relief, more so than the trial, appellate, or second trial court, even though these courts could perhaps better judge of the intrinsic merits and circumstances of the case. Moreover, an executive pardon is often based on evidence which has never been submitted to a court. We advocate jurisdiction being given to a court of claims in order to maintain the traditions of American judicial procedure. If the jury or trial court were given the right to pronounce on the propriety of an award in a case of acquittal (as is the case in some of the European countries), it would bring into our law a new kind of acquittal in which the jury or judge could acquit with degrees of approval or sympathy, a procedure which might give rise to odious distinctions. While it would be desirable to have the benefit of the special knowledge of the case secured by the trial court or by the jury, it is better to forego this advantage for the sake of conformity with legal custom and to leave the establishment of the damage to a court having jurisdiction of other claims against the state.

It may be argued as an objection to such a measure that the case is of rare occurrence. The very fact, however, that there will be few demands on the state treasury should overcome any hesitation there may be to enact appropriate legislation. The mere rarity of the case is no reason for a failure to acknowledge the principle and to remedy the evil. It makes the individual hardship when it does occur seem all the more distressing. Dean Wigmore has explained our previous indifference to the grievous injustice thus inflicted on innocent individuals as follows:

> It is nobody's interest, apparently, to move for such a law. You and I have never suffered in that way; no large business is threatened; no class of persons feel a loss in their pockets; and so nobody exerts himself, Only the casual victims feel the wrong and to expect them to unite in a demand for legislation is absurd.

We have undertaken to draw a bill to regulate this question so far as it applies to convictions of innocent persons in the federal courts. The bill has been introduced in both houses of Congress; it is now before the judiciary committees, and it is hoped will become a law. The bill is here given in full:

A BILL

To grant relief to persons erroneously convicted in the courts of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who, having been convicted of any crime or offense against the United States, shall hereafter, on appeal from the judgment of conviction or on the retrial or rehearing of his case, be found to have been innocent of the crime with which he was charged and not guilty of any other offense against the United States, or who, after inquiry by the executive, has received a pardon on the ground of innocence, may, under the conditions hereinafter mentioned, apply by petition for indemnification for the pecuniary injury he has sustained through his erroneous conviction and imprisonment.

Sec. 2. That the claimant may, within six months after he has been finally acquitted or pardoned on the ground of innocence, petition the court of claims for the relief granted in this act.

Sec. 3. That the court is hereby authorized to make all needful rules and regulations, consistent with the law, for executing the provisions hereof.

Sec. 4. That the claimant shall have the burden of proving his innocence, in that he must show that the act with which he was charged was not committed at all or, if committed, was not committed by the accused.

Sec. 5. That the claimant must show that he has not, by his acts or fail-

ure to act, either intentionally or by wilful misconduct or negligence, contributed to bring about his arrest and conviction.

Sec. 6. That the court of claims shall examine the validity and amount of all claims included within the description of this act; they shall receive all suitable testimony on oath or affirmation and all other proper evidence; and they shall report all such conclusions of fact and law as in their judgment may affect the right to relief.

Sec. 7. That upon proof satisfactory to the court of claims that the claimant is unable to advance the costs of court and of process, the cost of obtaining and printing the record of the original proceedings and of securing the attendance of such witnesses as the chief justice or the presiding judge of the court of claims shall certify to be necessary, and the service of all notices required by this act, shall be paid out of any general appropriation made by law for the payment and satisfaction of private claims, on presentation to the secretary of the treasury of a duly authenticated order, certified by the clerk of the court of claims and signed by the chief justice or, in his absence, by the presiding judge of said court.

Sec. 8. That the court shall cause notice of all petitions presented under this act to be served on the attorney-general of the United States, who shall be authorized, by himself or his assistant, to examine witnesses, to cause testimony to be taken, to have access to all testimony taken under this act, and to be heard by the court. He shall resist all claims presented under this act by all proper legal defenses.

Sec. 9. That the court of claims in granting or refusing the relief demanded shall take into consideration all the circumstances of the case which may defeat or in any other way affect the right to and the amount of the relief herein provided for, but in no case shall the relief granted exceed five thousand dollars.

Sec. 10. That in all cases of final judgments by the court of claims the sum due thereby shall be paid out of any general appropriation made by law for the payment and satisfaction of private claims, on presentation to the secretary of the treasury of a copy of said judgment, certified by the clerk of the court of claims, and signed by the chief justice or, in his absence, by the presiding judge of said court.

Since the enactment of this legislation was first proposed in this country, in January, 1913, two states of the Union, Wisconsin (Laws of 1913, ch. 189) and California (Laws of 1913, ch. 165), have enacted statutes on the lines of the above bill. The public press has given it more general support than is usually accorded to new proposals for specific improvements in the law. In these times, when social justice is the watchword of legislative reform, it is not an unreasonable expectation that statutes, carrying into effect this desirable reform, will soon be enacted by our federal and state governments, for which Wisconsin and California may be regarded as worthy examples.

CHICAGO COURT OF DOMESTIC RELATIONS

By William N. Gemmill,

Judge of the Municipal Court of Chicago; President of the Illinois Branch of the American Institute of Criminal Law and Criminology.

This unique court was organized in April, 1911, by a resolution adopted by the judges of the municipal court. Under an act of the legislature creating this court, the judges were given the power to establish branch courts, and to prescribe the procedure for them. All cases involving wife and child desertion, contributing to the dependency or delinquency of children by parents and others, violations of the child labor law, and the law forbidding women to work more than ten hours during any one day, actions for selling liquor and cigarettes to minors, violations of the truancy laws, and actions in bastardy and against abortion are now all brought together in one centralized court and tried by one judge sitting continuously in that court. This court is called the court of domestic relations.

For the first year of the court, Chief Justice Harry Olson assigned Associate Judge Charles N. Goodnow to preside, and the writer was assigned in the same manner, for the second year, ending April 30, 1913.

While presiding over this court during the last year, the writer tried 3,699 cases, in 2,024 of which either the wife alone or the wife and children were deserted by the husband and father. To one who has listened through the whole year to the harrowing stories of abuse, privation, amounting often to starvation, as told by these deserted women and children, it becomes very apparent that women not only have a greater capacity than men for undergoing suffering and enduring hardship, but that they exhibit a greater loyalty towards their children and their dependent blood relations. Notwithstanding the fact that hundreds of these deserted women are often left, sometimes in the midst of severe winter, with several children dependent upon them, they always keep up the struggle, often by taking in washing, doing scrubbing, or other similar work, and at a great personal sacrifice, to keep the family together, and save them from starvation.

The court of domestic relations, so far as I know, is the only one ever created whose primary function is to keep the family together. Our divorce courts were organized to separate families. Seldom is an effort made in them to reunite those who, for some reason, have found their married relations uncongenial. But during the last year more than 50 per cent of the divided families brought into the court of domestic relations were induced, through the intercessions of the court, to reunite and forget the mistakes of the past, so far as possible, in the interest of the larger purpose of keeping the families together, by making the home a fit place for the growth of children. It is, however, not always desirable that separated families should be reunited. It often happens that the cause for the separation is one of a nature which makes it imperative that the husband and wife should not again live together. Our education has led to the view that marriage is always to be encouraged and divorce discouraged. If, however, our race is to be more virile than it is today, we must change this view. No day passes in the court of domestic relations but that the judge is called upon to listen to some terrible life tragedy. A young girl full of hope, ambitious, with high ideals, met and married a man whom she had every reason to believe was pure, and possessed of ideals as lofty as her own. Scarcely, however, had the marriage taken place, when she discovered that instead of to a man, she had bound herself for life to a monster, and life offered nothing to her, and the children that might be born to her, but unspeakable torment. For such as these, marriage is a curse, and divorce a great blessing. We hear it said that divorce destroys the sanctity of the home. Few people, however, imagine how many homes there are where the only thing left for divorce to destroy is inhuman and unspeakable cruelty, and the possibility of multiplying the increasing army of defectives and criminals. We have many moral reformers who say that a young woman having once made the fatal mistake of being led to the altar by a man of this sort, should be compelled to continue her life with him, although by so doing she will never know a single hour not filled with unutterable sorrow and bitterest disappointment. In this day of progress we are becoming more humane. There is not a criminal, no matter how grave his offense, but may hope for pardon and parole, and thus another opportunity to begin life anew. Why should we shut the doors of hope to the thousands of women whose only offense was to love madly, but not wisely?

During the last year I tried, by means of a card index, to arrive at some of the causes which separate families. Whenever an applicant came into court he or she was first met by a young lady, assistant to the judge, who made careful inquiry into the family history of the applicant. All such data were recorded upon a large card kept for that purpose. If the case was an ordinary one involving wife abandonment, or some other well-known offense, coming within the jurisdiction of this court, this assistant prepared the formal complaint and warrant for the arrest of the delinquent party, all of which she thereafter presented to the judge, either in chambers or upon the bench. If the case was an unusual one the applicant was brought directly before the judge before any further steps were taken. Upon the same card, blank spaces were left for the judge to record his conclusions, after hearing the case upon the trial. If a woman was deserted upon one day it often followed that she would apply to the court on the same day, and a warrant was issued for her recreant husband. It frequently occurred that before the husband had been able to board a train with his paramour upon the day of his desertion, he was seized and brought before the court.

Of the 3,699 cases tried during the year, over 2,000 of them were heard within one week after the complaint was made to the court, and in the 2,024 cases in which husbands were charged with deserting their wives and children, the husbands were arrested and brought before the court, and an order entered for the payment of money, for the support of their dependent families, in more than three-fourths of the cases, within two days after the first complaint was made to the court. The following is a summary of my conclusions as registered upon this card, and filed for record in the case. In each instance the data were registered either during the hearing of the cause or immediately afterwards. This table has to do altogether with cases of wife and child abandonment. Like tables were kept in all other classes of cases. The causes for such abandonment were as follows:

	Per cent
Excessive use of intoxicating liquors	46
Immorality of husband	12
Immorality of wife	2
Ill-temper and abuse by husband	8
Ill-temper and abuse by wife	3
Venereal disease of husband	12

	Per cent
Interference of mothers-in-law	6
Interference of fathers-in-law	1
Youth of parties	4
Laziness of husband	3
Sickness	1

While our records show that, in a great majority of instances, the greatest blame rests upon the husband and father for breaking up the home, yet in very many instances the women are the greater offenders. Nor is this to be wondered at. In a large city most of the women are confined during the greater part of their lives within the narrow walls of a flat or tenement house. They are often surrounded by warring and disagreeable neighbors who make life a burden to themselves and to all those coming near them. The result is that they become irritable and disagreeable, and their husbands at night become the objects of their stored-up wrath.

By reason of the great power conferred upon this court it is able to compel many drunken, lazy and shiftless men to contribute quite largely to the support of their families. The court has the power to take summary action in all cases involving family support. A deserting husband finds, when he is brought before the court, that he has only one alternative; he must support his family or go to the Bridewell. If he shows an unwillingness to support the family he finds himself upon the way to the Bridewell within an hour after such unwillingness is displayed to the court. The result of this action, in a financial way, during the last year was that $75,562.59 was paid into the court by men of this kind, and by the court paid out, for the support of dependent families. An additional sum of almost an equal amount was likewise paid upon order of the court directly by the men to their families, without passing through the court.

We are, however, greatly handicapped, by reason of the failure of the Illinois statutes to provide that workhouses, wherein prisoners are employed, be required to pay a portion of the earnings of such prisoners to their dependent families. In Illinois nothing is paid by the state or the city to such families, although the heads of the families are required to work constantly during the terms of their imprisonment. This thrusts upon philanthropic organizations and private charities the burden of caring for these families, a burden which is becoming altogether too heavy for them to carry. It is the aim of the court in dealing with cases of wife abandonment to permit the

offending husband to go upon parole, whenever he gives a bond with proper surety conditioned upon the payment of a certain fixed sum for the support of his family. The greatest difficulty arises, however, by reason of the fact that many wife deserters have no financial means, and are unable to secure anyone to execute a bond in their behalf. The court is, therefore, faced in all such cases, with the alternatives of either allowing such persons to sign their own bonds, trusting to their honor to make payments as prescribed in the bond, or of sending them to the Bridewell. In nearly all cases the first alternative is adopted and such persons, unless they are of known bad character, are permitted on parole upon signing their own bonds. It frequently happens, however, that being released they fall into their old habits, and fail to make the payments, as ordered by the court. It often follows that such persons are arrested sometimes three or four different times and brought before the court in an effort, only partly successful, to secure the needed family support. In most of such cases the threat of the workhouse arouses a wholesome fear, that brings to the court many thousands of dollars, for the support of needy families. There are, however, many men who have fallen so low that even the Bridewell has no terrors for them. Indeed, in not a few instances when deserting husbands were told by the court that they must either support their families or go to the Bridewell they gleefully accepted the latter alternative.

Prior to a few months ago the wife abandonment statute of Illinois had been construed by our courts as making wife abandoment a continuing offense. A recent decision of the supreme court of this state declared otherwise, so that under the act as it stands today, a husband once convicted of abandoning his wife can only be held for her support for a period of one year, and unless he rejoins her after that time, he can never again be charged with her abandonment. This unfortunate interpretation of the statute greatly hampers the work of the court and the accomplishment of justice.

During the last year 499 couples were brought before the court in bastardy actions. The writer married 162 of these couples. Judgments aggregating $165,000 were entered in these cases. Under the Illinois statute the defendant when found guilty may be ordered to pay the sum of $550 to the prosecutrix for the support of the child, this to be paid through a period of nine years. Fifty-one per cent of the women involved in these cases were domestics. It has been

said that in many cases of this kind the women were led to their downfall by reason of low wages, etc. A careful analysis, however, of the cases before the court last year does not demonstrate the truthfulness of the assertion.

In 130 cases before the court last year men were charged with contributing to the delinquency of girls. The offense generally consisted in taking girls to hotels or disorderly houses. A few of these men were hardened characters, who cared nothing for the effect their conduct would have upon the lives of such girls, but by far the larger number of men so brought before the court were but boys ranging in age from fifteen to twenty years. Most of these boys had been led to commit their first crime through a chance meeting, upon the street, with one or more of these young girls, most of whom are from fourteen to seventeen years of age. Few people realize how many such girls there are upon the public streets of most any town or city, and fewer people realize the individual power for evil of such girls when they have gotten out from under parental restraint and are permitted unhindered to run upon the public streets at all hours of the night.

During the last year in the court of domestic relations the writer tried 210 persons charged with violating the child labor law and the laws prohibiting the selling of liquor, tobacco and cigarettes to minors, and 98 cases involving the violations of the law forbidding the employment of women for a period of more than ten hours during any one day. The child labor law of Illinois has had a most beneficial effect in taking children out of factories, workshops and department stores, and in limiting the hours of their employment. There is, however, a danger not well understood by the average citizen, growing out of the strict enforcement of this law. In Illinois no child under the age of fourteen years can ever legally be employed at any gainful occupation, and children between the ages of fourteen and sixteen years cannot be employed during the months when school is in session, unless a certificate is obtained from the school authorities, permitting such employment. One of the results of the rather strict enforcement of this law has been to turn hundreds and thousands of bright young boys upon the streets, especially during the summer months when school is not in session. They meet in groups in alleys, play marbles, craps and engage in other games of doubtful character. Here the good boy meets the vicious boy and together they plan some escapade which usually results disastrously to both.

It is altogether right and proper that children under the age of fourteen years should not be employed at certain tasks, such as work in factories, etc., but boys of this age should be permitted to perform certain kinds of light work, especially during the school vacations, and to run errands after school under certain circumstances, and thus cultivate habits of industry, and arouse laudable ambitions.

Many saloon-keepers and dealers in cigarettes and tobacco have been arrested and fined for selling to children. It is my opinion that not enough emphasis is given to the need of a strict enforcement of the law against the sale of liquor and cigarettes to minors. I have tried more than 25,000 criminal and quasi-criminal cases, and while it would be altogether untrue to say that all cigarette users are criminals, yet it is true that almost every criminal, degenerate, defective and delinquent man or woman brought before the court, was a user of cigarettes, and nearly every truant was found to be addicted to the habit. In the vast majority of these cases the most unfailing accompaniments of the degenerate, professional criminal, defective and feeble-minded individual are the yellow-stained fingers, the discolored lips, the dimmed and water-soaked eyes, dullness of hearing, and the absence of almost all moral perception.

The court of domestic relations is now a firmly established institution. Its moral force in the community is most salutary. Thousands of men upon whom the responsibilities of married life rest lightly are kept in a fairly straight and narrow path by a knowledge of the fact that there is an institution well equipped to mete out summary punishment to wife and child deserters. No one unfamiliar with the court can appreciate the range of its activities. Family skeletons are always on parade; usually from twenty to fifty stalk in and out of the court every day; some of them are most hideous; others are mirth-provoking and welcome, for they relieve the tension. But few lawyers appear in the court. In not over one out of five cases does a lawyer appear on either side. Nearly all of the questions are put by the judge and are aimed to reach the heart of the trouble by the most direct route. The one all-embracing question is at once addressed to the deserting husband, who is now thoroughly sobered by his arrest. That question is, "Why did you leave home?" If all the answers to it during one month could be compiled, they would make interesting reading. The volume could be used to point many moral lessons, but it could also be used as a valuable

joke book. Here are a few of the answers: Daley left home, as he said, because his wife refused to wear mourning to her mother-in-law's funeral. When I turned to the wife and asked why she did not wear the accustomed black, she promptly replied: "I am no hypocrite; I was not sorry the old thing died and I was not going to make anybody think I was." Another said he left home because his wife persisted in wearing her kimono to the breakfast table. When I asked her why such conduct, she replied that she was brought up that way and she never would change. Another said he left home because the bill for his mother-in-law's false teeth came with his monthly grocery bill. Another, a pretty young Swedish girl, married to an artist, said she left home because her mother-in-law went everywhere with them on their honeymoon.

In many cases the court was called upon to determine how much a wife, whose husband earns from $15 to $20 per week, should pay for her spring or fall hat. In many other cases the question for the court's solemn adjudication was how many afternoons during a week may a wife go to the movies and properly take care of her home. In others the all-important question was how much the wife should allow her husband during the week for carfare, beer and cigars. I found the usual allowance by a thrifty housewife was 5 cents per day. A frequent complaint by one side or the other was the infrequent intervals between baths, and the court had judicially to determine what was a proper interval.

A day seldom passed in this court when from one to five women were not carried from the room in an unconscious or semi-conscious condition due very often to epilepsy or to some other form of incurable disease.

Last year we established two extra rooms in connection with the court, one where the children might wait with their mothers until the cases in which they were interested were called for hearing. In this large room were kept tables upon which was furnished the latest reading matter, and many rocking chairs and blocks from which the children could erect houses, etc. In the other room several children's cots were placed and no day passed without some unfortunate babes sleeping upon these cots entirely unconscious of the work going on, for their care, in the court outside. It often happens that from five to ten or fifteen babies are brought to the court in a single day. Many of these babies are not over one week old. For

the care of these children and their mothers the court has now employed a nurse, who devotes her whole time to this service. Milk is also supplied for the use of the waiting children.

While the court is doing much in an advisory way in helping to reëstablish broken homes, yet too much emphasis must not be placed upon this kind of work, for the presiding judge is called upon every day to enforce the law with rigor. It is the fear of the penalties which the law prescribes which enables the court to obtain any kind of justice for the injured. Take away from the court of domestic relations this power to punish without ceremony or delay the evil-doer, and the court would lose all its efficiency. No day passes but what it becomes necessary, in order to break down the stubborn will of a wife deserter, that he be sent to the workhouse. Usually within an hour or often within ten minutes from the time he is arraigned in court he finds himself upon the way to the Bridewell. After he has been there a day, possibly two or three days, a great change comes over him and he sends a most urgent appeal to the court to release him on parole. Accompanying such an appeal is a promise henceforth to provide properly for his family. It follows, therefore, that while the court daily sends many wife deserters to prison, it brings back from the prison in the course of a week a number substantially equal to the number sent, and a new opportunity is offered. One such committal is usually sufficient to accomplish the court's purpose. It is sometimes necessary, however, that the same person be committed two, three and four times before his lesson is thoroughly learned.

In advocating law reforms, in order to secure social justice, it is all-important to keep in mind the urgent need of keeping the law strong and virile, and in making the penalties for its violation real and substantial.

THE PRIVILEGE OF THE ACCUSED TO REFUSE TO TESTIFY

By Herbert R. Limburg,

Of the New York Bar.

The extent and character of public criticism of our courts may well be regarded a thermometer registering the degree of success with which our law is administered. The writer proposes to consider at the outset, how the privilege of the accused to refuse to testify affects the administration of the law, and to what extent it may be responsible for criticism of the courts.

The importance of dispensing justice is no greater than the importance of satisfying the community that justice is dispensed. There is no such thing as absolute justice. Our standards are always more or less artificial. They are merely the expression of our ever changing view of public morals and of public and private right. In a sense law is justice, and as we change our law we change our justice; indeed our statutes as well as our judge-made law represent merely the standard of morality adopted for the time being. That is why the public opinion of the administration of the law is so important, and why it may be of interest to analyze briefly some phases of the common criticism of our courts. This may enable us to discern specific weaknesses and the remedy therefor.

The object of every trial, whether civil or criminal, is to ascertain the truth. In the final analysis every case presents a simple question, to which the courts are called upon to give a categorical answer. This question is: Are the facts stated in the "complaint" in a civil case, or in the "indictment" in the criminal case true? That is the sole question that a jury is called upon to answer, and from the answer flow the legal consequences prescribed by our then system of law and morals. Our rules of procedure in themselves amount to nothing more than the method adopted for the sake of convenience and regularity, by which the jury's answer to this question may be secured. If they assist toward a correct ascertainment of the facts, they may generally be regarded as good rules; if they tend toward suppressing the truth or toward rendering a correct determination of

the issue more uncertain, they are inherently unsound. The great cry against the "law's delays" is but one phase of this question. "Justice delayed is justice defeated" is a trite, but in the main truthful statement; not primarily true because delay may inconvenience the individual or the state, nor because delay in itself may frequently occasion hardship, but chiefly because it renders a truthful verdict more uncertain. In fact the most severe criticism to which our courts are ordinarily subjected is that they do not dispense justice, i.e., that our system is not conducive towards reaching a truthful verdict.

In criminal cases the criticism is most frequently made that the guilty escape conviction. The converse—that the innocent are convicted—has doubtless been true in some cases, but these are sporadic and the result in nearly every instance of intense temporary local feeling. However deplorable, these cases are exceptional and cannot be regarded as an indictment of our law or of our system of procedure.

No system has yet been found which will always bring about a correct determination of the facts. The jury system seems to come closer to the ideal than any other, yet it is impossible wholly to remove passion, prejudice or improper considerations from all juries, just as it is impossible to select only perfect judges.

The chief complaint against our system in criminal cases, however, seems to be that there is a large percentage of miscarriages of justice, in cases where the accused is acquitted. Most juries endeavor to reach a conscientious and truthful result. If then, there is any considerable percentage of failures to reach that result, we are confronted with the question whether all of the available evidence has been presented to the jury, and, if not, whether artificial laws or rules of procedure prevent the jury from considering relevant testimony which would assist in reaching a truthful determination of the issues. It is from this point of view that a consideration of our constitutional provision that no man shall be compelled to incriminate himself may well be approached.

The elimination of the accused as a compulsory witness necessarily involves that the prosecution is prevented from presenting evidence which would throw light upon the question at issue. This is so whether the accused be guilty or innocent, for his evidence would tend to show either his innocence or his guilt, and thus assist in its

determination by the jury. In fact the accused is frequently, from the nature of the situation, the one best qualified to give testimony which will determine the truth, yet under our present constitutional provisions he may not be called as a witness. It may even happen —indeed frequently does happen—that the accused is the sole eyewitness of the occurrence, yet the jury are thus deprived of his direct testimony and may be compelled to determine the case wholly upon circumstantial evidence. The proposition that our constitutional prohibition against compelling the accused to testify eliminates relevant testimony does not require further elaboration, for it is practically axiomatic.

Having reached the conclusion that our constitutional rule deprives the jury of relevant testimony, and at times of the best evidence of which a case is capable, and therefore tends to make a correct determination more uncertain, we are next called upon to consider whether there are controlling reasons which should nevertheless induce us to retain the principle of immunity from self-incrimination without change.

And first we may, with propriety, consider whether there is any inherent injustice in compelling the accused to give evidence against himself. This question has been discussed for many years by jurists of distinction. It has been suggested by some that it is inherently unjust to compel the accused to testify against himself, i.e., to furnish evidence upon which his own conviction may be based. Nowhere will be found a more complete refutation of these arguments than in Jeremy Bentham's *Rationale of Judicial Evidence* (1827). Jeremy Bentham labels the two chief arguments of the alleged "injustice" "The old woman's reason" and "The fox-hunter's reason" and expresses himself in part as follows:

> *The old woman's reason.* The essence of this reason is contained in the word "hard:" 'tis hard upon a man to be obliged to criminate himself. Hard it is upon a man, it must be confessed, to be obliged to do anything that he does not like. That he should not much like to do what is meant by his criminating himself, is natural enough; for what it leads to is his being punished. What is no less hard upon him is that he should be punished; but did it ever yet occur to a man to propose a general abolition of all punishment, with this hardship for a reason for it? Whatever hardship there is in a man's being punished, that, and no more, is there in his thus being made to criminate himself, with this difference, that when he is punished,—punished he is by the very supposition; whereas, when he is thus made to criminate

himself, although punishment may ensue, and probably enough will ensue, yet it may also happen that it does not.

What, then, is the hardship of a man's being thus made to criminate himself? The same as that of his being punished; the same in kind, but inferior in degree; inferior, in as far as in the chance of an evil there is less hardship than in the certainty of it. Suppose, in both cases, conviction to be the result: does it matter to a man, would he give a pin to choose, whether it is out of his own mouth that the evidence is to come, or out of another's?

To this, to which, in compliance with inveterate and vulgar prejudice, I have given the name of the old woman's reason, I might, with much more propriety, give the name of the lawyer's reason. . . . . Nor yet is all this plea of tenderness—this double-distilled and treble-refined sentimentality, anything better than a pretence. From his own mouth you will not receive the evidence of the culprit against him; but in his own hand, or from the mouth of another, you receive it without scruple; so that at bottom, all this sentimentality resolves itself into neither more nor less than a predilection—a confirmed and most extensive predilection, for evidence, the badness of which you yourselves proclaim, and ground arguments and exclusions upon in a thousand cases.

The fox-hunter's reason. This consists in introducing upon the carpet of legal procedure the idea of "fairness," in the sense in which the word is used by sportsmen. The fox is to have a fair chance for his life; he must have (so close is the analogy) what is called "law"—leave to run a certain length of way for the express purpose of giving him a chance for escape. While under pursuit, he must not be shot; it would be as "unfair" as convicting him of burglary on a henroost in five minutes' time, in a court of conscience. In the sporting code, these laws are rational, being obviously conducive to the professed end. Amusement is that end; a certain quantity of delay is essential to it; dispatch, a degree of dispatch reducing the quantity of delay below the allowed minimum, would be fatal to it. . . . . To different persons, both a fox and a criminal have their use; the use of a fox is to be hunted; the use of a criminal is to be tried. . . . .

Confounding interrogation with torture; with the application of physical suffering, till some act is done—in the present instance, till testimony is given to a particular effect required. On this occasion it is necessary to observe, that the act of putting a question to a person whose station is that of defendant in a cause, is no more an act of torture than the putting the same question to him would be, if, instead of being a defendant, he were an extraneous witness. Whatever he chooses to say, he is at full liberty to say; only under this condition, properly but not essentially subjoined, viz. (as in the case of an extraneous witness) that, if anything he says should be mendacious, he is liable to be punished for it, as an extraneous witness would be punished. . . . .

Those who may be interested in pursuing the literature upon this subject further are referred to the *Treatise on Evidence* by Chief

Justice Appleton of Maine (1860), to the fourth volume of Professor Wigmore's monumental *Work on Evidence*, and to ex-President Taft's address to the graduating class of Yale University Law School (1905).

The writer has never been able to discern any inherent injustice in compelling the accused to testify. But the question of justice or injustice does not alone dispose of our problem. The supporters of the doctrine of immunity from self-incrimination also base their arguments upon the abuse which they claim existed before the introduction of this principle, and which they claim now exists in countries outside of the domain of the common law, where the principle of immunity from self-incrimination is unknown.

An extended consideration of these arguments would necessarily involve an examination into the history of the privilege and into the administration of the law on the continent of Europe, which the limits of this article do not permit.

The writer discussed the subject from this standpoint in a paper read last October at the congress of the American Prison Association held at Indianapolis, and in the present article will accordingly limit himself to pointing out what he regards as the salient points and the conclusions to be drawn therefrom.

The introduction in Great Britain in the thirteenth century of the system of compulsory examination of the accused constitutes probably the greatest step in advance that has ever been taken in our judicial history. Up to that time the trial of the accused was by "wager of law" which consisted in the accused pronouncing an oath of innocence in company with oath helpers. Successful pronouncement constituted acquittal, failure meant conviction.

The compulsory examination of the accused substituted for this haphazard system an inquiry into the facts of the case, and the principle that the determination should be based upon the facts.

During the succeeding two centuries this system was administered without substantial complaint. There was indeed a bitter controversy as to the extent of the jurisdiction of the church courts, but there never was any question of the propriety of compulsory examination of the accused, where jurisdiction over the subject matter existed. After this period, however, abuse unquestionably did arise, and indeed remained entirely unchecked until the statute of 1533, which for the first time fixed definite preliminary requisites before the accused could be examined. The rather severe criticism

which eventually brought about the enactment of this statute was not at all leveled against compulsory examination of the accused as such, but against the exercise of the right of examination in the absence of a formal complaint and as to offenses concerning which the accused had not been formally charged.

The system of examining the accused had begun to be misused to harass and examine persons against whom there was no shadow of a complaint, or against whom there existed merely suspicion, in an endeavor to discover some offense or other with which they might be charged. This brought about the realization that the right to compulsory examination had proper limitations, and should be confined to cases in which there was some prima facie evidence of guilt, or at least an accusation by responsible public authorities.

It seems, however, that the discussion as to the necessity for these preliminary conditions was carried on so long and waxed so fierce, that the distinction between the conditions under which the inquisitional oath might lawfully or unlawfully be administered was gradually overlooked, and the matter came to be argued as if the examination of the accused were either wholly lawful or wholly unlawful. Both counsel and courts seem to have lost sight of the distinction which had been enacted into statute after so many years' controversy, viz.: that the compulsory examination of the accused was lawful where there had been the proper preliminary foundation, and unlawful where such foundation was absent—and finally, as the result of a series of judicial decisions, the courts about the year 1700 declared that compulsory self-incrimination in any form or under any circumstances was unlawful.

This was judge-made law pure and simple. It was not, as so many seem to believe, the enactment into statute of a principle of human justice or of human rights, but was nothing more or less than the usurpation of legislative power by the courts. This should not be forgotten, because in the United States the privilege of the accused is declared by express constitutional enactment in every state except New Jersey and Iowa, and in these states it is held to be a part of the fundamental law by implication from other provisions of the constitution.

Only recently the Supreme Court of the United States in an opinion by Mr. Justice Moody (Twining *vs.* United States) asserted that the privilege against self-incrimination "is best defended not as

an unchangeable principle of universal justice, but as a law proved by experience to be expedient." In Great Britain, where, as we have seen, the rule originated as judicial legislation, it is no longer of universal application, but has been much weakened by statutory exceptions. For instance in 1883 a statute was passed which expressly permits compulsory self-incrimination in bankruptcy proceedings. The tendency of our own courts today, as every lawyer knows, is to modify and limit the application of the constitutional provisions.

A critical examination of the history of the privilege against self-incrimination leads to the conclusion that its abuse has depended solely upon the conditions under which the compulsory examination of the accused might be invoked, and that under a system of law which made formal accusation by public authorities based upon sufficient prima facie evidence a condition precedent, no such abuse has existed in the past.

Nor does the experience of these countries which permit such examination of the accused tend to weaken our conclusions. It is undeniable that the exercise of the right of compulsory examination upon the continent of Europe has been singularly effective to ascertain guilt. While upon some—but comparatively rare—occasions the right to examine the accused has been conducted to an oppressive degree, such abuse is rendered possible only by the fact that under the continental system, the examining magistrate acts not only as a judicial officer, but also as prosecutor.

In view of this dual function of the examining magistrate, there is lacking any independent judicial arbiter, whose function it is to control and limit the right of examination by confining it to relevant matters, and to prevent abuse whether arising from undue zeal of prosecuting officers, or otherwise, and it is remarkable, in view of this situation, that the abuse of this system on the continent has been so very rare.

This brings us finally to a consideration of a remedy for present conditions.

Our constitutional rule is undoubtedly detrimental to the interests of justice and unduly hampers the proper administration of the criminal law; yet an unlimited right to examine the accused might lead to grave abuse. In the paper which the writer read last October before the congress of the American Prison Association, he suggested as a possible solution that there be permitted a limited

exercise of the right of compulsory examination, which should be surrounded by the safeguards which experience and history have shown not only to be necessary, but to be entirely adequate. This suggestion is that compulsory examination of the accused should be permitted after indictment, but only at a formal hearing before a magistrate, and with the right to the accused to be represented by counsel and to "cross-examine." The prerequisite of an indictment would compel the public authorities in the first instance to present prima facie evidence of guilt, entirely apart from the proposed examination. The magistrate would secure order, prevent abuse, and would restrict the examination to matters relevant to the indictment. The right of representation by counsel and cross-examination would give the accused immediate opportunity of explaining any evidence apparently indicative of guilt.

Since the publication of this suggestion, the writer has received numerous expressions of approval of such a course from judges, public prosecutors and members of the bar, and he hopes that this suggestion will receive serious consideration and discussion by those having the administration of our criminal law and the improvement of our procedure at heart, and that as a result there will be brought about such statutory and constitutional changes as the situation may call for.

ADULT PROBATION

By Wilfred Bolster,

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The lay mind is so far unfamiliar with the essence of the probation system, and indeed those dealing with the subject at close range often show such a disagreement, if not ignorance, as to its basic principles, that it may be well, in attempting to gain a helpful conception of those principles, to restate a few definitions of probation.

Probation is a judicial system by which an offender against penal law, instead of being punished by a sentence, is given an opportunity to reform himself under supervision and subject to conditions imposed by the court, with the end in view that if he shows evidence of being reformed, no penalty for his offense will be imposed.

Or, probation is the suspension of final judgment in a given case, permitting the offender to have a chance to overcome his weakness or mistake by coöperating with the state through its probation officers. Its method is that of overcoming evil with good.

Or, probation is the conditional forgiveness by society, acting through its judicial officers, of an offender against its penal laws, based upon a reasonable expectation that, if forgiven, he will not again offend; and intended to take effect upon evidence that this expectation has been fulfilled.

The last definition probably is closest to the technical and historical aspects of the system. Legal practice has not yet arrived at the stage of compelling an offender to accept probation. And the almost universal practice at the end of a satisfactory probation period is to dismiss the case, or make a practically equivalent disposition by filing. Neither of these aspects is consistent with a fourth definition sometimes attempted—"a reformatory without walls."

The probation system originated in the practice of the judges of many Massachusetts courts, notably those of the inferior courts in and about Boston, of continuing cases from time to time, after a determination of guilt, and upon satisfactory proof of good behavior

of dismissing the case. Here is the germ of the theory that in certain cases society, by being kind to the defendant, is kind to itself. In a state where a maximum and minimum penalty, itself a rudimentary form of individualized punishment, had become the rule rather than the exception, this judicial practice marked the next step in the evolutionary process. It seems probable that the chief conscious motive was a desire to relax the rigors of the old system of punishment for crime. Reformation, as an end in itself, was in the background. The theory evidently was that society might well forego the entire penalty at times. And apparently society readily adopted the practice, whatever its realization of the theory. In 1878, the mayor of Boston was authorized to appoint a probation officer for Suffolk County, to be under the charge of the chief of police, and whose duty it should be to recommend to the courts of Suffolk County "the placing on probation of such persons as may reasonably be expected to be reformed without punishment." In 1880, this method was made state-wide. In 1891, the law took substantially its present shape, by which probation officers are judicially appointed throughout the state, and become to all intents and purposes agents of the courts. It is significant that all these laws provided only that courts might appoint probation officers, and might place offenders "upon probation." What that term meant in criminal law, what consequences it entailed, were still left for judicial evolution. And such has been the general course of later legislation in other states. In truth, probation is but one aspect of the evolution and growth of the system of individualized punishment.

The history of probation shows that there can be no essential and basic difference between adult and juvenile probation, for probation, in practice, though not legislatively, antedated juvenile courts and juvenile delinquency statutes. The topical division is in some ways unfortunate, as creating the impression of a difference in kind. The difference is only in degrees and methods resulting from the greater plasticity of the material for probation found in juvenile courts, and the more intensive treatment permitted by society because of the greater prospect of ultimate reclamation for society's welfare.

The space limits of this article obviously preclude any detailed description of the practice of probation, but attention cannot be centered too often upon its three cardinal principles, the selection

of only the fit for probation, the choice of properly qualified probation officers, and the need of judicious, unremitting supervision during the term of probation.

Probation is no panacea for crime. It has its definite niche in criminal practice, and any attempts to extend it beyond its proper sphere must result unfavorably. A proper selection of cases for probation should, in the writer's opinion, follow this rule: that the case should, after thorough investigation of the antecedents, environment, temperament and habits of the defendant, disclose a tendency to anti-social ways susceptible of reformation, more reformable outside than inside prison walls, conformably with public opinion, and consistently with public safety. This excludes in most cases the casual offender. A man of previous good conduct, who, under great provocation, assaults another, a woman of previous good repute, who under a sudden temptation, steals in a department store (an offense in which recidivism is exceedingly small), these are not usually cases requiring probationary treatment. What the humiliation of arrest and consequent appearance in court cannot accomplish in such cases, probation is not likely to accomplish. The prompt termination of the case by a moderate penalty or none at all is enough in such cases, because the probability of relapse is negligible. At the other extreme lie cases of chronic offenders, for whom probation may be a brief restraint, but whose real reform is largely improbable. It is all too common for courts to grant probation for purposes of temporary restraint alone, and the practice tends to the disrepute of the probation system. Underlying the probation system, just as in all penal measures, is the community instinct of self-preservation, and when the endeavor for persistent reform becomes disproportionately expensive when compared with results, the basis for further effort vanishes.

Legislation which limits probation to certain offenses is also illogical; and attempts to classify probation results by crimes rather than by persons are misleading. It is the habit or tendency which should be sought for, and the particular crime is of consequence only in so far as its nature denotes such tendency. The anti-social tendency plus a prospect of reform are the bases for probation.

As to fitness of officers, a somewhat extended experience in selection in a large city court has satisfied the writer that suitable candidates are an extremely rare commodity, and that a proper

selection of probation officers is as important as the selection of the judge himself. Their qualifications have been thus described. "The ideal probation officer should possess sound judgment, tact, patience and zeal in the work, the ability to read human nature, sufficient adaptability to appreciate and make due allowance for varying results of temperament, history and environment. He should be one who knows how to lead rather than drive, but who can drive effectually if need be. He should understand the influences that determine human character and conduct for good and ill, as well as methods of moulding character and how to apply them. And above all, he should have a love for the work."[1] It is obvious that these qualifications cannot be had for the pittance which many states pay probation officers, yet an unsuitable officer is a poor investment for any community. Appointment is generally a function of the court. The importance of temperament and personality renders ordinary civil service methods of selection of doubtful value. In view of the growing importance of the probation system, it would seem advisable to inaugurate a method of preliminary training and examination, under the auspices of some specially qualified board, such as the probation commissions of Massachusetts and New York, and to give such board, if not the power of final selection, at least that of certification.

The urban court, if constructed according to the modern ideas of comprehensive unity, has the great advantage in the matter of selection of officers that the force may be made mutually supplementive. For instance, in the municipal court of Boston, the appointees, in addition to the majority of persons of common business experience, include appointments from the police force, several members of the bar, and an officer trained in parole work; and the public is now watching with interest the experiment of adding a physician who is also a specialist in psychology. The different lines of approach to the problems of probation which such a force brings with it result in discussions which cannot fail to prove mutually helpful, and to avoid stereotyped methods. A responsible department head, with large power, is an essential to best results.

In adequate supervision of persons on probation lies the very heart of the system, yet it is the part which is all too apt to be crowded

[1] Report of Committee on Adult Probation in *American Institute of Criminal Law and Criminology Journal*, vol. 1, no. 3.

into the background by the more insistent claims of preliminary investigation, court attendance and office duties. A division of the force may sometimes secure more adequate field work. Constant contact with the probationer is indispensable. This part of the probation system is so important as to warrant quoting at some length a summary of the directions in which the probation officer should exert himself:

> During probation, constant, judicious and helpful supervision, not reaching the stage of undue annoyance, is imperative. This involves a constant study of the probationer and his environment, and the enlisting of all agencies, social, charitable, religious and industrial, which can aid in the work of reform. The officer should help his charge to obtain suitable employment, to live under proper conditions, to associate with desirable companions, and avoid harmful influences. The officer should strive to gain the probationer's confidence and respect and at the same time to impress upon his mind that the relation must be mutual.
>
> He should not be content with aiding him to hold in check his criminal or evil proclivities during the time of his probation—proclivities which if still existent are liable to break out again as soon as he has escaped sentence —but should endeavor to help him to really reform himself. To this end the officer should endeavor to stimulate the probationer's dormant energies for a morally healthful and useful life; develop in him ideas of right living, duty and sobriety, and ambitions along desirable and laudable channels; change those impulses, points of views and attitudes toward life and society which are wrong; develop new mental habits in place of old ones; stimulate his confidence in his own capacity to control himself and to succeed in a new and useful life. The re-awakening of will power is an object of importance, inducing the probationer to depend rather upon his own effort and initiative than upon the officer. In sum and substance the officer should endeavor to build up a new character in the offender; to replace the perverted ideas, impulses and habits which he has acquired through his environment with a new stock, *i.e.*, to reëducate him along lines which determine conduct.[2]

Not over fifty cases per officer at a time is an ideal condition seldom realized in actual practice. It is partly a taxpayer's question, yet when to the actual earnings of probationers is added the excess cost of prison maintenance over production which is saved, the public can well afford to pay the much less cost of an adequate probation force. Publicity of actual figures along this line is to be desired.

Closely linked with the question of supervision is that of surrender, too often regarded by the probation officer as a confession

[2] Report of Committee on Adult Probation, *supra*.

of failure. Nothing could be more erroneous than the custom of gauging the probation work of a court by the number of surrendered cases, and assuming that the one showing the smallest proportion of such cases is doing the best probation work. Exactly the opposite is usually true. Few surrenders denote either an under-use of probation, or, more frequently, supervision so lax as to be valueless. Correct data of recidivism after discharge from probation would furnish a surer test.

The spread of judicial probation has been great in point of legislation, it having been authorized in forty-two states and the District of Columbia. In actual practice, Massachusetts is probably the only state in which all authorized courts employ the system. Within a year or two, half of the counties in the state of New York had yet to put it in practice, and in many states it is little more than a name. And yet its growth in practice has been constant, and each year marks its use by a larger number of courts.

It is a matter of constant regret to the friends of the probation system that actual information about its practical workings is so meager and unobtainable. The system has passed the empirical and entered upon the scientific stage, and it is in danger of halting for want of sufficient data to make its future progress sure. Rule-of-thumb methods have bred diversity and anomaly. Their removal can be brought about only by intensive study and scientific deduction, a study of facts, and the facts in adequate detail and quantity are wanting. Legislation for compulsory reports in this, as in other matters of judicial work, is one of the needs of the hour.

One of the conspicuous dangers to the probation system is the habit of making it the dumping ground of measures, remedial or beneficial in themselves, but whose purpose is foreign, if not antagonistic, to the theory of probation. Massachusetts furnishes examples of such blunders. The first probation law required that probation officers should inform the court whether a defendant had been previously convicted. This has the advantage, more imaginary than real, of giving the probation officer a consecutive knowledge of the case. It has the much greater disadvantages, and actual ones, of encouraging in the probation officer, whose instincts should be those of a good Samaritan, the very opposite ones of a detective, and of identifying the probation officer too closely with the prosecution in the mind of the defendant, a very inauspicious

beginning for real reclamation service. This work of investigation is really vicarious work of the court itself, the selective process that precedes the granting of probation, the gathering together of the good and the bad in the defendant's make-up, a function not wisely left to the possibly one-sided scrutiny of the prosecution alone. It would be a boon to probation if it could be done by a distinct agency of the court. Another perversion of the functions of the probation officer is in the collection of suspended fines. The Massachusetts law directs that the fine shall be suspended and the defendant shall be placed on probation. The theory is still collection, but collection by delayed payment, a mere detail of method. The time and energies of a really good probation officer are too valuable to be spent in performing the duties of a mere collector. The argument that "supervision can do no harm" hardly touches the case; very likely a goodly percentage of the entire population might profit by sagacious oversight. This collection work would also better be entrusted to some other agency of the court. The sooner such anomalies are sundered from the practice of probation, the better for the probation system. They have served their purpose as temporary makeshifts, and their further retention is justifiable only in courts where the volume of business precludes a proper division of labor. What is here said of course does not apply in the relatively rare case in which the payment is purposely and wisely made a part of reformative treatment.

The future seems to promise for probation one of two very dissimilar courses, either its retention as part of the judicial structure and machinery, or an expansion of the Wisconsin method of transfer of all cases on probation to a central agency, independent of the courts. There may be predicted, as an early sequence of the adoption of the latter course, a limitation of the judicial function to the mere determination of guilt, transferring to another authority the dispensing of retributive measures, or their suspension for reformative purposes. The system of judicial probation demands for its preservation that there be secured a better appreciation of the justifiable limits of the probation system, more uniformity of application, more cohesion between the various steps of reformative treatment, less of the variations born of the present myopic mania for creating isolated specializing courts, which from their very isolation breed antagonisms of theory and practice, and the

creation of which runs counter to the modern ideas of court unity. The benefits of specialization, which can be retained by divisional courts, are now more than offset by the dangers of autonomy.

The Wisconsin method is a half-way measure. It makes for uniformity of treatment, probably also for economy; but it has the very serious defect of divorcing the judges, upon whom still rest the duties of selection for probation and sentence on surrender, from the means of that intimate knowledge of reformative methods and results which is indispensable to a proper use of the selective process. It may be that it marks an evolutionary step toward the creation of a sentencing board, and there are even now surface indications in Massachusetts of the rapid growth of that idea. Of course such a plan looks not only to the removal of variations in the granting of probation, but also to the lack of uniformity, and sometimes of sound judgment, in actual and final sentences. Indeed, the latter is probably the more urgent reason for the proposed measure. The adoption of such a plan of course means the end of probation as a judicial function.

The writer is yet to be convinced of the wisdom of such a radical change. Even in so small a state as Massachusetts, the number of cases which would pass annually under control of a sentencing board could not be less than 100,000, probably many more. This would inevitably require much subdivision of labor with a consequent tendency to variation and abuse hardly less than the present system discloses. Such a board would also lose in large measure what is often one of the best means of determining disposition, the story of the crime as disclosed at the trial. A wider grant of power to state probation commissions, a more efficacious method of disseminating among judges information of reformative methods employed both in probation and in penal treatment, and above all, the closer approach to uniformity which is a necessary sequence of the present movement toward a greater unification of the judicial system—these would seem to promise the safer correctives for the present shortcomings in the practice of probation. The lack of uniformity in present sentences can be adequately met by giving prison commissioners a wider power of revision of sentences.

THE JUVENILE COURT MOVEMENT FROM A LAWYER'S STANDPOINT

By Edward Lindsey,

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The lawyer is apt to look at the juvenile court movement simply as it is expressed in the statutes passed by many of the state legislatures and commonly referred to as "juvenile court laws." He sees a somewhat heterogeneous mass of legislation which has no apparent correlation with the general legal system. Aside from questions as to the constitutionality of such statutes he will look in vain for reported cases arising under them and will probably dismiss the subject as one of the fields which the general legal system has failed to cover. Yet the cases which arise and are disposed of under these statutes frequently involve fundamental legal principles, for questions of status are the most fundamental of all legal questions and just here lies the especial interest of the juvenile court movement to the legal student. By questions of status is meant those questions which pertain to the relations of individuals to each other and to social and political groups, such as the family, the state and society in general. All rights and obligations pertain to persons either by reason of the person's relation to some group—from the mere fact of his standing in that relation—or because of some contract or agreement between himself and some other person or group. Questions touching the criminal law also arise. The statutes themselves and the movement which caused their enactment show little conscious consideration of the legal principles involved. They are, of course, the expression of certain theories for social betterment rather than of social experience or practice. These theories relate largely to the class of questions touching the criminal law. In defending these statutes and maintaining their constitutionality the object of the statutes is usually stated to be to prevent juveniles continuing in a career of crime or becoming criminals by reforming them and furnishing proper training for them. This seems to be the dominant note and the original one. In Pennsylvania the act of 1901 is generally referred to as the first juvenile court act. But

in 1893 an act was passed providing that no child under sixteen years of age under restraint or conviction should be placed in any apartment or cell of any prison or place of confinement or in any court room during the trial of adults charged with or convicted of crime, and that all cases involving the trial and commitment of children for any crime or misdemeanor in any court may be heard and determined by such court at suitable times to be designated therefor by it separate and apart from the trial of other criminal cases of which sessions a separate docket and record shall be kept. This class of ideas seems to have been an extension of the ideas of treatment of criminals developed by the philanthropists with the object of reformation largely in view, and based partly on determinist theories denying free-will and responsibility for crime and partly on directly opposite theories of the value of training in developing the will. When these views as to the treatment of criminals became common they were naturally applied to the treatment of juvenile delinquents. The extent to which questions of status are involved however, has been largely overlooked.

As before stated, there is no legal literature except on the question of whether constitutional provisions are infringed by the statutes. There is a considerable literature of the movement, propagandist in character, of the nature either of panegyric or of criticism and for the most part based not on actual observation and study but on preconceived theories. A careful and impartial study of the operation of these statutes is much to be desired but does not yet exist. Some general statements with regard to their operation are justified but cannot be made too confidently.

Most of the statutes referred to have been passed within the last fifteen years but, as has already been indicated, it would be a mistake to suppose that they originated spontaneously within this period; indeed there is much less that is entirely new about them than is generally supposed. What is new, I think, falls chiefly under two heads: (1) providing increased administrative machinery for the application by the courts of established principles and recognized powers, such as the suspension of sentence and probation, the results of which have been generally beneficial and (2) the entire disregard, as far as the statutes themselves go, of established legal principles and the absence from them of any limitations on the arbitrary powers of the court, which always involves dangerous possibilities. Con-

sideration of the whole movement shows that the juvenile court as we now have it is the result of the operation of two opposing tendencies, one of which may be called the socialistic tendency, manifested in the various statutes, the other the individualistic tendency, manifested in the attitude of the courts toward these statutes, frequently declaring them unconstitutional, but now modified by the vigorous support of the statutes. Considerations of space prevent a comprehensive survey of the ground to show the basis of this conclusion; a few points and instances only can be briefly indicated.

In 1867, the Illinois legislature in "an act in reference to the Reform School of the city of Chicago" provided that in the case of any child under sixteen "destitute of proper parental care" or "growing up in mendicancy, ignorance, idleness or vice," any judge of the superior or circuit courts if of opinion that "his or her moral welfare and the good of society require" should commit such child to the Reform School. This act was declared unconstitutional by the supreme court of Illinois in 1871 in the case of People *vs.* Turner. In the opinion Judge Thornton considered the act repugnant to parental rights but based the decision on the constitutional right of a minor as well as an adult to liberty, except as punishment for crime. He said:

> It is claimed that the law is administered for the moral welfare and intellectual improvement of the minor and the good of society. . . . . If, without crime, without the conviction of any offense, the children of the state are to be thus confined for the good of society, then society had better be reduced to its original elements and free government acknowledged a failure. In cases of writs of habeas corpus to bring up infants, there are other rights beside the rights of the father. If improperly or illegally restrained, it is our duty *ex debito justitiae* to liberate. The welfare and rights of the child are also to be considered. The disability of minors does not make slaves or criminals of them. They are entitled to legal rights and are under legal disabilities. . . . . Can we hold children responsible for crime; liable for their torts; impose onerous burdens upon them and yet deprive them of the enjoyment of liberty without charge or conviction of crime? The bill of rights declares that all men are by nature free and independent and have certain inherent and inalienable rights, among which are life, liberty and the pursuit of happiness. . . . . Shall we say to the children of the state, you shall not enjoy this right, a right independent of all human laws and regulations? It is declared in the constitution, is higher than constitution and law, and should be held forever sacred.

The Turner case is typical of many others during the next thirty years. The various legislatures passed numerous acts in which can be traced the fuller development of the socialistic idea that the abstract political entity we call the state is a sort of artificial parent of all minors with rights over them superior to any rights of the natural parents or of the minors themselves; that it is the duty of the state to control and supervise the education both mental and moral of all children and for such purpose may dispose of their custody, fix their status and confine them in an institution provided only the primary purpose be not punishment for something done but reformation or improvement.

This legislative tendency was long resisted by the courts from the standpoint of the rights of the minor himself. The tendency of the courts was individualistic and to support the right of the minor to his liberty as against the state except after conviction of crime, subject only to the rights of parents. In all questions as to the custody of children the courts adopted as a basic principle the good of the child and treated the minor as the subject of rights and duties and only under certain disabilities. The attempt has been made to cite this chancery jurisdiction at common law as a ground for sustaining the statutes under discussion. For example, in an address before the American Bar Association in 1909 on the juvenile court, Judge Julian W. Mack cited some early cases of the chancery protection of infants as affording the legal ground for sustaining the juvenile court jurisdiction. This theory, however, is entirely erroneous. Very different notions are involved. The chancery jurisdiction was always exercised for the protection of the individual rights of infants in respect to their persons or their property and not as asserting against either the paramount authority of the state. It originated in the feudal relation of lord and vassal and was first exercised principally to secure to the king his feudal dues. The extension of it in this country was purely individualistic and to supply the want of natural guardianship and to vindicate the rights of the minor as against the state as well as individuals. It appears, however, that this erroneous theory has had considerable influence over courts in sustaining statutes framed on entirely different and opposing theories.

In Pennsylvania the act of 1893, before referred to, was held unconstitutional in one of the counties and the decision was acqui-

esced in. In 1901 a complete juvenile court act was passed. This act was held unconstitutional by the superior court in Mansfield's Case, 22 Sup. 224, on the grounds that it created a new court, was insufficient in title and offended against the constitutional provisions that no person shall for any indictable offense be proceeded against criminally by information and that trial by jury shall be as heretofore. Another act was passed in 1903 which avoided the objections as to creation of a new court and as to title but in other respects was more flagrantly in conflict with constitutional provisions than was the act of 1901. Nevertheless in the case of Comw. *vs.* Fisher, 27 Sup. 175, the superior court (two judges dissenting) held that the act of 1903 "offends against none of the provisions of the constitution." This decision was affirmed on appeal to the supreme court, 213 Pa. 48, the court saying:

> To save a child from becoming a criminal, or from continuing in a career of crime, to end in maturer years in public punishment and disgrace, the legislature may surely provide for the salvation of such a child, if its parents or guardian be unable or unwilling to do so, by bringing it into one of the courts of the state without any process at all, for the purpose of subjecting it to the state's guardianship and protection. . . . . There was no trial for any crime here and the act is operative only when there is to be no trial, the legislature denies the child no right of a trial by jury for the simple reason that, by the act, it is not to be tried for anything. The design is not punishment nor the restraint imprisonment.

But this is merely begging the question. According to this decision the constitutional guaranty against deprivation of life, liberty or property without due process of law is limited to persons actually brought to trial for crime. It is impossible to escape the impression that the public opinion favoring this legislation had infected the court and that in the opinion it is endeavoring to find a legal ground for sustaining the act, but without conspicuous success. The supreme court of Illinois in 1905, in People *vs.* McLain, with reference to the Illinois juvenile court act, said:

> If this enactment is effective and capable of being enforced as against the relator, father of the boy, it must be upon the theory that it is within the power of the state to seize any child under the age of sixteen years who has committed a misdemeanor, though the father may have always provided a comfortable, quiet, orderly and moral home for him, and have supplied him with school facilities, had not neglected his moral training, and had been and was still ready to render him all the duties of a parent.

It would seem that constitutional safeguards as far as minors and the relation of parent and child is concerned have completely broken down. Many of the provisions of the juvenile court acts are clearly in conflict with constitutional provisions and this conclusion can only be escaped by evasions. In the case of commitment to an institution there is often a very real deprivation of liberty nor is that fact changed by refusing to call it punishment or because the good of the child is stated to be the object. The only logical theory for their complete justification is the extreme socialistic theory of the functions of the state. But this is only a verbal justification at most for in spite of sonorous language as to saving the child and affording it protection, care and training by the state, there has been scant provision for making good any of these so far as the state is concerned. What usually happens is that the child is handed over to some organization or institution (sometimes partly subsidized with state money, it is true) which in some cases does its work well and in others badly.

Perhaps it may be premature to regard the constitutional questions as settled. No doubt the courts have been right in refusing to declare these acts unconstitutional in their entirety and not all the features are discussed in the decisions. The questions presented in most of the cases have been predicated upon parental rights and these have been presented as though they were purely private rights. It is strange that the public nature of the rights involved has been so little recognized. It is also true that in the majority of cases involved the parties are unable through poverty or ignorance or both to make a contest. The statutes are of course general in terms. In the McLain Case, *supra*, it was argued: "This law applies, with equal force, to the son of the pauper and the millionaire, to the minister's son (who is sometimes the wolf among the flock), as well as to the son of the convict and the criminal." As a matter of fact, however, it is not applied to the dominant social class and if ever it is so applied it will undoubtedly be largely modified. It may be that a period of criticism will succeed the period of encomium as to these statutes and that then the features really out of harmony with our existing legal system will be eliminated. There are some indications of the development of a critical attitude. In commenting on the Monroe County (N. Y.) juvenile court act Mr. T. D. Hurley, of Chicago, who was identified with the early juvenile

court legislation in Illinois, in an article widely copied in the public press, says:

> Throughout the law the state is made supreme master over the child. The parent is only incidentally considered; he is not made a party to the proceedings, nor is he charged with neglect or inability to care for his child. The state is made to occupy the position of primary parent with rights superior to that of the natural parent. This is a false and vicious position to take. There is no law or authority to substantiate this doctrine. The rights of the parent are superior to those of the state, and, until the parent forfeits these rights the state cannot interfere with his control or custody of the child. Parental rights should not only be protected, but, as far as practicable, preserved.

Archbishop Glennon, of St. Louis, has been quoted as follows:

> We have the right to preserve our homes from state control. We have the right to remain free and not to become tenants of a soulless state. We utterly abhor the doctrine that the little children who bless our homes shall be wards of the state, common property. The idea of common parentage is not only the end of order, but the end of civilization itself.

It would not be difficult to eliminate the features of these statutes which conflict with constitutional provisions and general legal theory and still retain all the valuable features so that they might fit into our legal system and not be, as they are now, extra-legal expedients. The system of probation and the whole administrative system provided for enabling a court to exercise supervision over the delinquent juvenile are generally appreciated as valuable and will be still further improved. The vague and unlimited nature of the powers granted to the court would seem to call for some further definition and specification. It is to be presumed, of course, that the court will act in accordance with legal principles. It has, however, been proposed to constitute laymen and women juvenile court judges. This has been opposed on the ground that legal training is essential for a judge in the juvenile court as well as in any other. In regard to such a proposal the supreme court of Utah said in Mill *vs.* Brown:

> The judge of any court, and especially a judge of a juvenile court, should be willing at all times, not only to respect, but to maintain and preserve the legal and natural rights of men and children alike. . . . . The juvenile court law is of such vast importance to the state and society that it seems to us it should be administered by those who are learned in the law and versed

in the rules of procedure, to the end that the beneficent purposes of the law may be made effective and individual rights respected.

But everything should not rest with the personality of the judge. While with the right man in the right place the very indefiniteness of his powers may be productive of immediate good, in the long run it will be just as unsafe as experience proved it to be in the criminal law. The corporal punishments and other abuses that have developed in some of our juvenile courts are sufficient indications of possibilities. The desired result might, of course, be reached through the decisions of the courts themselves. For reasons partly indicated above, however, few cases come before the appellate courts and if juvenile court judges formulate their decisions in writing these do not find their way into the reports. It is not impossible that judicial decisions may become more prominent in connection with this class of cases, but some modification of the acts themselves would seem desirable.

There is too a confusion of functions in these statutes. The view is gaining general recognition that the juvenile court should not have jurisdiction in the cases of dependent children. Where the case is one only of relief because of poverty or misfortune there is no question for a court, and such cases can be far better dealt with by the administrative agency of the poor directors or similar officials and agencies. But beside the question of dependency there are the distinct fields of crime and status embraced in most juvenile court acts. The child who comes into court accused of crime inevitably stands on a different footing from one who is there merely from parental neglect or from incorrigibility—and should. All criminal questions should be dealt with by a criminal court. Every child accused of crime should be tried and be subject to neither punishment nor restraint of liberty unless convicted. No child should be restrained simply because he has been accused of crime, whether he is guilty or not. Of course if there is no denial of the charge there is no necessity for a trial; but there can be no objection to having the criminal charge tried in the criminal court. There need be no punishment. If convicted he can then be turned over to the juvenile court to determine in a proper proceeding, with the rights of all parties safeguarded, whether a change in his custody or status would be for his best interest. We should then have the juvenile court dealing only with questions of status, with questions of the

custody and the control of the child. It may be that criminal trials of juveniles should be held at special sessions, but the separation of the consideration of the fixing of the status of the child from the consideration of his guilt or innocence of a criminal offense would be advantageous. There seems to be a tendency to bring all questions of family status into one group before one court, the so-called courts of "domestic relations." Theoretically there is much to recommend this scheme but its value remains to be demonstrated in practice.

THE TREND OF THE JUVENILE COURT

By Thomas D. Eliot,
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Workers and thinkers in the field of the juvenile court have, consciously or unconsciously, divided in theory and in practice during recent years. By contrasting sharply their differing views, and by noting the various courts with these contrasts in mind, the writer purposes to bring out certain conclusions as to the present trend of the juvenile court as an institution. An analysis of the functions performed at present by juvenile courts will show to what extent the differences in their policies are reconcilable.

One group of workers tends to expand the court's work to include many different services as the need arises or the budget allows.

Another group wishes to limit the court's functions, or to transfer them entirely to other agencies. There are two conspicuous lines of thought in this second group, each equally plausible, which at first sight, however, seemed to the writer mutually exclusive. On the one hand, there is the statement that the functions of the juvenile court should be taken over by the school system. On the other hand is the argument that they could better be performed by fusion with a domestic relations court, handling the whole family unit.

I

Before passing judgment on these groups, let us review the courts themselves for facts which seem to point in one or another direction.

In the courts of the following cities have been developed one or more specialized lines of social work in connection with probation: Washington, D. C.; Richmond and Brooklyn, N. Y.; Newark and Elizabeth, N. J.; Pittsburgh, Pa.; Cleveland, Columbus, Toledo, and Cincinnati, Ohio; Louisville, Ky.; Indianapolis, Ind.; Kansas City, Mo.; Denver, Colo.; Salt Lake City, Utah; Los Angeles and San Francisco, Cal.; Portland, Ore.; Seattle, Wash.; Vancouver, Winnipeg, and Toronto, Can.; Chicago, Ill.; Minneapolis and St. Paul, Minn.; Des Moines, Iowa.

The list of activities differentiated from or grafted on to the probation department includes placing-out and employment agencies, clinics, educational classes, recreational groups and camps, relief measures and pensions. I have included above those courts which are so closely allied with some organization performing these functions as to make the two a single institution for all practical purposes; such as the Juvenile Probation Association of Brooklyn or the "Auxiliary" of the San Francisco court. Many probation offices not included here constantly perform some of these services for their charges, but have not developed special facilities for handling any one kind of need.

Juvenile courts in many places, chiefly in the middle west, have features partaking in some way of the nature of domestic relations courts. The New Jersey, Ohio, Philadelphia, Indianapolis, Michigan and Utah courts are in this group. In other places opinions are openly advocated which point in a similar direction. Among these are Pittsburgh, Louisville, St. Louis,[1] Grand Rapids,[2] and Chicago.[3] Contributory delinquency and dependency laws, the jurisdiction of which is now almost everywhere placed in the juvenile court, also point toward the intimate connection between juvenile and domestic relations courts.

Of the attempt to transfer or force back different phases of probation work upon other agencies there are examples, not always deliberate or clear-cut, in Boston, Springfield (Mass.), Newark, Baltimore, Indianapolis, St. Louis, Denver, Oakland (Cal.), Seattle, Minneapolis, Chicago, and Grand Rapids. The report of the Hotchkiss committee on the juvenile court of Chicago (1911–1912) contains perhaps the best statement of the thesis that the juvenile court is an educational institution.[4] The proposals of the so-called Levy bill in New York, and of Mr. Willis Brown, formerly of Salt Lake City and Gary, Ind., for transplanting the juvenile court bodily to the school system, are not by any means carefully or consistently worked out, but they are significant indications of a tendency in this direction.

[1] Report, 1912–1913.

[2] Report, 1912.

[3] *The Survey*, May 11, 1912; *The Criminal Law and Criminal*, September, 1912.

[4] See also paper by Prof. W. E. Hotchkiss, in *Proceedings of National Conference of Charities and Corrections*, Cleveland, 1912.

It will be noted that I have not attempted to align the courts into three distinct groups. Several present apparently conflicting evidence. As a matter of fact, few of them have any theory at all about what they undertake. Some frankly claim that local circumstances must control their policy exclusively.

As typical of the first group, however, might be mentioned the juvenile court of Salt Lake City. From them comes the following:

> We are convinced, through experience, that juvenile court work naturally divides itself into separate and distinct departments as follows: (1) The apprehending department; (2) the investigating or segregating department; (3) the judicial department; and (4) the probation department.
>
> Each department has its own particular duties to perform and is supervised by a head of the department, with all departments, with the exception of the judicial, being under the general supervision of the chief probation officer. . . . . In our judgment, the investigating department is a most important one and should be so equipped as to enable it to make a thorough investigation of the physical and mental conditions of the child, also the home environment, the neighborhood environment, the school conditions, ... About three-fourths of the young offenders brought into our court are settled by the investigating department and one-fourth go before the judge. . . . .
>
> In my visit to the convention of charities and correction at Cleveland, Ohio, last June, I was very greatly surprised to find a great majority of juvenile court workers contending that the apprehending of minors does not belong to juvenile court work. It seems to me that such a view is absolutely wrong and tends to narrow instead of broadening our field of action. I sincerely trust that public opinion will not favor such a contention.

As examples in the second group I shall cite the New Jersey and St. Louis courts; the former leaning toward fusion with the domestic relations court, the latter a clear-cut instance of the transfer of former court work to other agencies, notably the school system, to their mutual advantage.

The New Jersey law (ch. 360, laws of 1912, p. 630) reads:

> 1. In all counties of this state where there is or may hereafter be established a county juvenile court, said court is hereby vested with jurisdiction to hear and determine all disputes involving the domestic relation, the jurisdiction over which is now or may hereafter be by law vested in any court of this state except the court of chancery and the orphans' court.
>
> 2. By disputes involving the domestic relation is meant all complaints for violation of an act entitled "An act concerning disorderly persons" (Revision of 1898). . . . . where the gravamen of the complaint is the failure or neglect of one member of a family to satisfy or discharge his legal obligations to another member or members of the family, and all charges against any per-

sons for abandonment and non-support of wives, or children, or poor relatives, ... *provided, however,* that nothing in this act shall be construed to confer upon such court jurisdiction to hear and determine any criminal complaint . . . . except as provided by law.

3. The jurisdictions of courts now authorized by law to hear and determine any of the matters herein referred to shall not be curtailed or affected . . . . but the county juvenile court shall have jurisdiction in such cases concurrent with such courts; *provided, however,* that any such cause pending in any other court, excepting the court of chancery or the orphans' court, may be transferred to the county juvenile court by the order of the judge of such court having first obtained jurisdiction, or said cause may be transferred to the county juvenile court upon the application of any party complainant or defendant provided such application is approved by the judge of the county juvenile court. . . . .

4. . . . . process may be served in the same manner as provided for the service of process in other cases in which the juvenile court has jurisdiction.

. . . . Approved April 2, 1912.

The following from St. Louis are the best statements of the "forcing back" policy, by the only probation office which has followed it consciously and consistently:

. . . . I am today filing a petition handed me . . . . in the case of R——— N———. In doing so and in defense of my position in this particular case, I want to take the opportunity of explaining what I feel ought to be the coöperation between the public school system and the juvenile court.

I think you will grant that truancy and incorrigible school conduct are a problem for the educational authorities. If you grant that, you will also grant that a child, in appearing before the court for such causes, is a confession of failure on the part of the school system. This failure may be due to causes for which the board of education can enforce no remedy. It will then become necessary to call on the court of law to put through a plan which may have been laid down by the attendance officer, principal, or teacher. It is not fair to the judge to bring before the court a truant and present at the same time only the fact of truancy. A report ought to be made, preferably written, or presented verbally, presenting a social diagnosis and prescribing a remedy. If the trouble be environmental the boy may be forced by court order to live with relatives who could give him a better home. If it be a "gang" problem the family might be forced to move. If both of these remedies have been applied and have failed, an institution may be needed. If such a report is made there is no reason why the attendance officer should not appear before the court in exactly the same light as a probation officer, and his recommendation received in the same way. At least such recommendations will prevent the child's being placed on probation, as was intended in R——— N———'s case. You will certainly agree with me that that is a useless disposition. The court ought to act on the theory that any delin-

quent care received from the attendance officer should have been given careful thought and effort from a social service viewpoint. You certainly will grant that there is no inherent power in a probation officer as such which makes him better to handle a case than an attendance officer. Such a disposition will only mean a duplication of effort and I believe a shifting of responsibility.

Again,

We are getting away, I think, from the individual case, and we are realizing more and more that to be efficient the juvenile court must simply be an eye for the community, through which to see the social diseases as they affect children.

The object of the juvenile court which understands its mission in a community is, not to punish the children which come under its jurisdiction, but to point out the weak spots in the community to the agents for social uplift, to the end that these districts can be reached before it becomes necessary to bring the children into correctional institutions.

II

Confusion would result if one were to try to guess the trend by merely counting courts. Conclusions must be based upon the relative effectiveness of different policies, and upon a careful study of the functions performed by juvenile courts.

The first juvenile courts, like many American penal reforms, were emergency measures, occurring at the point of greatest abuse. Children were being tried and jailed with and like adults. The juvenile judge replaced the criminal judge, the jail gave way to the detention home and probation officer, and lo! a new institution, the juvenile court.

Probation was hailed as the keystone of the new system. In the chancery courts it was founded on the ultimate power of the state to take guardianship of its children. Probation and the juvenile court became as a result practically inseparable concepts. No one thought of separating or transferring them.

When probation officers began to grapple with cases they found that every one represented the failure of one or more other social agencies to reach the child in time. Nay, they often found that the agency which should have kept the child normal simply did not exist.

Juvenile delinquency is a sort of precipitate of all such forms of maladjustment. The probation officer was forced to become a jack-of-all-trades or first-aid man. He secured for the child shoes, job, club, book, medicine, as the case demanded, in addition to supplying

the primary need of moral education. Usually he had no time or thought to go deeper than the immediate need of individuals.

Wherever a community is especially lacking or inefficient in its child-caring equipment of a certain sort, whether institutional or legal, children needing that kind of care are likely to get into trouble in large numbers. Many a court, alert to such an immediate need, has at once undertaken to meet the emergency with special funds or facilities for the purpose. Assuming the premises that probation belonged to the juvenile court, and should meet all needs of the abnormal child, the above is the logical proceeding. However, if this be granted, no line can be drawn short of a court administering all the children's charities: as a sort of "department of maladjusted children," many of whom might have been kept normal had the community shouldered the task in time. Some courts actually state this as their ideal. They are all things to all men. But the theory leads in practice to makeshifts, overlapping, and friction, and to inefficiency because of the natural limits of money, staff, time and strength.

Now it is noticeable that there is not one of the special tasks taken up by different courts working on the expansion theory but what has been successfully handled somewhere by other and purely administrative agencies, for the most part by the school. In the cities, for example, where there is adequate medical inspection in schools, we find less need of a juvenile court clinic.

Education is essentially a process of restraining, releasing and directing organic energy. Clinics, recreational and employment facilities are now recognized as legitimate parts of this process. Even the detention of children for observation and investigation is increasingly recognized as educational in its purpose. Probation, in the light of these facts is seen to be nothing but a special kind of moral education by a specialized teacher, carried on with the aid of other devices equally educational in their essence.

The question at once arises, why should a child have to be brought to court in order to receive proper educational treatment?

A conservative criminal lawyer might reply, "Because he is accused of transgressing the law, and the facts must be reviewed." But at the basis of the juvenile court, resting on the old precedents in the courts of chancery, is the theory that it is not an act which is to be punished, but a condition which demands remedy, in regard to which the court is adjudging the rights of the disputing parties. Of

this condition the child's acts are simply the evidence and the guide to proper measures for the welfare of the child, who is assumed to be legally non-responsible.

A court represents society's powers of adjudication and compulsion. Its action ordinarily implies a dispute of rights or conflict of interests; otherwise it is outside its regular field, and is really acting as an administrative agency. Only, then, where rights are contested should it be necessary to bring a child's case to court in order to get the treatment needed to keep it normal.

If this be true, much of the juvenile court's business is entirely unnecessary. In the earlier days of some courts, they were swamped with cases which were brought in, not as to a court, but as to an all-healing philanthropic institution. Blundering attempts have been made in some instances to cut down the numbers. The less abnormal children, or rather the "minor offenders," regardless of condition, were sifted out, but frequently no provision was made for their no less real needs. The flood of minor cases should have made it obvious that something was wrong with a school system which failed to supply a demand for advice and help such as the juvenile court was supposed for a time to furnish *ad libitum*.

Many courts have continued to encourage this panacea notion by their willingness to shoulder the failures and leave-overs of every other institution. Large numbers of parents voluntarily bring their children to such courts. Boys even offer themselves for advice, and the practice is hailed as a victory. Furthermore, the practice of "handling cases out of court" has spontaneously become widespread, a majority of cases being so handled in certain courts. This means, that when cases can obviously be handled by common consent, they are taken on "unofficial probation" or other services are rendered without trial.

Such work shows the great need of public but non-compulsory agencies of special education, to which wayward children may voluntarily be brought for advice or even for voluntary commitment. But unofficial probation work also obscures and handicaps the court's legitimate work, and should be forced back on other agencies where it belongs. There are enough cases which cannot as yet be so referred to other agencies, to occupy the entire attention of any existing probation force.

Assuming now for the moment that all cases capable of non-judi-

cial settlement have been eliminated from the juvenile court, we have left those legitimate cases in which there has been a refusal to follow the wishes of the administrative agencies attempting to help the child, and the rights of the parties must be reviewed in the light of the child's condition. But is there any more reason than before why a court should actually administer the educational remedy? In cases of ordinary compulsory education and of commitment to reformatory schools it is quite capable of turning over the matter of treatment to other authorities.

We must admit, then, that the first juvenile court which attached to itself the machinery of treatment, nay, even the first chancery court that undertook the care of minor wards, made, theoretically speaking, a mistake. We may fully appreciate the value of the personal work done with these methods, and the wisdom of their use as a temporary expedient, but at the same time may find the makeshift poor social economy in the long run. While there is reason in having a court pass on the exercise of the state's power of *parens patriae* when it is disputed, yet there is no obvious reason that the power should be exercised by the court itself, nor that its exercise be a compulsory act. It is already exercised by school and reformatory alike.

When the juvenile court began, probation directly replaced the jail or reform school. The leap of imagination from jail to education was too great to be bridged at once. Now, school systems have developed special detention schools, some of which admit only by court order; while prisons have become increasingly educational. But for the fact of a court record, the dividing line is no longer. This "court record," with which is associated an absolute stigma in the minds of many, is the arbitrary line remaining between what are essentially only different kinds of special education. Society has decreed that certain kinds shall have the stigma of at least nominal compulsion, while others shall not.

The logical working out of our theory demands, then, that any educational agency, whether it be house of refuge or school for normal children, be allowed to admit without trial children voluntarily offered to them, when the conditions seem to warrant it. On the other hand, agencies should not be obliged to wait in disputed cases until a child's condition is seriously abnormal before being able to call on a court to sanction their plans for its welfare. A court should have power to take cognizance of cases in which the abnormality is ever so

slight, provided the treatment is disputed. The record of compulsion by society is thus becoming a relative and no longer an absolute stigma. Already many juvenile court laws (for example those of Utah) allow jurisdiction over conditions and acts which are not recognized as transgressions by the adult laws.

This whole theory may, moreover, with equal logic be applied to the adult courts, for there are also adult reformatories, adult probation, and adult educational institutions for supposedly normal persons. We already commit insane and some inebriates without trial. Prison colonies may become increasingly educational in character and administration. We may even venture the remote possibility of a certain percentage of voluntary commitments to them, duly authorized and recorded through a proper administrative bureau, whereas ordinary disputed cases would still pass through the courts.

III

In the case of the adult court, if all matters of treatment be turned over to administrative authorities, there is still for the court its legitimate function of adjudicating the rights of legally responsible individuals. In the case of juveniles, however, the theory holds them not legally responsible. It is not the child's rights which are at stake, it is his condition which is being looked into.

If, then, a trial implies disputed rights, whose rights *are* being decided in a juvenile trial? In cases of educational treatment voluntarily agreed upon, the child has naught to say; his "rights" are not considered, it is a question of his welfare. Parental authority is sufficient when it is undisputed. When, therefore, the facts or plans in a given child's case *are* disputed, the contest is in reality between the right of the agency or institution and that of the parent, to retain custody and administer treatment. If this be so, why should any child be *tried*, or even be present at trial, except as a witness?

Here, at last, we approach the ground taken by those who advocate on grounds of expediency the fusion of domestic relations and juvenile courts. The family is increasingly becoming the unit of educational treatment or rehabilitation. Non-support and contributory delinquency laws are a recognition of this principle. The custody of children is a domestic relation, and, if disputed, its adjudication should be a trial of the parents' rights, even if the amount of

business forbids the actual combination of "juvenile" and other domestic jurisdiction under the same bench.

Thus we see that, by breaking up the function of the juvenile court into that of adjudication and that of treatment, two theories of its possible future, apparently irreconcilable, are synthesized. Together, the ideas of treatment exclusively by administrative agencies and of adjudication by a domestic relations court shear the present juvenile court of any theoretical excuse for existence. They lead to a policy of gradual contraction and self-abolition which every institution handling abnormal people might well adapt and adopt, a policy in marked contrast to the expansion theory of the juvenile court, that of the first group mentioned.

If the theory here outlined is found to work as well in the future as it bids fair to from current examples, the juvenile court will prove to have been an interesting and valuable experiment, but a passing stage to something far more thoroughgoing and effective. Instead of taking itself for granted as a necessary evil or even as a joy forever, it will find its greatest present usefulness in the interpretation of its work to the public, pointing out to other agencies their weak spots, and gradually forcing back the responsibility for child-care upon the normal institutions of home, school, and church, where it belongs. In turn, the court will continually hold up the hands of the social worker by sanctioning wise plans of family rehabilitation.

JUSTICE FOR THE IMMIGRANT

By Frances A. Kellor,

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The United States government has recently spent over $700,000 in a comprehensive investigation of immigration. One volume is devoted to crime. This consists of more than 400 pages containing an analysis and classification of crimes based upon court records. There is no attempt made to analyze the provisions of the laws violated nor the manner by which these violations were made into court records through legal procedure. In fourteeen volumes which the Immigration Commission devotes to industrial conditions, no mention is made of the administration of justice in small industrial communities, of which there are thousands, made up largely of immigrants.

The investigation of peonage in the South opened the eyes of Americans to the way in which justice can become subservient to industrial necessities and business expediency. It is no part of my purpose to discuss the use or abuse of laws during labor disturbances. That investigation is already under way. But what Americans should wish to know is whether the laws as at present administered in times of peace are giving the immigrant equal protection. We look upon courts as places of punishment and the immigrant regards them with fear. In reality they fill a much larger place than this. They are the educational centers through which men, whether complainants, defendants, witnesses, or hangers-on, receive their lasting impressions of fairness, justice and equality, and in accordance with which they become law-abiding, right-minded and right-feeling citizens, or go forth with hatred in their hearts, curses on their lips and the desire to make war on a society which denies them justice.

The immigrant does not start the race fair with the American. We expect him to know the multitude of laws and ordinances and regulations in a strange country with the institutions and customs and organization of which he is unfamiliar. We expect the peasant to adjust himself immediately to a complicated city system. We

expect him to learn to be law-abiding technically as well as intentionally with the heavy handicap of not knowing English. All this notwithstanding, as a government, we do nothing to instruct him or inform him, either when he lands or goes into our industries, as to his responsibilities or duties or obligations. We are content to leave this to the padrone, the immigrant banker, the notary public, the saloon and to such associates as he may find or friendly welfare associations as he may chance upon.

It is inevitable under these conditions that the administration of justice should in many instances bear one relation to the alien and another to the American. I am here concerned more with a system of law enforcement which makes injustice, subservience to business interests, dishonesty and the perversion of justice easy than with the corruptness of the men who administer the laws.

In the brief space at my disposal I hope to call attention to a few of the conditions found in the course of my investigations, which I hope will lead to such a study of our statutes and procedure as will restore the equality of the law, and will lead to an analysis of criminality among aliens which will include among its causes and explanations the content and administration of laws.

To what extent the present administration of law affects the statistics of crime, unjustly brands ignorant offenders as criminals or confirms them as such, perverts their sense of justice and destroys their respect for law and order, are unanswerable questions, in the absence of such information. We are approaching the time when convictions for violations of ordinances such as traffic regulations, sanitary codes, health laws and similar measures of precaution, violations of which do not imply criminality, will not be tried in criminal courts, but in municipal and other civil courts where fines and not imprisonment will be the chief penalty imposed.

Justices of the peace and police justices. These influence the life of the immigrant most directly. The way in which the law treats his every-day frailties in such matters as drink, disorderly conduct, vagrancy, trespass, assault and battery, petit larceny, and his civil differences with his neighbor is the immigrant's measure of the effectiveness and fairness of regulation. The way in which it treats his complaints of wages unpaid, oppression, and regard for his personal rights and property is a guide to his future actions in relation to his fellows.

New York may be taken as more or less typical of the prevailing system. Justices are elected, not appointed, and are therefore removable only by the appellate division of the supreme court through a long and difficult process. This is further safeguarded by requiring a bond from the person making charges, to be available in case of the failure of such charges. Under this system justices are responsible only to the board of supervisors in matters of depositing fines and receiving fees and are usually members of the town board. Under an appointive system direct responsibility would be established. The common use of these offices as political awards tends still further to lower the standard of qualifications.

Any male citizen, other than a tavern keeper, over 21 years of age, is eligible to office regardless of any general or legal education of any kind. This justice with no knowledge of law, or specific qualifications, is entrusted with power to issue warrants, administer oaths, take testimony and deprive defendants of property by imposing fines, and of liberty by imposing sentences not exceeding one year.

Justices receive no salaries and are paid under a fee system which puts a premium on delays and convictions. The uncertainty of the fees provides so precarious a livelihood that such justices usually have other occupations. There is no prohibition against their being employed by the industry upon whose continuance the whole community frequently depends. Teamsters, machinists, or clerks of such companies fill such positions.

Fees are based upon certain acts specified by law which include among others the following: Issuing summonses and warrants, swearing jurors, drawing affidavits, swearing witnesses, every necessary adjournment of cases, entering sentence of court 25 cents, and for record of conviction 75 cents, and for services when assisting other justices $2 a day. All fines are deposited with the town clerk and the law prohibits the retention of any part of these. This system encourages delays, multiplicity of papers, adjournments and convictions. In one court where 60 cases were examined one-third of the sentences were suspended, permitting the collection of the additional fee for record of conviction.

The rules of evidence which safeguard defendants in other courts are not observed, corroboration is not required in serious

offenses like larceny, interpreters are not furnished and complainants and constables are permitted to serve as such.

The power of justice courts in some states is broader than is generally known. They may have such questions as constitutionality of the law argued before them but rarely take cognizance of it. They may stay proceedings, if the parties appear and state that they have received satisfaction, providing the reason for the stay is set forth in the records. This makes it easy to use the powers of the justice to compel settlements upon threat of fines or imprisonment, if he so desires.

In New Jersey the practice is to collect fees directly from the litigants. The law of 1898 provided that no fees should be allowed justices unless the person against whom the complaint was made was convicted. In 1901 this was amended so that a justice who filed a bill of particulars of costs to the clerk might be paid if there was no conviction. An investigation in a number of counties showed that this law was not being enforced. In other words, the administrators of law violated the provisions governing their own offices. In some of the largest cities of the state the justice has no authority to try the case but issues the warrants which must be paid for when issued. This has led to the common expression among the foreigners: "I am going down to buy a warrant against you." An investigation of 38 warrants issued by one judge showed that only 7 were held for trial.

In making the following statement of notable instances which came to my attention among others, I wish to make it clear that under the present system hundreds of justices are administering the law fearlessly and honestly and with due regard to the rights of all. At the same time, I wish to point out that the system is such that it depends upon the man elected and not upon the laws which govern his office and the manner of his election whether his office is an instrument of justice or a tool in the hands of those who wish to oppress, exploit, and intimidate the ignorant immigrant unfamiliar with American laws, institutions and customs. That these officers are being used for such purposes there is abundant proof. The contempt in which the office is held; the use of it as a reward politically; its frequent isolation from publicity centers; the clan spirit with which the American element holds together, preventing publicity; the race prejudice existing in small towns; and the isola-

tion of the immigrant by districts and by language increase the necessity for every safeguard being afforded by these courts.

The writer was called upon to investigate a small industrial community in which it was alleged that oppression, extortion and graft prevailed in the administration of the justices' court. The company practically owned the town except the saloons. It employed one of the justices and its counsel was county judge. A saloon-keeper and a padrone were the interpreters when one was needed. It was found in the case of both justices that bills and claims for fees have been presented to the supervisors and paid which the docket did not substantiate; that they had failed to file records as required by law; that they had falsified accounts and settled cases in violation of law, there being no record kept; that they had neglected to transmit the fines to the clerk within the time specified by law; and that they were incompetent as shown in their conduct of trials. I submit briefly the records of several cases showing what occurred in that village, and the connection between the saloon-keeper, the policeman, and the justices.

The defendant was employed as a domestic by a saloon-keeper who also acted as the court interpreter. She left his employ without notice. He threatened "to get even" with her and later accused her of stealing $90. She was haled before the justice who compelled her to settle under threat of jail. Aside from the accusation of the saloon-keeper, no other evidence was taken.

The defendant was arrested during a fight and was ordered to pay $15 for a torn coat and $12.50 for "court expenses." Only the complainant's testimony was taken, yet both he and the defendant were each required to pay $5 for the interpreter.

Two defendants testified that they had been arrested and "sentenced" to settle a claim of $50 for apples picked by their wives. They paid $40 in court and paid the balance to the policeman. In addition they paid "$12.50 costs."

A complainant in a case testified that after being assaulted by the defendant he paid the local police officer $12 ($6 for himself and $6 for the justice) in order to have the defendant arrested and be found guilty. The latter was arrested the following day and was fined $5.

The defendant did not buy his beer for a christening from the saloon-keeper interpreter. He was thereafter arrested for violating some Sunday law, and was fined $75 by the justice.

The complainant in a civil action for breach of contract brought before the justice testified that he had rented a boarding house from the saloon-keeper interpreter. As the latter's saloon was not patronized by the complainant's boarders, he shut off the water supply for the house. The complainant

was forced to move and sold his furniture for $245, receiving a deposit of $100. The saloon-keeper advised the purchaser not to pay the balance and sent word to the complainant that unless the deposit was returned, he would have him sentenced to jail. He returned the deposit and sold his furniture to another for $180, receiving a $50 deposit, but the latter was also advised by the saloon-keeper not to pay the balance. The complainant appealed to the justice, who later gave him $23.33 as his share of the amount collected, although the purchaser testified that he had given the justice about $60. No record could be found of the disposition or settlement of the case.

The defendant was arrested on a charge of assault in the third degree. The interpreter called the defendant outside of the court room and informed him that the justice said it would take $55.35 to "settle the case," otherwise he would be sent to jail. The defendant, the justice and the interpreter then went to the latter's saloon where a check for this amount was made out to the order of the interpreter who testified that he gave the justice the full amount thereof in cash. The justice then returned to the court room alone and paid the complainant, who had been told to wait for him, the sum of $31.50, for which he signed a receipt according to the latter's sworn testimony. The justice's docket when examined later contained the entry "Guilty: sentence suspended, has two small children: no funds," and showed that the costs had been assessed at $3.80. After deducting the interpreter's fee of $3, there still remained $20.85 unrecorded and unaccounted for. While this investigation was being conducted, the complainant was compelled to sign a new receipt for $45, while the defendant was advised to leave town and threatened with discharge from work.

A dispute as to the non-payment of a debt of $10 had arisen between a saloon-keeper and the defendant. As the latter was about to leave the village en route abroad, he was arrested at the railroad station at 10 p.m. and immediately brought before the justice, who forced him to pay the sum of $19. The difference between the debt and the amount paid was in reality in the nature of a "fine" as the costs in all cases are charged to the town.

The defendant had been arrested on a charge of petty larceny. He paid the justice $5 out of court and when the case was later called, was informed he was discharged. The docket however read that sentence had been "suspended," thereby making him guilty of the crime. As a matter of fact, the defendant should not have been originally charged with the crime, as an employee had actually taken the money in question, each individual being responsible for his own individual acts.

Warrants of arrest for assault in the third degree had been issued against 6 persons. Only four had been apprehended, yet the other two, according to the docket were noted as "Guilty: sentence suspended."

These justices are holding office today. The investigation was completed in the summer when the supreme court vested with the power of removal was not in session. The owners of the industry involved took advantage of this, and as they were the political leaders of the county and

the main taxpayers their interference was successful. Some of the complaining witnesses were dismissed and as there was no other industry near, they left for parts unknown; affidavits were subsequently obtained under duress in which they denied their testimony. They were intimidated, they were bribed to leave town and the action for removal was delayed on one pretext or another until the whole case was rendered so weak that successful prosecution was doubtful. Never was a better case presented on behalf of the recall of judges which would have permitted the facts to have been laid promptly before the people. As it was, even publicity was denied as the county papers were also under the control of the owners.

In another case four men complained that they had been illegally arrested for petit larceny. Six immigrants left an employment agency in New York September 22 to work on the construction of a dam for a large paper factory. Their fare of $3 by boat and 75 cents for meals and the fee for the job were to be deducted from their first wages. They arrived about 10 a.m. September 23 and were to go to work on the morning of the 24th. They were told by the padrone that they could have no food until they paid for it. Two of them had money but the four others did not. The four were given a piece of bread and some sausage which was all the food they had from noon September 22 until the morning of September 24 when they refused to work without breakfast and went away. The justice was employed as machinist by the company and the superintendent said he wanted to make an example of them for not working out their fare and they were arrested and sentenced to 30 days in jail, but were promptly released on habeas corpus proceedings brought by the state bureau of industries and immigration.

The following letter from an alien in Pennsylvania is of interest:

> In this county, and particularly in this borough, it has become the practice of justices of the peace and others who are aiding in the scheme to extort money in various ways from the foreign people. One of the principal things practiced is to bring them in before the justice of the peace on some criminal information, whether they have violated the law or not, and then demand large sums of money from them under the guise of a settlement, and then let them go, or in some instances hold them for court expecting that they will still pay more money, and if so, then manage to get the case *nol-prossed* without a trial. Others who seem to live upon what they can extort by some means from these foreigners, have a practice of going to them and demanding

money under threat that if they do not pay they will be taken to jail. It is very hard for any one located here to get a hold on the people who are practicing these things, for they are combined together, and threaten the foreigners if they tell these things.

The following case, among many others, was submitted in support of this statement:

In December, 1912, a Pole was arrested for selling liquor without a license and when brought before a justice was informed that the case could be settled for $200 for the complainant, and $100 as costs for the justice. The Pole could not, or did not put up the money, and the justice was about to send him to jail, when an accomplice in the foreign exchange department of a bank made an offer to go bail for him if he would go home and bring up his bank book so that he could fix the bank account to protect him for going his bail. This was arranged, and the Pole went home but did not come back with the bank book, but went away, and was not in the county for about six months.

When this accomplice learned that the Pole had left, he and the justice between them issued a warrant for the arrest of the wife of the Pole, when the justice had no information against her then or at any other time, and placed the warrant in the hands of a member of the state constabulary who went to arrest her. The Catholic priest and railway agent at that place interceded for her, and found her handcuffed in her house waiting until train time and under the custody of the officer. The priest called up the justice on the phone and asked him whether he would not accept him as bail for her, and allow her to remain at home, as she had three young children there and no one to care for them if she was taken away. He replied that he would not accept the priest as bail, but if she would turn over her bank book to the officer she might remain at home, and if not she would have to be brought to court, and the three young children with her if necessary. She had no bank book to put up at that time, and the constabulary took her and her three small children to jail. The accomplice met them near the jail as the officer was bringing them in, and said to her, "Now you will stay in jail." This was on a Saturday evening, and they all were placed in jail and remained there until Monday some time, when he got uneasy for fear the humane agent would get to know about it, and went with a woman to the jail and proposed to take the children out and take them to the woman's house. The children cried, and then they took her and the children all out to the house of this woman, who kept a sort of restaurant in the town. Here they were kept for about two days and hounded for money or a bank account.

Naturalization. The admission to citizenship is the highest honor which this country can confer. No act should be so free from exploitation as this. The federal government has established a high standard of qualifications. But in addition to this a number of states have passed laws making the earning of a livelihood depend-

ent upon naturalization or the obtainment of first papers. This immediately opens the door to graft, encourages dishonesty and makes naturalization not a high privilege but a condition precedent to going to work. This results in wholesale evasion of the law, which is a part of the early education of the newly arrived alien, whose first introduction to America is as a protected law breaker. These laws apply primarily to employees on public works and to trades in which a license is required. In New York City, this restriction has led to wholesale frauds and exchanges in licenses and there are records showing that the little Greek boys who peddle flowers have been arrested as many as five times during their first few months in the country for peddling without a license. The padroni say it is cheaper to pay fines, as they cannot get licenses. The political leaders also turn this requirement to great advantage by assisting members of their clubs to obtain first papers and licenses, thereby controlling the voters. From among many cases this is of significance:

An alien had his first papers and wanted to get his final papers. A runner and shyster lawyer offered to get them for him. He turned over his first papers and paid $5 to the lawyer and was told to deposit $9 with a saloon-keeper as a guarantee. He was taken four times to the court and the lawyer demanded his expenses paid. The alien had no money and was asked to sign a paper which he found was used afterward to collect the $9 deposited with the saloon-keeper. Five dollars more was then demanded and he signed a memorandum agreeing to pay the runner for his services as follows:

Lost time, May 8, 9, 10	$6
One day lost, May 19	5
Spare time given to lawyer, May 28	4
Lost one day, June 11	5
Spare time given to lawyer, June 14	2
Spare time given to lawyer, June 18	2
	$24

At the time the case came to my notice he had lost his first papers, paid $14, lost several days' work, and had not obtained his papers.

The extent of these frauds is colossal. Bogus naturalization societies and schools for English have been found which are covers

for "ambulance chasers," insurance schemes, and land sales. One such society had over 3,000 persons registered.

There is a bill now pending before Congress asking for a commission to take up this whole subject and recommend adjustment of the inequalities and elimination of abuses, and I doubt if there is any subject more in need of such an investigation.

It is difficult to maintain a theory of equal rights for all in the face of some of the laws which have been enacted. It were far better in my judgment to maintain a strict and consistent policy of exclusion for the protection of American laborers than to discriminate against men to whom we have opened our doors, and who do not understand this version of justice. Such are the workmen's compensation laws where aliens are specifically excluded from becoming beneficiaries, or where non-resident families may not receive more than two-thirds of the amount payable to resident families, or where the amount for aliens is limited to a maximum of $750.

On the other hand, the establishment of governmental agencies looking toward the assimilation of immigrants has been strenuously opposed as discriminating and as tending to increase immigration. The past decade has seen, however, a steady development of such agencies. One of the most important of these is the establishment by New York state of a bureau of industries and immigration, which creates in effect an immigrants' court. This has the power to make investigations, hold hearings and make adjustments. This experiment has done more to reduce the law's delays, obtain justice and fair treatment for the immigrant and maintain his faith in American freedom and justice than any other one single experiment.

California has recently established a commission on immigration and housing with similar powers, and Cleveland has established the first municipal agency in the form of a city immigration bureau, which takes charge of all immigrants in need of information, advice and assistance.

It is through such measures and agencies as these that the alien will finally receive the full measure of justice which should accompany his admission, and it is to these we must look for a better knowledge and administration of our laws through the minor courts which bear so important a relation to the immigrant.

THE ALIEN IN RELATION TO OUR LAWS

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A native of one country who takes up his residence in another is obviously a political and national "misfit" in his new surroundings. Such "misfit" may be temporary or permanent, partial or complete, depending on a variety of causes, subjective or objective, some of which we shall have occasion hereinafter to consider.

An alien, as such "misfit" is technically called, is "fitted" into the body-politic, more or less successfully, by the highly conventional legal method of naturalization, and into the body-national by the subtler process of assimilation.

In countries of little immigration the problem of "fitting-in" aliens is of little practical importance, except that it occasionally calls upon diplomacy and international jurisprudence to disentangle some intricate questions of conflict of laws. But in countries like ours, where every year hundreds of thousands pour in from every part of the world, where whole villages and townships of peoples, alien to our history and race, are transferred from abroad, the problem of politically and nationally "fitting in" these outsiders is one of surpassing importance.

In older countries alien residents are, at most, such a small minority that their readiness to "fit" politically into the new jurisdiction, or socially and economically into the new environment is, in most instances, an interesting rather than a practical question; they are overwhelmed by mere force of numbers.

With us, instead, the question is eminently a practical one, and as such we shall study it from two distinct points: first, that of the alien trying to "fit" into the new country, and then that of our country trying to "fit" itself to this enormous alien mass.

The disabilities of an alien in a foreign land are either historical or actual. Historically an alien, entering a foreign state, was considered, if not an enemy, at best a suspicious person. With very few exceptions he was actively discouraged from staying in the new coun-

try and every obstacle was thrown in the way of his settling or owning property there. Commerce removed some of these obstacles, and international goodwill is destroying others.

The actual disabilities of aliens are due to differences between the life, customs, laws and language to which they are born and those they find in the country of emigration. They vary, practically, with each individual; they are accentuated by ignorance, inexperience, lack of courage, and profound differences in historical, political and social precedents.

All such disabilities, historical or actual, are met and their rigor attenuated in numberless ways; by culture and international exchanges, whether it be the selling of American machines for Italian marbles, or the mutual lending out of professors between universities of different countries; it is also met unofficially by benevolence, such as by immigrant and travelers' aid societies, and officially by national and international legal enactments. It is with this latter form of aid that we are here principally concerned.

The law has from ancient times recognized the disabilities of the citizen outside his native country and has endeavored to make up for them in sundry ways. The oldest of these is the creation and recognition of the consular office and the gradual development of consular law. Friendly conventions and treaties between the commercial nations of the world and the development of diplomatic and international rights and obligations added strength to the protection thrown around the alien within a foreign jurisdiction.

It should be observed here, and constantly borne in mind, that this weighty structure of protection was built up in the course of those centuries when emigration from one country to another was sporadic and exceptional. But now let us examine at close range the workings of this venerable and high-sounding mechanism in overcoming the political and actual disabilities of an alien from one of the old countries coming today into our territory.

His government has had our official assurance by solemn treaty that he, though an alien, "shall receive . . . . the most constant protection" for his person and property. We have also recognized divers officials from his own country as accredited diplomatic or consular officers, and have guaranteed that they may have recourse to our own authorities "whether federal or local, judicial or executive . . . . in order to defend the rights and interests of their countrymen."

Let us now take the not infrequent case of some simple peasant from some village of southern Italy, unschooled but intelligent, honest but totally ignorant of most of our municipal ordinances. Let us suppose that for the commission of one of these purely statutory crimes our alien peasant is arrested. Let us assume that when arrested he keeps his wits about him and demands an opportunity to communicate with his consul. What could the average official sent here by foreign governments do with the old-fashioned consular machinery at his command? Bear in mind that in one year the magistrates' courts of the first division of New York City committed or held for trial nearly 30,000 foreign-born persons; that they disposed of nearly 140,000 cases of which probably one-half were natives of some foreign country. Bear in mind also that the subjects of Italy who may apply for aid to their consular officers within the jurisdiction of the New York consulate number nearly 1,000,000 people. Bear in mind, further, that a substantial percentage of such subjects are illiterate and ignorant of our language, and many of them engaged in hazardous labor and not a few the easy prey of swindlers. Consider, also, that except in a few large centers like New York, Chicago and San Francisco, the consular officers of several countries having large numbers of subjects here, are assigned to jurisdictions covering territory more extensive than the geographical area of their native land.

Bearing all this in mind, what diplomatic or consular chancellery, organized to meet conditions of other ages and of well-settled countries, with administrative regulations enacted decades ago and a personnel trained in the old schools—what chancellery—I ask, can meet with any effectiveness the rightful demands of their subjects here?

Such old-fashioned machinery of extra-territorial assistance is rendered even more ineffective in operation by our dishonorable inertia in living up to our treaty obligations; that this government should covenant to protect a foreign citizen within its borders, and when the rights of such citizen are violated, we should plead our inability to protect him on account of the conflict of federal and state rights is conduct well deserving ex-President Taft's appellation of "pusillanimous."

On all sides, therefore, the laws which are intended to meet and attenuate the disabilities of the alien are more apparent than real, more high-sounding than effective. And it is not strange, therefore, that lynchings of foreigners have gone unpunished, that peonage

among immigrants has been not infrequent, that discriminatory legislation against resident alien labor is enacted and enforced and most of the time without challenge, and that the chancelleries of European cabinets protocol every year thousands of complaints from dissatisfied subjects in this country.

On the other hand, there are certain actual disabilities to which an alien is subject among us which it seems practically impossible to meet by any legal enactment. Take, for example, that very substantial handicap of an alien who, being charged with crime, and having the constitutional right of confronting his witnesses and of hearing the testimony adduced against him, can neither, in most cases, understand what is said against him, nor tell his own story except through the very imperfect medium of an interpreter. I have elsewhere pointed out how the interpreter service in our courts, in effect, often deprives an alien accused of crime of certain vital constitutional safeguards,[1] and in another paper I have endeavored to describe certain special forms of fraud to which immigrants are exposed for which no adequate remedy has been devised except in so far as the immigrant-aid bureaus in certain sections have brought some relief.[2]

The first of such bureaus was established several years ago by the Italian government as a quasi-legal office for immigrants in New York City, and others have since been organized in the larger cities substantially upon the plan of the New York bureau. While no official statistics of such offices have been published in this country, some idea of their workings and results may be had by reference to a report made to the Italian Colonial Congress held in Rome in 1911.[3]

Having briefly considered the disabilities of the alien in relation to our laws, let us now look at the other side of the question, at our own disabilities in fitting him into our body-politic and national.

What distinguishes our problem of adjusting the alien to our system, environment and national aspirations from a similar problem in other countries is not merely the great diversity of origin and condi-

[1] *Defects in the Methods of Securing and Using Interpreters.* Report of Gino C. Speranza at the annual meeting of the New York state probation commission, 1911.

[2] "The Relation of the Alien to the Administration of Law," in *Journal of Criminal Law and Criminology,* November, 1910.

[3] *L'Assistenza Legale degli operai Italiani nel Nord America.* Report of Gino C. Speranza to the Congresso Coloniale Italiano (Sezione Quarta) Rome, June, 1911.

tion of those who come to us, but their enormous numerical strength. The "fitting in" of one hundred thousand aliens presents not merely a more complex problem than is presented by the "fitting in" of one hundred, but a distinct and novel series of problems.

We have endeavored in various ways during the last twenty-five years to grapple with such problems by legislative measures which can be roughly divided into two classes: immigration and naturalization restriction.

Before 1882 we had no immigration laws to speak of. Since then a body of statutes have been enacted, variously interpreted and as variously enforced, which, in substance, aim to exclude the feeble-minded, the pauper, the criminal, the contract-laborer and the defective. Some of these statutes are so ingenuously drawn that it is not strange that many undesirable aliens come in, and some desirable ones are barred out.

Especially weak are those provisions of the law which seek to keep out the criminal and the anti-social. Granting that it is difficult to define in law what beliefs and acts shall stamp a man as anti-social, and even assuming, as our laws ingenuously assume, that when we ask the alien, on his arrival, to state his political creed and criminal history, he will answer truthfully, yet we may well challenge the effectiveness of the present test of "belief in organized government" as a measure of our political self-protection. May it not be asked whether even "belief" in "government" organized on an essentially different basis from ours might not be as dangerous to our national life as belief in anarchy or disbelief in "organized government?"

Here, again, precedents of the liberality of other countries in admitting political offenders, or in extending the right of asylum, are really not helpful; they fade into insignificance when their relatively sporadic character is examined in relation to the vast number of aliens who might seek to invoke them when endeavoring to enter our own country. The most rabid anarchist, or even a hundred of them, can be safely left at large in any well-organized, stable democracy. But can this be said of a hundred thousand? And a hundred anti-social men preaching freely in a country of long settled government, with old traditions and customs, and of a homogeneous racial population, are far less dangerous than a like number appealing to, and inflaming the imagination of thousands and thousands who are our "fellow-citizens" only by the most stretched courtesy, who know little or nothing of our government and less of our history.

I have taken an extreme example, although how even such an extreme case is actually possible has been pretty well demonstrated by certain excesses of the Industrial Workers of the World.

Another fundamental defect in our legal provisions for self-protection is that in most of the international agreements where we grant certain rights to, and assume certain obligations towards citizens of foreign states, the "reciprocal" rights granted and the "reciprocal" obligations assumed by foreign governments are reciprocal in form rather than in fact. For instance, the duty of protecting a million subjects of Austro-Hungary is a very different matter from the "reciprocal" duty of the dual monarchy of protecting a handful of American tourists traveling in that empire. So, likewise, it is of little moment to Russia how an American there may become naturalized, and the Czar need not worry over the possibility of ex-subjects of our republic becoming members of the duma and influencing the foreign policy of the empire. But in our country we have seen how a constituency composed largely of former subjects of the Czar may (and we are not concerned here with its wisdom or unwisdom) influence this government to abrogate a treaty with a friendly power.

Or take another and more recent instance of "reciprocity": about a year ago we agreed with Sweden that consular officers of each of the contracting countries should have the right to administer estates of nationals dying intestate in the foreign jurisdiction; thereupon all foreign states with whom we had agreed to grant "the most favored nation" treatment claimed the same right. The result has been that consuls of countries at the opposite end of Europe, like Greece, Italy and Austria, with very large colonies here have practically excluded our own state officials from administering yearly hundreds of thousands of dollars left here by deceased aliens, our courts being obliged to allow clerks and agents of such consulates to earn the commissions fixed by our laws for our administrators.

Another situation calling urgently for relief as a measure of self-protection is the indifference of many of our naturalized citizens to the spirit and political intent of such naturalization. This indifference to the practical obligations of the oath of allegiance is indirectly fostered by the paternal interest of some foreign governments in their emigrant subjects abroad. The emigration laws of Italy and Austria, for instance, excellent and humanitarian as they are, nevertheless effectively keep the immigrant here in close and constant relation with

the fatherland. Alleging the necessity of protecting him because of his ignorance, the emigration officials of such foreign governments follow him from the moment he sails from Europe, and even after he lands here watch paternally over his needs. At home they relax the rules regarding military service so that young men may feel that they can return, even if they have violated the military law; and in certain places, political elections are arranged with due regard to the season when immigrants from the Americas generally return home. An eminent member of the Italian Parliament, commenting on the recent elections in Italy under the new law which extends the electoral franchise to certain classes of illiterates, writes in a quasi-official journal that the striking fact in such elections in the south of Italy (whence most of the new voters come) is that "the *Americani* who, until now, were interested in the political life of only one country—the United States—have been able for the first time to contribute to the formation of the national legislature," and he adds that deputies from such southern provinces assured the writer that "the *Americani* threw themselves into the electoral battle with great vigor."

Granted that there is nothing sacred in what are popularly called Anglo-Saxon institutions, yet if we believe in the great system of self-government developed and stubbornly fought for by the English people through centuries of training and struggle, we may fairly claim that its continuance and stability will depend on a citizenship attached to, and understanding its spirit and history, and in sympathy with its political ideals. Against the influence of great masses of peoples coming to us from every part of the world, with traditions, history and training totally different from ours, most of them belonging to an honest but ignorant and unschooled class, and a very large number of them wholly unused to self-government, we may justly invoke as a measure of legitimate self-protection the provision for a longer and more rigid apprenticeship before granting to aliens the electoral franchise. An Italian observer, trained in our laws and with a wide, sympathetic experience among his compatriots here, has recently urged the advisability of making the term of such apprenticeship fifteen years.[1] I do not think this excessive, though I believe that provision should be made for shortening the time of such appren-

[1] Robert Ferrari, of the New York bar, in the *Journal of Criminal Law and Criminology*, November, 1913.

ticeship on proof of special educational training, or of public, or quasi-public, services rendered.

After this rapid review of a vast field, let us briefly point out certain remedies that suggest themselves for the problems that confront us. To begin with, our laws, both in their national and in their international provisions, should define and recognize the peculiar status of that individual whom we call "immigrant" and whom we consider as subject to very special disabilities, but who, in the eye of an outworn jurisprudence, is merely an alien subject. Nor must we longer hold to the belief that we can adequately protect him or ourselves by exclusively national measures, or by the old international guarantees which contemplated facts and conditions unlike those which exist today in countries of large immigration.

International conferences should be urged by the United States with a view to such agreements as already exist, for instance, for the international protection of laborers, minors and women-workers, between certain states of continental Europe. Special immigration conventions should be sought by which, on the one hand, the possibilities of rejection and the hardships of deportation might be eliminated, and, on the other, the guarantees of foreign coöperation in keeping the criminal and the undesirable out of this country might be strengthened.

Above all, we need an effective strengthening of our laws regarding naturalization. Opinion may differ as to whether we should further restrict the number and character of those who wish to come to our shores; but there can be no substantial disagreement as to the necessity of restricting the right of American citizenship to those aliens only who show by length of residence and by reliable tests of right conduct, that they are fairly entitled to participate in our government.

THE ADVISABILITY OF A PUBLIC DEFENDER

By R. S. Gray,

San Francisco–Oakland, Cal.

The insufficiency of our modern judicial system to meet the demands for justice can hardly be questioned by the well informed. This situation is being remedied by many methods, an example of which is the enactment of workmen's compensation acts to displace judicial procedure based upon the law of negligence. Nevertheless, the substance of our present method of determining disputed matters involved in so-called crimes, torts and other justiciable wrongs, will doubtless remain for a long time to come. No matter what our theories may be, we have the spectacle in all ordinary criminal trials of a more or less unequal combat between society on the one hand and the individual or banded individuals on the other. If the defendant is innocent he is able ordinarily to establish the fact only at a frightful cost. If the defendant is poor and friendless, the chances of his escape, even though innocent, are small and, if guilty, the chances are great that his punishment will be excessive. Under our system of jurisprudence, almost every criminal proceeding is attended by an injustice, the toleration of which is inexplicable. We say that the presumption of innocence attends the defendant in a criminal trial at least until the case passes from the hands of the advocates, yet bringing to bear upon the accused all the power of organized society to convict even before trial, we compel the accused, if possible, to provide his own defense at his own full cost and risk, and we turn the tribunal, which should be dispassionately seeking only the truth, into a battlefield for the mighty or a slaughterhouse for the weak. At least in all criminal proceedings the accused should be given by the state what the husband is compelled to furnish the wife accused of infidelity, adequate means of defense.

That defense will not be adequate unless afforded by an official secure from fear or favor. The administration of injustice by the private detective should cease. From the moment a man is arrested the state should, without request, afford him official counsel equal to and coördinate in every respect with that of the prosecution, for

in the eye of the law he is only under suspicion while presumed to be innocent, and at best at a fearful disadvantage. Certainly he should not be subjected to inquisition except in the presence of such official counsel.

The refusal of the state to provide for the poor and helpless as adequate counsel and advocacy as it provides for pressing its own charge is a burning shame for which it is difficult to find adequate expression. The state compels the weak to submit even in advance to the fear and terror of the powerful in their control over judicial proceedings. The state entangles the hands of every citizen in the mesh of the law, yet leaves him helpless if poor to either maintain or defend an action in court. The state refuses to make justice free to the multitude and practically shuts the door of justice in their faces, leaving them to a wolfishness of greed and heartlessness that it is difficult to believe exists, but which does exist and will continue to exist until there is a radical change in human nature itself. In the face of such a condition of affairs, the few that are rich and even the many that are comfortable fatuously wonder at the spirit of anarchy that flames forth ever and anon and which it is increasingly difficult to restrain.

The president of the Legal Aid Society of New York, speaking of thirty-six years' work, said: "In the City of New York alone we have by this time, taught over 380,000 lessons to that number of taskmasters," yet even he bewailed the inadequacy of such relief. Great as the work of the New York society has been, its greatest significance is the revelation of the appalling need for "justice" against "taskmastership," a need which it is evident the greatest of these legal aid societies can hardly more than make temporary shift to meet until the people at large, if not a sleeping and self-satisfied bar, awake. Members of the legal profession sometimes take much pride in the fact that courts appoint counsel for poor persons charged with crime, and that the poverty stricken who will make oath to their pitiful state may even sue *in forma pauperis*. The utter futility of such methods has given rise to legal aid societies, and one of the greatest advocates in the city of New York, confessing his own prior ignorance of the actual extent of such work there done, testified before the delegates of legal aid societies of the United States as to the "immense good to mankind, the immense good to this community, not only to the poor, but to the rich and substantial" done by the New York society.

In the *Bulletin* of the Chicago Legal Aid Society, published in the issue of October, 1912, of the *Illinois Law Review*, appears this comment: "We may hope that in time a direct appeal to a public official shall start the machinery of justice in motion, providing automatically for redress and defense without the present preliminary requirement of payment for professional services most needed by those least able to afford them. In the meantime it is the high privilege of legal aid societies to assist the unfortunate over the wall of procedure into the court of justice." What an indictment of our boasted civilization and especially of governmental agency in its most sacred function and office, that of doing "justice."

The English authorities hold that their poor prisoner's defense act of 1903 was not intended to "give a person legal assistance in order to find out if he had got a defense," or, in other words, have practically branded the act as saying he shall not have such help before and at the trial unless he has previously shown without any such help that he has a defense. Comment seems superfluous as to the dead-sea character of such fruit of statutory and judicial beneficence.

An inquiry lately came to the writer from the chairman of a committee of a Chicago bar association, asking for information "on the question of a public defender in general or in its application to a large city like Chicago." The inquiry was passed on to Hon. Wiley F. Crist, judge of department one of the police court of San Francisco, who has had experience in legal aid society work, and to Professor Elmer I. Miller, vice president and supervisor of history and political science at the California State Normal School at Chico.

Judge Crist replied as follows:

"I want heartily to concur with you that a public defender is desirable. My experience leads me to believe that a great many defendants in criminal actions could prove their innocence if they had capable counsel, but many cannot afford to pay the essential fees. In addition to this I believe there would be a great saving of expense to the taxpayer caused by trials in the superior court of persons unjustly charged with crime."

Professor Miller stated some of his reasons for believing in a public defender, as follows:

"1. No doubt poor defendants are often unfairly treated because their cases are not properly presented.

"2. The additional cost of a public defender will probably be more than offset by the saving in keeping innocent persons out of jail.

"3. Inequality before the law, due to the inequality of financial ability of persons to hire counsel, is notoriously great.

"4. The present system looks too much to victory to the powerful and too little to justice for the poor.

"5. This last situation must change or the rapidly declining influence of the courts with the masses of the people will soon reach a very dangerous point."

As to the need for a public defender under our present as well as the coming system of jurisprudence in criminal matters, careful study may well be given the article on "Public Defense in Criminal Trials," by Maurice Parmelee, Professor of Sociology, University of Missouri, published in vol. 1 of the *Journal of Criminal Law and Criminology*, and also Professor Parmelee's work on *The Principles of Anthropology and Sociology in their Relations to Criminal Procedure.* The paper by Robert Ferrari, of the New York City Bar, on "The Public Defender: The Complement of the District Attorney," published in vol. 2, p. 704, et seq., of that journal, also deals with the subject in an illuminating manner. At the present time, the provisions for defending poor persons accused of crime are totally inadequate. Probably few, if any, of the 380,000 lessons taught to "taskmasters" by the New York City Legal Aid Society, involved the defense in a criminal case. Perhaps the only statute showing anything like a recognition of the breadth of the duty which society owes its needy members is the freeholders' charter of the county of Los Angeles, California, which affords relief in civil, to some extent at least, as well as in criminal matters, under civil service system with an efficiency bureau and a well guarded recall. A full review of the charter provisions concerned may be found in the opening portion of a symposium on that and related matters prepared, at the suggestion of Dr. John H. Wigmore, by the writer and attorney Abram E. Adelman of the Chicago bar, for publication in the January, 1914, issue of the *Journal of Criminal Law and Criminology.*

THE WOMEN'S NIGHT COURT IN NEW YORK CITY

By Frederick H. Whitin,

General Secretary, Committee of Fourteen, New York.

To deal more wisely and hence more effectively with the social evil is the chief purpose of the women's night court; "women's" only in that the defendants are all females. For but one offense does the number of women arrested exceed that of men—prostitution, and even that included, 85 per cent of those arrests are men.[1]

During the winter of 1907, Judge (now district attorney) Whitman secured legislation which authorized a night court. The reason for such a court was the injustice which frequently was done persons arrested after the close of court, about 4 p.m. Until the courts had opened at 9 a.m. the following day, such defendants as could not give bail were detained in jail, so that many innocent persons were often held for twelve hours or more, for 40 per cent of those arrested are discharged by the magistrates. Bail unless given by a friend means a fee to a professional bondsman; the poor man has few friends with the necessary security and the fee is often more than the probable penalty. The principal sufferer from the professional bondsmen was the prostitute, the street walker. Arrested when her day's opportunities were best, she readily paid the bondsman's fee of $5. It was common talk that the fee went "three ways." The records themselves showed that the woman who did not secure bail was more likely to be convicted than one who did.

The first night court—it was for offenders of both sexes—was opened August, 1907. In 1908, 25 per cent (46,523 persons) of the total arraignments in the magistrates' courts of Manhattan and the Bronx were in this court. The inferior criminal courts commission of that year gave especial attention to this court and its recommendations represented the next development.

Two night courts were established, one for men and one for women. The chief magistrate may designate the magistrates to

[1] Report of Police Department, 1912, Arrests: Felonies—males, 17,066; females, 1,714; misdemeanors—males, 90,049; females, 17,178.

preside in the women's night court—the magistrates rotate in all the other courts. A system of fingerprint identification for prostitutes was provided in this court and an attempt was made to deal with the social evil from the side of disease. This was the famous clause 79 which required every woman convicted of prostitution to be examined by a health department physician and if diseased to be committed to a lock hospital. This clause was opposed because a possible step towards reglementation. It was declared to be unconstitutional not because of sex discrimination as was argued by its opponents but because the draftsman of the clause had written a mandatory "shall" instead of a permissive "may," thereby denying the defendants their constitutional right of a day in court. These were the commission's amendments peculiar to this court. It shared with the others the many benefits and improvements resulting from the legislation, the result of the commission's labors.

Each year since 1910 the law affecting the court has been widened and improved. Cases of soliciting, loitering and of tenement prostitution are now tried solely in the women's night court. The fingerprint identification has been extended to include cases of vagrancy and intoxication. The fine as a disposition in prostitution cases has been abolished and the age limitation (thirty years) has been removed for commitments to the state reformatory for women at Bedford. The cases of women charged with keeping disorderly houses or of committing prostitution in tenements (at present the most extensive form of the evil in this city) are now promptly tried and disposed of in this court.

With the increased interest in sex problems and in fallen women, the women's night court has attracted much attention. As the interest has resulted in giving assistance to the probation officer, Miss Alice Smith, it has been very acceptable, but as it has drawn a morbid crowd of men and women, boys and girls, it is much to be regretted. Some nights the theatrical sign S. R. O. (standing room only) is needed at the entrance. It is hoped that some legal way may be found to exclude the miscellaneous observers without violation of the constitutional right of public trial.

The chief magistrate has each year assigned four magistrates to sit regularly in this court. Judges Barlow, Herbert and Murphy have recently been re-assigned for the fourth year. To them, and to Miss Smith, is the credit due for the success which has attended

the work of this court. The much desired uniformity of sentence has been secured. Any woman, a first offender, who genuinely desires to leave "the life" finds here not one but many open doors to help her. There are, however, among those apprehended for the first time, some hardened offenders, and these Miss Smith speedily detects. The magistrates are guided very largely by her opinion as to whether the women shall be put on probation, sent to a reformatory institution or the workhouse. The woman who desires that those criminally responsible for her fall and life shall pay the penalty, finds at this court, ready and anxious to act, the judge, the attendants and the police. Cases occasionally occur where women familiar with the court because of their own arraignment there, come to the court in some hour of resentment and give such testimony that the man whom they have been supporting can be apprehended. More frequently Miss Smith or the arresting officer will get the girl's story and so a case against the man is secured. He has been even arrested in the court room itself. But the girl must give the necessary evidence and must not weaken on trial. It depends on her testimony whether the man escapes or whether he gets six months or a year in the penitentiary These are the cases of the pimps, men who live in whole or in part off the profits of prostitution. Compulsory prostitution is a felony and convictions before a petit jury (cases not tried in this court) are difficult to obtain if the complaining witness is a professional prostitute and jealousy or revenge can be shown to be a motive.

The work of this court shows plainly from the records. The first year for which detailed figures are available of the disposition of prostitution cases is 1907. These are from the report of the research committee of the committee of fourteen and the report of a special investigation by the city commissioners of accounts:

	1907		1913	
	Number	Per cent	Number	Per cent
Arrests	8806		3006	
Discharged	3227	37	347	11
Convicted	4579	63	2659	89

DISPOSITIONS

	1907		1913	
	Number	Per cent	Number	Per cent
Workhouse	999	18	2083	78
*Fined	3911	71	0	0
Probation	325	6	303	12
Institutions	18	0	237	9
Other disposition	226	5	36	1

* By a 1913 amendment to the law this disposition is no longer possible.

The comparison of the tables is striking. The number arrested has decreased two-thirds yet street soliciting has been much reduced. The percentage convicted has arisen from 63 per cent in 1907 to 87 per cent in 1913, despite the increased severity of sentence. Whereas 71 per cent of those convicted were fined in 1907 that disposition was impossible in the latter half of 1913. The proportion put upon probation has doubled while those sent to reformatory institutions have increased from an absolute few to as many and more than the institutions can accommodate. As probation is useless except in special cases, the workhouse commitment is the only recourse in the majority of cases, and this disposition has increased more than fourfold. The workhouse commitment can do the women no good even at the best and the New York City institution is the worst, yet detention there acts as a strong deterrent to any aggressive pursuit of "the life." Efforts must be made to improve that institution, for as it is today, the magistrates will not impose long sentences even on the repeated offender.

Since the adoption of the fingerprint identification system, complete records have been available. Since the records began in September, 1910 (forty months) 5,492 different women have been convicted of prostitution in the women's court. Of these 3,075 or 56 per cent have been convicted but once; they represent the casual, the woman who brought face to face with the penalties of "the life" changes her course. Many undoubtedly leave the life—the majority probably—others leave the city for places where repression is not so active while some avoid re-arrest. It would seem reasonable to consider the woman who is arrested over four times a persistent offender. These number 587, a relatively small proportion, their cases constituting 11 per cent of all convictions of this offense. These

are the women who should be permanently restrained since it is evident that they cannot or will not cease to be a social menace.

The complete record is as follows:

CONVICTIONS FOR PROSTITUTION (SOLICITING, LOITERING AND VAGRANCY—TENEMENT PROSTITUTION) AT WOMEN'S COURT. SEPTEMBER 1, 1910 to DECEMBER 31, 1913

Reported by Identification Bureau

INDIVIDUALS	CONVICTED	INDIVIDUALS	CONVICTED
3,075	once	47	eight times
966	twice	27	nine times
562	three times	24	ten times
302	four times	15	eleven times
200	five times	7	twelve times
144	six times	2	thirteen times
121	seven times		

The individual records of the two women who have been convicted thirteen times each—the highest so far—are of especial interest, and also show the details upon which the above tables are based:

RECORD OF CONVICTIONS AS A PROSTITUTE OF MARY SMITH

Fingerprint Bureau No. 107

DATE	DISPOSITION	CHARGE	JUDGE
October 22, 1910	Workhouse	Soliciting	Herbert
April 4, 1911	Workhouse	[1]Soliciting	Murphy
September 12, 1911	Workhouse, 5 days	[1]Loitering	Murphy
September 20, 1911	Workhouse, 5 days	Loitering	Herbert
September 30, 1911	Workhouse, 10 days	Loitering	Barlow
October 24, 1911	Workhouse, 10 days	Loitering	McQuade
November 11, 1911	Workhouse, 20 days	Soliciting	Murphy
December 26, 1911	Workhouse, 10 days	Loitering	Herbert
February 27, 1912	Workhouse, 30 days	Loitering	Murphy
April 11, 1912	Workhouse, 30 days	Loitering	Herbert
May 12, 1912	Workhouse, 30 days	Loitering	Herrman
July 7, 1912	Workhouse, 30 days	Loitering	Harris
October 5, 1912	Workhouse, 30 days	Loitering	Herbert

[1] When the charge is soliciting, the evidence shows such crime directly. When the charge is loitering, the crime is the same but is shown by circum-

RECORD OF CONVICTIONS AS A PROSTITUTE OF MARY GOLDEN

Fingerprint Bureau No. 1028

DATE	DISPOSITION	CHARGE	JUDGE
March 9, 1911	Fine, $10.00	Loitering	Barlow
March 9, 1911	Fine, 10.00	Loitering	Barlow
March 23, 1911	Fine, 5.00	Loitering	Herbert
April 30, 1911	Workhouse 10 days	Soliciting	Herbert
June 9, 1911	Fine, $10.00	Loitering	Barlow
June 26, 1911	Workhouse 5 days	Loitering	Herbert
June 26, 1911[3]	Workhouse 30 days	Loitering	Herbert
August 12, 1911	Workhouse 5 days	Loitering	Murphy
September 14, 1911	Workhouse 15 days	Loitering	Murphy
October 19, 1911	Workhouse 10 days	Soliciting	McQuade
March 22, 1912	Workhouse 30 days	Loitering	Barlow
May 14, 1912	Workhouse 20 days	Loitering	Herbert
December 30, 1912	Workhouse 20 days	Loitering	Herbert

It is of special interest to note that neither has been convicted for a year past, a year when the city has been a closed one to vice. What has become of them—in which of the possible classes they may be—is unknown.

The women's night court is doing its work in dealing with the problem of the social evil and doing it well. The next development is proper treatment of the persistent offender.

We must have a farm branch of the workhouse where the incorrigible and hopeless can be detained for long periods if not permanently and where by their work they can pay the cost of their maintenance. We need an industrial school, not necessarily a reformatory, where the women can be made economically more efficient. We must detain those who because of having a communicable disease are a social menace and we must protect those not able to care for themselves because of mental deficiencies. It is because of this tremendous problem, one great enough with abundant funds, but one which in fact must be handled with relatively limited means that

stantial evidence of the witnesses, with but few exceptions a police officer in citizen clothes.

[3] The second arrest on the same date was possible because she had had her trial postponed in the first case and had been released on bail. It was while so released that the second arrest occurred.

Mayor Mitchel successfully persuaded Dr. Katherine Bement Davis to leave the State Reformatory for women and to become the first woman Commissioner of Corrections in New York City. She has as great chance now as she had at Bedford ten years ago. May she succeed equally well!

THE OPPORTUNITY FOR WOMEN IN COURT ADMINISTRATION

By Mary M. Bartelme,
Judge, Chicago Municipal Court.

Judge Merritt W. Pinckney of Chicago had been upon the bench of the juvenile court but a short time when he realized that in order to do justice to the delinquent girls, the greatest need was to have their cases heard by a woman. He found that a very large number of little girls under 18 years of age were brought in on the ground of some immorality; that often the culprit was a timid little first offender, if offender at all, who had no understanding of the character or possible results of her act; that she often had been assaulted by a man whom she did not know and whom very likely she would never see again; that many times the act left her with a disease for which she should have immediate and persistent treatment and perhaps isolation; and that her parents or custodian might have contributed to her delinquency. In four cases, all heard within six months, in which the parents insisted that their child had had intercourse with men and must be sent to the State Training School and the child as emphatically insisted she had not had such relations with men, it was found on examination by a woman physician that the statement of the child was true, and the parents' request was not complied with.

It was evident to Judge Pinckney that hearing the child's case in a large public court room presided over by a man, whose clerks were men, and whose other occupants were men, women and children waiting to have the cases in which they were interested heard, or perhaps mere curiosity seekers, was not conducive to secure the facts from the child, or to do justice to her. He therefore appointed a woman to hear the cases of girls charged with delinquency. The hearings are now held in a small room with none but women clerks and with as few "outsiders" present as possible, and consequently the hearings are more in the nature of a dignified family conference than a court trial. Under such conditions it is far easier to obtain

the confidence of and a true and full statement of facts from the girl, and only when these are obtained can justice be done.

Personally, I believe it is easier for a woman than a man to obtain a true statement of facts from a little girl who is charged with theft. She intuitively feels that a woman will better understand the taking of some face powder or articles of dress or finery she deems so necessary during the years when she feels fine plumage and good grooming are essential to her success in the "game" of securing the attentions of the other sex.

A girl must have recreation and above all she should experience those greatest of all joys and desires in a woman's life, wifehood and motherhood, and if the means and activities that lead up to these cannot be obtained under the most auspicious circumstances, still they must be obtained. The girl, too, feels a woman will understand when she tells her that she is one of a family of seven living in three rooms, the largest of which serves as kitchen, dining and living room, where meals are prepared, cooked and eaten, where father is resting his shoeless feet and babies are being gotten ready for bed; that she cannot entertain company in her home and therefore does meet "fellows" on the street corners, in the park or at the movie.

It is the realization on the part of a girl that a woman understands and feels her needs and desires that makes her throw aside her timidity and secretiveness, give to the woman judge her confidence, and relate to her her struggles, her opportunities and her lack of them.

The intimate relation which a woman has with home conditions, with all domestic relations and with the unfolding of the child's character, its needs, its longings, makes it possible for her to put herself in the child's place and to understand her.

Personally, I believe a woman of good judgment and legal training should be able to handle more efficiently and justly than a man the cases that arise in a juvenile court, morals court or a court of domestic relations.

The introduction of women upon the police force in some of our large cities is one of the best innovations that could be made for the betterment and protection of the ignorant, unthinking or delinquent girl, who in a public place of amusement or recreation is accosted or spoken to, or herself approaches and speaks to a boy or

man whom she has never seen before. The appearance of a woman police usually causes the disappearance of the boy and the escort of the girl to her home by a woman.

It may not always be pleasant for women to render such service but it is a duty they owe to the home and the family, which have a right to such service.

A COMPARISON OF SOME OF THE PRINCIPLES AND RULES OF PRACTICE OF THE AMERICAN AND THE CANADIAN COURTS

By David Werner Amram,

Professor of Law, University of Pennsylvania.

The most notable contrast between American and Canadian procedure lies in the flexibility of the latter, due to the fact that it is created by rules of court and not by acts of legislature. In most of the United States legal procedure is of mixed origin. It is based partly on ancient common law practice, partly on rules of court, and partly on acts of legislature. It is the latter element which disturbs the symmetry of the system, and retards its natural evolution and efficiency.

In speaking of Canadian procedure I wish to be understood to be limiting myself to the consideration of the procedure in the province of Ontario. Quebec is the only one of the provinces of the Dominion which is still subject to French law, but, in its code of civil procedure the influence of the English system is apparent, for example, in the adoption of such writs as mandamus, injunction and prohibition. All of the other provinces are subject to a system of law and procedure which as to part of them (New Brunswick, Nova Scotia and Prince Edward Island) was brought in by the first colonists and as to one of them (Ontario) was adopted by legislative enactment in 1792. The other provinces (British Columbia, Manitoba, Alberta, Saskatchewan and the Yukon territory) are of later creation and subject to the rules of English law and procedure as modified by Canadian legislation and practice. Ontario has been the most progressive of the provinces and Ontario lawyers consider their system of procedure an improvement upon the parent system established under the English rules of 1883.

Procedural Legislation and Rules of Court

The Ontario judicature acts lay down broad principles, leaving methods of procedure to the courts. This is a principle of differentiation of function between legislature and courts for which many of

the best men at the American bar have pleaded for many years and which has often found expression in the reports and debates of the bar associations. The prescription of rules of court in acts of legislature hampers rather than promotes the efficiency of procedure. A court which makes its rules may modify them, so that through their too strict interpretation they may not lead to injustice. Where the rule is laid down by the legislature, the sound discretion of the courts cannot be exercised at all, and the rule of procedure attains the same dignity and inviolability as a rule of substantive law. The Ontario court finds itself unhampered by legislative interference, and is allowed free play for its wisdom to determine how the business of litigation can best be done, so that, to use the words of rule 183,

> A proceeding shall not be defeated by any formal objection, but all necessary amendments shall be made upon proper terms as to costs and otherwise, to secure the advancement of justice, the determining of the real matter in dispute, and the giving of judgment according to the very right and justice of the case.

The powers of American courts should be further enlarged by the abolition of all legislative rules, so that procedure may be regulated entirely by the tribunals before which the causes are litigated. The danger that once existed at common law whereby rules of practice through long use became inflexible, need not be feared, for the ultimate power to correct an abuse would always remain in the legislature and could, in an extreme case of judicial obstinacy, be invoked.

The American people have learned to place their trust in legislatures, whether for better or worse I shall not say, and they have become correspondingly jealous of the normal powers and authority of their courts. The legislatures have in response to this feeling kept an eye on the courts and asserted a regulative supervision over them, sometimes in apparent trespass of the constitutional border lines that divide the legislative and judicial fields.

The interference of legislatures with the normal development of common law and procedure has served its purpose and has fully impressed its lesson upon the mind of all the ministers of justice on the bench and at the bar, and it may now be retired in favor of the older method of allowing the law, at least so far as practice and procedure are concerned, to be developed solely through the instrumen-

tality of its experts. No theory is more crude than that which maintains that our legislatures are more expressive of the public will and more responsive to public ideas of right than our courts. The courts are composed of judges and attorneys-at-law, who like all other men are impressed by the influence of the spirit of the times. Notwithstanding an occasional illustration of judicial insensibility to contemporary needs or tendencies, it remains true that judges express the ideas of right and expediency dominant in their day, modified however by the whole body of law and practice that has been handed down by tradition. For the individual in the pursuit of his own affairs, radicalism, modernity and self-expression may be permitted almost indefinitely; for a community of millions of people, social life must perforce be regulated largely by the rules made by the dead and not by the living.

The Single Court and Uniform Rules

The fundamental characteristic in the organization of the courts of Ontario is the single court, a supreme court consisting of two divisions, the appellate division and the high court division. The latter is the trial court for all causes. Every judge in either division is a member of the other,[1] and when necessary may sit and act as a judge of either of the divisions of the supreme court or for any judge who is absent or whose office has become vacant.[2]

In addition to the judges who sit continuously in the appellate division, five judges of the high court division are annually selected to sit as appeal judges for one year, so that there are at all times at least two appellate courts in session, and if necessary an additional temporary appellate court may be organized by the judges for the purpose of preventing the accumulation of cases not heard and the corresponding delay in final decisions.[3] The constitutionality of acts of Parliament or of the provincial legislature cannot be impugned until after notice has been given to the attorney-general for Canada and the attorney-general of Ontario, who "shall be entitled, as of right, to be heard either in person or by counsel, notwithstanding that the Crown is not a party to the action or proceeding."[4]

[1] Judicature act, sec. 8.
[2] *Ibid.*, sec. 14.
[3] *Ibid.*, secs. 38, 39.
[4] *Ibid.*, sec. 33.

The lieutenant-governor in council annually convenes the judges for the purpose of considering the operation of the judicature act and of the rules of court and of enquiring into any defects which may appear to exist in the system of procedure or the administration of justice, and making the necessary changes in its rules or recommending amendments that cannot be carried into effect without legislative authority.[5]

The American system (barring some slight modifications here and there) is still a system in which multiplicity of courts with exclusive jurisdiction makes possible the all-too frequent miscarriages of justice on account of successful pleas to the jurisdiction, nor have we anything equal to the rule requiring the judges to meet annually to study their rules and their effect on litigation and the promotion of justice. The provision which makes the chief law officer of the state a party in interest in every case in which the constitutionality of legislation is attacked is one that will recommend itself by its essential reasonableness.

There being but one court for Ontario it naturally follows that there is but one set of rules of court. Uniformity in rules of court in the United States has been discussed by a number of bar associations. It seems to me that it would be possible and practicable for the supreme court justices in each of our states to promulgate rules for the courts of the state, precisely as it is possible for the supreme court of the United States to promulgate rules for all of the federal courts. Proper provision could be made for the special needs of different localities, due to difference in density of population, in distances from the county seat, in convenience of transportation, etc.

Appointment of Judges

The spectacle furnished by the United States in which the courts of justice are daily held up to criticism, ridicule, contempt and even vituperation excites unbounded surprise across our northern border. The people of Canada are satisfied with their judges and their administration of the law, and yet they have absolutely nothing to do with their selection or appointment.

The minister of justice, after consultation privately with such of the bar as he sees fit, recommends an appointee to the cabinet.

[5] *Ibid.*, sec. 113.

The bar in its collective capacity does not express any opinion; the legislature has nothing to do with the selection; the judges would not think of interfering with the choice or advising as to it. The choice of the man is made by the minister of justice and submitted by him to the cabinet. If the cabinet approves, an order in council is passed; if the cabinet disapproves, a further recommendation is made by the minister of justice until the cabinet is satisfied. The recommendation of the cabinet is made to the Crown and the appointment is thereupon made.

Barring an occasional protest in favor of more active participation by the bar in the choice of the judges, this system meets with approval. No litigant who wants his case decided simply on its merits, cares anything about the residence, race, religion or politics of the upright and able judge. Considering the excellent results achieved by judges elevated to the bench otherwise than by popular election, the American people may well study their local state systems without prejudice and under the conviction that other systems may be just as good.

Details of Procedure

In Ontario actions at law or in equity are commenced by a writ of summons, are pleaded to issue by a statement of claim, statement of defense, and, if necessary, plaintiff's reply, with full power in the court to allow any and all amendments that may be deemed necessary, and to bring in by third-party procedure any person or persons who may have any interest in the controversy. All persons whether interested jointly, severally or in the alternative may be joined as plaintiffs or defendants, and judgment may be given against one or more of the defendants, for one or more of the plaintiffs.[6] Several causes of action may be included in the same proceeding,[7] and if there are many persons having the same interest, "one or more may sue or be sued, or may be authorized by the court to defend, on behalf of, or for the benefit of all."[8]

It becomes possible under the Ontario system to dispose of the interest of all parties to a controversy in one action, and all differences between law and equity, contract and tort, right to property

[6] Rules 66 and 67.
[7] Rule 69.
[8] Rule 75.

or right to damages are merged in the fact that the controversy arises out of the same transaction and that all of the parties have an interest in the whole or some part of it. The effect of this rule is to prevent multiplicity of actions and reduce the amount of litigation arising out of a single transaction.

It was feared at one time by the bar of Ontario that this and other rules making for simplicity and speed would reduce the business of the bar, but the result has proved quite the contrary. The knowledge that all controversies arising out of a single transaction may be disposed of at one trial swiftly, justly and certainly has encouraged litigation. I have before me the calendar of the supreme court of Ontario, appellate division, for appeals entered for the month's session, commencing April 7, 1913. There are sixty-nine cases on the list, fifty-one of which are from judgments entered during 1913, that is to say, within three months of the date of the argument on appeal; thirteen within six months and five older cases antedating this period. Of the cases in 1913, five are less than a month old since judgment, thirty-one are less than two months old. The appellate divisions of Ontario hear and dispose of about 800 cases per annum whereas the average record of the supreme and superior courts of Pennsylvania is about 1,200 cases per annum. It will be seen therefore that in Ontario, with a population of about 3,000,000 as against a population of 8,000,000 in Pennsylvania, the appellate courts dispose of almost twice as many cases in proportion to population as the appellate courts of Pennsylvania. This should allay the fears of members of the bar that simplicity and speed would reduce the emoluments of the profession. The simpler the procedure and the more expeditious the trial the greater will be the interest of the public in this method of adjusting its difficulties and the greater the amount of business that the bar will be called upon to administer.

One of the startling methods for saving time is that laid down in Ontario rule 232:

> On all appeals or hearings in the nature of appeals, and on all motions for a new trial, the court or judge appealed to shall have all the power as to amendment and otherwise of the court, judge or officer appealed from, and full discretionary power to receive further evidence, either by affidavit, oral examination before the court, or judge appealed to or as may be directed.

Under this rule, the court on appeal will hear testimony if necessary to supplement the record from the trial court instead of send-

ing the case back for retrial with all the attendant delay, cost and disappointment.

After pleadings are filed either party may be cross-examined by the other prior to trial upon the allegations therein.[9] This examination for discovery is necessary in three-fourths of all cases. By compelling disclosure of the real merits and defects of the case of both sides it promotes settlement out of court and saves the time and cost of trial; it also enables better preparation to be made and curtails the length of the trial.[10]

A series of similar rules[11] are those relating to the production of documents before trial whereby not only parties but also third persons may be compelled to exhibit for inspection papers alleged to relate to any matter in controversy. The theory underlying these rules is that no man shall be permitted to conceal any fact necessary to bring into light the real merits of the controversy, and the element of chance, which makes litigation so fascinating a game to the bar and so distressing to the litigants in many of the United States, is reduced to a minimum.

The Jury

Under the Ontario system[12] the right to trial by jury in civil cases exists only in certain cases in tort, and practically all other issues of fact are tried and all damages assessed by a judge without a jury.[13] If a party desires a jury trial notice must be given, but notwithstanding such notice the presiding judge may dispense with the jury.[14] The court may direct the jury to give a special instead of a general verdict,[15] and in all actions whatsoever, except in an action for libel, the judge may direct the jury merely to answer questions of fact put to them by him and not to give any verdict at

[9] Rule 327, etc.

[10] Paper of J. H. Spencer read at meeting of Ontario Bar Association in 1908, and Report of the Committee on Law Reform at same meeting. 45 *Can. L. J.*, 19, 23.

[11] Rules 348–352.

[12] Judicature act, sec. 53.

[13] *Ibid.*, sec. 55.

[14] *Ibid.*, sec. 56.

[15] *Ibid.*, sec. 60.

all.[16] This method of substituting answers to specific questions for a verdict is used in nearly all cases. "The court may obtain the assistance of merchants, engineers, accountants, actuaries or scientific persons in such way as it thinks fit to enable it to determine any matter of fact in question in any cause or proceeding and may act on the certificate of such persons."[17]

It will be seen from these provisions that a profound change has taken place in Ontario in trial by jury. This ancient system which contributed so much to the development of the English constitution and to the maintenance of the liberties of the people no longer satisfies the demands of justice. Blackstone foresaw this,[18] and the French Canadians at the time of the introduction of English law could not understand how Englishmen would sooner have their property rights determined by the jury of tailors and shoemakers than by judges.[19] The American states are hampered in the establishment of jury reform by the provisions of the seventh amendment to the federal constitution.

Judicial Opinion in Legislative Matters

Although strictly speaking this subject is not relevant under the general caption of this article, I cannot refrain from making mention of a method in vogue in Ontario whereby much bad legislation is nipped in the bud. The practice is to refer all private acts to two judges for an opinion upon their justice and expediency,[20] and furthermore[21] the lieutenant-governor in council, i.e., the government, may refer to the court for hearing or consideration any matter which he thinks proper to refer for an opinion as in an ordinary action. If the constitutional validity of an act of the legislature is involved the attorney-general must have notice and the court may direct any party in interest to be notified of the hearing or may request some counsel to represent such interest. After hearing the

[16] *Ibid.*, sec. 61.

[17] Rule 268.

[18] 3 *Black. Com.*, 381.

[19] *Practice, Civil and Criminal in Ontario*, by the Hon. William Renwick Riddell, an address delivered before the annual meeting of the New York State Bar Association, January 20, 1912, p. 10.

[20] R. S. O. 1897, cap. 52.

[21] *Ibid.*, cap. 84.

court files an opinion which becomes a judgment subject to an appeal as in an ordinary action. This system has not yet been expanded to its full possibilities in Ontario, and is, I believe, practically unknown in the United States. As a method for eliminating much improper legislation it deserves most serious consideration. Such a method would impose additional duties on the judges, but granting the desirability of having a judicial opinion upon legislation either prior to its enactment or before any actual case arises under it, it might be advantageously adopted and expanded. It is in line with the general modern tendency to rely in technical matters on the opinion of experts, and there is much to be said in favor of introducing the expert into the field of law-making instead of limiting his function to the field of interpretation only after an actual controversy has arisen, in which the legislative act in question is invoked and must be applied.

The comparison between the Ontario and American practice, briefly and superficially herein presented, points out several lines of rational reform which it would be well for our statesmen and legislators to consider in their attempts to bring judicial procedure into alinement with modern needs and tendencies.

LEGAL PROCEDURE IN ENGLAND

By John L. Griffiths,

Consul-General of the United States, London, England.

In reviewing the administration of justice in any country, the most important thing to consider perhaps is the character of the judiciary. This is especially true of England, where the judges take a far more active part than they do in America in the trial of causes, and where they are far more outspoken in their comments on the evidence. The contrast between the manner of choosing judges in the two countries is very striking. The judges in England are appointed to serve during good behavior; they are paid adequate salaries, and upon retirement are provided with substantial pensions. The lord high chancellor receives an annual compensation of £10,000; the lord chief justice £8,000; the members of the high court of justice £5,000; the county court judges £1,500; and the magistrates of the Metropolitan (London) police courts as a rule £1,500. Justices of the peace serve without pay; they deal with minor cases, usually of a criminal nature, although they have a limited civil jurisdiction. In criminal prosecutions, where a grave offense is charged, and the justices are convinced of the probable guilt of the accused, it is their duty to bind him over for trial at the assizes. Political considerations, broadly speaking, have no weight in English judicial appointments, although in the case of men of equal merit the party in power would naturally be inclined to appoint a judge of its own political faith. An exception to the general rule is to be found in the case of the lord high chancellor, who retires from office with his party. His duties, however, are not purely judicial, as he presides over the deliberations of the House of Lords. It may be taken for granted when an English barrister becomes a high court judge that he previously held a prominent position at the bar, and had shown his probable fitness for the bench.

A foreigner who studies the English judicial system is very strongly impressed with the few courts in England in comparison with the great number in America. In Liverpool, for example—a city with a population of about 750,000—all the important cases

are tried at the assizes, which are held four times during the year. The sessions usually last from two to four weeks, and three judges are ordinarily in attendance. The judges upon circuit—and this is true generally—try civil and criminal cases indifferently. If the criminal docket is large at a particular assize, one judge will probably be designated to try the criminal causes. At the next assize he might sit only in the trial of civil actions. Under such an arrangement, a judge is less apt to have predispositions and prejudices than if his whole time were devoted to the hearing of a special class of causes. Listening from day to day to nothing but recitals of crime may often so harden the sympathies of a judge, and so blunt his power of discrimination, that he may impose sentences of undue severity, or look upon all who come before him as guilty, notwithstanding the presumption of innocence in their favor. He loses the quality of open-mindedness, and ceases therefore to be impartial in his judgments.

English judges, by reason of their life tenure of office, are not affected by fluctuations of public opinion. They realize they have but one duty to perform, and that is to administer the law as they understand it without regard to consequences. They resemble very closely, except in the adequacy of their compensation and the significance of their pensions, the federal judges in America. They control, or influence, or direct—whichever word may seem the most appropriate—the verdict of a jury to a far greater extent than do the judges of the state courts in America. A lawyer can experience no greater pleasure than to listen to the summing-up by an English judge of an important case. He calls the attention of the jurors to discrepancies in the testimony, emphasizes the importance of certain facts, endeavors to sift what is essential from what is immaterial, asks without passion or prejudice if a certain line of conduct is consistent with the contention of counsel, and after a full statement of the law reminds the jury that they are the sole judges of the facts, but that they must accept the law as delivered from the bench.

A distinguishing feature of legal procedure in England is the decision of a case upon its substantial merits, with a complete disregard of technicalities. In a criminal trial, for illustration, the important thing in England is to prove the commission of the offense rather than the precise manner of its perpetration. After the nisi

prius court has rendered judgment in a civil action, and either party feels aggrieved, an appeal may be taken. This is done without filing a motion for a new trial, and neither is a bill of exceptions nor printed briefs submitted. The appellate judges almost invariably decide a case immediately after the arguments have been heard. They have the power to modify the judgment by increasing or reducing the amount of the damages assessed. They may amend the pleadings, hear additional evidence, and make any order which in their opinion should have been made in the court below. They have the right to grant what may be called a partial new trial, covering only such question or questions concerning which it is thought there was a miscarriage of justice at the original trial, but without in anywise affecting the decision of the nisi prius court on any other question. Only about 10 per cent of the cases which are appealed against are reversed and sent back for further hearing. It will thus be seen that everything connected with the administration of justice in England has in view the expeditious trial and disposal of cases, so that litigants may not be worn out by protracted delays. Postponements are seldom if ever granted simply to meet the convenience of counsel, and ordinarily a case is tried, approximately at least, upon the date set for hearing. If a postponement is requested the costs—and they are usually substantial—must be defrayed by the party making the application.

A statute passed in 1851 (14 and 15, Vict. c. 100) indicates how thoroughly legal procedure has been simplified in the trial of criminal cases. The statute provides:

> From and after the coming of this act into operation, whenever, on the trial of any indictment for any felony or misdemeanor, there shall appear to be any variance between the statement in such indictment and the evidence offered in proof thereof, in the name of any county, riding, division, city, borough, town, corporate, parish, township, or place mentioned or described in any such indictment; or in the name or description of any person or persons or body politic or corporate therein stated or alleged to be the owner or owners of any property, real or personal, which shall form the subject of any offense charged therein, or in the name or description of any person or persons, body politic or corporate, therein stated or alleged to be injured or damaged, or intended to be injured or damaged by the commission of such offense; or in the christian name or surname or both christian name and surname, or other description whatsoever of any person or persons whomsoever therein named or described; or in the name or description of any matter or thing whatsoever therein named or described, or in the ownership of any property named or

described therein, it shall and may be lawful for the court before which the trial shall be had, if it shall consider such variance not material to the merits of the case, and that the defendant cannot be prejudiced thereby in his defense on such merits, to order such indictment to be amended according to the proof, by some officer of the court or other person, both in that part of the indictment where such variance occurs and in every other part of the indictment which it may become necessary to amend, on such terms as to postponing the trial to be had before the same or another jury, as such court shall think reasonable; and after any such amendment the trial shall proceed, whenever the same shall be proceeded with, in the same manner in all respects, and with the same consequences, both with respect to the liability of witnesses to be indicted for perjury and otherwise, as if no such variance had occurred.

No indictment for any offense shall be held insufficient for want of the averment of any matter unnecessary to be proved, nor for the omission of the words "as appears by the record" or of the words "with force and arms," or of the words "against the peace," nor for the insertion of the words "against the form of the statute," instead of "against the form of the statutes," or vice versa, nor for that any person mentioned in the indictment is designated by a name of office or other descriptive appellation, instead of by his proper name, nor for omitting to state the time at which the offense was committed in any case where time is not of the essence of the offense, nor for stating the time imperfectly, nor for stating the offense to have been committed on a day subsequent to the finding of the indictment, or on an impossible day, or on a day that never happened, nor for want of a proper or perfect venue, nor for want of a proper or formal conclusion, nor for want of or imperfection in the addition of any defendant, nor for want of the statement of the value or price of any matter or thing or the amount of damage, injury or spoil in any case where the value or price or the amount of damage, injury, or spoil is not of the essence of the offense.

Every objection to any indictment for any formal defect apparent on the face thereof shall be taken by demurrer or motion to quash such indictment before the jury shall be sworn, and not afterwards; and every court before which any such objection shall be taken for any formal defect may, if it be thought necessary, cause the indictment to be forthwith amended in such particular by some officer of the court or other person; and thereupon the trial shall proceed as if no such defect had appeared.

It was only as recently as 1907 that a court of criminal appeal was created in England. Prior to that time, all criminal appeals were passed upon by the home secretary. The criminal appellate court is composed of the lord chief justice and eight judges of the king's bench division of the high court, appointed for the purpose by the lord chief justice, with the consent of the lord chancellor. Three judges, however, constitute, a quorum, and this is the number

usually sitting. The judgment of the majority prevails. The decision of this court is final, except where "upon the suggestion of the director of public prosecutions or the prosecutor or the defendant the attorney general certifies that the decision of the court of criminal appeal involves a point of exceptional public importance and it is desirable for the public interest that a further appeal should be brought." In such a case an appeal may be made to the House of Lords. If an appeal is taken in a criminal case, the court may either increase or diminish the sentence which has been imposed. The court has also the power "where an applicant has been convicted of an offense, and the jury could on the indictment have found him guilty of some other offense, and on the finding of the jury it appears to the court of criminal appeal that the jury must have been satisfied of facts which proved him guilty of that other offense, the court may, instead of allowing or dismissing the appeal, substitute for the verdict found by the jury a verdict of guilty of that other offense, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law for that other offense, not being a sentence of greater severity." The fact that the criminal court of appeal may increase the sentence acts naturally as a deterrent in many instances, and tends to restrict the appeals to cases where counsel are satisfied that there is substantial merit in their position. Upon the appeal, witnesses may be called and examined who appeared in the nisi prius court, and witnesses may also be examined who could have been required to testify in the first instance but did not do so, and, further than this, competent witnesses may be heard, including the defendant himself, who could not have been required to testify upon the original trial. The court upon deciding against the appellant may order that the sentence shall run from the time of the appeal instead of from the date of conviction. The criminal appellate court has, however, no authority to grant a new trial, and, if it is satisfied that the appeal is well laid must quash the conviction and allow the defendant to go free. There has been much criticism of the inability of the appellate court to grant a new trial, and the lord chief justice and many other justices have declared that the power to do so should be vested in the appellate court. Judgment is rendered usually at the conclusion of the hearing of the appeal, but if there is an important point of law to be considered, the court may reserve its opinion for a few days and then deliver it in writing.

The rapidity with which cases are tried in England has attracted the attention and elicited the admiration of other countries. In a table which appears in a report of the special committee of the American Institute of Criminal Law and Criminology appointed to investigate the criminal procedure in England, it is shown, with reference to twelve cases heard at the central criminal court, London, that the ordinary time of trial—and this would include the impanelling of the jury, the statements of counsel, the examination of witnesses, the charge of the judge, and the verdict of the jury—was about two and one-half hours. These cases covered charges of murder, rape, arson, receiving stolen goods, and shooting with intent to murder. A verdict of guilty was returned in seven cases, a verdict of not guilty in two, and a verdict of guilty but insane in three cases. In four other cases referred to in the report, three required two days to try, and one—a case of criminal libel—eight days. It is interesting to note in these cases the time that elapsed between the date of the arrest and the date of trial, which was as follows:

Arrest	Date of Trial
May 4	June 3
May 16	June 4
May 7	June 6
April 27	June 7
May 9	June 10
May 2	June 10
April 18	June 4
May 3	June 4
May 27	June 29
June 1	June 29
June 4	July 1
July 8	July 19
July 5	July 10
July 16	July 19
June 27	July 20
March 4	June 8

The last mentioned case was the one in which criminal libel was charged.

The public prosecutor in England strives simply to discover the truth. He will in this quest even bring out facts favorable to the defendant if they are within his knowledge. His reputation at the bar fortunately does not depend upon the number of convictions he may be able to secure. No time is practically consumed in England

in the examination of jurors, as the ordinary practice is for counsel to discuss their objections with each other before the trial. If an objection has substance, it is almost always recognized in the interchange of views, and the name of the person is struck from the panel. The jury in a criminal case simply pass upon the question of guilt or innocence. If a verdict of guilty is returned, the sentence is imposed by the judge after he has been informed by a police officer of the history of the accused, and especially of any previous convictions. The trial of cases is greatly facilitated in England by the fact that few objections are made to the admission of testimony, and when made they are stated with the greatest possible brevity. The judge indeed usually passes upon an objection without hearing from counsel. If a barrister is inclined to be rhetorical, or to wander away from a discussion of the facts of the case, the judge will probably bring him down to earth by informing him that if he has nothing further to say it would be desirable for him to conclude his remarks. The impassioned appeal is seldom heard in an English court, even in the trial of criminal cases. It would have little influence upon the English juror, and would be very apt indeed to prejudice and alienate him.

It is not an exaggeration, I think, to say that cases are tried in England in less time ordinarily than it takes in America to impanel a jury. English newspapers are not permitted to comment upon the evidence during the progress of a trial, or even in advance of the hearing to do more than mention the bare circumstances of the commission of the crime. An atmosphere is not created, therefore, before the trial, either favorable or prejudicial to the plaintiff or the defendant in a civil action, or to the Crown or the accused in a criminal case, and a person who is called to serve upon a jury cannot have formed an opinion of the merits of the case from the perusal of his favorite newspaper. England, with a population according to the last census of over 30,000,000, has only eighteen high court judges. While there is a periodical demand for the creation of more judges, I am satisfied that in no country are cases tried with greater despatch than in England, and that nowhere are the demands of justice more adequately and admirably fulfilled.

In order that legal procedure in America may more closely correspond with that of England, the judges must be appointed to serve during good behavior, or if elected chosen for very long terms;

largely increased salaries must be paid; they must be freed from all political influences; in criminal as well as in civil cases, they alone should interpret and declare the law, and juries should not be permitted to substitute their own interpretation; newspapers must be restricted to a brief recital of the facts connected with the commission of an alleged offense; technicalities must be brushed aside in the trial of a cause, and no case should be reversed unless the appellate court is satisfied that substantial injustice has been done; postponements should only be grudgingly granted, and never merely to suit the convenience or comfort of counsel; arguments of counsel should be limited as to time, and during that time they should be compelled by the judge to confine their remarks to an unemotional and unrhetorical discussion of the facts of the case.

APPENDIX

CAUSES FOR DISSATISFACTION WITH THE ADMINISTRATION OF JUSTICE IN METROPOLITAN DISTRICTS[1]

INTRODUCTORY

I. The causes for dissatisfaction with the administration of justice are more numerous and more emphatically apparent in a metropolitan district than anywhere else.

II. The causes group themselves about the following six subjects:

A. Selection, retirement and discipline of judges.

B. Organization of the judges after they are selected.

C. Selection of jurors as judges of the facts, the guidance of the jury and discrimination in its use.

D. Rules of practice and procedure.

E. Efficiency in the offices of clerks of courts.

F. Selection, retirement, discipline and organization of the bar.

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[1] This statement was prepared by the American Judicature Society and sent out accompanied by the following letter:

AMERICAN JUDICATURE SOCIETY

TO PROMOTE THE EFFICIENT ADMINISTRATION OF JUSTICE

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WILLIAM E. HIGGINS, Chicago

January 6, 1914.

DEAR SIR:

We herewith send you an analytical outline of causes for dissatisfaction with the administration of justice in a metropolitan district, excluding, however, the special causes for dissatisfaction with particular rules of practice and procedure.

This outline was prepared at the instance of the Directors of this Society. It does not necessarily represent the views of the Directors. It simply brings

I. SELECTION, RETIREMENT AND DISCIPLINE OF JUDGES

I. It has been suggested that in the metropolitan district where the elective system prevails the following is a fair *description of the actual mode of selecting and retiring judges and the weaknesses of that system.*

A. Judges are usually not really elected, but are designated by the leaders of the party political machine dominant in the district. These leaders appoint the nomination. The electorate only decides which of two or three sets of nominees it prefers. The compulsory primary has but little altered the situation.

B. These leaders have too little responsibility for the due administration of justice. They have the strongest motives for rewarding purely political service to an organization. The occasional instances when the political leaders exercise power to good purpose do not alter the fact that the system is lacking in adequate efficient responsibility.

C. The judges are subject not merely to a recall, but to a progressive series of recalls—*first*, by the leaders of the party organization refusing nomination; *second*, by a wing of the party knifing the candidate at the polls; *third*, by an upheaval in a national election; and *fourth*, and most rarely, by actual public dissatisfaction with the judge himself. These recalls for the most part retire the judge from office regardless of the character of his service. The

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together in concise form many, and we hope, most of the suggestions which have been put forward in the last few years by different persons regarding the causes for dissatisfaction with the administration of justice in the United States (omitting, however, particular proposals regarding practice and procedure).

We desire to promote an expression of views on your part regarding the items of this analysis and to receive any independent and additional suggestions which you can give us. If your experience has not been in practice in a metropolitan district, your views as to how far the suggested causes for dissatisfaction apply outside of such districts will be much appreciated.

In replying please refer to the page and subhead of the enclosed analysis and address your remarks as specifically as possible to each item. At the end add further suggestions not brought out by the comments already given.

It is our plan to classify and arrange all the answers received under each item of the enclosed analysis and to add the many additional suggestions which will be received and in this way secure a complete compilation of all suggested causes for dissatisfaction with the administration of justice.

Please do not attempt at the present time to go into your views concerning the details of practice and procedure, for we shall send out at a later time an analysis regarding the causes for dissatisfaction with the rules of practice and procedure and invite your views especially upon that subject by itself.

Very truly yours,

AMERICAN JUDICATURE SOCIETY.

HERBERT HARLEY,

Secretary.

recall at any time by petition will operate to place the judges even more in the power of the political party machine organization than they are now.

D. There is at present no means of disciplining judges at all.[2] There is no chief justice or presiding justices of different divisions of the court to whom the rank and file of judges are responsible for the performance of their duties.

E. There are no service test requirements which permit judges to be selected from among those practitioners only who have obtained some success in actual practice before courts.

F. The mode of selecting and retiring judges is so unsatisfactory and the character of the duties of judges is such as to stifle competition for places on the bench by men who have succeeded in practice.

II. It has been suggested that the selection of judges in the sense of the picking out by the electorate of those among the lawyers who it desires above all others is impossible for a metropolitan district having over one hundred thousand population; that such an apparent method of selection results in appointment by the political party leaders; that therefore if by a non-partisan ballot the political party machine influence could be eliminated or so greatly reduced as not to be controlling, nothing but chaos would result: that as a matter of fact the great influence of the political party machine would continue to be the predominant principal force in the election of judges even with the non-partisan ballot.

III. It has been suggested that the bar association should be given power to place upon the official ballot a bar association ticket which could have upon it candidates who had been nominated by any of the other political parties. The question, however, has arisen whether this would result in a greater power in an unbiased bar association to select good judges, or in the lining up of lawyers in political camps controlled by the leaders of the political party machines.

IV. It has been suggested that nothing of great value can be accomplished until the fact is faced that judges in a metropolitan district are practically certain to be appointed and that the only proper appointing power is one which is legal, conspicuous, subject directly to the electorate and interested in and responsible for the due administration of justice; that this principle may be worked out in various ways:

A. Suggested that judges may be appointed by the state executive; that this is better than the present mode, but objectionable because of the governor's interest in promoting a legislative program, the building up of a political machine, and his remote responsibility for the administration of justice; also that he is frequently a stranger to the metropolitan district.

B. Suggested that appointment be by the highest appellate tribunal of the state, the members of which are subject to the electorate; that this is better than the present method and better than appointment by the governor, because such a court is more responsible than the executive for the due admin-

[2] Except in the municipal court of Chicago and a few others similarly organized.

istration of justice and the members of it have a stronger motive for appointing fit men, as well as an excellent opportunity for determining the character and ability of lawyers. On the other hand, most of them may be strangers to the metropolitan district. Also there is danger that the most important tribunal of the state may become involved in politics. Furthermore, responsibility for selection is not concentrated.

C. It has been suggested that the appointment be by a chief justice who is a resident of the metropolitan district and who is subject to the electorate at fairly frequent intervals and in whom should be vested large powers to oversee and direct the work of the courts. It has been suggested that such a chief justice would be conspicuous and in a high degree responsible for the due administration of justice and therefore most interested in the selection of fit men for judges.

1. If such a plan be adopted the following questions arise concerning the selection of the chief justice:

(a) Shall he be elected at a general November election, or a general city election in the spring, or at a special judicial election in June, when no other offices are filled?

(b) Shall there be a separate judicial ballot?

(c) Shall the ballot be partisan or non-partisan?

(d) If partisan—

(1) Shall nominations be by primary?

(2) May candidates run on as many party tickets as choose to include them?

(3) Shall there be a special bar association ticket which may include upon it candidates running on other tickets?

(e) If non-partisan—

(1) Shall nominations be by petition? or

(2) Shall anyone eligible be free to run upon making a deposit in money which will be returned to him if he receives at least half as many votes as any person elected to office?

(f) It has been suggested that the eligibility test for the chief justice should be—

(1) That he has been a lawyer in active practice in the handling of litigation in courts of the state for fifteen years; that he should have been also a resident of the metropolitan district and a practitioner at the bar of that district for not less than ten years.

(2) If any organization of the bar is effected which gives special recognition to practitioners who specialize in the handling of litigation in the courts, the chief justice should be selected from this class only.

(3) That judges already sitting be eligible to run for chief justice only upon resigning at least thirty days prior to the election.

2. Under the plan of selection by the chief justice of the other judges of the court several questions arise:

(a) Shall some of the judges be appointed by the chief justice with the consent of the governor or any other body while other judges are appointed by the chief justice alone?

(b) Shall the eligibility test permit any citizen of the United States who has been admitted to the bar for a given number of years and practiced in any state to become a judge?

(c) Should an eligible list be created consisting of twice as many members as there are judges of the court, to be selected by the chief justice of the court and the heads of the different divisions of the court, to the end that the chief justice may be required to select at least every other judge appointed from the eligible list?

3. The question also arises as to the proper mode of selecting masters or assistant judges:

(a) Shall they be appointed by the chief justice alone; or

(b) By the chief justice and the presiding justice of any division of the court to which the master is to be attached, and in case of disagreement, the presiding justice of the appellate division to make a third member of the selecting committee; or

(c) Shall appointment be by the chief justice and the presiding justice of the division to which the master is attached in rotation; or

(d) Shall the appointment be by the presiding justice of the division to which the master is attached?

(e) Shall there be a civil service examination providing an eligible list and testing candidates' knowledge with respect to the duties of the office and their experience?

(f) Shall any citizen of the United States admitted to the bar in any state be eligible?

V. It has been suggested that the retirement of judges is an entirely different problem from that of their selection; that the problem of retirement also differs, according as the judge is a chief justice with power to appoint judges, or is merely one of a number of judges who have been appointed or otherwise selected.

A. Retirement of the chief justice.

1. What shall be the limit of his term?

2. Shall he be subject to impeachment; or

3. Recall by joint resolution of the legislature; or

4. Recall by popular vote which at the same time operates to elect another?

5. In case of retirement by failure to be reëlected shall the chief justice continue to remain one of the judges of the court, subject to assignment to duty by his successor?

B. Retirement of judges other than the chief justice.

1. Shall they be retired by impeachment; or

2. Recalled by joint resolution of the legislature; or

3. Recalled at any time by popular vote which merely vacates the office, leaving it to the chief justice to fill the place by appointment; or

4. Shall the name of the judge be submitted to the electorate at specified periods, such as three, six and nine years; the question being whether the judge's place shall be vacated, leaving it to be filled by the appointment of the chief justice; or

5. Shall the judge be removable by a vote of the judicial council consisting of the chief justice and the presiding justices of the different divisions of the court after a hearing and after cause shown, the cause to be as general as under civil service acts, *namely*, inefficiency, incompetency, neglect of duty, lack of judicial temperament and conduct unbecoming a judge?

C. Retirement of masters.

1. They may hold at the will and pleasure of the appointing power; or

2. The will and pleasure of the judicial council; or be

3. Dischargeable only for cause which must be stated in writing but need not be proved, said discharge to be by the head of the division to which the master is regularly attached, with the consent of the chief justice; or

4. Discharge only for cause and upon a hearing before the judicial council.

VI. Suggested that the discipline of judges is a different matter from their retirement.

A. That an elective chief justice with power to appoint judges to the court should not be subject to any disciplinary authority on the part of the court.

B. As to the judges other than the chief justice who are appointed to places by the chief justice, it has been suggested:

1. That the council of judges composed of the chief justice and the presiding justices of the several divisions of the court should have power to reprove any judge privately or publicly, to transfer any judge to some other division of the court upon a hearing and for cause shown, such as inefficiency, incompetency, neglect of duty, lack of judicial temperament and conduct unbecoming a judge.

2. That judges, especially in the trial courts, would be held in check and to a proper line of judicial conduct if there were present in the court a specialized and expert bar and by the constant reporting of selected rulings by members of the bar.

C. No special provision for disciplining masters is needed because of the manner in which they may be removed.

VII. It has been suggested that competition for places on the bench by successful practitioners would not be promoted by raising salaries so much as by

A. An improved mode of selection and retirement of judges which tends to give security of tenure to those who do satisfactory work;

B. The improvement in the personnel of the bench and its better organization for the purposes of efficiency, as hereinafter suggested, so as to furnish proper fields of specialization for judges.

C. The creation of important administrative positions, such as the presiding justices of the divisions, who should be *ex officio* judges of the appellate division. This would also attract men of special ability at the bar who might be disinclined to take an ordinary judicial position.

D. These features need only be added to the present salary arrangement in many places to make the positions on the bench sufficiently attractive to draw able and successful members of the bar.

II. THE ORGANIZATION OF JUDGES AFTER THEY ARE SELECTED

I. It has been suggested that the problem presented by the court of general jurisdiction in a metropolitan district where many judges are working at the same time over extensive dockets of cases of all sorts, is this: How can each judge in the time spent upon the bench be brought most effectively into contact with litigation? How can his energies be applied so that he wastes the least time and does the most accurate thinking, which leads to a determination of the cause? This is an ordinary problem for an efficiency expert.

II. It has been suggested that an efficiency expert would first classify and arrange the work.

A. That he would find that all of it fell into at least four classes:

1. Non-contested matters—defaults, motions of course, amendments, etc.
2. Contested motions, demurrers, etc.
3. The trial on the merits.
4. Appeals.

III. It has been suggested that the efficiency expert would then stop the spending of time by the judge on the more trivial work which others could do as well; that he would utilize the services of less highly paid masters or assistant judges to handle motions of course, ordinary defaults and uncontested matters.

IV. It has been suggested that the efficiency expert would then take care that individual judges did not have to cover too wide a field in the handling of causes.

A. That he would find that no man could become expert when he must cover all kinds of practice and substantive law, such as criminal pleading, practice, trials and substantive law; common law pleading, practice, trials and substantive law; chancery pleading, practice, hearings and substantive law; appellate practice and substantive law and practice in all sorts of cases appealed.

B. That the efficiency expert would find that there are several extensive fields of substantive law and of practice in which judges could specialize profitably to themselves, to the public and without unduly restricting the scope of their work, such as

1. Civil and criminal jury trials.
2. Commercial cases tried with and without a jury.
3. Cases tried without a jury, covering the field now largely covered by what is known as chancery practice.
4. Probate, divorce, juvenile court, and family relations in general.

C. That the obvious step is for each judge to be assigned to final hearings in one of these classes of cases—a sufficient number of judges being assigned to each class to dispose of it.

V. It has been suggested that it is obviously unwise to let six or fifteen or thirty judges go to work as they please on a long unspecialized docket of several thousand cases; that to obtain the best results there must be divisional heads who will have large administrative powers and responsibility for

the docket of each division. Hence, each division should have a presiding justice.

VI. It has been suggested that all these arrangements should be merely tentative; that actual experience may show that it will be advisable to transfer some classes of cases from the docket of one division to that of another and some judge from one division to another, and to make new rules for the conduct of judicial business and the function of masters. Hence there must be some managing authority at the head of the whole organization. The chief justice of the entire court is therefore necessary. He should be the head of an executive committee composed of the heads of the several divisions, with full powers of management. The same powers should reside in the court as a whole, if it chooses to exercise them.

VII. That an important cause for dissatisfaction is the attitude of appellate tribunals toward the trial courts, the former frequently administering corrections to the trial judge through reversals. It attempts to discipline and educate by the same means. The result is the trial judge and the appellate tribunal become estranged and in their bickerings the litigant and the public suffer. The remedy for this is obtained by the organization above suggested, where the appellate tribunal and the trial courts are subject to the same central authority, namely, the chief justice and council of judges. By this means trial judges may be corrected and disciplined in a suitable way and by proper authority if they be at fault, without the litigant suffering. The appellate division on the other hand, may be compelled by the same authority to attend solely to the administration of justice and to refrain from exercising the function of educating and disciplining trial judges.

III. SELECTION OF THE JURY AS JUDGES OF THE FACTS, AND ITS GUIDANCE. DISCRIMINATION IN THE USE OF THE JURY

I. Jurors, when used, are the judges of the facts in controversy. The public service of administering justice consists in part of their mental operations in determining facts. Property and personal rights are subject to the determination of jurors. The subject of the method of their selection, the choice of causes in which their services are used and the guidance of the jury by the court is of great importance. Defects in any of the three respects mentioned may give rise to serious dissatisfaction with the administration of justice.

II. Methods of selecting jurors. This has several stages.

A. The drawing of panels by jury commissioners.

B. The preliminary examination by the judge and excusing men or finding them disqualified. Where this is performed by the judge for every panel, it is a waste of time and energy and he should be relieved of it and the duties placed upon some less important official acting under the direction of the judge or the presiding justice of division.

C. The examination of jurors when called into the box and sworn to answer questions touching their qualifications. Here is presented the problem of shortening up the examination, preventing abuses in the extent of exami-

nation, which may result in great waste of judicial energy. *Quaere:* Whether the extensive examinations permitted do not in part find their justification in the fact that in many states under the present system the jurors obtain no guidance from the court in the performance of their function as judges of the facts.

III. It has been suggested that to meet the case of the absence of a member of the panel in long cases there should be additional jurors, or the taking of a verdict of less than the total number.

IV. It has been suggested that the verdict of less than the entire number of jurors hearing the case be sufficient.

V. Discriminating in the use of jurors:

A. It has been suggested that in some classes of cases jurors are of no value at all, *viz.*, in suits depending upon the construction of documents or the legal rights arising from documents. Their use in this class of cases is now eliminated in chancery causes.

B. It has been suggested that juries are of value where the result depends upon the evidence of witnesses regarding human actions and conduct. In these cases juries are a protection against a one-man view of the evidence. A chance is provided for debate among several minds looking at the evidence and observing the witnesses. A chance is given for an appeal from the experienced judge to the judgment of twelve less specially trained minds.

C. At present the cases where juries are not used and where they are used is to some extent illogical, depending upon historical considerations of whether the cause was originally in chancery or at law. It has been suggested that the matter should be reduced by rules of court or by legislation to a more rational line of distinction between the cases where juries are of special service and where they are of no service. In cases lying between the two extremes juries might be permitted upon application and upon terms.

D. It has been suggested that less than twelve jurors be used, especially in cases involving small amounts.

VI. Expert guidance of the jury by the courts: It has been suggested that as the jury with its numbers is a safeguard against the judge, so the judge with his experience should be a safeguard against the jury; that the two should be responsible together for securing a correct view of the facts. The judge, therefore, should have freedom to give to the jury not only his views of the law, but also in his discretion his analysis of the evidence.

IV. THE RULES OF PRACTICE AND PROCEDURE

I. It is suggested that there can be no solution of the problem of efficient rules of practice and procedure so long as the rules which are promulgated are made by the legislature and put out in the rigid and unchangeable form of statutes, which can only be altered or amended or repealed by further act of the legislature; that the subject-matter of rules of procedure and practice has to do with the details incident to the rendering of a public service. The matters dealt with are too minute and technical to secure adequate attention from the legislature. Legislative enactments on such details, however satis-

factory to start with, are certain in the course of time and with changing conditions, to fail.

II. It is suggested therefore that the first and most important step in the improvement of practice and procedure is for the legislature to place the rule-making power in the hands of the courts, with authority to make readjustments from time to time.

V. THE METHOD OF SELECTING, RETIRING AND DISCIPLINING OFFICERS OF THE COURTS, THE CLERKS AND THEIR ORGANIZATION AND DUTIES

I. Here the chief causes of inefficiency are to be found in the multiplication of clerks for different courts instead of a central clerk's office; the complete isolation and independence of the separate clerks by reason of the fact that they are elected and subject only to statutory duties and beyond the power of control by the judges.

II. It is suggested also that the fact that they are elected simply hands the filling of these offices over to the political party leaders who for the time being are successful; that this is in fact an appointment and not an election; that an election in the sense of the electorate choosing is out of the question in a metropolitan district because of the inconspicuousness of the office and that, therefore, some method of appointment is inevitable.

III. It is suggested that a much better method of appointment would exist if the chief justice or a judicial council of the court were authorized to appoint one clerk for one central clerk's office, to hold at the pleasure of the appointing power.

VI. METHODS OF SELECTING, RETIRING AND DISCIPLINING MEMBERS OF THE BAR AND THEIR ORGANIZATION

I. As to the *selection*, *retirement* and *discipline* of members of the bar.

A. As to the methods of selecting lawyers much has been done to raise standards, moral and educational, for admission to the bar. It has been suggested, however, that further steps may be taken, *viz.:*

1. That two years of general collegiate education be required.

2. That a law school education be required, the period to be the usual one of three years.

3. That admission upon examination at the end of three years' law school study permit practice, excluding, however, any right of being heard in the courts in contested matters; that to acquire the right of being heard in such contested matters in each division of a metropolitan court, a period of apprenticeship in practice be required and a further and special examination, oral and written, which would relate to the practice and rules of substantive law handled in the particular division to which admission is desired.

4. It is suggested also that the whole matter of enforcing compliance with rules for admission to the bar be placed in the control of the governing board of a legally incorporated society of all the lawyers (as indicated hereafter under II) which governing board should act under the supervision of the highest appellate tribunal of the state.

B. It has been suggested that our present method of retiring lawyers by disbarment is so cumbersome as to be quite inadequate in a metropolitan district having from five hundred to five thousand lawyers.

1. It has been pointed out that disbarment proceedings are brought in the highest appellate court of the state, where the matter is referred to a referee for the taking of testimony in support of the charges, the referee reporting his conclusions upon the issues. Thereafter there is a trial *de novo* before the full bench of the supreme court on the entire evidence as reduced to writing. Such disbarment proceedings are in fact a great burden upon the highest appellate tribunal and take up the valuable time of the most important judicial body of the state over what can be as well done by the governing board of a properly organized bar.

2. As a practical matter the grounds of disbarment are the commission of crimes or very serious offenses involving the breach of fiduciary obligations and in rare cases, gross fraud and deception of the court. Some courts have even doubted their power to impose lesser penalties, such as suspension from practice for a limited length of time.

3. It has been suggested that to remedy the above conditions the grounds for disbarment should be codified as completely as possible by the supreme court, or under its direction, and that the enforcement of the code be conferred upon the governing board of a legally incorporated society of all the lawyers in the metropolitan district, subject only to a review by the courts upon terms fixed by rules promulgated by the highest appellate tribunal.

C. It has been pointed out that for the lesser and more prevalent sorts of unprofessional conduct no authoritative code of conduct for lawyers exists except that contained in the grounds for disbarment. The highest tribunal of the state might issue such a code and provide for its enforcement, but it has not done so. Hence no means now exists for requiring a high standard of conduct from lawyers.

1. It has been suggested, therefore, that the supreme court prepare, or have prepared under its direction, an authoritative code of conduct for lawyers.

2. That the enforcement of such a code should be placed in the governing board of an incorporated society of lawyers with possibly a review within limits by the courts, as provided by the rules of the supreme court.

3. That for the infraction of the rules of the code of conduct the governing board of the legally incorporated society of lawyers be permitted to punish by the giving of private warnings, public warnings, public resolutions of condemnation and suspension from practice for a limited period.

II. As to the *organization of the bar*.

A. It has been pointed out that the present organization of lawyers is purely social and voluntary, including in many instances only a small part of the total number of lawyers. It has no such organization or powers as enable it to take charge of admissions to the bar or the matter of disbarment or the discipline of members of the bar and enforcement of an authoritative code of legal ethics.

B. It has been suggested that what is needed is a legally incorporated

society which shall include all lawyers by the simple process of fixing the fees to be paid and the requiring of every lawyer, as a condition to continuance in practice, to keep up his membership in the society; that the governing board of such society should be composed of representatives elected for a considerable term and that the governing board should have power conferred upon it to enforce the rules of the highest court of the state as to admissions to the bar; also to enforce any authoritative code of legal ethics and disbar members. The governing board might be given power to promulgate a code of legal ethics and to enforce it by suspension from practice for a limited term.

C. It has been suggested that the present bar associations are properly organized and well adapted for the functions which they now perform, *namely:*

1. Discussion of public questions such as selection of judges, the changes in procedure and substantive law.

2. Social activities.

III. As to the *specialization* of lawyers with respect to their professional activity.

A. It has been suggested that the same reasons which demand specialization among the judges in the interest of efficiency, require it even more among lawyers. It has been urged that to permit lawyers in a metropolitan district to be heard in any court at will at the same time that they are carrying on all the possible lines of activity which the lawyer touches in the business of the commercial world or in the personal affairs of clients, is to introduce the same sort of disorder and inefficiency as would occur in any large department store if all the employees were allowed to serve the public in any way they saw fit.

B. It has been suggested that the fundamental line of cleavage in the activities of lawyers is between the counselor and the advocate.

1. The position of the counselor has been thus described: The counselor is the lawyer who has clients. Their affairs, business and personal, so far as they touch the law, and in many respects where they do not touch the law, are his principal care. His success is founded in his ability to keep his clients out of trouble; to adjust their differences; to see that the instruments they execute have no pitfalls for them and that their sales and purchases, their creation of trusteeships and organization of corporations, are accomplished within the law. It is the counselor's duty to play safe for his client at all times and to keep him out of difficulty. In a metropolitan district where great business interests center and the wealth of individuals and corporations is very great, the counselor's entire time and energy are frequently given to his special branch of the profession.

The counselor may be an individual lawyer with a small office and a very quiet line of counseling. Frequently several organize in a firm and specialize their counseling somewhat in different directions. Some firms are so large and have such an enormous business that a long list of partners is necessary, many of whose names do not appear in the name of the firm. Many clerks and assistants are employed and different branches of legal business are handled in different departments of the office. Some counselors devote themselves as individuals to special lines of counseling. They are counselors to trust de-

partments of a bank. They are counselors for corporation management and the issuance of corporations' securities or for particular kinds of corporations. Often their offices are with the executive offices of the corporation, or adjacent to the business office of the individual. Sometimes they are independent and serve several corporations or individuals requiring the same sort of counsel.

The counselor with any extensive practice in a metropolitan district has no time for work in the courts in important contested matters. The simpler and uncontested work in the courts is performed by clerks, assistants and junior partners under the counselor's direction. The counselor discovers that he loses money whenever he goes into court in a contested case. His clients cannot reach him and he cannot serve them satisfactorily. When the counselor's client becomes involved in important litigation it is economically to the advantage of the counselor to prepare the case fully in view of his complete knowledge of all the affairs of the client, and then to secure the services of a trained advocate who can fully absorb the case and does so under the guidance of the counselor, and then conducts the case through the courts, with or without the coöperation of the counselor, as the counselor prefers.

2. The advocate's line of activity has been thus described: The advocate answers the inevitable demand of the counselor for a well-trained and effective trial lawyer. The advocate makes a business of practicing in the courts in contested cases, especially those of more than usual importance to the parties engaged. His success depends upon the development of individual talent in the handling of litigation in the courts on the civil and criminal side, or both. He must satisfy, not the layman who is a client, but the trained counselor who is able to distinguish ability from bluff. The advocate, therefore, has no time for or interest in the miscellaneous affairs of clients. His energy is concentrated upon the handling of particular cases in the courts. Whatever counseling he may do is merely such as he may contribute at the request of counselors in particular matters where his advice, in view of his experience in the courts, may have particular value. The advocate's days are spent in the preparation of cases for hearing or in actual trials. His earnings accrue as the result of conducting litigation which the counselor decides is necessary or inevitable. Specialization among advocates is probably inevitable. Some will devote themselves to jury trials, civil and criminal, and appeals; others to commercial causes tried with and without a jury, and appeals; others to chancery causes and appeals.

3. It has been suggested that in view of the special development of the counselor in the United States his position must be the more prominent and important branch of the profession. Socially, financially and from the point of view of influence in the community, his is the more desirable position. The advocate is clearly dependent upon the counselor for business and consequently must seek the favor of the counselor. The advocate always stands in the community as an individual with individual talents. He gets nowhere professionally as the member of an organization. He renders always individual and personal service. The financial rewards on the average are comparatively small. He tends toward an interest in the academic side of the law rather than toward a development of commercial and financial astuteness.

The advocate, however, chooses his profession because he prefers the work which he selects to that which the counselor does and his own special reward is the attainment of success as an advocate and after a mature experience, a place upon the bench.

C. It has been suggested that a *sine qua non* to the development of the distinction between the counselor and the advocate is that the advocate shall not invade the sphere of activity of the counselor by dealing with clients and that the counselor in return shall not undertake the handling of contested matters in the courts except as he does so in coöperation with the advocate. The latter rule is a fair exchange for the former. The keeping of the advocate away from handling clients is absolutely necessary as a guarantee that a popular advocate who has a public following shall not steal the clients of the counselor.

D. The advantages of such specialization among lawyers have been put forward as follows:

1. These advantages are very great from the point of view of the individual. He has a chance for more agreeable work by reason of the specialization, and also in case of success, an opportunity for greater profits.

2. From the point of view of the public the advantages are:

(a) The specialization furnishes a service test for candidates for judgeships, since judges would for the most part be selected from those who specialize in the handling of contentious business in the courts.

(b) The motives for expediting the work of the courts by the lawyers are vastly increased.

(1) The lawyer handling contentious business in the courts wishes to go ahead with trials as rapidly as possible, since his income depends upon doing this work.

(2) The client wishes work in the courts done expeditiously because he is paying an expert for special services.

(c) Greater assistance is rendered the court. Court and advocate can drive at the main point of controversy with the greatest speed. The advocate can eliminate much that he knows by experience to be not worth presenting without fear of injuring the client's cause.

(d) False and fraudulent claims and ill-founded suits are more easily than now to be discouraged because the advocate must protect his standing with the court.

(e) Greater knowledge of the rules of the courts by the bar is developed and the criticism and scrutiny of the judge's work are much closer and hold the judge much more in check than the present system.

(f) There is better service to the client.

(1) Legal business better attended to.

(2) Litigation more quickly reached and disposed of.

(3) Better representation on the firing line in litigation.

(4) Better preparation for trial.

(g) Over-contentiousness would be reduced because the advocate must protect his standing with the court.

(h) The objection that a separation of the advocate from the counselor is a bad thing is founded largely in the sentiment and pride of present members of the profession, all of whom call themselves members of the bar, and have freedom to range the courts when and where they please. It is said also that a man who is in touch with the client's entire affairs prepares a case better for trial. But even when an advocate is employed the client's regular counselor has the chief burden of the case's preparation and there is no reason why the advocate should not have the greatest freedom of intercourse with the client and the witnesses in preparing cases for trial. No canons of professional etiquette should ever be allowed to keep the advocate from direct contact with the client and his witnesses, or separate the counselor from easy conference with the advocate while in court. As for the counselor's pride in having free audience in the court, that should not stand in the way of efficiency in the work of the courts and the service rendered clients.

E. It is suggested that such specialization among lawyers may be promoted in the following ways:

1. *The competitive method:* Under this the advocate makes it clear that the counselor cannot compete with him in the handling of litigation in the courts. This results in the following developments:

(a) Large firms of counselors, with a large and varied number of clients, employ one or more advocates to give all their time to the litigated work of the firm.

It has been suggested, however, that this is a transition stage only, because

(1) It does not provide any way for the smaller firms of counselors and single counselors to secure expert advocacy without running the risk of losing their clients to the big firms of counselors.

(2) It has the disadvantage of cutting off the large firm of counselors from securing the best advocate for the particular case. It requires the employment of the same advocates for all sorts of cases.

(3) This arrangement is unsatisfactory to the advocate in the long run, for he finds it continually more difficult to become expert when he must deal with the difficult cases arising in a metropolitan district handling many thousands of important cases in all branches of the substantive law and practice.

(b) The moment the system whereby an advocate gives all his time to a firm of counselors begins to break down the individual advocate appears. He first answers the demand of smaller firms and individual counselors who wish to secure expert advocacy in particular cases, and by restricting the field of his advocacy he is able to compete successfully in his line with the advocates employed by the big firms who must cover a very much wider field.

2. *The slightly coercive method:* This involves the imposition of special requirements for admission to practice in the courts in the handling of contested matters and trials, *viz.:*

(a) First, a general admission to practice as counselor.

(b) Practicing as a counselor for a limited term.

(c) Then a special examination for admission to practice as an advocate in each trial division of the metropolitan court.

(d) This might result in many persons staying out of practice in contentious matters, especially in courts where they never expected to practice. It would tend to cause one who had taken the trouble to secure admission to practice in particular divisions, to practice there and to receive a share of contested causes heard in those divisions.

(e) This plan leaves every lawyer free to practice both as a counselor and as an advocate, but imposes special requirements on practicing as an advocate which would tend to cause anyone so practicing and succeeding to devote himself largely to advocacy.

(f) It should be a rigid rule, even under this system, that any lawyer practicing as an advocate should be barred from ever or for a considerable time dealing as a counselor with any client whom he represented as an advocate for any counselor.

3. *Compulsory division:*

(a) The counselor might be ruled out of all audiences in the courts in contested causes except as he appeared associated with an advocate and the advocate might be ruled entirely out of the sphere of the counselor, and the requirements for admission to each branch of the profession might be fixed independently, with the right of any member of either branch of the profession to transfer to the other branch.

BOOK DEPARTMENT

NOTES

ATWOOD, E. L. *The Modern Warship*. Pp. 146. Price 40 cents. New York: G. P. Putnam's Sons, 1913.

BELLET, DANIEL. *La Nouvelle voie Maritime le Canal de Panama*. Pp. 330. Price, 5 fr. Paris: E Guilmoto, 1913.

It is fortunate that there is little probability that M. Bellet's opinions concerning the Panama Canal will find immediate and universal acceptance in the United States, else it is doubtful if the canal would be opened. According to him the waterway is merely a huge monument to a course of misconduct and a policy of folly. The United States government swindled the French canal companies, sandbagged Colombia, broke faith with England, and repudiated its obligations to the entire world, and withal has spent a tremendous sum of money on a work which will never pay the expenses of maintenance and operation let alone the cost of construction.

BRISSENDEN, PAUL F. *The Launching of the Industrial Workers of the World*. Pp. 82. Berkeley: University of California Press, 1913.

This interesting short study presents a mass of testimony on the beginnings of the Syndicalist movement in the United States. It reviews the preliminaries to the calling of the first convention of the Industrial Workers of the World in 1904–05. The various groups and elements represented at the convention in June, 1905, are carefully analyzed and tabulated. The bibliography, comprising almost one-fourth of the pamphlet, is complete and valuable. This list of magazines and newspapers of the present labor movement is particularly useful to the student while to the layman the existence of this amount of material will come as a distinct surprise.

BROWN, SAMUEL W. *Secularization of American Education*. Pp. 160. Price, $1.50. New York: Teachers College, Columbia University.

This is a Teachers College thesis and is a review of the state legislation, state constitutional provisions and state supreme court decisions by means of which the present secularization of education exists. It traces in a number of chapters the history of education in America from the day when the aim was almost entirely religious, through the stage when the aim and control were both religious and secular, to the present condition where state institutions are entirely secular both in fact and theory. In every state of the Union there exists now a system of public education in which civic and industrial aims are dominant, in which religious instruction is either entirely eliminated or else reduced to the barest and most formal elements, and the control of which is

invested well-nigh exclusively in the state. The author thinks that the two factors which have brought about the change are: an educated citizenship, necessary to the existence of a republic, and religious opinion which is an individual right. The book is a valuable reference to one interested in the evolution of a system of education and the controversy between church and state in their efforts to control and determine the same.

BURKE, E. J. *Political Economy.* Pp. xvi, 479. Price, $1.50. New York: American Book Company, 1913.

This book, written by a professor in a Catholic university, is designed for use in Catholic colleges, high schools, and academies. Though no particular effort has been made to introduce Catholic dogma or teaching, yet the special feature of the book is the presentation of the Catholic doctrine whenever the subjects treated touch upon the domain of ethics. Naturally, frequent reference is made to the encyclical *rerum novarum.*

The treatment of the elementary principles of economics is prefaced by an account of the various schools of political economy. Among the more important principles of the Catholic school are: The right of private property in the means of production; the right of private individual productive energy; toleration of the differences of classes in society, without the bitter opposition now existing between them; the rejection of the "Laissez-Faire" principle of the liberal school which errs in insisting almost exclusively on the rights of the individual; and the carrying on of strenuous warfare against the Socialist doctrine which would subvert the present order of society, and would, it is claimed, subject the laborer to even greater slavery than Socialists claim now to exist, since under Socialism laborers would be dependent for their labor and place of work upon the will of the community.

CANNON, IDA M. *Social Work in Hospitals.* Pp. xi, 257. Price, $1.50. New York: Survey Associates, Inc., 1913.

The author of this volume has had an unusual opportunity to know and understand the possibilities of social service work in connection with hospitals. She has long been the head worker of the social service department of the Massachusetts General Hospital in immediate association with Dr. Richard Cabot, the pioneer in this field. A year ago, Miss Cannon had the opportunity to visit a number of institutions and observe various methods of work. This book is designed to furnish not merely information about the movement, but definite instruction with reference to the handling of different types of problems that arise in connection with the hospital. Thus the three chapters on medical-social problems form the real backbone of the volume. There are also excellent chapters on basis of treatment, working together, records, organization, workers, together with many sample forms that may be used for recording work done. The volume will be helpful to all who are engaged in this work, and is to be particularly commended to the managers of hospitals, who may have in mind the introduction of this department.

Comparative Prices, Canada and the United States, 1906-1911. Pp. 316. Ottawa: C. H. Parmelee.

CURRAN, JOHN P. *Freight Rates—Studies in Rate Construction.* Pp. v, 367. Price, $5.00. Chicago: Railway Text-Book Publishing Company, 1913.

It was the aim of the author of this book "to give in a clear and concise manner the rate bases or structures" upon which railroad tariffs are built. After a brief and unimportant introduction to the volume, the railroad rates prevailing from trunk line and New England territory to Canada and the West are explained. This is followed by a discussion of the rail and lake rates from the trunk line territory west. Subsequent sections of the book take up, in turn, rates from the Central Freight Association territory and from the South and West. The book is a valuable guide to those seeking to understand how the rate systems prevailing between practically all sections of the United States have been worked out. It is a book for reference rather than for reading.

DAVIS, WILLIAM WATSON. *The Civil War and Reconstruction in Florida.* Pp. xxvi, 769. Price, $4.50. New York: Longmans, Green and Company, 1913.

This volume presents a detailed analysis of the course of the political history of Florida from 1860 to 1876. The work is divided into four parts, the first giving a brief history of Florida before 1860 and an account of the origin and development of the secesson movement; the second dealing with the military events and the political and economic conditions during the war; the third and fourth describing the stormy period of reconstruction with the conflict of federal and local authority, the domination of the alliance of the carpet-bagger, the scalawag and the negro, the reign of lawlessness and crime, and the eventual return of the Democratic party to power.

The history of the events which stand out as landmarks in the progress of the conflict between the free and the slave states has been adequately written. Of the work of filling in the gaps—analyzing local sentiment, describing minor details, and showing the effects of the struggle on the everyday life of the people—much remains to be done. Professor Davis has made a noteworthy contribution to the growing number of monographs which are being written with this purpose in view. It is such studies as this which will constitute the material from which may be derived an interpretation and an explanation of the great conflict.

D'EGVILLE, HOWARD. *Imperial Defence and Closer Union.* Pp. xl, 312. Price, 7/6. London: P. S. King and Son, 1913.

MITRA, S. M. *Anglo-Indian Studies.* Pp. xxxv, 525. Price, $2.50. New York: Longmans, Green and Company, 1913.

Mr. D'Egville has very skillfully used the literary remains and political activities of Sir John Colomb, a retired captain of the royal marine artillery, and member of Parliament for some sixteen years following 1869, to show the evolution and status of the program of British imperial defense as based on

the sea power. Colomb was a modern pioneer in the movement to exalt the naval power idea over a defensive military policy favored by the British government, and had a large part in instituting the reforms that led to the creation, in 1904, of the imperial defense committee. The later work of this committee and of various conferences for imperial organization, and the exposition of the principles for which Colomb contended are well presented in five chapters. Two are given to the policy and principles of this defense, two to the imperial coöperation which conditions its success, and one to the imperial representation and union which should result.

The author of the second work, a native Hindu, who has lived eight years in England and won recognition as an interesting writer on Indian subjects, brings together in his volume sixteen miscellaneous articles, some of which have previously appeared in the English reviews. Their value is in showing the native attitude to certain British administrative and other problems in India. Mr. Mitra writes as a Hindu and an imperialist. He believes the safeguard of the empire lies in maintaining a balance between Hindu and Moslem subjects on the divide and rule principle. In the transfer of the capital to Delhi and in the English policy as to the Balkan troubles, he sees undue Moslem influence. He deprecates any democratic movement, such as for colonial self-government, as contrary to the aristocratic spirit of the native princes, who rule something like a third of India.

DUTTON, SAMUEL T. and SNEDDEN, DAVID. *The Administration of Public Education in the United States.* Pp. x, 614. Price, $2.00. New York: The Macmillan Company.

A new edition of a valuable work issued by the same writers in 1908. It contains an additional chapter on moral education; the statistical information is brought down to date. The book presents a fund of valuable information not elsewhere available in a single volume. It is an indispensable reference work to the busy superintendent of schools and an excellent text for classes in school administration.

Not only the administration of education in the public schools is covered, but the administration of all school activities supported by public taxation. There are chapters devoted to the discussion of the chief problems of the administration of correctional education, the education of defectives, compulsory education, and continuation schools. The subject of child labor legislation is also discussed. The writers, both men of extensive practical experience, have chosen for brief treatment about all the current problems in every field of educational administration. The bibliographies appended to each of the thirty-three chapters include only the most valuable papers and books.

EATON, J. S. *Handbook of Railroad Expenses.* Pp. xii, 559. Price, $3.00. New York. McGraw-Hill Book Company, 1913.

This handbook, containing a complete analysis of the system of accounting for railroad expenditures, as prescribed by the Interstate Commerce Commission, should be of great value to railroad statisticians and operating officials,

and to others interested in the study of railroad accounting. The author presents in an abridged form the classifications and rules adopted by the commission together with full explanatory and critical comments of his own. The work is carefully organized and well written.

EHRLICH, EUGEN. *Grundlegung der Soloiogie des Rechts.* Pp. 409. Price, 10m. Munchen: Duncker and Humblot, 1913.

FAIRBAIRN, F. W. *Rate Construction Guide.* Pp. 94. Price, $5.00. Cleveland: The Author, 1913.

This *Rate Construction Guide* shows how to compute through freight rates from Indiana, Michigan (southern peninsula), Ohio, the western parts of New York, Pennsylvania and West Virginia and from Chicago, Milwaukee and Peoria districts to all points in the United States. The object of the publication is to explain the rate systems that have been established by the railroads for traffic from the Central Freight Association territory to other parts of the United States. The book is intended to be a practical guide for those engaged in rate construction. The book does not deal with general principles or theories of rates, but seeks to state exactly what rate systems prevail. A revised edition of the work is published each year.

FAY, C. R. *Copartnership in Industry.* Pp. 146. Price, $1.00. New York: G. P. Putnam's Sons, 1913.

This little manual outlines the history of copartnership, describes and illustrates the various types of copartnership and profit-sharing, and makes clear the real nature and spirit of successful experiments in this field. The following quotations reveal the author's viewpoint: "Freedom is the breath of life to copartnership," "it is not so much a body of things as a body with spirit in it," "when they (students of coöperative and profit-sharing schemes) are studying successes they are studying personalities—studying, in fine, the stuff of which industrial chivalry is made."

GIFFEN, ROBERT. *Statistics 1898–1900.* Pp. xiii, 485. Price, $3.00. New York: The Macmillan Company, 1913.

A posthumous work, consisting of fragments of material under the same general heading, the volume makes clear the interest of the author in statistical data. The introduction deals with the meaning of statistics. The main part of the book includes a number of chapters on area and population statistics, births, deaths and marriages; imports and exports; agricultural statistics; mineral statistics, and the like. The chapters contain a large amount of comment and an inconsiderable proportion of statistics.

GODDARD, HENRY H. *The Kallikak Family.* Pp. xv, 121. Price, $1.50. New York: The Macmillan Company.

A valuable contribution to the subject of heredity; the most important investigation ever made of the causes of human defectiveness; a study of two lines of descent, from the same father and a normal mother in one line, and an

illegitimate union with a feeble-minded woman in the other; the first formal report of the research laboratory of the Vineland School for Defective Children.

The inheritableness of feeble-mindedness is conclusive. In six generations there were 480 descendants in the degenerate line, of whom 262 are known to be feeble-minded. There were twelve unions where fathers were normal and mothers feeble-minded; result, seven feeble-minded and ten normal children. There were eight unions where fathers were feeble-minded and mothers normal; result, ten normal and ten defective children. In forty-one cases where both of the parents were feeble-minded, there were 222 degenerate children and two normal.

Feeble-mindedness has been defined as irregular failure of development. Dr. Goddard's cases seem to prove this for they present a great variation in the degree of development and many varieties of social irregularity. His work emphasizes the fact that all cases of true amentia must be early recognized by state authority, if any progress is to be made in its suppression. The Vineland institution and Dr. Goddard have placed all the world under obligations by this painstaking study of the heredity of feeble-mindedness.

HART, ALBERT B. *Social and Economic Forces in American History.* Pp. 523. Price, $1.50. New York: Harper and Brothers, 1913.

Professor Hart has reprinted from the several volumes of the American Nation Series the chapters dealing with social and economic conditions. The volume containing these reprints thus presents a concise and most instructive account of living conditions during successive periods. The first two chapters are by President L. G. Tyler and depict "Early New England Life and Social and Economic Conditions of Virginia" down to 1652. From the volumes prepared by Doctors Andrews, Greene, Thwaites, Howard, Van Tyne and others, appropriate chapters are taken—seven chapters by Professor Turner, four chapters by Professor Hart, and one or more by other contributors to the "American Nation." Although made up of the writings of numerous authors, this volume presents a fairly well integrated account of the social and economic forces in American history.

HENDERSON, CHARLES R. *Social Programmes in the West.* Pp. xxviii, 184. Price, $1.25. Chicago: University of Chicago Press, 1913.

Few men in America are better fitted to describe social policies of western countries than Prof. Charles R. Henderson, professor of sociology, University of Chicago. The present volume contains the Barrow lectures, delivered in the Far East in 1912–13. These lectures are six in number: Foundations of Social Programmes in Economic Facts and in Social Ideals; Public and Private Relief of Dependents and Abnormals; Policy of the Western World in Relation to the Anti-Social, Public Health, Education, and Morality; Movements to Improve the Economic and Cultural Situation of Wage-Earners; Providing for Progress of Nation and Humanity.

Though primarily designed for the information of Orientals, they are to be found of value to those of us at home who frequently lose a perspective of the entire field because of interest in some smaller portion thereof.

HOLMES, JOHN H. *Marriage and Divorce.* Pp. 63. Price, 50 cents. New York: B. W. Huebsch, 1913.

This book is written for popular reading and is an effort to steer a safe and sane course between the theories of the "Sacramentarians" who view marriage as indissoluble and the "Libertarians or Individualists" who regard the matter purely from an individual point of view and believe in absolute freedom of divorce. The author believes that when marriage is morally ended it should be legally ended but would throw around marriage all the moral, social and economic safeguards which will make for its continuance. The tone of the book is earnest, rational and constructive.

HUGHAN, JESSIE WALLACE. *The Facts of Socialism.* Pp. 175. Price 75 cents. New York: John Lane Company, 1913.

ADAMS, EDWARD F. *The Inhumanity of Socialism.* Pp. 61. Price, $1.00. San Francisco: Paul Elder and Company, 1913.

Dr. Hughan has set for herself the task of presenting in simple form "the data as to the movement in our country calling itself Socialism, its relation to Marx, labor unionism, the family, the church, the state; its ultimate program, its immediate platform, its leaders, organization and present policy." She has done this well and has written an interesting little volume defending Socialism. Each chapter is followed by a short list of suggested readings and a number of suggested topics for reports and discussions. As a book for beginners and as text book for courses in Socialism it should prove valuable.

The Inhumanity of Socialism shows clearly that the author has not "in recent years, read much Socialistic or Anti-Socialistic literature of which the world is full" (p. 3). Mr. Adam's entire attack is based on the assumption that Socialism will entirely remove the driving force of selfishness and consequently is not worthy of any further consideration. He feels that not only must we retain the struggle for existence but implies that it should be greatly intensified. Socialism is open to attack on many grounds; it is unfortunate that the premises from which an attack is made should themselves be so very weak.

JEBB, RICHARD. *The Britannic Question.* Pp. 262. Price, 35 cents. New York: Longmans Green and Company, 1913.

The author defines the Britannic question as "the problem of how to effect a closer and permanent union between the self-governing states" (p. 9). The problem is first given an historical and a philosophical setting and then alternative solutions are considered at length. Imperial federation as one possibility soon strikes its colors under Mr. Jebb's energetic treatment to a policy of alliance of the autonomous states of the empire. Separate consideration is given to the effect the two systems might be expected to have on the dependencies, and the work concludes with a criticism of the recent pronouncements on the imperial question by Mr. Borden and by Mr. Bonar Law. Although written with an avowed bias the book is an instructive and stimulating summary of a controverted issue.

JOHNSTON, R. M. *Bull Run—Its Strategy and Tactics.* Pp. xiv, 293. Price, $2.50. Boston: Houghton, Mifflin Company, 19.3

JONES, CHESTER LLOYD. *Statute Law Making.* Pp. xii, 327. Price, $2.50. Boston: Boston Book Company, 1912.

KNEELAND, GEORGE J. *Commercialized Prostitution in New York City.* Pp. xii, 334. Price, $1.30. New York: The Century Company, 1913.

KRAUS, JUR HERBERT. *Die Monroedoktrin in ihren Beziehungen zur Amerikanishen Diplomatie und zum Volkerrecht.* Pp. 480. Berlin: J. Guttentag, 1913.

LAUBER, ALMON W. *Indian Slavery in Colonial Times Within the Present Limits of the United States.* Pp. 352. New York: Longmans, Green and Company, 1913.

LEOPOLD, LEWIS. *Prestige.* Pp. 352. Price, $3.00. New York: E. P. Dutton and Company, 1913.

The task set by the author of this volume is the rational explanation of the origin, conditions and effects of Prestige. He defends it not as a logical, moral or aesthetic phenomenon derived from mystical sources, but a purely socio-psychological influence. Book I traces the origin of the word from *praestigiae* meaning delusion and its connection with ideas of mystery and juggling through its modification till at last it comes to mean "the favorable appearance of one man in the eyes of another." Its atmosphere is "permanency, large numbers, exaggerated distances between men, and the receptivity of the masses." A discussion of racial and individual characters of recipients closes this part.

Book II treats of the possessors of prestige, its values, means, utility, etc.

Book III is the practical portion of the book in which the influences of prestige in love, economic life, religion, politic, brute force, intellect and abnormality is traced with rare sagacity.

The volume is a constructive and brilliant psychological investigation of an important phenomenon in social life and should take rank among the valuable treatises on social psychology.

LONGUET, JEAN. *Le Mouvement Socialiste International.* Pp. 648. Paris: Aristide Quillet, 1913.

In this volume we have a very valuable and timely contribution to literature of Socialism. Many have been the books defending or attacking socialistic practice and theory but a careful study of the extent and size of the movement such as here given has been lacking. After a short historical sketch of the "international" and of the present International Socialist Bureau at Brussels, the author gives us the standing of the socialist parties in every part of the globe. In the study of each country there is a short historical review and then a discussion of present plans, policies, leaders and prospects. The short bibliography that is appended is suggestive.

LOWNHAUPT, FREDERICK. *What an Investor Ought to Know.* Pp. 152. Price, $1.00. New York: Magazine of Wall Street, 1913.

A very elementary little volume of 152 pages, discussing the position of holders of corporate bonds, the idea of diversification of investments, the most important factors governing safety of bond investments, and the use of railroad and industrial reports as indices of the inherent worth of securities. While it is believed that the author could have stated his ideas in a much smaller space, or in the same space included a much more valuable book, it is undoubtedly true that investors often ignore or are ignorant of the few elementary principles explained, and for this reason there is a real need for books of this kind, which devote considerable space to the consideration of a few very fundamental ideas.

LUDWIG, ERNEST. *Consular Treaty Rights and Comments on the "Most Favored Nation" Clause.* Pp. 239. Akron: The New Werner Company, 1913.

This brief by the consul for Austria-Hungary at Cleveland, Ohio, presents the argument in favor of the exercise by foreign consuls of the right to administer the estates of their countrymen dying intestate in the United States. The cases which have been decided in eleven states are reviewed, an analysis is made especially of the decision of the United States supreme court in the case *In re* Rocca *vs.* Thompson and a comparison is given of the American and European interpretations of the most favored nation clause as applied to the special subject under consideration. The thesis argued is that since the treaty with Sweden, proclaimed March 20, 1911, consuls "have the right to be appointed as administrators" and that the clause allowing them to exercise this power "so far as the laws of each country will permit" does not act as a limitation. Therefore it is concluded that where the state has created a public administrator to handle such cases the state law must yield to the treaty and *a fortiori* the consul possesses the right in states where the statutes make no such provision.

MATIENZO, JOSE NICOLAS. *Le Gouvernement Representatif Federal dans la Republique Argentine.* Pp. 380. Paris: Librarie Hachette and Company, 1912.

This is a French translation of *El Gobierno Representativo Federal en la Republica Argentina*, reviewed in THE ANNALS, May, 1911.

MYERS, ALBERT COOK (Ed.). *Narratives of Early Pennsylvania, West New Jersey and Delaware.* Pp. xiv, 476. Price, $3.00. New York: Charles Scribner's Sons.

This volume of documents concerning the early history of Pennsylvania, West New Jersey and Delaware begins with extracts translated from a Dutch book, first published in 1655, the *Korte Historiael*, etc., by David Pietersz de Vries. This journal by De Vries gives an account of the six voyages which he made between 1618 and 1644. The third of these voyages was to the West Indies, and the fourth and sixth were made to the Delaware. The document

as reproduced gives those parts of the journal which refer to the trips to the West Indies and to the Delaware.

There follow in the volume of *Narratives*, extracts from the writings of Capt. Thomas Yong, 1634; from the "account of the Swedish churches in New Sweden" by Rev. Israel Acrelius, 1759; from the reports of Gov. Johan Printz, 1644 and 1647, and from the report of Gov. Johan Rising, 1654 and 1655. Penn's account of the province of Pennsylvania, 1681, his letter to the committee of the Free Society of Traders, 1683, and also his account of the province of Pennsylvania, 1685, are given. The volume gives much space to Gabriel Thomas' "Historical and geographical account of Pennsylvania and West-New-Jersey, 1698," and to the "circumstantial biographical description of Pennsylvania" by Francis Daniel Pastorius, 1700. These and the other documents contained in the volume make the book valuable as a reference work for students of the early history of the colonies about the Delaware.

O'FARRELL, HORACE HANDLEY. *The Franco-German War Indemnity and Its Economic Results*. Pp. x, 80. Price, 1s. London: Harrison and Sons, 1913.

All who have read Norman Angell's *The Great Illusion* will be interested in this study of the chapter in that volume entitled, The Indemnity Futility. The Garton Foundation and its work deserve to be better known because of the undoubted value of such a movement in furthering the cause of international peace. The author of this small volume does not differ from Mr. Angell in his general attitude but arrives at much the same conclusions in a different manner. The chief point at issue is whether the payment of the indemnity by France was the primary cause of Germany's economic troubles in the following decade. Mr. O'Farrell finds other causes more potent and concludes that "the indemnity played but a small part, if any, in aggravating the financial troubles under which Germany, in common with the rest of the world, suffered," while it actually conferred some benefits.

OSBORNE, ALGERNON A. *Speculation on the New York Stock Exchange, September, 1904—March, 1907*. Pp. 172. Price, $1.00. New York: Longmans, Green and Company, 1913.

This is an interesting but rather superficial discussion of the lack of anything which "tends to bring the volume of speculation in different stocks into approximate conformity with investment buying or selling" and is an outgrowth of the theory that speculation in security markets in general, and on the New York Stock Exchange in particular, causes business depressions, as contrasted with the idea of speculators whose actions are the result of coming conditions which they foresee. As a criticism of the foolish who purchased at the high prices existing before the 1907 panic, and a description of market conditions at this time, this book is excellent, but to assume that the buyers were all speculators and the investors all wise men and draw the conclusion that speculators are therefore lacking in that rare judgment and discounting ability attributed to them, is unwarranted. That some misjudged future conditions in 1906–07 is certain—that they were the speculators, in the Wall street sense of the term, the author has utterly failed to show.

PARCE, LIDA. *Economic Determinism.* Pp. 155. Price, $1.00. Chicago: C. H. Kerr and Company, 1913.

This monograph is an attempt to explain history on the basis of the way in which people make their living. Forms of government, types of social institutions and standards of living are products that arise out of conditions of life and can be comprehended only when these conditions are understood. History that explains cannot be written in terms of "dynasties" or "reigns." It must be told in periods of man's successive achievement in the art of subduing nature. This process is traced by the author through savagery, barbarism and civilization with special emphasis upon the changes produced by the industrial revolution. It is too brief and fragmentary to comprise a thoroughgoing treatise of the subject. It is rather a defense of a point of view.

PARKINSON, THE RT. REV. MONSIGNOR HENRY. *A Primer of Social Science.* Pp. xii, 274. Price, 2s. London: P. S. King and Son, 1913.

This little volume was written for the Catholic Social Guild. It is exceedingly elementary but covers a wide range of topics. Its four parts are: I. Introductory, in which such subjects as social science, sociology, the social point of view and social reform are explained and clearly distinguished from each other; II. Elements of the Social Life, including a study of the individual, the family, the state and the church; III. Economic Relations, covering production, distribution and consumption; and IV, Social Failures, personal and moral aspects and state assistance.

The whole range of material is treated from the ecclesiastical point of view.

PERRIN, JOHN W. *History of the Cleveland Sinking Fund of 1862.* Pp. 68. Cleveland: The Authur H. Clark Company, 1913.

PILLSBURY, ALBERT E. *Lincoln and Slavery.* Pp. 96. Price, 75 cents. Boston: Houghton, Mifflin Company, 1913.

For the solution of a problem peculiarly American in its nature only that man was fitted who was peculiarly American in instinct, training and sympathy. Mr. Pillsbury shows in a convincing manner that Lincoln fully understood that the fundamental issue between the North and the South was slavery; that the permanence of the Union depended upon the complete eradication of that institution; and that the keynote of Lincoln's political career was his struggle for the emancipation of the negro.

Questions of Public Policy: Addresses Delivered in the Page Lecture Series, 1913, before the Senior Class of the Sheffield School, Yale University. Pp. 134. Price, $1.25. New Haven: Yale University Press, 1913.

This book contains four lectures delivered by well known men before the senior class of the Sheffield Scientific School of Yale University in the summer of 1913. The lectures are: The Character and Influence of Recent Immigration, contributed by Jeremiah W. Jenks; The Essential and the Unessen-

tial in Currency Legislation, by A. Piatt Andrew; The Value of the Panama Canal to this Country, by Emory R. Johnson; and The Benefits and Evils of the Stock Exchange, by Willard V. King.

QUICK, HERBERT. *On Board the Good Ship Earth.* Pp. 451. Price $1.25. Indianapolis: Bobbs-Merrill Company, 1913.

With a true journalistic instinct the author approaches the major social problems of the day. His titles are both fanciful and specific. His rhetoric is excellent, and his conclusions regarding the responsibility of society for a careful piloting of the *Good Ship Earth* are convincing. Mr. Quick has what is sometimes called "a social viewpoint," which he has adapted marvelously to a popularized discussion.

SCOTT, WILLIAM A. *Money.* Pp. 124. Price, 50 cents. Chicago: A. C. McClurg and Company, 1913.

This is the second volume in the National Social Science series and attempts to give a concise statement of the main facts concerning money and its functions. It is "designed for the general reader rather than the expert or the young student."

STELZLE, CHARLES. *American Social and Religious Conditions.* Pp. 240. Price, $1.00. New York: Fleming H. Revell Company, 1912.

The volume of literature appearing on any subject is usually a crude index of public interest in the material presented. If this is true in this particular field, and observation seems to confirm such a view, then there is an increasing interest on the part of the church and religious people generally in the new adjustment of the church to the social and economic life of our time. No more virile writer on religio-social topics is to be found than the author of this little volume. Dr. Stelzle has grouped in 240 pages a usable mass of information which ought to be of great value to ministers and laymen not only in increasing practical knowledge, but in providing a motive for constructive service. Topics treated are problems of city and country, the liquor problem, women and children in industry, the immigrant, the negro, the Indian, the Spanish-American, the church's mission in the solution of these problems. The treatment is constructive and opens up a new vision of the function of a live, efficient church with energies centred in a unified program of social advance. An extended survey and outline of work is presented in two valuable appendices. As a handbook of practical information on social subjects the usefulness of the work is greatly impaired for lack of an index.

STUART-LINTON, C. E. T. *The Problem of Empire Governance.* Pp. x, 240. Price, $1.25. New York: Longmans, Green and Company.

The author starts with the assumption that "the only alternative to imperial disintegration is imperial federation" (p. 11); decides in favor of the latter without explaining why; and proceeds to indicate what form federation should assume. An imperial council might do, he thinks, as a temporary makeshift, but the ultimate goal is an imperial parliament where all the constitu-

ent parts of the empire have representation, an imperial executive of the cabinet type, and an imperial supreme court. This federation is to have a written constitution, which the author supplies. The federation thus organized is then informed how to manage properly its most important business, including naval and military defense, finance, taxation, emigration, the tariff, and the diplomatic service.

The method of treatment is purely speculative. The government of an imaginary imperial federation is outlined with little consideration for what might be possible or practicable in any actual federation. Bold assertions are often advanced unsupported by evidence or argument (e.g., pp. 6, 31, 33, 41, 126, 232), and misstatements of fact are not infrequent (e.g., pp. 28, 46, 175).

SUMNER, WILLIAM G. *Earth Hunger and Other Essays.* (Ed. by Albert G. Keller.) Pp. xii, 377. Price, $2.25. New Haven: Yale University Press, 1913.

Some three years ago under the title of *War and Other Essays* Dr. Keller published a volume of the writings of his teacher and associate, Professor Sumner. In the present volume are collected some forty articles, some of which have never been published. These are grouped under three main heads: liberty, fantasies and facts, democracy. Some half dozen, including earth hunger are outside of this classification.

The author was one of the great teachers of his day. He had a genius for compelling men to think. It is fitting that all the work of such a man be preserved in form accessible to future students. The editor is to be thanked therefore for the collection. He has done his part well. It now remains to be seen whether the reading public will appreciate the merit of the subject matter most of which concerns live issues of the day.

TRAWICK, A. M. *The City Church and Its Social Mission.* Pp. viii, 166. Price, 60 cents. New York: Association Press, 1913.

This little volume is one of a series being issued by the Young Men's Christian Association. The material is grouped in six chapters, which seek to show the connection of the city church with family life, public care of children, problem of charity, labor problem, social vice, other religious agencies. Naturally, so great a field imposes a great burden on the author, who tries to condense the chief facts into such brief compass. On the whole, the work is well done. The author's outlook is hopeful, his horizon wide. It should be of value in Y. M. C. A. classes and others of like nature. A fairly full bibliography is given at the end.

TUELL, HARRIET E. and HATCH, ROY W. *Selected Readings in English History.* Pp. ix, 515. Price, $1.40. Boston: Ginn and Company, 1913.

WHITEHOUSE, J. H. *Essays on Social and Political Questions.* Pp. 95. Price, $1.00. New York: G. P. Putnam's Sons, 1913,

WOOD, RUTH K. *The Tourist's Spain and Portugal.* Pp. xvi, 357. Price, $1.25. New York: Dodd, Mead and Company, 1913.

Not a Baedeker and yet not a travel book this lies half between the two. The descriptions are well written, but the mechanics of the journey and an anxiety to omit mention of none of the "liens" of each city make the style at times labored. The instructions are not detailed enough to allow the traveller to dispense with his guide book. The chapters on Portugal contain much information not found in the usual tourists' manual.

REVIEWS

ADAMS, BROOKS. *The Theory of Social Revolutions.* Pp. vii, 240. Price, $1.25 New York: The Macmillan Company, 1913.

The mind of the complacent lawyer who holds the traditional attitude toward legal interpretation will receive something of a shock upon reading this book. The author is not temperamentally a sensationalist and with a legal training and practice covering more than twenty-five years we have reason to regard his utterances as the result of deep conviction. A casual reading of the book confirms this supposition. His studies have not been confined to the mere technique of legal procedure and the perusal of precedents, but have gone deeply into the social, political and economic forces which shape public opinion and mould law. The present volume is an exposition of the conclusions which are the product of these experiences. But the conclusions are not presented without an exhibit of the material upon which they are based. In Chapter I he discusses what he terms the collapse of capitalistic government which he regards inevitable as the result of the establishment of a new equilibrium. Capital has assumed sovereign power without accepting responsibility. The day of calling capital to account has arrived. Chapter II discusses the limitations of the judicial function and Chapter III American courts as legislative chambers. The assumption of legislative functions on the part of the judiciary uniformly has been followed by extension of authority over the courts by constitutional amendment and other methods. The social equilibrium, Chapter IV, is the force which determines where sovereignty resides and this is illustrated by an appeal to history, especially the events of the French Revolution.

Political courts are discussed in Chapter V and are portrayed as the inevitable precursors of revolution. "During the Reign of Terror, France had her fill of political tribunals."

The concluding chapter on inferences is constructive and logical on the basis of the premise laid down in the previous chapters. Civilizations have broken down through administrative difficulties. "The rise of a new governing class is always synonymous with a social revolution and a redistribution of property." The judicial recall he regards "as revolutionary in essence as were the methods used during the Terror," and would convert the courts into political tribunals and "a political court is not properly a court at all, but an administrative board whose function is to work the will of the dominant faction for the time being. Thus, a political court becomes the most formid-

able of all engines for the destruction of its creators the instant the social equilibrium shifts." The remedy lies in an untrammeled and independent judiciary. Since we are not traveling in that direction, the inference is clear.

Many readers will hardly agree with the premises and hence will object to the conclusions. But we have here a thought-provoking work and one well worth pondering in the light of contemporary facts.

J. P. LICHTENBERGER.

University of Pennsylvania.

ALEXINSKY, GREGOR. *Modern Russia.* (Trans. by Bernard Miall.) Pp. 361. Price, $3.75. New York: Chas. Scribner's Sons, 1913.

Though not a systematic discussion of the Russia of our time, this book contains much material of value to the students of contemporary institutions. The author's experience as a member of the Duma gives him intimate knowledge of its workings, or rather of its powerlessness to do creative work, and his access to material in Russia opens to him fields closed to most western European writers. The chief criticism of the style is the author's tendency to discursive language. Pages of concrete facts, which furnish excellent pictures of phases of Russian economic and political life are followed by others which are indefinite or unrelated to the subject discussed. The volume is far from the standard of Palme's *Russische Verfassung* or Chasles' *Le Parlement Russe*, neither does it have the solidity of Milyoukov's *Russia and Its Crisis*. On the other hand, it is much more easily read than any of these and will probably familiarize more people with the general lines of Russian national development, its economics and its governmental organization.

Four chapters on the physiography and history of Russia introduce the discussion of modern conditions. The treatment of the latter shows great confidence in the potentialities of the country and its people and marked pessimism as to the present outlook. Three features of Russian life limit the realization of the nation's proper development. Economic interests are in the hands of a comparatively small group bent on keeping things as they are and reaping the greatest possible immediate profit. The large landholders squeeze from the peasant the last kopeck beyond the barest existence. Politics are controlled by the same group. The Duma is a farce. Indeed though the people were fired with the hope that the first and second Dumas might accomplish something to ameliorate conditions they have now lost interest in the meetings.

The result of the control of politics and economics by the reactionaries is reflected in bad social conditions. The chapters dealing with these subjects are the best in the book. Sanitary conditions are deplorable, over 80 per cent of the people are illiterate. Social conditions have hardly progressed farther than the feudal state, personal morality is held in light esteem, the police system contributes to disorder and the system of taxation discourages enterprise.

In this dark picture the only hopeful features are the work done by the Zemstvos in the development of local self-government and the gradual awakening of the wealthy classes to the backward condition of their fatherland.

The concluding chapters on the church and literature of Russia are sketchy and unsatisfactory.

CHESTER LLOYD JONES.

University of Wisconsin.

ASCHAFFENBURG, GUSTAV. *Crime and Its Repression.* Pp. xxviii, 331. Price, $4.00. Boston: Little, Brown and Company, 1913.

HOPKINS, TIGHE. *Wards of the State.* Pp. viii, 340. Price, $3.00. Boston: Little, Brown and Company, 1913.

In order to arouse the public conscience in regard to any social wrong, two things are necessary. First, a careful collection of data must be made and generalized in a scientific manner. Second, upon the basis of this knowledge there must be a persistent propaganda. Both these demands are being met in the modern literature of criminology and penology. To the first type belongs the work of Aschaffenburg; to the second, that of Hopkins.

Crime and Its Repression is a careful, critical and constructive piece of scientific work. It is based upon German conditions, but its method is equally applicable to any other country. Theories in regard to crime are examined in the light of obtainable facts and, in numerous instances, are shown to rest upon insufficient data. The thing that impresses the reader throughout the work is the emphasis laid upon the necessity of seeking adequate causes for the phenomena.

Parts I and II are devoted respectively to the consideration of the social causes, and the individual causes of crime. In the former are discussed those causes which lie outside the individual in changes of season, race and religion, city and country, occupations, alcohol, prostitution, gambling, and economic and social conditions. The method is one of careful criticism of available statistics as one of the chief sources of erroneous conclusions, but no effort is made to discredit their use. In the latter, the causes which lie within the individual are studied. These include parentage and training, education, age, sex, domestic status, physical and mental characteristics of criminals and mental diseases. Neither heredity nor environment alone is sufficient to exhibit the real nature of the anti-social act we call crime. It is the joint product of all the elements involved, and can be understood only when all factors are given their full value.

Not until this survey is made are we prepared to consider the treatment of the criminal which the author reviews in Part III under the caption, The Struggle Against Crime. Here in the same critical manner are reviewed such subjects as prevention, responsibility, the purpose and means of punishment, indemnification, suspended sentence, probation, etc. In his conclusions, the author may be classed among the leading advocates of the individualization of punishment. In fact, the only sane method of repression is not in the repression of the unfortunate victim, but in the elimination of the causes which create the victim.

This volume is the sixth in the list of foreign books selected for translation by the American Institute of Criminal Law and Criminology.

The author of *Wards of the State* for years has been in the position to

make first-hand observations of the methods and the results of imprisonment of offenders, and has presented this treatise for the purpose of arousing the public mind to action in regard to the elimination of palpable social wrongs.

Beginning with the statement that "Imprisonment, its effects upon the prisoner and the prejudice it creates against him in the public mind" are the chief topics of consideration, he describes in graphic style the conditions of penal servitude and prison labor at Portland and other institutions, and shows the old archaic system now so thoroughly discredited has not yet been displaced even in enlightened England. This is the content of Part I.

Part II, labeled Preventive is a treatise of only one aspect of the subject of prevention—that of detection and identification of criminals. Chapters are devoted to the subjects of Bertillonage and the finger print, crime and the microscope, crime and the camera, the police dog, the jiu-jitsu for the police. These chapters are interesting and informing reading, but one may affirm as certainly of these as the author does of the prison, that the efficacy of these methods perfected to ever so high a degree would have little or no perceptible influence in the diminution of crime. If the prison itself is no deterrent, it is hard to see how a system that would result in putting more men into prison would increase its value as a preventive.

Part III contains two excellent chapters on the futility of flogging and the inequality of sentences but its chief burden is the demonstration of the failure of imprisonment, either to diminish crime or to work the reformation of the criminal. He regards the prison as "the tragi-comedy of our day," graduating the offender to a criminal career, and branding him with a stigma that makes it impossible for him ever to have a fair chance for normal life. The greatest condemnation of the prison is the absolute lack of confidence on the part of the public in its product. Chapter XX, entitled New Horizons, is the only constructive portion of the book. Here the author sketches the outline of a real system of "prevention" through the treatment of the causes of crime; the abandonment of retaliative and retributive punishment; the methods of rehabilitation of the offender.

The book is neither logical in its treatment nor comprehensive, and its title is something of a misnomer, yet it contains much valuable material and will tend further to render unpopular our scientifically discredited system of penal servitude.

J. P. LICHTENBERGER.

University of Pennsylvania.

BAERLEIN, HENRY. *Mexico: The Land of Unrest.* Pp. xxiv, 461. Price, $3.75. Philadelphia: J. B. Lippincott Company, 1913.

Existing confusion in the public mind with reference to the Mexican situation is traceable very largely to the fact that but few persons are acquainted with the antecedents of the present situation. The long period of anarchy which followed closely on the heels of the Declaration of Independence; the successive attempts to establish popular government in the absence of any of the elements upon which popular government must rest, and finally the adoption in 1853 of a constitution far in advance of the political training and

preparation of the people: these are all elements in the Mexican situation which tend to explain present conditions.

The work of Mr. Baerlein is a valuable adjunct to the study of present conditions. In his capacity as correspondent of the *London Times* he visited many different sections of the country. His keen sense of dramatic contrasts enables him to paint an exceedingly vivid picture of conditions prevailing during the long presidency of Porfirio Diaz.

The author has evidently concentrated his attention on the shortcomings of the Diaz administration. He fails to take into account the fact that during its early years, the fundamental problem was to establish something approaching order throughout the confines of the Republic. In the accomplishment of this purpose some ruthless measures were no doubt adopted, but it must also be borne in mind that the national administration had to deal with a lawless element which, while not forming any considerable percentage of the total population, was able to create a feeling of insecurity throughout the country.

The author dwells at length on the mistakes of the Diaz administration and the corruption which existed amongst officials. As to the extent of such corruption there are wide differences of opinion. It is true that influential persons were able to secure special concessions and franchises and amassed large fortunes through such special privileges. It is also true that large land owners were able to increase the extent of their holdings at the expense of their weaker neighbors. Opposition to the Diaz régime, especially if it took the form of political agitation, was ruthlessly suppressed.

All of these facts are brought out with great clearness by the author, but he fails to point out one of the most important shortcomings of the policy of President Diaz, namely the failure clearly to appreciate the fact that the development of the country's wealth did not necessarily mean a corresponding advance in its welfare. Porfirio Diaz concentrated his efforts on the utilization of the natural resources of the country, but he failed to accompany his efforts in this direction with the proper safeguards to the interests of the working classes. While, therefore, the country advanced rapidly in wealth during his administration, the condition of the farm laborers and miners did not show a corresponding improvement.

In spite of a certain lack of proportion the book of Mr. Baerlein is a valuable contribution to a study of the antecedents of the present situation in Mexico.

L. S. ROWE.

University of Pennsylvania.

CHAPIN, F. STUART. *Introduction to the Study of Social Evolution.* Pp. xix, 306. Price, $2.00. New York: The Century Company, 1913.

This book is an attempt to present in usable form the more elementary aspects of biological and anthropological material of social evolution for elementary classes in sociology. Part I with three chapters on variation and heredity, struggle for existence and the origin and antiquity of man presents the essential phases of organic evolution. Part II with six chapters on association, the influences of physical environment, social heredity,

races and peoples, tribal society, and the transition from tribal to civil society, surveys the main aspects of social evolution. At the end of each chapter is given a selected bibliography of the standard works from which the material is drawn.

Like many other teachers the author has felt the need for a collection of the material to be put into the hands of the student. So varied and scattered are the sources that the average library is entirely inadequate in duplicate copies to supply a class of any considerable proportions with facilities to pursue the studies for themselves through assignments. As a result the lecture method of instruction has been often a necessity in this subject. How well this volume will meet this need can be determined only by use. The reviewer is of the opinion that its practical utility would have been enhanced greatly had it been somewhat more comprehensive. It will require much in the way of lecture and further explanation.

The material is well selected and presented. The order is logical and scientific. Considerable emphasis is placed upon the illustrations which illuminate the text and which otherwise would be inaccessible to the average student, called as they are from such a wide range of sources.

We believe the author has done a real service not only in emphasizing the need for the constructive study of developing society but also in rendering the material for such study more available.

J. P. LICHTENBERGER.

University of Pennsylvania.

COLLIER, PRICE. *Germany and the Germans from an American Point of View.* Pp. xii, 602. Price, $1.50. New York: Charles Scribner's Sons, 1913.

In two earlier books, *The West in the East* and *England and the English*, Price Collier, writing from an American point of view, has given an interesting and suggestive account of the people of the East and of England, and of their customs and problems. The present work is a similar study of Germany and the Germans.

The first two chapters trace the historical development of Germany. Chapter III deals in a friendly way with the present Emperor, William II, a man who has impregnated the German people "with his own aims and ambitions, to such an extent, that they may be said, so to speak, to live their political, social, martial, religious, and even their industrial, life in him." Mr. Collier professes the greatest sympathy with the kaiser in his capacity as war lord, and in his insistent stiffening of Germany's martial back-bone, yet believes that the German Emperor is far and away the best and most powerful friend that the English have in Europe.

The place of the newspaper and the power of the journalist is said to be increasing rapidly, but as yet neither the press as a whole, nor the journalists, with a few exceptions, exert the influence on either society or politics of the press in America and England. A good word is said for German cities, which in the great majority of cases present no loopholes for private plunder, and which are administrated by experts, not by politicians.

Chapter VI, on a land of damned professors, proves a disappointment, not because of its account of the German system of education, but because the part which the professors in the German universities have played in the industrial development of Germany receives hardly more than passing mention.

In a chapter entitled ohne armee kein Deutschland, the author minimizes Germany's warlike intentions. Political geography provides a sufficient excuse for Germany's army and navy. The supposedly bellicose army, in an existence of over forty years, has done far more to keep the peace than any other one factor in Europe, except, perhaps, the British navy. Furthermore, the Germans want peace, but being the last comers into the society of nations, they mean to insist upon recognition.

In conclusion the author expresses the conviction that Germany is confronted with a grave internal danger arising out of the fact that its marvelous development of recent years has been artificial, because forced. It is not possible, merely through the natural development of its innate characteristics, for a nation to change in one generation, as Germany has changed. Consequently it is felt that there is little ground for the belief that the German nation is to save the world by Teutonizing it. The scarecrows of autocracy, bureaucracy, and militarism are not destined to live, much less to be transplanted to other countries.

ELIOT JONES.

University of Pennsylvania.

COMMONS, JOHN R. *Labor and Administration.* Pp. ix, 431. Price, $1.60. New York: The Macmillan Company, 1913.

We should be very grateful to Professor Commons for this collection of essays and studies. Many of us who have been reading with great interest his suggestive articles in various magazines will re-read them in this volume, and will be glad, moreover, that the more recent ones are made so readily accessible in bound form. Among the twenty-two studies in the volume, there are a number that deal with the philosophy of the labor movement and of the labor conflict, such as the union shop, restrictions by labor unions, and the class conflict. Another of this group is one on unions and efficiency, in which for the first time the reasons for the hostility of organized labor to the efficiency movement are analyzed, and the need shown of adopting "methods that will recognize the mutability and solidarity of labor and convert this craving for harmony and mutual support, as well as the impulse of individual ambition, into a productive asset." In the volume are the remarkable studies of American shoemakers, the longshoreman of the Great Lakes and the musicians of St. Louis and New York. The first of these stands as one of the most interesting studies in economic history and it is a distinct gain to have it reprinted. The closing studies of the volume contain the results of the author's experience as a member of the Wisconsin Industrial Commission. He emphasizes not only the importance of the administration of labor laws, but the need for adequate administration. As Professor Commons is the originator of the Wisconsin experiment in this field and has been one of its first ad-

ministrators, these studies are of particular value. A sentence in the introduction truly summarizes the underlying thought of the essays: "Through them run the notions of utilitarian idealism, constructive research, class partnership and administrative efficiency—a programme of progressive labor within social organization." No person interested in economic or in labor history can afford to be without this volume.

ALEXANDER FLEISHER.

Philadelphia.

DEWSNUP, E. R. *Freight Classification*, 4 vols., pp. ii, 304; TRIMPE, W. A. *Freight Claims*, pp. 62; MORTON, J. F. *Routing Freight Shipments*, pp. 27; STROMBECK, J. F. *Reducing Freight Charges to a Minimum*, pp. 68. Chicago: La Salle Extension University, 1913.

In addition to the *Atlas of Railway Traffic Maps*, previously mentioned in THE ANNALS, the La Salle Extension University has issued the above-named treatises on freight classification, freight claims, freight routing, and reducing freight charges. They are among the various lessons of an extensive course on interstate commerce now being prepared under the direction of that institution.

The description of freight classification was written by Prof. E. R. Dewsnup of the University of Illinois. After describing briefly the past development of classification it outlines in full the present application of the Official, Southern and Western classifications, the manner in which classifications are made, and the rules contained in the classification books. Volume four contains in convenient form for the use of students a series of appendices explaining territorial and technical traffic terms, abbreviations used in traffic publications, and the application of the leading classifications.

The remaining lessons are briefer and are presented in a more technical form. Mr. W. A. Trimpe of the Chicago bar describes the nature and kinds of freight claims, how, by whom, and to whom they are presented, the forms and documents used in making claims, and the manner in which they are handled. The lesson on reducing freight charges to a minimum was prepared by Mr. J. F. Strombeck, president of the Strombeck-Becker Manufacturing Company. It points out the methods by which shippers may assure to themselves the lowest available freight charges. Mr. J. F. Morton, assistant traffic director of the Chicago Association of Commerce in the lecture on routing freight shipments briefly discusses the ways in which the proper routing of freight benefits shippers. Being especially designed to assist young men who expect to enter or have entered some one of the many branches of interstate commerce, these lessons though brief are essentially practical.

GROVER G. HUEBNER.

University of Pennsylvania.

DUNN, SAMUEL O. *Government Ownership of Railways*. Pp. vii, 400. Price, $1.50. New York: D. Appleton and Company, 1913.

Mr. Dunn's book is a readable and clear presentation of issues that will confront the public in this country, if government ownership and management

of the railways should be undertaken. The considerations involved have long needed a popular treatment—one that would not be wrapped in the obscurity that envelops many scholarly works on the problem of transportation. Perhaps a readable and condensed book of this sort will be of more service than the published results of many exhaustive investigations.

The examination which the author makes of the interaction of politics and railways owned by the government is most useful at the present time. In general discussions, particularly, the probable growth of corrupt relations between railway officials and public servants, under either government or private ownership, has been the subject of many carelessly sweeping statements. A glance at the evidence bearing on this matter which Mr. Dunn brings forward will tend to make unqualified assertions somewhat less common than they have been. Economists and students of railway matters have learned caution in forming or expressing opinions; popular prophecies should become more balanced if such books are widely read as this deserves to be. The author's concluding decision is definitely against government ownership; and he reaches it, after a fair and critical weighing of available evidence, without any of the labored arguments from analogy that have been customary in popular works on the subject, and have served to darken counsel.

There are few situations where public ownership and private operation exist. A rather full notice of this possible solution would not have been out of place. Abuses of delegated powers of ownership, rather than of pure operation, have made the present situation acute. Present evolutionary tendencies however point to government ownership and operation and possibly call for a consideration of government operation, as well as ownership, rather than of the possible outcome just indicated.

A. A. OSBORNE.

University of Pittsburgh.

FERGUSON, WILLIAM SCOTT. *Greek Imperialism.* Pp. xiv, 258. Price $2.00. Boston: Houghton, Mifflin Company, 1913.

This book contains a course of six Lowell Institute lectures delivered in February, 1913, to which a seventh has been added to make the list of Greek experiments in imperialism complete. It traces the development of imperialistic ideas and practice in the empires of Athens, Sparta, Alexander, the Ptolemies, Seleucids, and Antigonids, from the germinant form in the city-state, through the deification of rulers as a bond of interstate union, to the nice balance of the federal system, and makes clear the manner in which the Greeks prepared the way for the unification of the world under the empire of Rome. The judicious selection of material and the clear and well-balanced treatment reveal fullness of knowledge and penetrating insight into historical processes. Such a guide-book has value for the student of ancient history and government, and is a timely aid to the general reader in view of present-day tendencies and discussions, for it corrects widespread misconceptions as to what Greek governments really were, and as to the causes of the metamorphosis of city-states from ultimate to constituent political units. Some readers will be surprised to learn that there was "no such thing in Athens as the final settlement

of controversial matters by a single popular vote," and still more perhaps to read that if "we take into account the ratio of dominant, subject, and foreign elements, and also the time consumed in reaching with ships, orders, or explanations, the outer limits of authority, the magnitude of Athens' imperial undertaking will stand comparison with that of England in modern times."

Frequent *obiter dicta* are both enlightening and pertinent, such as, "The Greeks still have something to teach us as to the educative power of great poetry;" and, "the singleness of purpose with which Sparta made vocational training the aim of her public education achieved the happy result that she had no men of letters to betray to posterity damaging secrets of state." The author's graphic style paints many a vivid picture like this of the end of the Seleucid empire, "Then, the blackened hulk, manned by a mutinous crew, lay helpless in a sea infested with pirates, when Pompey picked it up and towed it into a Roman harbor."

Only a few errors have been noted. Chronus appears for Cronus (p. 143), Calchis for Chalcis (p. 230), and eight months are spoken of as three-fourths of the year (p. 69). The minimum panel of Athenian jurymen should be 201 instead of 401 (p. 49), the statement that men of large wealth in Athens "volunteered" to support the theatre, etc., ignores the frequent attempts to evade what was really a legal requirement (p. 65), and there is scant justification for the inclusion of Herodotus and Hippocrates with Sophocles, Phidias, et al., among the men produced by the Athenian régime (p. 74).

But defects are few and slight. The book is interesting, instructive, and stimulating, the name of the publishing firm guarantees its excellence in externals, and a select bibliography and an index contribute to its usefulness.

FRANK EDWARD WOODRUFF.

Bowdoin College.

GARNEAU, FRANÇOIS-ZAVIER. *Histoire du Canada.* (*Bibliothèque France-Amérique.*) Cinquième édition, revue, annotée et publiée avec une introduction et des appendices par son petit-fils Hector Garneau. Préface de M. Gabriel Hanotaux, de l'Académie Française. Tome I. Pp. lv, 610. Paris: Félix Alcan, 1913.

This book is unique as the combined work of two French-Canadian historians, belonging to the same family, but separated by two generations. Francois-Xavier Garneau, the original author (1809–1866), was a Liberal of the early Victorian era in Canada. His views upon the history of his race took the color of his own patriotic nationalism; yet, devout Catholic though he was, upon questions of Church and State (a very engrossing subject in French-Canadian history), he shared with contemporary Liberals an enlightened disapproval of extreme clericalism. The better part of his life he devoted to a study of the material of Canadian history, and, adopting the style and method of Michelet, he achieved the distinction of writing, in point of time, the first national history of French Canada, and certainly, as yet, the best.

It seems appropriate that his history should be selected by M. Hanotaux for the Comité France-Amérique as the initial number of their Bibliothèque,

a series planned by the committee with the object of furthering mutually the cultural relations between America and France. The republication of the work in Paris, under such patronage, points anew to the historical interest of France in America—not only as a past field of colonial enterprise, but also as the present home of some millions of French people, retaining vigorously their national distinctiveness, and preserving a national culture, of which the scholarship of Garneau is such an eloquent testimony. On this side, a history dealing with the place of France in the beginnings of America is always welcome; but the Comité France-Amérique has placed the reception of this work beyond a doubt by means of a new edition, the fifth, in which the original acquires an altogether different value.

By offering the revision of the work to M. Hector Garneau (a grandson of F.-X. Garneau), the Comité France-Amérique secured an editor who desired, as a tribute to the memory of the first historian, to enhance the usefulness of the book by making it accord with the requirements of recent historical scholarship. M. Hector Garneau has brought to his task a very extensive knowledge of the sources and literature of Canadian history; and, as editor only, he has been content to use for bibliographical references and appendices material which might well have made a work under his own name. By relating the text of the original to all the material now available for study and research, he has, in effect, transformed a classic of the early nineteenth century into a model of critical thoroughness. It would be difficult to say whether the volume at hand owes more to the excellent narrative style and philosophic grasp of the author, than to the critical revision and annotation of the editor: for what is editorial in form has often a substantive value that can hardly be dissociated from authorship. In its present edition the combined work of author and editor makes the most complete general history of French Canada that we have; and one which, while always acceptable in earlier editions, has now become invaluable.

C. E. FRYER.

McGill University, Montreal.

HEAPE, WALTER. *Sex Antagonism.* Pp. 217. Price, $1.50. New York: G. P. Putnam's Sons, 1913.

A book devoted to the sex question, now so much in the public mind, written from the biological point of view, ought to be of peculiar interest. The author's frank avowal that one aspect of the present social unrest is due to an almost universal ignorance of the part sex plays in race development and in modern civilization is worthy of consideration. The book is written as a criticism of Frazier's theories of Exogamy and Totemism which mean little to the lay mind. He disagrees with Frazier as to the origin of these universal customs in primitive society, regarding Exogamy as due to the instinctive sex impulses of the male, while Totemism is a feminine creation which has special relation to the function of maternity.

His main contention, of vital importance to the social student in general, is that the biological differences in sex express themselves in all phases of life in a fundamental difference in sex impulses and instincts which are strongly

opposed to each other. "Thus the male and female are complementary; they are in no sense the same and in no sense equal to one another; the accurate adjustment of society depends upon the proper observance of this fact." Sex antagonism is the result of the disturbance of complementary relations in an artificial society the practical significance of which is exhibited in the modern feminist movement. Beginning in inter-sex antagonisms it culminates in intra-sex conflict, and the author sees great danger in the tendency to develop the latent secondary male characters in the female sex. He says: "By training her recessive male qualities she can never attain to more than a secondary position in the social body; but by cultivating her dominant female qualities, by increasing their value, she will gain power which no man can usurp and will attain that position as a true complement of man which is essential for the permanence and the vigor of the race."

Many readers will feel that the writer has exaggerated the differences in sex characters of men and women, but that it is a subject too much neglected, all who realize its fundamental importance will readily admit.

The book is thought-provoking, presents an old subject in a new light, and is worthy of serious study by all who view with concern the new adjustments required by modern civilization.

J. P. LICHTENBERGER.

University of Pennsylvania.

HOLLAND, BERNARD. *The Fall of Protection.* Pp. xi, 372. Price, $3.00. New York: Longmans, Green and Company, 1913.

The author of this book states in the preface that though he has not exerted himself to be *impartial*, yet he has tried not to be unfair, in the sense of suppressing or misstating facts and arguments which support opinions not his own. This purpose has been steadily maintained in the main part of the work, which consists of an account of the protective system in Great Britain and its fall from 1840 to 1850. Throughout the explanation of the old national system and the colonial system, and in the narrative of Peel's fiscal reforms, 1842–1845, the battle of the corn laws, Peel's conversion, and the repeal of the corn laws and the navigation laws, our author is not only not unfair, but rather gives the impression of impartiality. The general direction in which his sympathies lie is indicated, however, by his minimizing, through a failure to say much about it, the important part which Richard Cobden played in the struggle for repeal. It is indicated also by his belief that it was a mistake to assert that the corn laws had raised or maintained rents, farming profits, or bread prices; or, at least, it was a very great exaggeration of the practical effects of those laws. It is open to question, or at least difficult to prove, he maintained, whether the English corn laws, *while they lasted*, ever raised the rent of a farm, or the profits of a farmer, or the price of a loaf. This position, however, seems untenable, when we consider that the price of wheat in England in 1842 (to take our author's own figures) was 57s. per quarter, whereas in Germany it was only 40s. The freight to London being 5s. per quarter, the duty must have kept the English price artificially high, and therefore main-

tained British rents and bread prices higher then they would otherwise have been.

In the closing portions of the book, which present a brief account of the existing tariff system, the leanings of the author are more apparent. It is pointed out that the fiscal revolution of 1846 was made possible by the fact that England's supremacy at sea was unchallenged, which gave her assurance of foreign food supplies; by the fact that England possessed a subject empire which could be held open by force for England's exports; and by the fact that England's manufacturing power was unrivaled. But at the present day British control of the sea is no longer unchallenged, the colonies of the British Empire have adopted protective tariffs, and England's manufacturing power is subject to keen competition. As English agriculture was ruined, so by a later development in the same process, unless steps are taken to prevent it, will English manufactures be destroyed. The author believes that this development can be prevented by the adoption of the Chamberlain plan, a reform based upon the national policy of moderate protection and colonial preference abandoned by Peel in 1846. The Chamberlain proposal has been defeated, it is true, but its principle has been accepted by one of the great British parties; it is being resisted more and more weakly by the other; and, if signs can be trusted, it will be carried into effect, in some shape, at no very remote date.

ELIOT JONES.

University of Pennsylvania.

HOLMES, ARTHUR. *The Conservation of the Child.* Pp. 345. Price, $1.25. Philadelphia: J. B. Lippincott Company,

The title of this book, while applicable, does not give the prospective buyer an adequate index to its contents, as the title of all serious books should do. The subject is the mental and physical deficiency of certain children. If the sub-title were used in the place of the one printed on the covers, the buyer would know exactly the nature of the book: "A Manual of Clinical Psychology presenting the Examination and Treatment of Backward Children." To be sure, it is a discussion of the conservation of some children, probably 10 per cent of all of them. Such a valuable book should not be issued without an index.

Dr. Holmes has been associated with Dr. Witmer almost since the beginning of the work of the psychological clinic, the initial attempt to use clinical methods in the investigation and treatment of troublesome school children, and his book is the result of the sixteen years' work of the clinic. The first chapter is a historical sketch of the treatment of feeble-mindedness. Following this is a description of the establishment and organization of the psychological clinic in the University of Pennsylvania. Nearly one-half of the book is taken up with the discussion of the cases which have appeared in the clinic. Most of this discussion is extremely valuable. The cases are well chosen but would be more serviceable if a complete history of each individual case were given, as Huey has done in his case book of backward children. One of the most

interesting chapters of the book is that in which the author discusses the subject of "moral deviates." The book closes with the chapter upon the sociological relations of the clinic. It is of vital interest to public school people who are abreast of the time and who consider it a part of their duty to strengthen the weak and to give proper assistance at the right moment to unfortunate children. It is another valuable addition to the technical library of the child welfare worker and is a handbook for use in the psychological clinics now being organized in various universities, normal schools and social centers.

A. H. YODER.

Whitewater, Wis.

KNIFFIN, WILLIAM H., JR. *The Savings Bank and Its Practical Work.* Pp. vi, 551. Price $5.00. New York: The Bankers' Publishing Company.

As indicated by the title this study of the savings bank is a practical one. After a brief account of the savings bank movement both abroad and in the United States and a discussion of the nature, functions and value of such banks, the author surveys the situation in the United States at the present time. He finds that most of the mutual institutions are in the East and North. There are only ten west of the Mississippi River, nine of which are in Minnesota and one in California. None is to be found south of West Virginia. The reasons are found to be the commercial motives that prompted the settlement of the South and West and the preponderance of agriculture which affords few idle funds for investment. There are, of course, many stock savings banks in all parts of the country.

The remainder of the volume describes organization and practical work. The New York law is declared to be the model and the description follows its requirements with frequent references to the laws and the practice in other states which differ from New York. The duties of the trustees and the various officers, the by-laws, the method of making deposits and withdrawals are treated in successive chapters. Devices used in different banks are compared and various swindling methods are described. The uses of the new card and loose leaf systems of keeping records are discussed. The old style ledger is condemned and the common argument against loose leaves and cards that they are not legal evidence in court proceedings is answered by the assertion that the courts have ruled that it is the original entry that counts. Hence, says the author, the ledger has no better chance than cards, since the ledger is usually not a book of original entries.

The entire business of the savings bank is clearly and adequately discussed. Illustrations are numerous and varied and a large number of forms and records are inserted. In addition the book is well arranged and attractively bound and printed. It is, so far as the reviewer knows, the only satisfactory recent treatment of the subject and it is certainly done in a most capable manner.

E. M. PATTERSON.

University of Pennsylvania.

KNOOP, DOUGLAS. *Outlines of Railway Economics*. Pp. xvi, 274. Price, $1.50. New York: The Macmillan Company, 1913.

ELLIOTT, HOWARD. *The Truth About the Railroads*. Pp. xxi, 259. Price, $1.25. Boston: Houghton, Mifflin Company, 1913.

The book on *Railway Economics* by Mr. Knoop, lecturer at the University of Sheffield and at the Midland Railway Institute, contains an instructive account of railroad rate-making and railroad regulation in Great Britain. British railroads being operated by private companies are of particular interest to the American reader. The demand for an increase in freight rates, which is now the topic of widespread discussion in the United States, has already been granted in the United Kingdom. So too the problem of railway combination and consolidation has been decided in that country; and British railways are likewise being subjected to an increasing amount of public regulation. The volume contains several instructive chapters on the methods of making freight rates and fares in Great Britain, outlining fully the conditions which influence rates. It similarly describes the methods of making the British freight classification, and the way in which passenger fares on British railroads are made. The various forms of railroad combination are divided into two groups: first those which cause the parties to the agreement to have one management, and second, those which leave each party to the agreement under independent management. Railway combinations of the first type are brought about by amalgamation, by lease, by a so-called "working union," and by working agreements. Those of the second type result from the conferences of railway officials meeting at the Railway Clearing House, from pooling arrangements whereby earnings are divided, from agreements concerning the division of territory, and from agreements to facilitate the handling of through traffic. Coöperation has long superseded competition in Great Britain, and railway combinations have been legalized.

The author does not under present conditions look with favor upon the tendency to increase the strictness of public control. His opinion is not unlike those of many American railway managers. "At the present time," says Mr. Knoop, "the proprietors of the railway companies find themselves being gradually deprived of the power of conducting their undertakings on business lines. They have to bear the whole of the risks, yet new conditions, involving considerable increases of capital and working expenses, may be imposed on them from outside. That the state should exercise control over privately owned railway undertakings is most desirable, but a position in which the state assumes no financial responsibility of any kind, while imposing from time to time new conditions which restrict the powers of the managements and affect the profits prejudicially, may easily become unfair." The volume closes with an account of the discussion which has recently arisen in Great Britain concerning the ownership of British railroads by the state.

The book entitled *The Truth About the Railroads* by Mr. Howard Elliott is similar to the volume by Mr. Knoop only in that it contains similar views concerning the future increase of public control in the United States. It consists of a series of addresses which were delivered on various occasions by the recently selected chief executive of the New York, New Haven and Hartford

Railroad Company. The tenor of the volume is a plea for a cessation of hostile public sentiment, and for an era of friendly coöperation between railway companies, railway employees and shippers. Mr. Elliott summarizes the present difficulties of American railways as follows: "Upon the one hand there is a critical public. Upon the other, the railroads are struggling with the forces which are causing rates to remain stationary or to decline, causing wages to rise or to remain stationary, bringing demands from a prosperous and luxurious people for increasingly expensive facilities and service, and causing taxation to rise at an alarming rate. These four forces are all at work reducing the margin between income and outgo and making it more and more difficult for the owners of railroad properties to keep their lines in suitable condition to carry on the business of the country, and to obtain a return commensurate with the risk of the business and sufficient to attract further investment."

G. G. HUEBNER.

University of Pennsylvania.

KOSER, REINHOLD. *Friedrich der Grosse. Volksausgabe.* Pp. 533. Price, 6 m. Stuttgart: J. G. Cotta'sche Buchhandlung Nachfolger.

Those who lack the time to read Koser's three volume *History of Frederick the Great* will be grateful for this compact biography in one handy volume by the most competent living authority. This book was prepared to satisfy the popular interest that developed on the occasion of the two hundredth anniversary of Frederick's birth, and it naturally emphasizes the personal element. It consists mainly of extracts from the large work suitably linked together with connecting narrative, so that it does not give the impression of a mosaic. "Those chapters of the large work which are primarily of biographical interest, excluding the technical details of diplomatic, military, and administrative history are reproduced practically complete." The first chapter is an excellent summary in thirty-three pages of the author's small work *Frederick the Great as Crown Prince.* The book realizes excellently the purpose of the author to give a comprehensive, clearly-defined picture of the career and personality of the famous autocrat.

ROSCOE J. HAM.

Bowdoin College.

LAMPRECHT, KARL. *Deutsche Geschichte der jüngsten Vergangenheit und Gegenwart. Erster Band.* Pp. 518. Price, 8 m. Berlin: Weidmann'sche Buchhandlung.

In 1909 Professor Lamprecht published the final volume of his well-known *Deutsche Geschichte,* of which the first appeared in 1891. The first five volumes—through the reformation—came in rapid succession, after which there was a long halt. From 1901 to 1904 he wrote three substantial volumes on recent German History—the "Ergänzungswerk." Then in extremely rapid order appeared the remaining seven volumes of the main work. After a brief interval Professor Lamprecht again took up the subject-matter of the Ergänzungswerk and planned out a new work in six volumes, which he entitles *Deutsche Geschichte der jüngsten Vergangenheit und Gegenwart.*

Volume one describes the economic and social development especially of the latter half of the nineteenth century; volume two the political history of the same period; volumes three and four will deal with the recent history of German science, literature and art and will bring the account down to the date of writing; volumes five and six will take up again the subjects of the first two volumes and continue them to the present.

Obviously no historian could come to such a task with more thorough preparation. The first volume of this new work is a revision with but slight changes of part one of volume two of the Ergänzungswerk. In it we find full expression of the characteristic qualities of the author's philosophy of history. Just as physics and chemistry investigate the permanent laws that underlie the operations of biological evolution, so psychology discovers and states the permanent laws that underlie the processes of history. The fundamental task of the historian is to determine what particular psychic states are dominant in the various epochs of the life of a nation. The dominant forces in Germany during the latter half of the nineteenth century are those that arise from the growth of a capitalistic economy, and the greater part of this volume is essentially an interpretation of recent German History in terms of the steadily increasing influence of free enterprise—der freien Unternehmung. Hardly a phase of the nation's life has escaped the influence of this factor. Now the system of free enterprise with rapid accumulation of capital demands for its successful working a phenomenal expenditure of thought and nervous energy. It has created a new psychic condition: the people have begun to discover their nerves, the man of the hour is the man of high-strung temperament and abundant nervous energy (Bismarck), the neurotic diseases become conspicuous: in short the age of Reizsamkeit—of nervous strain—has come.

Professor Lamprecht deals with his subject largely and generously. He has a rare knowledge of his own day and generation and he has here given us a book that no one who is interested in modern German history can pass by. The literary style of the work is much superior to that of the early volumes of the *Deutsche Geschichte;* rhetorical monstrosities and "alphabetical processions" do still occur, but they are comparatively infrequent.

ROSCOE J. HAM.

Bowdoin College.

LODGE, HENRY CABOT. *One Hundred Years of Peace.* Pp. vii, 136. Price, $1.25. New York: The Macmillan Company, 1913.

The title of this book is a misnomer; it should be "One Hundred Years of Quarreling." The paper cover supplied it by the publishers announces that "in 1914 the American and the English people will celebrate the completion of one hundred years of peace between the two nations. The sigficance of this fact is brought out by Senator Lodge in this brilliant and penetrating sketch of the relations of England and the United States, since the War of 1812."

The book may be considered "brilliant and penetrating" by some others besides its publishers; but, as a matter of fact, it does *not* bring out at all the

significance of the great centenary of peace. Nearly one-fourth of its pages are devoted to a grossly partisan and misleading account of the American Revolution, the ill-feeling of the French Revolutionary and Napoleonic years, and the War of 1912. Two-thirds of the remaining pages record thirty-odd quarrels which arose during the century, and only one-fifth of the book is devoted to the peaceful settlement of those quarrels. Even the short account of these peaceful settlements is marred by a grudging and ill-natured spirit, and the credit for the avoidance of war is given wholly to Americans—wherever at all possible to some Massachusetts statesman. Even the illustrations of the book are in keeping with its contentious spirit. Only seven of them are devoted to peace-making or the peace-makers; while twelve are old English cartoons ridiculing America, or the portraits of the makers of mischief between the two countries. Emulating "Hamlet with Hamlet left out," not the slightest reference is made in these pages to that feature of the Rush-Bagot treaty of 1817 which stilled the war-drums and furled the battle-flags along the nearly four thousand miles of our Canadian boundary line; while Great Britain's assent to the Geneva arbitration of the *Alabama* claims is ascribed to England's unpreparedness for war and her fear of losing Canada! The prime feature of the Cleveland-Olney exaggeration of the Monroe Doctrine, which was repudiated by our own country almost as soon as it was uttered, is passed over in silence, and President Cleveland's bellicose message which brought the two countries to the verge of war is "illuminated" by the words: "England was surprised, and operators in the stock market were greatly annoyed. . . . . President Cleveland, moreover, however much Wall street might cry out, had the country with him, and no one today, I think, can question the absolute soundness of his position."

An author who, from his seat in the United States Senate, heard only the voice of Wall street in the mighty "Thou shalt not commit murder" which went up from the hearts of two civilized nations to their respective rulers in that terrible crisis, and who so obviously exults in the clenching of the mailed fist which precipitated that crisis, can scarcely be expected to interpret aright the hundred years of peace which are presumably to be celebrated by peace-lovers, peace-makers and peace-keepers in a genuinely peaceful spirit.

WM. I. HULL.

Swarthmore, Pa.

McMASTER, JOHN BACH. *A History of the People of the United States.* Vol. viii, 1850–1861. Pp. xix, 556. Price, $2.50. New York: D. Appleton and Company, 1913.

This volume marks the completion of a work the earlier portions of which have already established themselves as standard authority in American history. The manner of treatment which Professor McMaster has chosen is familiar. The national life is portrayed as it looked to the people of the period which the chapters cover. The main reliance for material is upon newspaper discussions and to a lesser degree the congressional documents of the period. Little effort is made at formal interpretation but the events and persons are made to speak for themselves.

This concluding volume dealing with the years from 1850 to 1861 is especially valuable because of the large number of developments in that period which have left their influence on our present-day life or have marked the rise of problems still unsolved. Constitutional questions such as the relation of the federal government to the territories, and the nature of the union were in the forefront of public discussion throughout the decade, questions of policy such as the treatment of foreigners, railroad extension, and our duty toward the West Indies were subjects of nation-wide interest, and parties were perfecting the organization of the electorate and clarifying the issues on which the approaching civil war was to be fought.

Few periods better lend themselves to interpretation by the methods Professor McMaster has chosen. The surge of popular opinion in the slavery controversy, the rush to settle the West and to exploit its mines, race riots, labor troubles, Cuban filibustering, the struggle for Kansas, the battles of the constitutional conventions, the party campaigns and finally the formation of the Confederacy; these are events which can be seen in no way more vividly than through the eyes of the contemporary editors and their correspondents.

The intensity of political life in the decade is mirrored in the fact that one-sixth of the five hundred pages of the book is devoted to a description of party conventions and campaigns and about an equal space to discussions of policy in Congress and to the Kansas conflict.

Many of the economic and social conditions emphasized show the earlier stages of problems still unsolved. Chinese immigration begins to trouble the West in the decade, complaints are made against immigrants, railroad control and strikes for higher wages and shorter hours begin to attract public interest, coinage reform and currency problems claim attention.

In a country so large and so rapidly changing as ours has always been, fruitful ground is offered for the development of unusual social phenomena most of which sweep into prominence for short periods to disappear again when new changes destroy the conditions under which they flourished. Of these the period just before the Civil War had its share. Then flourished native Americanism, the woman's rights movement, bloomerism, spiritualism, prohibition, and Mormonism. The closing chapters deal with the strained conditions surrounding the formation of the confederacy and with the events of the conflict up to the inauguration of Lincoln.

Few works of equal size show as much symmetry of plan as this and few will recommend themselves so highly to those who believe history should be a picture of life as well as a record of facts.

CHESTER LLOYD JONES.

University of Wisconsin.

MAURICE C. EDMUND. *Life of Octavia Hill.* Pp. xi, 591. Price, $5.00. New York: The Macmillan Company, 1913.

The gracious presence of the lady whose "counterfeit-presentment" adorns so many offices of charity organization societies in the United States pervades this attractive volume in which the biographer has played for the most part the modest rôle of editor. The book is more ample than the general reader will

find time to absorb, but not too minute or inclusive in its revelation of life and recital of work to meet the wishes of the numerous company of those whose ideals and methods in social service have been inspired and guided by Octavia Hill. The early trials of the family in which the mother's strength and wisdom impressed upon all the children that "if a thing is right, it must be done," gave the keynote of consecration; and the need to earn for self-support gave reality to the sympathy and fraternal feeling which dignified all later work for the poor and ignorant. Canon Barnett's testimony that Miss Hill "brought the force of religion into the cause of wisdom and gave emotion to justice" is well justified by this volume of intimate letters on public and private activity. High gifts of social organization, commanding powers of discipline in dealing with ignorance and wrong-doing, ready response to the commands of human progress were combined in this rare life with inexhaustible patience in personal ministry, abounding faith in human quality if rightly approached, exquisite refinement of feeling, broad culture, deep religious devotion, and self-forgetting daily service. Octavia Hill's name is permanently fixed to what is called "the housing reform." But most methods in this line work from the outside in through "model tenements." Her methods worked from the inside out, from improved people and homes to better houses; and this biography is a treasury of inspiration and guidance to those who believe that we must work to make better folks while we try to make better social conditions. Its clearness of sequence, its delicacy of treatment, and its balance of light and shade are testimonials to the high competence and character of its author and compiler. The book will greatly help in fulfilling the wish of Octavia Hill to leave behind her "greater ideals, greater hope, and patience to realize both."

ANNA GARLIN SPENCER.

Meadville, Pa.

MORISON, SAMUEL E. *The Life and Letters of Harrison Gray Otis, 1765–1848.* 2 vols. Pp. xxiii, 663. Price, $6.00. Boston: Houghton, Mifflin Company, 1913.

Dr. Morison's account of *The Life and Letters of Harrison Gray Otis* is very readable, and throws many illuminating sidelights upon American history during the first three decades of the constitutional period. The picture of social life in Philadelphia from 1797 to 1801, of the political intrigues at the end of the Federalist period, and of the beginning of the control of the national government by the Republican leaders is especially entertaining and instructive.

Massachusetts' attitude towards the federal government at the time of the attempted enforcement of the embargo act is well presented in volume two, which also contains a valuable account of the Hartford convention, of which Otis had intimate knowledge.

The work closes with an account of Otis' policy as mayor of Boston and an estimate of Otis' career. As the author states "Otis, in truth, belonged more to the eighteenth than to the nineteenth century. He had no ambition for territorial expansion or world power for his country. Since the manifest destiny of the United States has been otherwise, we may say that it was well

that Otis and his friends were swept out of national power at the beginning of the nineteenth century. The personality of Harrison Gray Otis was singularly well-rounded and attractive. In him were blended all the qualities that make up the man beloved by men. Had Otis been inclined to seek from Providence one more boon, it would have been that his countrymen should take him at his word, when he told them that the Hartford convention was intended to save, not to destroy, the Union of the States."

EMORY R. JOHNSON.

University of Pennsylvania.

REEDER, ROBERT P. *The Validity of Rate Regulations, State and Federal.* Pp. xv, 440. Price, $5.00. Philadelphia: T. and J. W. Johnson Company, 1914.

Public service corporations and their rates now form a central problem in our national and state legislation. In the volume before us we have one of the most valuable treatises upon the constitutional aspects of government regulation that have been published in this country. The author has made an exhaustive study of the cases, of textbooks and legal periodicals, and he has gone far afield into political science, sociology and economics for pertinent material. He has apparently given deep thought to the problems of constitutional law and has been able to offer solutions which go to the very heart of some of the most difficult problems. By the excellent arrangement of his material and by the use of a diction of striking simplicity he has stated the results of his labors in the clearest possible manner.

The book is divided into nine chapters, taking up the commerce clause, the distribution of governmental powers among the three departments of government, the due process clauses of the fifth and fourteenth amendments, the equal protection provision, the requirement of just compensation, the impairment of contract clause, preferences to ports, and limitations upon the federal judicial power. Special attention is given to such questions as whether separate intrastate transportation before or after interstate transportation comes within the commerce clause, whether the granting to a public utilities commission of a wide discretion in the establishment of rates is a delegation of legislative power which is forbidden by the constitution and whether in rate cases a public service company is entitled to claim that its property is worth more than the cost of reproducing that property at the present time, less an allowance for the depreciation which has actually taken place. In each case the discussion is an important contribution to constitutional and regulative law.

But the most noteworthy feature of the book is to be found in the two chapters which are devoted to the due process clause of the Constitution. The court "practically regards this provision as authorizing the court to impose upon governmental actions such tests of fitness as the court itself may choose to impose," (p. 130); and the author demonstrates that this position "does not rest upon either history, sound logic or a literal interpretation of the terms of the provision" (p. 130), that the restraint is indefinite and the decisions under it are inconsistent, that for the sake of consistent decisions in the future the position of the court must be reconsidered, and that the court should hold that

the due process provision simply requires the observance of the procedure which is established by the law of the land.

At first glance it may seem that for a book on rate regulation a disproportionate amount of space is given to this discussion of the due process provision. But in view of the frequency with which cases arise under this provision and the confused state of the decisions an elaborate discussion is certainly necessary for adequate treatment.

A feature of the arrangement of the book which especially commends itself is the statement of the law, separately from the discussion of the principles underlying the law. Those who wish to know the decisions on a given point find them clearly stated; those who desire to delve more deeply into fundamental questions of legal policy will find ample discussion of all important problems.

JAMES T. YOUNG.

University of Pennsylvania.

SCOTT, WILLIAM ROBERT. *The Constitution and Finance of English, Scottish and Irish Joint-Stock Companies to 1720.* Vol. I. *The General Development of the Joint-Stock System to 1720.* Vol. II. *Companies for Foreign Trade, Colonization, Fishing, and Mining.* Vol. III. *Water Supply, Postal, Street-Lighting, Manufacturing, Banking, Finance and Insurance Companies. Also Statements Relating to the Crown Finances.* Pp. lvi, 488; x, 504; xii, 563. Price, $5.00; $5.00; $6.00. New York: G. P. Putnam's Sons, Vol. I, 1912; Vol. II, 1910; Vol. III, 1911.

The increasing attention being given to the study of economic history is evidenced by the publication of these three volumes on the development of *Joint-Stock Companies to 1720.* During the one hundred and fifty years preceding 1720, the joint-stock company organization of business developed in Great Britain and Ireland, and established the business conditions which prevailed, without much change, until the renewed development of corporations began toward the middle of the nineteenth century. Dr. Scott has done his work with great thoroughness and with exceptional discretion in the handling of material, and has produced a work of scholarly value that will probably prove to be a permanent contribution to the literature of history and economics.

Dr. Scott has not attempted to present "the whole life history of the joint-stock system" for the one-hundred-and-fifty-year period. He states that "a complete account of its organization, in its entirety, would have required much more space than that available" in the three volumes, which, however, include an account of "the internal management of companies in relation to their corporate character, the means by which capital was collected and controlled, and the methods by which those who provided it participated in the profits or losses."

Volumes two and three contain part two of the work and present the "constitutional and financial history of *each* of the chief joint-stock companies from 1553 to 1720, with records of the highest and lowest prices of their stocks or shares, the amount of capital and the dividends paid." Volume two deals

with companies for foreign trade, colonization, fishing, and mining, while volume three considers water supply, postal, street lighting, manufacturing, banking, finance and insurance companies, together with systems relating to the Crown finances.

Having thus presented in volumes two and three, which were published before volume one was issued, the facts regarding individual joint-stock companies, Dr. Scott then wrote and published volume one—the account of the "general development of the joint-stock system to 1720."

As the author states: "The first part of the work consists of an attempt to record the beginning and the development of the joint-stock system during the first important stage in its history, namely, till the year 1720. . . . ." "The first part consists of a general introduction, providing a summary of the early years of joint-stock organization."

As the author explains, his method of presentation involved the risk of more or less repetition, but he seems to have avoided any unnecessary or undesirable repeating of material, in spite of the fact that volume one reviews, in a comparative and summary way, the details presented in the second and third volumes. The first volume will be read with interest by many who will not care more than to consult portions of volumes two and three, which may be considered to supplement and amplify volume one; but all students of American colonial history will probably wish to read carefully division two of volume two, which gives the history of the "companies for planting and similar objects," by means of which the first settlements were established in continental America.

EMORY R. JOHNSON.

University of Pennsylvania.

TAYLOR, GRAHAM. *Religion in Social Action.* Pp. xxxv, 279. Price, $1.25. New York: Dodd, Mead and Company, 1913.

For twenty years the author of this work has been an increasingly important factor in the civic and religious life of Chicago. Going there as professor in Chicago Theological Seminary, he settled with his wife and children in one of the poorest quarters of the city and there lived, and still lives, as a neighbor and friend to all comers. Despite the fears of many, his children grew into fine maturity and are doing him honor. His home developed into the settlement known as Chicago Commons, of which he is still warden. His interest in social work resulted in the founding of the Chicago School of Civics and Philanthropy, of which he is president. Through these years he has inspired great numbers of young men and women. If he has ever been discouraged or pessimistic, few know it.

The present volume is, in reality, the expression of his own socio-religious philosophy, as illustrated by his life. Because of this fact it is rather rambling and discussive in style—the author is not describing an outside reality—he is revealing an inner attitude. This marks to the critic, perhaps, the most glaring weakness, but it also indicates the source of its power. The changing conditions which require change in religious methods are clearly stated.

Personality, friendship, family, industry, religion, community indicate

the ground covered. In reality, it is the story of religion made social, a life made serviceable, an ideal made real, that characterizes the book. One who wishes to see if religion can express itself in life rather than in creed will find here convincing evidence. Few volumes better show the call to social service. It is a splendid story for any man or woman, young or old.

Miss Jane Addams contributes an interesting foreword.

CARL KELSEY.

University of Pennsylvania.

WATNEY, CHARLES, and LITTLE, JAMES A. *Industrial Warfare.* Pp. x, 353. Price, $2.00. New York: E. P. Dutton and Company, 1913.

"Despite the universality of interest in the labour movement, there does not appear to exist any epitome which may explain to the ordinary reader the exact significance and the possibilities of the growing unrest" (p. v). The authors have sought to supply this need by this popular volume on English conditions. It deals with the rise of the trade union movement and more recent entrance into politics of the labor groups. It also includes analyses of the Socialistic and Syndicalist movements. The main body of the book deals with the "labor unrest" in the various industries, such as railroading, mining, cotton, engineering, etc. In these chapters the authors discuss the various strikes—"the issues and personalities"—and analyze carefully the results accomplished. Chapter XVIII gives a statement of the suggested remedies from the point of view (1) of the employers, (2) of the workers, (3) of the public. The employers ask to be left alone and to be allowed to work out their own salvation. They distrust governmental and parliamentary action. "The difficulty of approaching any solution from the point of view of the workers is that their opinion is hopelessly divided according to their point of view of capital and capitalism" (p. 244). The authors feel that the great numbers of workers believe in peaceful agreements and desire simply "A fair day's wage for a fair day's work." The public desire peace above all else and continue the hope that the parties in the industrial struggle will develop agreements so that their course may be harmonious.

Although the book warns against the thought that "profit-sharing and copartnership" are the cure for all difficulties, they feel that much good may be accomplished by these means. The most significant step in the last fifty years is the "abandonment of the *laissez-faire* policy of the government in regard to industrial disputes . . . . " (p. 235). The authors think that "in all probability government action will in future take the form of giving legalized sanction to decisions binding organized groups of trades in different districts, in fact, compelling their organization" (p. 237).

The dual authorship is clearly visible and the lack of uniformity between chapters causes a distinct loss. The treatment of the subject is, however, judicial and unbiased. It is surprising to find the name of Mr. Tom Mann mentioned so frequently. He is without doubt one of the spectacular figures in the labor movement, but his influence seems to be over-emphasized. The summary of labor legislation is suggestive, but very incomplete. The entire book is superficial and fails to point out the essentials of the labor attitude.

The authors throughout see personalities and events rather than fundamental and deep-rooted causes.

ALEXANDER FLEISHER.

Philadelphia.

WEBB, SIDNEY and BEATRICE. *English Local Government; The Story of the King's Highway.* Pp. x, 279. Price, $2.50. New York: Longmans, Green and Company, 1913.

This volume is a continuation of the work on English local government begun by Mr. and Mrs. Webb in 1899. It presents aspects of contrast and of similarity with its three predecessors in the series. They dealt with organs of local government during the period from 1688 to 1835. The present is a study of one function of local government, and, in the words of the authors, "we have made it begin with the war-chariot of Boadicea and brought it down to the motor omnibus of today" (p. vii). Like the previous volumes, however, this is based on patient researches in widely scattered sources, and the same still is displayed in marshaling a wealth of illustrative detail in such a way as not to burden or obscure a clear and logical narrative. Copious references to authorities enhance the value of the work to the historical student, but their relegation to appendices following the several chapters renders their study more difficult without in any way aiding the reader who may desire to skip them.

In the apportionment of the narrative the motor omnibus fares somewhat better than the war-chariot. The special investigations of the authors go no further back than the sixteenth century, and the history of road maintenance previous to that time is dismissed with a brief summary of nine pages. The analysis of the road legislation of the Tudors and Stuarts, however, is masterly. By these laws the parish was left responsible for the upkeep of existing highways and the surveyors of highways and the justices of the peace were given ample powers between them to enforce this responsibility. But an excellent account of the working of this system shows that neither the average surveyor nor the average justice took his duties in this connection very seriously. The compulsory labor on the roads required of all parishioners became a farce, highway rates were rarely levied, and, though the parish was criminally liable before quarter sessions for neglect to maintain passable roads, such liability appears to have been only occasionally enforced. The roads could be used only by horsemen and not always by them.

In the seventeenth century a new demand was made on the roads by the beginning of traffic on wheels. Eventually this increased in volume until it revolutionized the methods of making roads and necessitated the creation of new administrative agencies. The story of this slow development, beginning with the attempt to make the new vehicles conform to the existing roads by regulating their size and weight, continuing through the turnpike stage and through the era of transition under Telford and Macadam, and ending with the complete reorganization of highway administration during the nineteenth century, is graphically and entertainingly told.

But the work of the historians does not end with the nineteenth century,

for the present century has brought its own problems of road maintenance. The authors find that the appearance of the motor car has produced effects on public opinion and on administration parallel to those produced by the advent of new users of the roads three centuries ago. They conclude, therefore, by suggesting the administrative reforms which should be made to meet the new traffic conditions.

W. E. LUNT.

Cornell University.

WINTER, NEVIN O. *The Russian Empire of Today and Yesterday.* Pp. xvii, 487. Price, $3.00. Boston: L. C. Page and Company, 1913.

Many books have been written about Russia but few of them give a comprehensive picture that is at once up-to-date and reliable. Russia is so large, her various sections so different, her people so diverse, that misconceptions concerning both the land and the people are easily gained. St. Petersburg is not Russia, neither is Kiev, nor the Jewish Pale. Russian officials and political leaders are not the Russian people. And yet to many, Russia has been represented by some restricted part or by a single element in its enormous population. National, as well as ethnic, unity is still lacking in the Empire of the Czar and Russia is most difficult of interpretation.

This book is descriptive of Russia rather than interpretive. Its purpose, evidently, is to picture the Russia of today in her various aspects and to tell briefly the story of her marvelous expansion. It does not rank as a critical study with such books as Drage's *Russian Affairs* or von Schierbrand's *Russia*, but it does what few other books have done for the English reader, that is, it gives a description of the whole land and people of European Russia as seen by a trained and experienced observer of national affairs.

The first part of the book consists of regional descriptions. After a chapter on Russia as a whole, the various larger divisions are treated, as Great Russia, Little Russia, the Land of the Cossacks, Poland and the Baltic Provinces, and so on. Then follow a series of chapters on social conditions, indicated by some of the chapter titles as follows: noble and Tchinovink, the peasants and their communes, the Jewish Pale and its unfortunates, education, religious forces, etc. A final group of chapters deals with historical and political topics, more especially those of recent date. Here are discussed Nihilism and revolution, autocracy and bureaucracy, the beginnings of representative government, etc. The author's conclusions are based upon his own observations carried on in all parts of European Russia, and his descriptions are not only fresh and vivid, but sane, accurate and unbiased. The book gives just what the general reader wants to know. It is attractively bound, fully illustrated and contains a bibliography and index. Although entitled "The Russian Empire," it does not treat of Siberia nor of the Russian Central Asian provinces.

G. B. ROORBACH.

University of Pennsylvania.

WOODBURN, JAMES ALBERT. *The Life of Thaddeus Stevens.* Pp. 620. Price, $2.50. Indianapolis: Bobbs-Merrill Company, 1913.

The chief aims of this well written and extremely entertaining biography are the vindication of the character of Thaddeus Stevens and the defence of the position he took on the vital political issues with the history of which he was so intimately connected.

Few could read this story of Stevens' life and study his relation to the absorbing problems of his day—the anti-Masonic turmoil, the free-school question, the slavery controversy, the conduct of the Civil War, and the policy of reconstruction—without being convinced that whatever Stevens said or did, his public actions, always straightforward and consistent, were based upon sincere motives. In so far as the justification of his record depends upon the question of his personal convictions as to the correctness of his attitude no one will be inclined to deny that his purposes were honest and his intentions good; and one even forgets the vindictive spirit which often actuated the grim old fighter in admiration for the relentless vigor and uncompromising determination with which he battled for what he thought was a just cause.

However, Professor Woodburn creates the impression that the position taken by Stevens in his political combats was justified not only because Stevens believed he was right, but also because the policies which he advocated were for the most part sound and wholesome. This latter claim may well be subjected to criticism. Probably the most prominent feature of Stevens' political career and certainly the one for which he will be longest remembered was the share he had in the formulation of the reconstruction policy of 1867. This policy, born as it was of a desire for retaliation and vengeance and saturated with a spirit of hatred and embittered partisanship, is now generally recognized to have been a grave blunder, and no testimony as to the self righteousness of its authors is likely to cause a reversal or modification of that judgment.

Professor Woodburn's apology for the greenback movement will find little acceptance. His statement that there was a contraction of the circulating currency from $58 per capita in 1865 to $17 per capita in 1875 is somewhat overdrawn. The short-time interest-bearing notes, which he includes as a part of the volume of currency in 1865, had little circulation, and furthermore they were practically all retired by 1868 without causing much change in monetary conditions. Rapid resumption was of course attended by hardship to many debtors, and it is certain that by the thimble-rigging tactics of the gold speculator the government was defrauded and the people despoiled. Yet it is impossible to see how commercial stability could have been established had not financial adjustment been effected along the lines pursued.

T. W. VAN METRE.

University of Pennsylvania.

YOCUM, A. DUNCAN. *Culture, Discipline and Democracy.* Pp. x, 320. Price, $1.25. Philadelphia: Christopher Sower Company, 1913.

A remarkably sensible book. It presents strong arguments in favor of many common sense views of education which are now in danger of elimination by our progressive educators. For example: Not all that children should learn need be learned in school; time is a necessary factor in learning; nothing can be more fatal to learning than the insistence of some critic upon thoroughness in the sense of complete comprehension. The author's views upon juvenilizing all literature ought to brace up some intelligent but timid educators who have long appreciated the condition but lacked the courage to discard the peptonized literary nourishment.

All the author says about specialization and the choice of a vocation is sound. "At each stage of education a limited amount of academic specialization should be compelled, strengthened by vocational motive wherever possible." The former should close with the finishing of formal school work and the latter then begin under ordinary conditions. Continuity is an indispensable condition of discipline. Habit in the sense of discipline must be permanent, and in the sense of general discipline must be dominant. The solution of the problems of education does not depend upon the growth of vocational schools nor upon cultural institutions with their lack of reality, "but lies in the paralleling of general education and specialization, and the relating of each as fully as possible to life."

Culture is the product of the education best for democracy. It has a direct relation to citizenship and vocation. However, there is special culture as there is a variety of vocations. General culture plus the special culture identified with the individual's life work is necessary. Either alone is insufficient. Not only are the two not incompatible, but they are complementary.

Culture, discipline and preparation for life constitute the pedagogical trinity according to Dr. Yocum. It is just the book to recommend to the intelligent, inquiring patron of education, for no discussion of the subject for the year just closed equals this in grasp and sanity.

ALBERT H. YODER.

Whitewater, Wis.

REPORT OF THE BOARD OF DIRECTORS AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE

I. Review of the Academy's Activities

At no time since its organization has the Academy demonstrated so thoroughly as during the course of the year 1913 the importance of the public service to be rendered by an organization such as ours. So many of the political, social and economic beliefs of the American people have been subjected to criticism during the past year that we find public opinion leaving its ancient moorings and anxiously seeking guidance. In this work of adapting our national thought to the new conditions that confront the country the Academy is called upon to play an important part.

The national character of our organization involves heavy responsibilities and in order to meet these responsibilities your officers must call upon an increasing number of our members for more active coöperation in the Academy's work. There is a growing demand for the establishment of Academy centers in different sections of the country, and your Board has given careful thought and consideration to this important question. We realize that the Academy's influence can be extended greatly through the establishment of these centers, but we also are conscious of the fact that the problems involved are of such magnitude that no final step should be taken in this direction until a carefully matured plan has been agreed upon.

In the spring of 1915 the Academy will celebrate the twenty-fifth Anniversary of its founding, and your Board is making the necessary preparations for this event. We cherish the hope that this celebration will furnish the occasion for the realization of two plans, which your Board has kept constantly in mind, namely, an endowment fund adequate to meet the needs of the Academy, and a building which will furnish the necessary facilities for the carrying on of the publication activities and for the holding of Academy sessions.

II. Publications

During the year 1913 the Academy has published a series of volumes which has brought together the best thought of the country on the important problems with which these volumes deal:

January.....Canadian National Problems
March.....Prison Labor
May.....County Government
July .....Cost of Living
September.....The Negro's Progress in Fifty Years
November.....Reducing the Cost of Food Distribution

Your Board desires to take this opportunity to express its obligations to the Editor-in-Chief, to the Assistant Editor, to the Associate Editors, and to the other members of the Publication Board for their unselfish devotion to the publication work of the Academy.

III. MEETINGS

During the year 1913 the Academy has held the following meetings:

January 25.....The Hay-Pauncefote Treaty and Panama Canal Tolls
February 8.....The Enforcement of Law in American Cities
March 14.....The Problems of Police Administration in their Relation to Vice and Crime
April 4–5.....The Cost of Living
November 7.....The Concentration of the Money Power
December 13.....The Aftermath of the Balkan War

IV. MEMBERSHIP

The membership of the Academy on the 31st of December 1913 was 5,641, with a subscription list of 690, making a total of 6,331. Of the 5,641 members, 1,220 are residents of Philadelphia, 4,206 are residents of the United States outside of Philadelphia, and 215 are foreign members. Of the 690 subscribers 4 are from Philadelphia, 616 from the United States outside of Philadelphia, and 70 from foreign countries. Compared with the membership on the 31st of December, 1912, we find that in the Philadelphia membership there is a gain of 16, in the membership in the United States outside of Philadelphia 26, and in the foreign membership a loss of 20, or a gain of 22 in the membership list. In the subscription list there is a gain of 71 in the United States outside of Philadelphia, 8 in the foreign, and 2 in Philadelphia, making a total gain of 103 in membership and subscriptions for the year.

During the year the Academy has lost through death 56 of its members, four of whom were life members:

Foreign

Tristao de Alencar Araripe, Jr.	R. von Bennigsen	Jacques Novicow

Philadelphia

Louis S. Amonson	William A. Ingham	Harry M. Nathanson
George I. Bodine	Andrew J. Jones	L. W. Steinbach
Hunter Brooke	Frank D. LaLanne	W. Henry Sutton
J. P. Duffy	James MacAlister	J. J. Taylor
Henry W. Hall	Edward W. Magill	Mrs. Owen Wister

United States

Arthur L. Adams	J. Howard Hanson	J. R. Planten
*Franklin Allen	*William F. Havemeyer	Charles E. Pugh
James M. Allen	J. L. Hudson	Charles H. Ripley
Silas W. Burt	W. H. Lanius	Henry Schoellkopf
T. L. Chadbourne	Homer Laughlin	Gustav H. Schwab
A. B. Church	Morris Loeb	Pehr Olsson Seffer
*John K. Cowen	E. Oram Lyte	H. G. Squiers
*Edwin S. Cramp	James W. McCarrick	Anson Phelps Stokes
George G. Crocker	J. H. McClelland	C. Edgar Titzel
H. P. Davidson	Frank M. Montgomery	Lester F. Ward
Frederick W. Feldner	M. L. Muhleman	John T. Willets
Daniel G. Gillette	Robert C. Ogden	John F. Winslow
James B. Hammond	Marlin E. Olmsted	

*Life members.

The death of these members has deprived the Academy of some very warm friends and enthusiastic workers.

During the year the Academy has lost by resignation 813 of its members and 19 subscribers, but this loss has been counterbalanced by the addition to our membership roll of 835 members and 100 subscribers. Of the 835 members, two were entered as life members. Five annual members were transferred to the Life Membership Roll, making a total of 7 life members during the year.

V. FINANCIAL CONDITION

The receipts and expenditures of the Academy for the fiscal year just ended are set forth clearly in the Treasurer's report. The accounts were submitted to Messrs. E. P. Moxey and Company for audit and a copy of their statement is appended herewith.

In order to lighten the burden of expense incident to the Annual Meeting a special fund amounting to $1,325.00 was raised. The Board takes this opportunity to express its gratitude to the contributors to this fund.

VI. CONCLUSION

Your Board desires to take this opportunity to thank those members of the Academy in all sections of the country who throughout the year have contributed toward strengthening our work, both through their advice and suggestions and through contributions to the special volumes.

The auditor's report is appended.

PHILADELPHIA, PA., January 9, 1914.

MR. STUART WOOD

Treasurer, American Academy of Political and Social Science
Philadelphia.

DEAR SIR: We herewith report that we have audited the books and accounts of the American Academy of Political and Social Science for its fiscal year ended December 31, 1913. As a result of our audit and examination we certify that the statements submitted herewith are true and correct.

Yours respectfully

EDWARD P. MOXEY & CO.

Balance, Cash on Hand, January 1, 1913			$3,416.48
RECEIPTS			
Annual Subscriptions		$24,268.92	
Life Memberships		700.00	
Special Contributions		1,376.00	
Subscriptions to Publications		3,209.23	
Sales of Publications		3,040.53	
Income from Investments		3,245.00	
Interest on Deposits		97.64	
Miscellaneous Receipts		9.50	
			35,946.82
			$39,363.30
DISBURSEMENTS			
Office Expense:			
Office Salaries	$8,152.20		
Special Clerical Service	78.70		
Supplies and Repairs	91.64		
Stationery	1,048.94		
Telephone and Telegraph	90.82		
Postage	864.27		
Freight, Express and Car Fares	52.44		
		$10,379.01	
Philadelphia Meetings:			
Hall Rents	$ 376.00		
Stationery, Engraving and Printing	1,074.60		
Clerical Services	107.26		
Expenses of Speakers	913.24		
Forward	$2,471.10	$10,379.01	$39,363.30

Philadelphia Meetings (Cont'd)			
Brought Forward	$2,471.10	$10,379.01	$39,363.30
Postage	222.16		
Telephone and Telegraph	20.73		
Car Fare, Newspapers and Sundries	28.80		
		2,742.79	
Publicity Expense:			
Pamphlets, Cards, Letters, Circulars and Advertising	$295.38		
Postage	874.50		
Stationery	573.25		
		1,743.13	
Publication of Annals:			
Printing	$9,878.75		
Reprints	941.44		
Binding	197.25		
Postage	771.17		
Advertising	64.00		
Stationery	341.07		
Car Fare, Expressage and Sundries	188.79		
Telephone and Telegraph	19.39		
Storage and Insurance	106.80		
		12,508.66	
Investments Purchased	$8,342.50		
Interest, Premiums and Commissions on above	123.66		
		8,466.16	
			$35,839.75
Balance December 31, 1913			$3,523.55

ASSETS

Investments

$3,000	St. Louis & Merchants Bridge Co. (1st Mtg. 6's—1929)	$3,000.00
3,000	Penna. & New York Canal & R. R. Co. (4½'s—1939)	3,000.00
5,000	Wm. Cramp & Sons Ship & Eng. Bldg. Co. (5's—1929)	5,000.00
5,000	West Chester Lighting Co. (1st Mtg. 5's—1950)	5,000.00
3,000	St. Louis Iron Mt. & Southern Ry. (General Mtg. 5's—1931)	3,000.00
3,500	Mortgage (6%)	3,500.00
3,000	Pittsburgh, Bessemer & Lake Erie (1st Mtg. 5's—1947)	3,000.00
5,000	Lake Shore & Michigan Southern Ry. Co. (Deb. 4's—1928)	4,801.25
3,000	Market Street Elevated Pass'r Ry. Co. (1st Mtg. 4's—1955)	2,786.25
5,000	Choctaw, Oklahoma & Gulf R. R. Co. (Gen'l. 5's—1919)	5,000.00
	Forward	$38,087.50

	Brought Forward	$38,087.50
$5,000	New York Central & Hudson River R. R. (Deb. 4's—1934)	4,640.00
5,000	Baldwin Locomotive Co. (Sinking Fund 5's—1934)	4,975.00
5,000	Lehigh Coal & Navigation Co. (Collateral Trust 4½'s—1930)	5,000.00
5,000	New York and Erie Railway (2d Mtg. 5's—1919)	5,000.00
5,000	City of Macon, Ga. (4½'s—1932)	5,000.00
5,000	Lehigh Valley Transit Co. (1st Mtg. 4's—1935)	4,387.50
4,000	New York and Erie Railway (3d Mtg. 4½'s—1923)	3,955.00
	Cash in Bank	3,523.55
		$74,568.55

LIABILITIES

None.

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STATE REGULATION OF PUBLIC UTILITIES

THE ANNALS

VOLUME LIII MAY, 1914

AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE
36TH AND WOODLAND AVENUE
PHILADELPHIA

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THE PAPERS IN THIS PUBLICATION WERE
COLLECTED AND EDITED BY
CLYDE LYNDON KING, PH.D.
ASSISTANT EDITOR

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REVIEWS

COMMISSION REGULATION OF PUBLIC UTILITIES: A SURVEY OF LEGISLATION

By I. Leo Sharfman, A.B., LL.B.,
Junior Professor of Political Economy,
University of Michigan, Ann Arbor, Mich.

I. The Scope of Utility Legislation

In the early days of the development of public utility properties there was little or no regulation for the safeguarding of public welfare. In order to afford effective stimulus for inventive genius and business initiative it was necessary to provide a free field for private enterprise, unhampered by legislative restriction. The technique of utility operation, in which so high a degree of efficiency has now been attained, had yet to be worked out; and the permanent necessity and financial practicability of the utility services, which have now been recognized beyond recall, had yet to be established. In these monopolistic industries, as in private business, public welfare counseled a policy of *laissez-faire*. In spite of their monopolistic character, it was felt that the public service industries, in order to be ready for public control no less than for public ownership, must first have reached a stage of maturity consistent with the lessened opportunities for private gain necessarily involved in a system of effective public regulation. During the first half of the nineteenth century, therefore, franchise privileges were freely granted by the state legislatures. These franchises extended for long periods and often in perpetuity. As a result, the privileges essential for supplying the future, as well as the then-existing, needs of the city were given to private corporations with little thought of immediate restriction or of reservation of power for future regulation. The public service franchise was looked upon as a private contract between the state and the grantee corporation, instead of as a permit by the sovereign for the performance by private individuals or corporations of functions largely public in their nature.

Regulation by the states through administrative commissions of the type that prevails today is very recent. The Railroad Com-

mission of Wisconsin was not established until 1905 and it was not given jurisdiction over utilities other than railroads, express companies and telegraph companies till 1907. The public service commissions of New York were not established till 1907. The Wisconsin and New York commissions have served, to a large degree, as models for the numerous administrative bodies for the regulation of public utilities that have sprung into being since 1907; and the Wisconsin and New York laws have been the basis of a large mass of the public utility legislation recently enacted. These laws substitute administrative regulation for direct legislative control. Large powers are entrusted to special boards or commissions whereby they are enabled to keep themselves constantly and thoroughly informed of the practical operation as well as of the general policy of public service corporations, on the basis of which knowledge and information they exercise such supervision over these utilities as may tend to harmonize the private interests of the owners and the general welfare of the public. With but few exceptions, present-day utility regulation is legislative in character only in the sense that the extent of commission jurisdiction and power is determined by statutory enactment.

Now a complete résumé of utility legislation would include, in addition to the so-called commission laws, all special franchises and charters, with such restrictions as they contain, and all direct legislation imposing duties upon utilities for the enforcement of which no provision is made. A comprehensive survey of commission legislation even would include many laws whereby duties are imposed upon utilities by direct legislative enactment with power of enforcement vested in commissions. This paper deals almost exclusively with commission laws. Emphasis is here placed upon the organization and powers of commissions rather than upon the duties of utilities. Moreover, the discussion is limited to state commissions. Since the authority of the Interstate Commerce Commission extends primarily, if not entirely, to interstate business, it is given no consideration here, in spite of its large influence upon state commission legislation. Municipal commissions are likewise beyond the scope of this paper. Although there has been considerable American experience with municipal commissions, usually deriving their direct authority from municipalities and exercising jurisdiction over utilities whose business

is confined within these municipalities, the general trend of commission regulation is towards the establishment of central commissions whose authority is state-wide.[1]

II. The Organization of Commissions

The success of commission regulation will depend largely upon the personnel of the commissions. Ultimately, the personnel of public service commissions will be determined by the attitude of the public towards its officials in general, and by the confidence or distrust which the public manifests towards the employment in the public service of trained experts and men of large business experience. This is one of the fundamental problems of American democracy, and it cannot be solved by mere legislation. But the effectiveness of commission regulation depends in large measure also upon political machinery; and this leads to a consideration of the important legislative requirements dealing with commission organization and procedure.

There are at the present time forty-eight state commissions, with independent personnel, representing forty-five separate jurisdictions.[2]

[1] The New York Public Service Commission for the first district is a state commission with limited territorial jurisdiction because of the special problems created by the dominating position of New York City.

[2] The following is a complete list of state railroad and public service commissions. Because of limited space no attempt is made to present a complete list of constitutional and statutory sources. All of the more important commission laws are given, and reference is made to such other provisions as deal with the creation and organization of commissions.

Alabama: Railroad Commission of Alabama (*Code 1907*, §§5632, 5633, 5636, 5637, 5640, 5642). Arizona: Corporation Commission (*Session Laws 1912*, ch. 90). Arkansas: Railroad Commission of Arkansas (*Kirby's Digest 1904*, §§6788, 6789, 6793). California: Railroad Commission of the State of California (*Statutes 1911*, 1st extra session, chs. 14, 40). Colorado: State Railroad Commission of Colorado (*Laws 1910*, special session, ch. 5). Connecticut: Public Utilities Commission (*Public Acts 1911*, ch. 128). Florida: Railroad Commissioners of the State of Florida (*Gen. Stats. 1906*, §§2882, 2883, 2887 [as amended 1907]). Georgia: Railroad Commission of Georgia (*Code 1911*, §§2616, 2620, 2621, 2622, 2625. *Acts 1878–79*, no. 269, §1). Idaho: Public Utilities Commission of the State of Idaho (*Session Laws 1913*, house bill no. 21). Illinois: State Public Utilities Commission (*Acts 1913*, house bill no. 907). Indiana: Public Service Commission of Indiana (*Acts 1913*, house bill no. 361). Iowa: Board of Railroad Commissioners (*Code 1897*, §§2111, 2121). Kansas:

Delaware, Utah and Wyoming are the only states which have no central commissions. New York, Massachusetts and South Carolina each has two distinct commissions.

Twenty-seven of the forty-eight commissions are appointed by the governor by and with the consent or advice of the senate or council; one is appointed by a railroad board, or a majority of its members, consisting of the governor, the lieutenant-governor, and the attorney-general; twenty are elected by the people. It is generally recognized that the appointive commission, all else being equal, is likely to call into the public service better and abler men than the elective commission. And there is a strong tendency towards the

Public Utilities Commission (*Gen. Stats. 1909*, §7185. *Laws 1911*, ch. 238). KENTUCKY: Railroad Commission (Constitution, §209. *Carroll's Statutes 1909*, §§821–823). LOUISIANA: Railroad Commission of Louisiana (Constitution, arts. 283, 287, 289). MAINE: Board of Railroad Commissioners (*Rev. Stats. 1903*, ch. 51, §48 [as amended by public laws 1909, ch. 141]; ch. 116, §1). MARYLAND: Public Service Commission (*Laws 1910*, ch. 180; *Laws 1912*, ch. 563). MASSACHUSETTS: Board of Gas and Electric Light Commissioners (*Rev. Laws 1902*, ch. 121, §1 [as amended by acts 1907, ch. 316]. *Acts 1910*, ch. 539, §1). Public Service Commission (*Acts 1913*, ch. 784). MICHIGAN: Michigan Railroad Commission (*Public Acts 1909*, no. 300). MINNESOTA: Railroad and Warehouse Commission (*Rev. Laws 1905*, §§1953 and 1956 [as amended by laws 1911, ch. 140, 1961]). MISSISSIPPI: Mississippi Railroad Commission (*Code 1906*, §§4826, 4828, 4830). MISSOURI: Public Service Commission (Public service commission law of March 17, 1913). MONTANA: Public Service Commission (Public service commission law of 1913). NEBRASKA: Nebraska State Railway Commission (*Cobbey's Annotated Statutes 1909*, §§10649, 10650). NEVADA: Railroad Commission of Nevada (*Statutes 1907*, ch. 44 [as amended by statutes 1911, ch. 193]); Public Service Commission of Nevada (*Statutes 1911*, ch. 162). The personnel of the two commissions is the same, the railroad commission being *ex officio* the public service commission. NEW HAMPSHIRE: Public Service Commission (*Laws 1911*, ch. 164). NEW JERSEY: Board of Public Utility Commissioners (*Laws 1911*, ch. 195). NEW MEXICO: State Corporation Commission (Constitution, art. XI, §1. *Laws 1912*, ch. 78). NEW YORK: Public Service Commission, First District (*Laws 1910*, ch. 480 [as amended through 1913]); Public Service Commission, Second District (same citation as for first district commission). NORTH CAROLINA: Corporation Commission (*Pell's Revisal 1908*, §§1054–1056, 1060, 2754). NORTH DAKOTA: Board of Railroad Commissioners of the State of North Dakota (Constitution, §82. *Rev. Codes 1905*, §§364, 366, 367. *Laws 1909*, ch. 216, §4). OHIO: Public Utilities Commission of Ohio (*Laws 1911*, no. 325. *Laws 1913*, house bill no. 582). OKLAHOMA: Corporation Commission (Constitution, art. IX, §§15, 16, 18 (a). Constitution, schedule §15). OREGON: Railroad Commission of Oregon (*Gen. Laws 1907*, ch. 53. *Gen. Laws 1911*, ch. 279). PENNSYLVANIA: Public Service Commission

appointive commission. Not only is a clear majority of the commissions appointive, but all the states which legislated during the past year created appointive commissions.[3]

The number of commissioners varies from three to seven. Thirty-eight commissions have three members; one has four; eight have five; one has seven. The term of office varies from two years in Arkansas and North Dakota to ten years in Pennsylvania. In five jurisdictions the tenure is three years; in six, four; in three, five; in thirty, six; in one, eight years. It is evident that the commissioners are generally being given a long enough tenure to make them expert in their work even if they are not so when they take office.

The compensation of commissioners varies from $1,500 in South Dakota to $15,000 in New York. In one commission the salary is $1,500 per annum; in one, $1,700; in one, $1,900;[4] in four, $2,000; in one, $2,200; in three, $2,500; in nine, $3,000; in one, $3,500; in nine, $4,000; in two, $4,500; in four, $5,000; in one, $5,500; in four, $6,000; in one, $7,500; in one, $8,000; in two, $10,000; and in two, $15,000. It will be noted that in fifteen commissions the salaries are $5,000 or over and in thirty-three they are less than $5,000. In nine commissions they are less than $2,500. In the recent legislation the tendency is to provide a reasonably adequate salary for the commis-

of the Commonwealth of Pennsylvania (*Laws 1913*, no. 854). Rhode Island: Public Utilities Commission (*Acts 1912*, ch. 795). South Carolina: Railroad Commission (Constitution, art. IX, §14. *Gen. Stats. 1902*, §§2063, 2064. *Laws 1893*, no. 304, §1. *Laws 1910*, no. 286). South Dakota: Board of Railroad Commissioners of the State of South Dakota (*Rev. Pol. Code 1903*, §§186, 187, 189–191, 194, 195 [as amended by session laws 1907, ch. 208]). Tennessee: Railroad Commission of the State of Tennessee (*Acts 1897*, ch. 10. *Acts 1907*, ch. 390). Texas: Railroad Commission of Texas (Constitution, art. XVI, §30. *Sayles' Civil Statutes 1897*, art. 4561). Vermont: Public Service Commission (*Public Statutes, 1906*, §§4591, 4592, 6172. *Laws 1908*, no. 116). Virginia: State Corporation Commission (Constitution, §155). Washington: Public Service Commission of Washington (*Laws 1911*, ch. 117). West Virginia: Public Service Commission (public service commission law of February 20, 1913). Wisconsin: Railroad Commission of Wisconsin (*Laws 1905*, ch. 362 as amended. *Laws 1907*, chs. 499 as amended, 454, 578. *Laws 1911*, ch. 593. *Laws 1913*, ch. 756).

[3] Idaho, Illinois, Indiana, Massachusetts, Missouri, Montana, Ohio, Pennsylvania, West Virginia.

[4] In South Carolina the salary of the members of the railroad commission is $1,900 per annum; the members of the public service commission receive $10 a day when actually employed.

sioners. Illinois and Pennsylvania, for example, in their new laws, provide a salary of $10,000 for each of the commissioners; Massachusetts, $8,000; Ohio, Indiana and West Virginia, $6,000; Missouri, $5,500; and Idaho, $4,000.

In addition to the commissioners, provision is often made in the statutes for a secretary or clerk and for a special attorney to the commission. Such provision for a secretary or clerk is found in thirty-five jurisdictions, and for a special attorney in twenty-two jurisdictions. In some states the attorney-general is directed to act on behalf of the commission and to appoint such other counsel as may be necessary. In thirty jurisdictions the salary of the secretary or clerk is fixed by statute, varying from $1,200 to $6,000. In nine jurisdictions the salary of the attorney to the commission is fixed by statute, varying from $2,500 to $10,000. In most of the jurisdictions it is further provided that the commission may employ such subordinates as it deems essential for the adequate performance of its duties. The following provision from the recent Massachusetts public service commission law indicates the general tendency of commission legislation in the matter of subordinate employees: "The commission may appoint or employ such engineers, accountants, statisticians, bureau chiefs, division heads, assistants, inspectors, clerks and other subordinates as it may deem advisable on such terms of office or employment and at such salaries at it may deem proper."[5]

In eight jurisdictions commissioners must have special qualifications prescribed by statute. In Georgia one of the commissioners must be experienced in law, and one in the railroad business; in Kansas one must be "a practical, experienced business man," and one experienced in the management or operation of a common carrier or public utility; in Maine the chairman must be learned in law, one of the commissioners must be a civil engineer experienced in the construction of railroads, and one experienced in the management and operation of railroads; in Michigan one must be an attorney having a knowledge of and experience in the law relating to common carriers, and the other two must have a knowledge of traffic and transportation matters; in Nevada the chief commissioner must be an attorney at law well versed in the law of railroad regulation, the first associate commissioner must be a practical railroad man familiar with the operation

[5] *Acts 1913*, ch. 784, §9.

of railroads, and the second associate must have a general knowledge of railroad fares, freights, tolls and charges; in Virginia at least one commissioner must have the same qualifications as are required for judges of the supreme court of appeals; in West Virginia one of the commissioners must be a lawyer of not less than ten years' actual experience at the bar; and in Wisconsin one must have a general knowledge of railroad law, and each of the others must have a general understanding of matters relating to railroad transportation. In two jurisdictions the qualifications are very general in character. The new Massachusetts public service law provides that each of the commissioners shall be "a competent person;" and in South Carolina it is provided that the members of the public service commission shall be "reputable and competent citizens of South Carolina."

Most jurisdictions provide certain disqualifications for membership in a railroad or public utility commission. The disqualification provisions of forty jurisdictions, stated in composite form, provide that no person employed by or connected with or holding any official relation to or owning stocks or bonds of or having any direct or indirect or pecuniary interest in any public utility over which the commission has jurisdiction or of the kind over which the commission has jurisdiction is eligible to membership in the commission. In Wisconsin it is provided that no person who has a pecuniary interest in any railroad or telegraph or express company in Wisconsin or elsewhere may become a member of the commission. In twenty-six jurisdictions it is further provided that no commissioner, officer or employee of the commission may engage in any other business, employment or vocation, or hold any other political office. In Idaho and West Virginia the prohibition extends only to any other political office.

The determination of rules of procedure and practice is largely in the hands of the commissions. In two-thirds of the jurisdictions authority is specifically conferred upon the commissions to adopt rules and regulations for their government and proceedings. It is usually provided, however, that all hearings must be open to the public and that any party in interest may be heard in person or by attorney. On the other hand, authority is almost universally given to the commissions to administer oaths, subpoena witnesses and order the production of books, records and memoranda in proceedings held before them. Investigations and hearings are commonly started on

complaint, but it is often provided that the commission may make summary investigations and hold hearings on its own motion or initiative and issue orders on the basis of its findings.

III. The General Extent of Commission Authority

The general extent of commission authority may be examined from three points of view. First, the scope and trend of regulation may be gathered from the number of commissions in existence and the rapidity of their growth. There are today, as already indicated, forty-eight state commissions, representing every state but Delaware, Utah and Wyoming. No less than thirty of these either came into existence since 1907 or, though in existence prior to that year, they have been so completely changed in character since 1907 that they are practically new commissions. Early in 1913 the National Civic Federation completed a comprehensive compilation and analysis of laws for the regulation of public utilities by central commissions.[6] In the single year that has elapsed since the results of that investigation were published, public service commissions have been created in two states, Idaho and West Virginia, where no utility commissions had before existed, and seven other states have passed complete public service laws now in operation.[7] In addition there has been a mass of amendatory legislation whereby already existing commissions have been very largely transformed.

The extent of commission authority may also appear from a consideration of the kind and number of utilities which may be reached in any way by the utility commissions. These commissions collectively have some degree of authority over corporations, companies, associations, joint stock companies, partnerships or individuals owning, operating, managing or controlling steam railroads, electric and street railways, interurban or suburban railways, elevated railroads or subways, automobile railroads, steamboats and other water craft, express lines and messenger lines, signalling facilities, bridges and

[6] *Commission Regulation of Public Utilities: A Compilation and Analysis of Laws of Forty-three States and of the Federal Government for the Regulation by Central Commissions of Railroads and Other Public Utilities.* The National Civic Federation, Department on Regulation of Interstate and Municipal Utilities, New York, 1913.

[7] See footnote 3.

ferries connected with railroads, pipe lines for the transportation of oil or water, sleeping, parlor and drawing-room cars, terminals, union depots, docks, wharves, storage elevators, fast freight lines, stage lines, messenger companies, telegraph and telephone companies, facilities for the manufacture and sale of gas or electricity, heat, light, water, power, hot or cold air or steam, and irrigation and sewage facilities. Whether a given business constitutes a public service undertaking depends largely upon the social and industrial conditions that prevail in the community. Whether, upon recognition of a given undertaking as a public service industry, express authority to regulate shall be granted to commissions, depends usually upon the public policy of the given community and more particularly upon the political conditions prevailing in that community. Therefore the utilities to which commission jurisdiction extends vary greatly in the different states; but the principles of adequate regulation, as embodied in the various powers conferred upon commissions, are found to depend but very slightly upon the number and nature of the utilities regulated. This is but a recognition that public service industries may, in most respects, be treated as a homogeneous class. A distinction is often made between interstate and municipal utilities, or between railroads and other public utilities. Commission legislation but seldom distinguishes to any striking degree between these classes of utilities, although there is considerable variety in the names of the commissions. Twenty-two of them are railroad commisssions; twelve are public service commissions; seven are public utility commissions; five are corporation commissions; one is a railroad and warehouse commission; and one is a board of gas and electric light commissioners. The names of the commissions do not always indicate the scope of their jurisdiction. Many of the railroad commissions have jurisdiction over the so-called municipal utilities: as, for example, the railroad commissions of Oregon and Wisconsin. And most of the public utility or public service commissions have jurisdiction over railroads: as, for example, the Massachusetts and New York commissions.

Finally, the extent of commission jurisdiction may be gathered from the powers vested in the commissions. Two types of regulating boards have appeared in American experience: the advisory board, with powers of investigation and recommendation, of which the old Massachusetts railroad commission is the most notable example, and the

mandatory board, with power to order as well as to recommend, of which the New York and Wisconsin commissions are perhaps the best examples. The advisory commission relies upon publicity and the strength of public opinion for the enforcement of its recommendations; the mandatory commission is vested with sufficient power to compel the utilities to submit to its orders.

The advisory commission has been abandoned even in Massachusetts. Large powers are now granted to the commissions; the duty of utilities to comply with the orders of the commissions is clearly stated; the commissions are given authority to invoke judicial process for the enforcement of their orders; and usually penalities, varying in stringency, are imposed upon utilities for failure to comply with these orders. Since the enactment of the Wisconsin railroad commission law in 1905 and of the Hepburn amendments to the act to regulate commerce in 1906, practically all utility legislation has proceeded on the basis of clothing commissions with ample power to exercise continuous supervision over public utilities and to afford effective relief to any party in interest whenever necessary. The authority to prescribe just and reasonable rates, therefore, is almost universally enjoyed by the modern type of public service commission. But in addition to such specific powers as are necessary for adequate public control, commissions now possess large general powers of investigation and supervision over the property and business of public utilities.

This general power of regulation is stated in most comprehensive fashion in the Illinois public utilities commission law. It is there provided that

> The commission shall have general supervision of all public utilities, shall inquire into the management of the business and shall keep itself informed as to the manner and method in which the business is conducted. It shall examine such public utilities and keep informed as to their general condition, their franchises, capitalization, rates and other charges, and the manner in which their plants, equipments and other property owned, leased, controlled or operated are managed, conducted and operated, not only with respect to the adequacy, security and accommodation afforded by their service but also with respect to their compliance with the provisions of this act and any other law, with the orders of the commission and with the charter and franchise requirements.[8]

The following provision of the Wisconsin public utilities act is found in most jurisdictions, and indicates the nature of the powers

[8] *Acts 1913*, house bill no. 907, §8.

vested in commissions in so far as they are essential to a proper per formance of their duties:

> The commission or any commissioner or any person or persons employed by the commission for that purpose shall, upon demand, have the right to inspect the books, accounts, papers, records and memoranda of any public utility and to examine, under oath, any officer, agent or employee of such public utility in relation to its business and affairs.[9]

IV. The Powers of Utility Commissions

We may now present a brief résumé of the more important specific powers vested in public utility commissions.

1. Franchises

The important provisions in commission laws looking to franchise regulation aim to prevent unnecessary duplication of utility properties through the introduction of competition where the public welfare demands the recognition of monopoly, and to provide for the uninterrupted operation of utilities, under adequate control of rates and service, subject to municipal purchase whenever such private operation ceases to promote the public good.

The first of these purposes has been accomplished by requiring the issue of a certificate of convenience and necessity by the commission before a public utility may enter upon a new undertaking or extend an existing undertaking or exercise franchise privileges previously granted but not theretofore exercised. The essential elements of the certificate of convenience and necessity are stated as follows in the New Hampshire public service commission law:

> No public utility shall commence within this state the business of transmission of telephone or telegraph messages or of supplying the public with gas, electricity or water, or shall engage in such business or begin the construction of a plant, line, main or other apparatus or appliance intended to be used therein in any city or town in which at the time it shall not already be engaged in such business, or shall exercise any right or privilege under any franchise hereafter granted (or any franchise heretofore granted but not heretofore actually exercised) in such town, without first having obtained the permission and approval of the commission. The commission shall grant such permission whenever it shall, after due hearing, determine and find that such engaging in

[9] *Laws 1907*, ch. 499, §1799m-38.

business, such construction or such exercises of the right, privilege or franchise would be for the public good and not otherwise; and may prescribe such terms and conditions upon the exercise of the privilege granted under such permission as it shall consider for the public interest. Authority granted under provisions of this section may only be exercised within two years after the same shall be granted and shall not be exercised thereafter.[10]

Provisions substantially identical with the New Hampshire section are found in nineteen jurisdictions.[11] It is to be noted that practically all the states which passed complete laws during 1913 provide for certificates of convenience and necessity.

The other purpose of the franchise provisions of commission laws is to recognize the essentially monopolistic character of public utilities by providing for their continuous operation, during good behavior, under a permit unlimited as to time, with power in the municipality to exercise an option of purchase. The indeterminate franchise was first established in Massachusetts, where street railway locations may be revoked by local authorities (the revocation being subject to approval by the commission in certain cases) at any time after the expiration of one year from the date of the franchise. The most thorough-going indeterminate franchise law is to be found in Wisconsin. It was enacted in 1907 and materially amended in 1911.[12] It provides for indeterminate permits for street railways and for heat, light, water and power companies in municipalities. The indeterminate permit was first to apply to all future grants, with authority for companies operating under limited-term franchises to exchange them for indeterminate permits. The amendment of 1911 provided that all franchises theretofore granted were to become indeterminate. The essential characteristics of the principle of indeterminate franchises are: first, that the public service corporation is recognized as a legal monopoly and no permit is granted to a competing company unless public convenience and necessity require such grant; and second, that the public service company, in accepting an indeterminate permit, consents to the purchase of its plant by the municipality in which it operates. The purchase price is to be

[10] *Laws 1911*, ch. 164, §13 (a).

[11] Arizona, California, Connecticut, Idaho, Illinois, Indiana, Kansas, Maine, Maryland, Massachusetts, Michigan, Missouri, New Hampshire, New York, Pennsylvania, South Dakota, Vermont, West Virginia, Wisconsin.

[12] *Laws 1907*, ch. 499, §§1797m–74 to 1797m–86. *Laws, 1907*, ch. 578, §§1797t–1 to 1797t–12. *Laws 1909*, chs. 180, 213. *Laws 1911*, chs. 546, 596, 662.

fixed by the commission, subject to review by the courts. The new public service commission law of Indiana provides for indeterminate permits similar to those established in Wisconsin.[13]

2. Security Issues

In fifteen jurisdictions the commission has authority to supervise the issue of stocks and bonds.[14] In some of these jurisdictions the commission's power is stated in general terms and does not provide for a strict control of capitalization. The New Jersey law, for example, merely provides that no public utility shall

> issue any stocks, stock certificates, bonds or other evidences of indebtedness payable in more than one year from the date thereof until it shall have first obtained authority from the board for such proposed issues. It shall be the duty of the board, after hearing, to approve of any such proposed issue maturing in more than one year from the date thereof, when satisfied that the same is to be made in accordance with law and the purpose of such issue be approved by said board.[15]

In many of the states, however, the commission has complete control, definite financial standards being prescribed and provision being made for thorough investigation and valuation by the commission before approval of security issues, and for detailed supervision of the disposition of the proceeds after the commission's certificate has been granted. The Wisconsin stock and bond law,[16] applying to railroads, street railway, telegraph, telephone, express, freight line, sleeping car, light, heat, water and power corporations, establishes the most comprehensive system of regulation of security issues by commission. It affords a practical guarantee by the state that there is an equivalence between the amount of outstanding securities and the investment upon which the utilities are entitled to a fair return. Legislation of similar scope may be found in five other states, three of which legislated during the past year.

[13] *Acts 1913*, house bill no. 361, §§100–109.

[14] Arizona, California, Kansas, Illinois, Indiana, Massachusetts, Michigan, Missouri, New Hampshire, New Jersey, New York, Pennsylvania, Texas, Vermont, Wisconsin.

[15] *Laws 1911*, ch. 195, §18(e).

[16] *Laws 1911*, ch. 593.

3. Rates and Service

Commission laws lay down the basis of rate-making, or the requisites of lawful rates, declare unjust discrimination unlawful, prescribe publicity in the making of rates and schedules, and vest in commissions the power to fix rates in accordance with the principles thus prescribed.

It is almost invariably provided that rates and charges must be just and reasonable, and the commissions are given authority to enforce the standard thus established. In many jurisdictions the various elements that must be considered and the various devices that may be adopted in the establishment of reasonable rates by utilities and commissions are further prescribed. The chief elements emphasized by the statutes for lawful rates are that a due regard be had "to a reasonable average return upon the value of the property actually used in the public service and of the necessity of making reservation out of income for surplus and contingencies."[17] Twenty-four jurisdictions make express provision for valuation of the property of public utilities by commissions.[18] These valuations are sometimes used for capitalization and purchase as well as for rate-making purposes. The tendency in these valuation provisions is to vest in commissions ample power for the successful ascertainment of utility valuations. Such elaborate valuation provisions may be found in Ohio,[19] Pennsylvania,[20] Washington[21] and Wisconsin.[22] The main device provided by statute by which reasonable rates may be secured is the sliding scale, chiefly applicable to the gas industry, but also, in some cases, to electric companies. In addition to the Boston sliding scale act in Massachusetts,[23] nine jurisdictions author-

[17] New York: *Laws 1910*, ch. 480, §97.

[18] Arizona, Arkansas, California, Florida, Georgia, Illinois, Indiana, Kansas, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Texas, Washington, West Virginia, Wisconsin.

[19] *Laws 1913*, house bill no. 582, §§21–31.

[20] *Laws 1913*, no. 854, art. II, §1 (k); art. III, §§4 (a), 6; art. V, §§19–23.

[21] *Laws 1911*, ch. 117, §92.

[22] *Laws 1907*, ch. 499, §§1797m–5, 1797m–6, 1797m–19, 1797m–82 to 1797m–86. *Laws 1907*, ch. 578, §1797t–8. *Laws 1911*, ch. 662.

[23] *Acts 1906*, ch. 422.

ize utilities to establish the sliding scale for the automatic adjustment of charges and dividends under commission supervision.[24]

It is almost invariably provided also that unjust discrimination is prohibited, and the commissions are given authority to enforce the prohibitions. Unjust discrimination is variously defined. As defined in the commission laws collectively it consists in charging a greater or less compensation to one person than to another for like and contemporaneous service; in charging rates other than those prescribed by law or specified in published schedules, refunding, remitting or rebating any portions of such rates, or extending privileges or facilities not uniformly open to all; in charging a less compensation in consideration of the furnishing by utilities of any part of the facilities incident to the service; in charging a less compensation in consideration of the size of the shipment or the extent of the service; in charging a greater compensation for a shorter than for a longer distance or for a smaller than for a larger service; in granting to any person, corporation, locality or any particular description of service any undue or unreasonable preference or advantage, or in subjecting the same to any undue or unreasonable prejudice or disadvantage; in assisting or permitting patrons to secure special favors or advantages, or rates other than those lawfully established; in soliciting, accepting or receiving special favors or advantages, or rates other than those lawfully established. There are also general prohibitions against offering, granting, soliciting or accepting free or reduced rate or special service, with elaborate lists of exceptions; special prohibitions, applicable to public officials and members of political organizations; and requirements that lists of persons to whom free or reduced rate or special service has been granted shall be published and filed with the commission. The provisions also indicate the kinds of special treatment which constitute justifiable discrimination and authorize the commissions to determine under what conditions such circumstances exist as make discrimination justifiable.

Again, it is almost invariably provided that utilities submit to full publicity in the establishment and change of their rates and schedules, and authority is vested in the commissions to render publicity in rate-making effective. Utilities are thus ordered to file their schedules of rates with the commissions, after due notice of their

[24]Arizona, California, Idaho, Maryland, Missouri, New York, Ohio, Pennsylvania, Wisconsin.

adoption; the matters to be contained in these schedules are prescribed in detail; the forms of schedules are made subject to the approval of commissions; it is provided that the schedules be published and posted; the filing, publishing and posting of rate schedules are often made a condition precedent to the exercise by utilities of the right to do business; and utilities, in many instances, are required to file with the commissions copies of leases, contracts and arrangements made with other utilities.

The most important powers as to rates are found in the provisions which authorize commissions to regulate or prescribe the rates and charges of utilities, establish the procedure to be followed in the exercise of these powers, and indicate the legal effect to be given to the rates and charges so established. All of the states now give the commissions mandatory powers over rates. In many of the jurisdictions there is language so broad that it may, by liberal interpretation, be construed to vest in the commissions power to fix rates in the first instance. When the legislation in each jurisdiction is taken as a whole, however, the authority of the commissions in practically all of the commission states is limited to the power on its own motion or on complaint, after investigation, to declare unreasonable rates and charges previously in force, and to prescribe others in lieu thereof to be followed in the future. In other words, in spite of the large power over rates vested in commissions, the right to initiate rates is practically everywhere reserved to the utilities; but in about one-third of the jurisdictions the commissions are given the additional authority to suspend the operation of rates fixed by utilities pending an investigation as to their reasonableness undertaken by the commissions. In some jurisdictions the rates fixed by commissions are considered *prima facie* lawful and in force until found unreasonable upon review by a proper court; in some states their operation is suspended until declared reasonable upon judicial review.

Many of the rate provisions, in so far as they empower commissions to supervise the business of utilities, apply to regulations, practices and service. But while more than one-half of the states provide that the service furnished by utilities must be reasonable or that the facilities must be adequate and safe, only about one-third of the commission jurisdictions vest sufficient authority in the commissions to render these requirements effective. The practice in the past has been to establish by direct legislative enactment absolute standards

of service and safety, and specific facilities and safety appliances. The present tendency, however, as evidenced by much of the recent legislation,[25] is to clothe commissions with power over service and facilities, both as to adequacy and safety, commensurate with their power over rates. The more recent commissions, therefore, are authorized to prescribe reasonable service standards and to provide for such inspection and testing of service and facilities as will insure their adequacy and safety.

4. Accounts and Reports

The regulation of accounts and reports serves to provide for commissions the data essential to an adequate control of capitalization, rates and service.

There are provisions for the regulation of accounts in twenty-eight jurisdictions. The most general requirement is that by which authority is granted to commissions to establish a system of uniform accounts for public utilities, with power to prescribe the forms of accounts, records and memoranda and to indicate the manner in which they shall be kept, or to classify public utilities and establish a system of accounts and prescribe forms for each class. In most jurisdictions this power may be exercised in the discretion of the commission. Sometimes, as in the new Indiana law, the authority to prescribe accounting practices is made mandatory upon the commission.[26] In a number of the jurisdictions it is further made unlawful for utilities to keep any other accounts, records or memoranda than those prescribed or approved by the commission. In the case of common carriers, the commissions are often specifically required to conform, as far as possible, to the system and form of accounts established and prescribed from time to time by the Interstate Commerce Commission. In about one-fourth of the states—Arizona,[27] California,[28] Idaho,[29] Illinois,[30] Indiana,[31] Missouri,[32] New Jersey,[33]

[25] Idaho, Illinois, Indiana, Missouri, Pennsylvania, West Virginia.
[26] *Acts 1913*, house bill no. 361, §15.
[27] *Session Laws 1912*, ch. 90, §49.
[28] *Statutes 1911*, 1st extra session, ch. 14, §49.
[29] *Session Laws 1913*, house bill no. 21, §47.
[30] *Acts 1913*, house bill no. 907, §14.
[31] *Acts 1913*, house bill no. 361, §§22–25.
[32] Public service commission law of March 17, 1913, §61.
[33] *Laws 1911*, ch. 195, §17 (*f*).

Ohio,[34] Oregon,[35] Pennsylvania,[36] Wisconsin[37]—special depreciation accounts are provided for: the commission is empowered to require proper and adequate depreciation or deferred maintenance accounts to be kept in accordance with prescribed forms and regulations whenever it shall determine that depreciation accounts can reasonably be required. And the commissions are given authority to examine as well as to prescribe accounts; that is, the commission or the commissioners or their duly authorized agents or examiners may have access to the accounts of the utilities and may at all reasonable times examine and inspect them. Heavy penalties are usually imposed for violations of accounting provisions.

The duty is almost invariably imposed upon utilities to transmit to the commission at specified intervals or at such time as the commission may designate, regular reports of their doings setting forth such facts, statistics and particulars relative to their business, receipts and expenditures as may be required by the commission. In many states special reports may also be called for by the commission at different intervals. It is often provided that the commission shall furnish blank forms for regular or special reports; and the reports must be duly sworn to or verified by such officers or persons as the commission may designate. Full and specific answers must be given to all questions propounded by the commission, or sufficient reasons must be stated for failure to make such answers. In case the reports or returns appear to be defective or erroneous, the commission is usually given the power to order their amendment within a specified time. It was very common in the older utility laws, particularly for the regulation of railroads and common carriers, to prescribe by statute the detailed contents of annual reports; but in pursuance of the general trend of giving commissions ample discretion in the regulation of utilities, the more advanced legislation, including most of the recent laws, vests complete power in the commissions as to the scope of the reports of utilities. Heavy penalties are usually imposed for the violation of provisions relating to reports.

[34] *Laws 1911*, no. 325, §§51, 52.
[35] *General Laws 1911*, ch. 279, §17.
[36] *Laws 1913*, no. 854, art. II, §1(i); art. V, §15.
[37] *Laws 1907*, ch. 499, §1797m-15.

QUALIFICATIONS NEEDED FOR PUBLIC UTILITY COMMISSIONERS

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This paper considers (a) the qualifications which are needed for public utility commissioners and (b) the manner of obtaining the needed qualifications. Under the first division are examined the qualifications prescribed by the various commission laws; the effectiveness of these requirements in obtaining men of the right caliber for the positions is discussed; conclusions are drawn from the discussion and from general observations regarding the responsibilities of the positions.

Under the second division are considered the manner of selecting commissioners, terms of office, salaries, political interference, facilities afforded commissions, educational helps and sustained public interest. The extent to which legislation can assist in procuring the needed qualifications is discussed.

A. Qualifications Needed

Qualifications Prescribed by Statute

Most of the public utility commission laws prescribe some qualifications. The laws[1] are by no means uniform and in the aggregate they cover a wide range.

1. Oath. It is generally required that commissioners shall take and subscribe to the constitutional oath of office and such other oaths as may be prescribed by law.

[1] For a comprehensive analysis of the statutory provisions with full citations up to 1913, see *Commission Regulation of Public Utilities.* The National Civic Federation, New York, 1913. Oath of office, p. 74; age, political condition, geographical location, previous experience, bond, bi-partisan requirement, pp. 65–73; general disqualifications for interest, pp. 79, 86; special disqualifications for interest ¶ 3712, 3723, 3738, 3745, 3751, 3766, 3770, 3780. See also subsequently enacted public service commission laws of Pennsylvania, West Virginia, Indiana, Illinois, Missouri, Idaho and Montana.

2. Age. Where age qualifications are prescribed, prospective members must be 25[2] or 30[3] years of age.

3. Political Condition. Persons appointed or elected to commissions are required to be qualified electors,[4] qualified voters,[5] citizens of the United States[6] or of the state[7] or reputable and competent citizens.[8] They must be resident citizens in some states.[9] In others they must have been citizens for two years,[10] or residents of the state for two years[11] or for five years.[12]

4. Bi-partisan Requirement. Some of the statutes[13] provide that no more than the number equal to a scant majority of the commissioners shall be members of the same political party.

5. Geographical Location. In some states members are chosen from congressional,[14] special commission,[15] supreme court[16] or other[17] districts. In such cases the persons selected must be residents of the districts for which they are chosen.

6. Previous Experience. In Georgia[18] one commissioner must be experienced in law and one in railroad business. In Kansas one is required to be a practical, experienced business man and one experienced in the management or operation of a common carrier or public utility. In Maine[19] the chairman must be learned in law. Of

[2] Arkansas, Maryland, Missouri, North Dakota, South Carolina, South Dakota, Tennessee and Texas.

[3] Georgia, Kentucky, Nebraska, New Jersey, Oklahoma and Pennsylvania.

[4] Alabama, Arizona, California, Connecticut, Georgia, Kansas, Montana, North Dakota, Pennsylvania, Rhode Island and South Dakota.

[5] Arkansas, Maryland, Missouri, Nebraska, Oklahoma, Tennessee, Texas.

[6] North Dakota, South Dakota.

[7] New Jersey, Virginia.

[8] South Carolina Public Service Commission.

[9] Arkansas, Massachusetts, Nebraska and Texas.

[10] Kentucky.

[11] Oklahoma, Pennsylvania, South Dakota and Tennessee.

[12] Maryland, Missouri.

[13] United States, Illinois, Indiana, Kansas, Nevada, Ohio.

[14] Alabama, Arkansas, New Mexico.

[15] Louisiana, New York, Oregon.

[16] Mississippi.

[17] Kentucky, South Dakota.

[18] Commission has jurisdiction over railroad, express, street railroad, dock, wharfage, terminal station, telephone, telegraph, gas and electric light and power utilities.

[19] The commission is strictly a railroad commission.

the two associates one is a civil engineer experienced in the construction of railroads and the other is experienced in the management and operation of railroads.[20] One member of the Michigan Railroad[21] Commission is required to be an attorney having knowledge of and being experienced in the law relating to common carriers while the other two have knowledge of traffic and transportation matters. In Nevada[22] the chief commissioner must be an attorney at law and well versed in the law of railroad regulation, while the first associate must be a practical railroad man familiar with the operation of railroads in general, and the second associate commissioner have a general knowledge of railroad fares, freights, tolls and charges. In Ohio and Wisconsin one member must have a general knowledge of railroad law and each of the other two members a general understanding of matters relating to railroad transportation.[23]

7. Bond. In some states members of commissions are obliged to give bonds in amounts ranging from $1,000 to $20,000.[24]

8. Special Disqualification for Interest. The provisions relating to the capacity of commissioners to participate in particular proceedings are substantially the same in all the statutes in which they occur. The act to regulate commerce provides that no commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest.[25] The constitution of New Mexico provides that no member of the commission shall be qualified to act

[20] It is significant that the salary provided for the chairman is $2,500 per year while that of the two associates is $2,000 each.

[21] Commission has jurisdiction over railroad, express, electric transmission and telephone utilities.

[22] Commission was established as a railroad commission. Subsequently it became *ex officio* the public service commission. No change was made in the qualifications for commissioners.

[23] Each of these commissions has extended jurisdiction over utilities other than railroads. The Wisconsin commission has jurisdiction over municipalities.

[24] Illinois, Indiana, Kansas, Minnesota, Montana, North Dakota, Oregon, South Carolina (Public Service Commission), South Dakota, Tennessee and Washington.

[25] Act to regulate commerce, as amended, sec. 17. See also *Iowa Code 1897*, sec. 2142; *Minnesota rev. laws 1905*, sec. 1955; *Montana rev. codes 1907*, sec. 4363; *North Dakota rev. codes 1905*, sec. 4362; Pennsylvania public service company law, 1913, art. iv, sec. 12; *South Dakota rev. pol. code 1903*, sec. 192.

on any matter pending before the commission in which he is interested, either as principal, agent or attorney.[26]

9. General Disqualification for Interest. General disqualifications are imposed for interest in (a) public utilities, (b) other public or private offices, and (c) political activity.

a. In some jurisdictions it is provided that no person employed by or connected with, or holding any official relation to, or owning bonds or stock of, or having any direct or indirect or pecuniary interest in any public utility, shall be eligible to enter upon the duties or fill the office of commissioner. In some cases the prohibition extends only to such relations with public utilities under the jurisdiction of the commission. In others, it extends to all public utilities of the kind over which the commission has jurisdiction.

b. The prohibition frequently occurs that no member of a commission shall engage in any other business, employment or vocation, or hold any other political office. It is variously expressed in the different statutes. The Wisconsin law provides that each commissioner shall devote his entire time to the duties of his office.[27] The Nevada statute provides that these limitations and restrictions shall not apply to the second associate member, but it is provided that no commissioner shall be a member of any political convention or a member of any committee of any political party.[28]

c. The recently enacted (1913) public utilities act of Idaho contains a stringent restriction against political activities of commissioners. It provides as follows:

> No commissioner shall, directly or indirectly, while he is a member of said commission, take any part in politics by advocating or opposing the election, appointment or nomination of any person or persons to any office in the state of Idaho, excepting under officers in the commission, nor shall any commissioner seek appointment or election or nomination for any civil office in the state of Idaho, other than commissioner, while he is a member of said commission nor shall any commissioner seek appointment, nomination or election to any civil office in the state of Idaho, other than that of commissioner, for a period of two years, from the date of the expiration of his term or after his resignation or removal from said office.[29]

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[26] Art. xi, sec. 3.

[27] *Laws 1907*, ch. 582, sec. 1797–1 (d).

[28] *Stats. 1907*, ch. 44, sec. 1, as amended by *Stats. 1911*, ch. 193.

[29] Sec. 7.

Discussion of Statutory Qualifications

Some of the qualifications prescribed by statute may be dismissed with scant consideration. The age requirement seems to have little practical value. The giving of a bond for the faithful performance of his duties is no assurance to the public that a commissioner will prove satisfactory and successful. The oath of office has a recognized place in our political system and no special significance attaches to its use in this connection.

The requirements relating to political conditions and geographical location would seem to serve little purpose. Citizenship in state or nation is no guarantee of faithful and efficient public service. Residence in the state at the time of elevation to office or for a prescribed period prior thereto has no practical meaning. Theoretically, at least, the best available men in the country or in the world should be eligible to these positions. Practically, a popular aversion to selecting non-residents for lucrative public offices seems to exist; it is a factor to be reckoned with.

Geographical location is an indefensible qualification except in such a case as New York, where two commissions are established with mutually exclusive territorial jurisdictions.[30] No unit of representation should be employed in a commission smaller than the general unit of territorial jurisdiction of the commission. The problems are state problems, or, in the case of the Interstate Commerce Commission, national. Organization of a commission on any other basis might easily result in the playing off of one section against another. Particularly would this be likely to occur in the case of such services as those of railroads, telephones, telegraphs and express, which are conducted in all parts of states and the nation.

General disqualification for pecuniary or other interest in public utilities is much debated. If it is approved, no occasion exists for the special disqualification to participate in proceedings in which the commissioner has a pecuniary or other interest. The two provisions seem to be mutually exclusive.

In favor of the interest disqualification to hold office, the following points may be urged: Pecuniary or other personal interest is

[30] Even in New York, however, the separation of territorial jurisdiction has ceased to be complete. In 1910 the legislature conferred on the second district commission jurisdiction over telephone companies in the first district.

opposed to public and private morals; a close parallel to the judiciary exists; but while judges, when unable to sit in a particular case, can call in other judges, no such opportunity is available for commissioners; the duty of regulating public utilities is continuous and is not confined to deciding contested cases.

Arguments in favor of the special disqualification and opposed to the general one may be summarized as follows: Commissioners should be men of substance; it is an unreasonable restriction to exclude a member of a commission from the very large field of investment in public utility securities; no possible injustice can occur if members are not allowed to participate in proceedings in which they have a personal interest; if necessary, provision may be made for special commissioners in cases of special disqualification.

Popular prejudice rather than reason probably has done much to affect the statutes on the subject. Because of the continuing nature of public utility regulation with respect to its incidence on the subjects of regulation, however, as contrasted with judicial administration of law, the general disqualification probably is wiser than the special disqualification to sit in proceedings in which an interest is held.

The statutory prohibitions of political activity recognize a sound principle. It is doubtful, however, whether they can be depended upon to accomplish their purpose. Political interference can not be legislated out of existence. In spite of statutory prohibitions it will exist just so long as it is countenanced by public opinion. Accordingly, no great reliance can be placed upon prohibitive statutory provisions.

Provision for bi-partisan boards probably is wholesome. It conforms to traditions of party government and is applied to courts which are appointive.

Manifestly, a member of a commission should occupy no other public office. This rule may work apparent hardship in some cases, as for instance, membership on school and other boards where the reward is in the honor rather than in the remuneration. Unless exceptions to the general rule are carefully made, however, it would seem that they should be avoided altogether. Most of the commissions are so burdened that their members are unable to engage in any other business.

The provision of the Idaho statute previously quoted is extreme in its limitation on certain fundamental rights of citizenship. It

would seem unnecessary to prevent a member of the commission from taking an interest in elections or even in appointments. Here the state is bordering dangerously on disfranchisement. Of course, there is a line beyond which the sense of propriety is shocked. This line may be hard to define and in the final analysis public opinion rather than statutory enactment should be relied upon to protect the public interest. The prohibition against "seeking" a public office other than that of commissioner within two years after being out of the office would seem to be unreasonably stringent as well as practically futile.[31]

Does previous experience afford an adequate test of fitness? We have seen that several of the states prescribe such qualifications. They are based on what may be called a division of authority conception of the organization of a commission. Both as a statutory requirement and as a rule of convenience for the appointing power, this conception has many adherents.

The chief arguments in favor of the experience qualifications may be summarized as follows: Successful administration of commission laws requires high ability; the problems are of a technical nature; members of the commission should possess those high qualifications which go only with long experience and recognized standing.

Briefly summarized, the opposing arguments seem to be as follows: Admitting the technical nature of the problems of regulation, opponents of the theory believe that the required proficiency can be had better through staffs of experts regularly or specially retained; a commission of three, five or seven members is not large enough to enable all branches of special knowledge and training to be represented by members; the commission is an entity, not an aggregate of individual units, and each member must be held fully responsible for every action of the commissions; neither membership nor high standing in one of the specified professions or callings is a certain guarantee of fitness for the peculiar duties of a commissioner; the vital questions of commission regulation lie in the province of no single profession or calling but belong in the broad field of the social sciences.

[31] See also Pennsylvania public service company law, art. iv, sec. 12, which provides that no commissioner shall during his term be a candidate for any other appointive or elective office of the commonwealth or any municipality thereof.

No question before commissions of the country today is of more importance than valuation.[32] We refer to valuation in a broad sense, of which reproduction value, original costs, going value, franchise value, depreciation, surplus, unearned increment, etc., are details. The great issue is the nature of value and not the application of the rule of value to particular cases. Great economic and political consequences hinge on the result. An incipient agitation for government ownership of railroads has already appeared, based on the application to unearned increment of one of the present value theories.[33]

No certain pronouncement on the nature of value has proceeded from the supreme court. The field is an open one and the commissions are the experimental laboratories. The fiat of commission or court will not long be controlling unless it is fundamentally sound. A rule too strict in its application may result in stagnation of public utility enterprise; one too liberal may plunge the country into a decisive public ownership movement. Value is an economic conception. The valuation rule seems today to be the common point of contact between the equities, respectively, of the public utilities and the public. The fundamental laws of political economy and political science are involved. The issue is one of public policy, not of law. It is one of broad, general, business principle; not of any *one* of the natural or applied sciences as opposed to all the others.

Valuable contributions to the valuation problem have been made by economists. This calling might well be entitled to serious consideration in a division of commissionerships among the professions. Merely being an economist, however, is no more a qualification for such a position than merely being a lawyer is a qualification for a difficult legal task, or merely being an engineer is a qualification for a specific engineering task. After all, the important consideration is the degree of attainment of the particular individual.

Previous experience as a qualification is like practicality. But what is a "practical" man? Every industry would have its own conception. Most of the commissions have jurisdiction over a wide range of utilities. The list includes at least the following:

[32] See "The Vagaries of Valuation," by John H. Gray, in *Am. Econ. Review, Supplement*, March, 1914.

[33] See letter of Clifford Thorne to Senator Kenyon, in the *Congressional Record*, 1914, p. 2223. See also report of Committee on Valuation and discussion thereon, *Proceedings of 25th Annual Convention, National Association of Railway Commissioners*, 1913.

Railroad, steam	Electric central station	Local express and transfer
Railroad, electric	Electric, transmission	Water carriers
Railway, street	Gas	Pipe lines
Express	Water	Cable companies
Telephone	Heating	Fast freight lines
Telegraph	Coal	Refrigerator lines

This list is not necessarily exhaustive. As new accessions come to the field of quasi-public industry it is to be expected that it will be added to. Manifestly, it is impossible to provide places on regulating commissions for men who are "practical" from the standpoint of each.

A candidate for a position should not be disqualified because he is "practical." On the other hand, too, being "practical" is not a sufficient qualification. A man chosen to such a position because he represented a particular point of view might inject into the deliberations of a commission and its entire activities a partisanship which would be anything but desirable.

The truly practical man is the one who is broad enough to comprehend all points of view and to act accordingly.

The scope of the duties of public service commissioners is broad. Doubtless it is impossible to find even one man, not to speak of three, five or seven men, who possesses the breadth of knowledge, the experience and the capacity desirable in the abstract. Regulation of rates, services, accounts, stock and bond issues, intercorporate relations, competition and other activities of a number of industries having state-wide or nation-wide extent is a large task. The least common denominator of this wide range of responsibilities probably is the gathering, correlation and analysis of facts and drawing sound and rational deductions therefrom.[34] This implies as a prime qualification the quality of mind that makes a better-than-ordinary diagnostician of a physician and gives us the brilliant lawyer. The greatness of mind which manifests itself in conspicuous leadership in marshalling human and material forces is wanted for the regulation of public utilities. It makes little difference whether this great-

[34] For information necessary for working out a schedule of rates for electric utilities, see address of John H. Roemer, chairman of the Railroad Commission of Wisconsin, before the Illinois Gas Association, March 18, 1911. The outline is reprinted in *Regulation of Municipal Utilities*, by C. L. King, p. 194.

ness of mind is produced through the training of a lawyer, an engineer, an accountant, a banker, an economist or a plain business man. It can not be defined by statute nor obtained through statutory enactment.

Conclusions as to Qualifications Needed

1. Summary of Statutory Requirements. Statutory requirements on the following subjects are not helpful: Oath, age, political condition, geographical location. Public morals require either a general or special statutory disqualification for private interest in the public utilities regulated. Commissioners should be prohibited from holding other public offices. The prohibition of political activity is sound in principle but ineffective in practice. If commissions are given authority and facilities with which to work, their members will have no time to engage in other businesses. The bi-partisan requirement is rational but not effective alone.

2. Function of Laws. The part which the law-makers can play in procuring the needed qualifications is set forth in a subsequent part of this paper. The chief function of the law is to create a condition which will make the positions attractive to men of the right type. The essential qualifications are suggested largely by the discussion of the inadequacy of the special statutory provisions. They are summarized in the following paragraphs.

3. Physical Capacity. Members of public utility commissions need to be vigorous physically. The work is large in volume and seems to be increasing rapidly in the commissions which are giving good accounts of themselves. Long working hours are the rule, and few vacations. From the standpoint of the physical strength required to enable one ably to acquit himself as a commissioner, the position is no sinecure.

4. Aggressiveness. Public service commissions are administrative bodies. They are charged with duties of constant supervision. They are empowered to initiate all proceedings necessary to accomplish the purposes of the laws. Merely passive enforcement of commission laws will not long command public respect and confidence and serve as a remedy for abuses, alike on the part of the public and the corporations, which it is the purpose of commissions to prevent. Aggressiveness should be found in public service commissioners.

5. Tact and Resourcefulness. Corporations are managed by men. The public in its organized capacity is represented by men. The public service commission sometimes acts as a buffer between the two groups of men and sometimes as counsellor and guide to one or the other. In filling these capacities, tact and resourcefulness are essential attributes of the commissioners.

6. Intelligent Interest in Public Utility Problems. It is futile to entrust the regulation of public utilities to men who have no intelligent interest in the subject matter. This interest need not have gone so far as to be the basis of a professional or business career, but it should be great enough to have given its possessor a general knowledge of the nature of public utility problems and a real willingness to use his utmost ability to master the subject.

7. Genius for Research. Commissions are approaching from one point of view economic and social problems on which the corporation fraternity and individual members of the public have been working for years. The time was when rates and services of public utilities were because they were. Like Topsy, they had just grown. In the last few years corporations have subjected their rates to close analytical scrutiny and in many, if not all cases, rate structures and individual rates are the result of deliberate, constructive and honest endeavor. Just so, honest and careful consideration has been given to the same subjects by members of the public. That conflicts of opinion have resulted, was, and is, inevitable. The public service commission must attack the same problems, not from the standpoint of one or the other of the contending parties, but from the standpoint of the general, public welfare. The commission must adopt a process of scientific analysis, just as the others have done. It must become a practical laboratory of research. Members of the commission should possess a peculiar genius for investigation.

8. Freedom from Bias. Strong prejudice usually is a deterrent to a successful career. In any activity it must be distinguished, however, from the commendable qualities of self-confidence and courage in the strength of one's convictions. Men who have shown prejudice or bias on any of the multifarious problems of regulation should not gain access to commissions. They are a menace to the public welfare.

9. Fairness. Public service commissioners should be fair. The rules of conduct which they are required to enforce are characterized

by reasonableness, adequacy and consonancy with the public welfare. It is highly significant that the successful commissions of the present day—the commissions which command the respect and confidence not alone of the public but of the public utilities regulated—are characterized on all sides as *fair*. The problem of regulation is not of a day, of a decade, nor of a generation; it is one of years to come and fairness above all things should characterize its beginnings.

10. Previous Service. Commissioners who have served their terms honorably and capably should retain their positions. Length of service adds to the ability and efficiency of the incumbent. Displacing a competent commissioner means sacrifice of a valuable resource. The education of new commissioners is costly to all concerned.

11. Executive Ability. The chairman of every commission should combine with other qualities that of executive ability. Some of the commissions are in reality large business institutions. Each must have a capable head. Disregard of this policy must inevitably result in inefficient administration.

B. Manner of Obtaining Needed Qualifications

1. Manner of Selection. Public utility commissioners should be appointed by the chief executive. On this point there seems to be substantial unanimity of opinion. Of 169 positions falling within this category, 104, or 61.6 per cent, are appointive. The remaining 65, or 38.4 per cent, are elective. Mere cursory consideration of the qualifications needed should convince one that the electorate is not competent to find and select the best men for these positions. Subordinate positions in the commissions may be filled under civil service rules. It is not likely, however, that any system of promotion will be evolved in the near future for filling, from the ranks, the offices of commissioner. It seems doubtful whether any system of promotion will produce in commissioners the needed qualifications.

2. Term of Office. The term of office must be long enough to enable a new commissioner to become acquainted with the duties of the office and to attain a degree of proficiency which will repay him for the early effort. We recall a statement of a member of one of the important commissions that it requires no less than a year

for a new commissioner to be thoroughly broken in. Table I shows the number of terms prescribed by the various statutes today, the range of the several periods and the number of commissioners holding office for the period of each term.

TABLE I.—TERMS OF COMMISSIONERS[35]

Terms in Years	Number of Commissioners
2	6
3	15
4	23
5	15
6	92
7	7
8	4
10	7
	169

	Years
Maximum	10.0
Minimum	2.0
Arithmetic average	5.63
Weighted average	5.48
Mode	6.0

From this table it appears that six years is the generally accepted term of office. More than 54 per cent of the 169 commissioners included in this computation hold office for this period. The term surely should be no less than six years and it would be a step in the right direction for the states having shorter terms to provide the 59 commissioners with at least six years of official life.

3. Salary. The salaries must be large enough to attract men possessing the needed qualifications. Table II shows the number and range of salaries paid public service commissioners and the number of commissioners receiving each salary.

[35] In making this computation all of the state commissions and the Interstate Commerce Commission were included with the exceptions of the commission of the District of Columbia and the Public Service Commission of South Carolina.

TABLE II.—SALARIES OF COMMISSIONERS

Amount of Salary	Number of Commissioners	Amount of Salary	Number of Commissioners
$1,500	3	$4,500	5
1,700	2	5,000	16
1,900	3	5,500	5
2,000	8	6,000	18
2,200	4	7,500	3
2,500	12	8,000	4
3,000	22	8,500	1
3,200	1	10,000	18
3,500	7	10,500	1
3,600	1	15,000	10
4,000	25		
			169

Maximum	$15,000
Minimum	1,500
Arithmetic average	5,209
Weighted average	5,362
Mean	4,000
Mode	3,000–4,000
Number receiving more than weighted average	60
Number receiving less than weighted average	109

The minimum salary is $1,500 a year and the maximum $15,000. The arithmetic average is $5,209 and the weighted average $5,362. The mean is $4,000 and the mode lies between $3,000 and $4,000. These figures indicate that under existing conditions most of the salaries are extremely small in comparison with corporation salaries. In fact, only 60 of the 169 commissioners receive more than the weighted average while 109 receive less.

The precise amount which should be paid is not susceptible of mathematical determination. It is quite evident that a salary less than $5,000 cannot be expected to attract men of the high caliber desired. Commissioners possessing the proper qualifications would seem entitled to salaries at least as large as those paid members of the highest state court.

4. Political Interference. Commissioners should be free from political interference. Terms of office should overlap so that no complete change in the personality of the commission will occur in a single year. This is an element of protection for the capable commissioner.

Appointments to subordinate positions should be at the discretion of the commission unless they are under civil service. No objection seems to exist to the application of civil service rules except, perhaps, in the case of responsible department heads or experts. Appointments made by the commission should not be subject to executive approval or disapproval.[36] Otherwise the way is laid for political interference. Similarly, within appropriations made, the commission should fix the compensation of its employees at its own discretion.[37]

All foreseen possibilities of political interference should be avoided in the law. Otherwise it is difficult to make the positions attractive to men of the right caliber.

5. Facilities Afforded Commission. Legislators must make ample provision for working equipment, employees and other facilities. Commissioners cannot perform their duties unaided. They should have ample means at their disposal and a large measure of discretion as to the use of such facilities. It is the practice of some legislators to make minute divisions of appropriations for commission purposes. This destroys flexibility. It would seem preferable to give the commission free rein within the limit of the aggregate appropriation. Similarly some legislatures limit the number of employees and fix by statute the compensation of each. Such a practice fails to take into consideration the varying needs of the commissions.[38]

Some of the work of the commissions is expensive. Valuations, for instance, run rapidly into money. Where a valuation is essential to the determination of a case the valuation should be made,

[36] The Illinois public utilities commission law of 1913 provides that the commission shall have power "upon consultation with and the approval of the governor" to appoint or employ additional employees as it may deem to be necessary to carry out the provisions of the act. See sec. 3.

[37] Section 5 of the Illinois law provides that all employees of the commission shall receive the compensation fixed by the commission subject to the approval of the governor.

[38] The Missouri public service commission act of 1913 provides that all persons appointed by the commission shall receive a compensation fixed by the commission, but that no clerk, agent, special agent, examiner, auditor, inspector or other employee shall receive a salary or compensation exceeding $150 per month and no stenographer shall receive a salary or compensation exceeding $100 per month. Commissioners possessing the proper qualifications could be trusted not to waste appropriations in extravagant salaries.

otherwise discredit is brought on the system of regulation, the commission and the commissioners themselves. Men possessing the desired qualifications will hesitate to assume responsibilities for the discharge of which they are not provided with adequate facilities.

6. Educational Aids. In the long run some progress can be made towards equipping men for these positions by special courses of instruction in schools, colleges and universities.[39] Systematic distribution of authentic information on various phases of the subject assists directly by elevating the general standard of knowledge on the subject of public utility regulation. Voluntary associations of public utility employees, boards of trade, chambers of commerce, professional associations and other organizations of a similar type offer a forum for the discussion of public utility problems and frequently a means for coming in actual contact with the application of commission laws. The commissions themselves are doing much in an educational way through the medium of opinions rendered in deciding cases.

7. Sustained Public Interest. Nothing is more effective in obtaining the needed qualifications than an active and sustained public interest in regulation. A healthy public interest adds materially to the honor of the position and quickens the right kind of competition for preferment. Sound public opinion will do more to procure the qualities of mind and body than tomes of statutes. Such an interest will react favorably on the appointing and confirming powers. All the multifarious factors entering into the cultivation and maintenance of an active public interest should be kept in operation.

8. Function of the Law-maker. The chief function of the law-maker in procuring the needed qualifications for public utility commissioners is so to legislate as to make the positions attractive. As to the powers themselves, little need be said. In most cases they are large enough to stimulate the imagination and ambition of men far above the average in mental capacity and achievement. The same, however, cannot always be said about the conditions under which

[39] See excellent "Preliminary Report of the Committee on Practical Training for Public Service," in the Proceedings of the Am. Pol. Science Assn., Tenth Annual Meeting, 1913, published as supplement to *The American Political Science Review*, February, 1914. This report points the way to practical experience in public affairs under the auspices and direction of the university.

the duties are to be performed. Let the legislator, then, provide a rational method of selection! Let him provide a term of office and a salary that will be attractive! Let him provide adequate facilities for carrying on the work of the commission and let him make political interference improbable, if not impossible! Then let our educational forces begin their work, and, finally bring a healthy public interest in regulation to bear on the commissionerships! The problem of obtaining the needed qualifications for public utility commissioners then will be greatly simplified, if not entirely solved.

THE PUBLIC SERVICE COMPANY LAW OF PENNSYLVANIA

By William N. Trinkle,

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State commission regulation of public utilities—regulation having the binding force of law—began in Pennsylvania on the first of the present year when the public service company law of July 26, 1913, went into full effect.

This legislation drafted by Attorney-General Bell, to carry out the policy expressed in Governor Tener's inaugural address and subsequent messages to the legislature, establishes a commission of seven members, which, acting upon its own motion, as well as upon complaint, has full power extending throughout the commonwealth to supervise, investigate, and, by its reasonable orders, to regulate the service and rates of public service companies to the end that such service shall be reasonably adequate and furnished without unreasonable discrimination or preference (as to either rates or service), at such rates of compensation as shall be just and reasonable to the public and the public utility alike.

Prior to this time there had been no regulation of the kind, which, applied by an administrative body of adequate powers, places upon a rational basis of control, and makes real, the true legal and economic relation existing between quasi-public corporations or unincorporated public service companies and the public whom they serve. Pennsylvania has moved more slowly and conservatively toward this end than have Wisconsin and New York, as if awaiting the result of the experience gained from the practical operation of similar statutes in these sister states during the past six years. In 1907, the same year which witnessed the enactment of the advanced Wisconsin and New York statutes, the Pennsylvania legislature passed an act pursuant to which the Pennsylvania State Railroad Commission was established, and which gave that body power to make investigations, to hold hearings, and to make recommendations as the result thereof, but gave it no power to order compliance with its recommendations when made. Within the limits of such restricted powers the work done by the

Pennsylvania State Railroad Commission was of much value and prepared the way for the adoption in 1913 of the more comprehensive and effective system for the regulation of all public utilities by the present Public Service Commission of the commonwealth.

There can be little doubt that there will always be some sort of governmental control of public utilities. By reason of the public nature of their business, the common law itself has, from the earliest times, prescribed general rules by which this business shall be governed, leaving the application and enforcement of these rules to such processes as the judicial department of the government has the power to employ for that purpose. With the progress of science and invention and the general advance of civilization, have come the steam railroads, the telegraph and the telephone among the great utilities of state-wide and country-wide operation. Under modern conditions these public utilities are practically public necessities. There are also the electric light, heat and power companies; the electric railways and the gas companies; the water companies and the like, whose activities in the interest of public economy tend to become more and more state-wide and to present social and industrial problems not merely of local concern but of state-wide importance. It has become apparent that no substantial progress can be made toward the practical adjustment of the true relationship between such utilities and the public, and of the rights and duties on both sides of that relationship, by resort either to the courts or to spasmodic legislation. The non-feasibility of either of these methods is perfectly obvious. Neither is there need to review the positive evils caused by such methods of dealing with this vital problem.

Intelligent and adequate regulation pre-supposes, in a continuing administrative agency of the government, that knowledge of operating and other conditions of the public utility business, which is wholly beyond the proper sphere of action of either the judiciary or the legislature, in periodical assembly met, to have, acquire or apply. There must be a governmental agency to which a complainant, without the means sufficient to carry on litigation, may go for redress of his particular grievance, and, moreover, obtain not merely the negative but positive remedy. This tribunal must be able to sift the merits of the individual complaint and the complaint of the public generally, in the light of the data and information which as a continuing body it either has, or in the exercise of its adequate powers for that purpose,

it can and should get, so as to make the proper application and adjustment of the general rules of law to the particular facts and conditions as they may be determined. Neither the general assembly nor the courts are institutions of a character adapted to the discharge of this indispensable function. An executive or administrative body such as the commission under the Pennsylvania public service company law, is so adapted, and best adapted, for that purpose. It is the clearing house for such public complaints as arise from lack of necessary information, as well as for those which prove well founded and require correction. The public and the utility are thereby equally protected; their respective rights and obligations under the law are weighed in the balance and adjusted; specific rules and regulations of uniform application under like circumstances are laid down for the guidance of the public and of the utilities, and are in the interest of both.

It will not be possible, within the limits of this brief résumé, to mention other than the more important provisions of the new Pennsylvania statute. The act has been drawn with a great deal of painstaking care. The provisions of the similar acts in Wisconsin, New York and New Jersey, have been subjected to considerable study in the light of their practical operation in those states. More recent legislation, such as that in California, Maryland and elsewhere, was also reviewed. The effort was to prepare a sound, comprehensive and effective measure.

In arrangement the act is divided into six articles. Article I is devoted to an enumeration of the classes of public utilities within its provisions—which enumeration includes all classes—and to the definition of such terms as "service," "facilities," etc., as these terms are used throughout the act. Article II sets out specifically the "duties and liabilities of public service companies." Article III consists of the definition of the corresponding "powers and limitation of powers of public service companies," and the provisions governing their creation. By article IV, the establishment of "the Public Service Commission of the Commonwealth of Pennsylvania," its officers and employees, etc., is provided for. Article V is the article in which the "powers and duties of the commission" are defined; and article VI prescribes the "practise and procedure before the commission and upon appeal."

It is made the express duty of every public service company to

furnish reasonably adequate and reasonably safe service at just and reasonable rates. Rates, and rules and regulations, etc., affecting rates, must be set forth in tariffs or schedules which the act requires shall be posted and kept open to public inspection. The posting of these tariffs is mandatory. The furnishing of any service without such posting of tariffs is unlawful. The commission may also require the tariffs to be filed as well as posted and will undoubtedly do so, now that the tariff bureau has been organized.

No change in either a posted or filed tariff can be made except upon 30 days' prior notice to the commission. Similar 30 days' notice of the effective date of change must also be given to the public by posting such notice. The commission is given the power, however, to allow a change in tariff on less than the 30 days' statutory notice if cause be shown. In the event that the commission has prescribed a rate, practise or classification, no change can be made therein, within a period of three years thereafter, without the express approval of the commission. These provisions of the law likewise apply to joint rates and joint tariffs. If the tariff be filed, the filed rate is the legal rate as against the company, otherwise, the published or posted rate is such legal rate.

When, after investigation and hearing, the commission finds that any rate is unreasonable, unjustly discriminatory or unduly preferential, it has full power to prescribe by its orders the just and reasonable maximum rates or joint rates as the case may be, and also to apportion the said joint rates. It has similar power to prescribe reasonably adequate and safe service, including facilities. In so doing, the commission may act as in the investigation of accidents, and as indeed, in all other matters, on its own motion as well as upon complaint.

The enumeration of specific duties as to the furnishing of facilities and service imposed upon common carriers and other public utilities by the statute would be prohibitively tedious. Among these duties of carriers, for example, are those relating to the equitable distribution of cars, reasonably continuous transportation, the construction of switch connections, the establishment of through routes and joint rates, the location of stations, grade crossings, the reporting of accidents, and the like.

An initial carrier receiving property for through shipment between points in Pennsylvania incurs, under the act, a liability for loss or damage in transit similar to that imposed by the Carmack

amendment to the interstate commerce act. There is, however, a little different treatment of the initial carriers' right of recovery over against the connecting carrier actually causing the loss, which perhaps provides a fairer adjustment than that prescribed by the corresponding provision in the Carmack amendment.

The commission has power to award reparation to the person actually sustaining damage by reason of the collection of rates found by the commission to have been unjust and unreasonable or unjustly discriminatory or unduly preferential, or in excess of the applicable rates contained in the tariffs. For the collection of the amount named, in the order of reparation, suit may be brought in any of the courts but no action can be brought in the courts for the recovery of reparation for the above mentioned wrongs until the commission shall first have determined the facts as to the violation of the law in these respects.

The commission has complete power to prescribe a uniform system of accounting to be followed by the various classes of utilities. In ascertaining fair value of property for rate making and other purposes of regulation, the commission is not in any wise confined to any particular formula. It may take into consideration such matters as original cost of construction, cost of reproduction, new, etc., etc., as referred to in Justice Harlan's famous opinion in Smyth *vs.* Ames, 169 U.S., 546, and may also consider such intangibles as developmental or going concern value. It is provided that "these and any other elements of value shall be given such weight by the commission as may be just and right in each case." These elastic provisions of the act, with regard to valuation, though drawn some time before the decision of the Supreme Court of the United States in the Minnesota rate case was announced, are in striking harmony with Mr. Justice Hughes' opinion in that case, viz., "the ascertainment of that value is not controlled by artificial rules. It is not a matter of formulae, but there must be a reasonable judgment having its basis in a proper consideration of all relevant facts." Around this vital, economic-legal problem as to what is the "fair value of the property used for the convenience of the public" and the fair return thereon, centers much of the whole problem of rate regulation itself. It was deemed wise to mention in the statute some of the considerations which enter into the ascertainment of this fair value, but the weight

to be given any one or more of them was left to the judgment of the commission.

The expediency of including municipal corporations in the scheme for the regulation of public utilities as prescribed by the act, is, of course, a debatable question. Their omission must be taken to mean that in the legislative judgment, it was for the time being, at least, unwise to subject to the regulative control of a state commission such utilities as are owned and operated by the various local governments throughout the state. There would seem on principle to be less necessity for regulation in such cases where the consumers are also in reality the owners and operators and thus have the remedies for abuses in their own hands. The act does provide, however, that where a municipality is engaged in the rendering of service of the kind rendered by a privately owned utility, it must, under the act, comply with the requirements of the commission as to uniform accounting in the same manner as public service companies.

Commissions have uniformly held that, where a public service company has made its investment for the furnishing of service within a municipality and is rendering, or can be required to render, reasonably adequate service to the community, at just and reasonable rates, another public service company should not, under a proper system of regulation, be allowed to enter into competition with the existing company, unless the commission is satisfied that the public interest and service will be promoted thereby. The same principle would apply, to a very large extent, to such competition by the municipality itself. Hence the act provides that the commission's certificate of public convenience shall be secured before any public service company may lawfully obtain any additional powers, franchises or privileges, and before any municipality may acquire, construct or begin to operate any plant, equipment or facilities for the furnishing to the public of any service of the kind or character already being furnished by any public service company within the municipality. A like certificate of public convenience must be obtained for the incorporation of a public service company, and no contract between a public service company and any municipal corporation is valid, unless it receive the approval of the commission, evidenced by the latter's certificate of public convenience. Such certificates of public convenience are given "if and when the said commission shall find or

determine that the granting or approval of such application is necessary or proper for the service, accommodation, convenience or safety of the public." In this way, needless competition with the long train of evils which it frequently engenders, to the detriment of the public service and rates and the consequent increasing occasion for regulation of such service and rates, is excluded before it becomes intrenched.

There are respectable authorities who still maintain that the sole function of a public utilities commission should be to regulate service and rates to the end that the service shall be reasonably adequate and the rates of compensation just and reasonable, and that the regulation of the subject of capitalization or the issues of stocks, bonds and other securities of public service corporations, has no proper place in a public utility statute. They take the position that it is the duty of a public service company to render, and the function of the commission to require it to render, reasonably adequate service, and to charge no greater rates for that service than will afford fair return upon the fair value of the property of the company, used and useful for the convenience of the public, and that the amount of stocks, bonds and securities outstanding has nothing whatever to do with the question. But it cannot, I think, be successfully contended that the over-capitalization, say of a gas company or an electric light or power company, does not have a direct tendency either to stint the adequacy of the service or the justice of the rates to the consuming public and thereby greatly increase the occasion for the regulation of such service and rates by the commission. If this be true, then the regulation of the issue of stocks and bonds becomes in effect a regulation *pro tanto* of service and rates, and moreover it gets rid of many embarrassing moral obligations having a tendency to confuse what should be the real issues in rate and service regulation. The bona fide investing public, who own the utilities, are entitled to some measure of protection as against what might be the effect of regulation by the government in the interest of the consuming public, and there is in any event the ever present public belief as to the detrimental effect of watered stock and inflated bonds on service and rates.

Whether this public impression proves in the particular case to be well or ill-founded, it nevertheless results in general public dissatisfaction and invites a multiplicity of complaints and therefore the cause of such impression should, as far as possible, be removed.

The best means of accomplishing this object was a question most carefully considered in the preparation of the Pennsylvania act. Wisconsin and New York, and I think, all other states which have undertaken the regulation of public utilities under a system like that now devised for Pennsylvania, have quite uniformly required that the consent of the commission be obtained before a public service company can lawfully issue any stocks, bonds or other securities. This was the method of dealing with this matter which was adopted in the bill originally presented to the legislature in 1911. The arguments urged against it at that time on the score of delay and great practical inconvenience, not only to the companies forced to await the decision of commissions upon the approval or disapproval of their financial arrangements, but on the ground of great practical inconvenience to the commissions themselves, were most forceful. In order to meet these objections and at the same time to provide ways and means whereby the provisions of the constitution of the commonwealth against the watering of securities might be practically enforced by the commission, instead of being allowed to remain the dead letter, as it has so largely been in the past, the attorney-general devised the plan of dealing with this matter which is the distinguishing feature of the Pennsylvania statute. This plan is an adaptation and modification of the certificate of notification or publicity plan, which the Railroad Securities Commission (of which President Hadley of Yale University was the chairman) after much study and solemn deliberation has recommended to Congress for the regulation of the issues of stocks and securities by the interstate railroads of the country. For the justification of this plan, the reader is referred to the very able report of the Railroad Securities Commission. As adapted and modified in the Pennsylvania statute, by means of the certificate of notification filed by the company with the commission at or before the time when the stocks, bonds or other securities are issued, the public is given a detailed description of the property, work or labor in consideration of which such stocks or securities are about to be issued, as well as all other needful information including the purpose of the issue. The commission may then, upon complaint or upon its own motion, investigate and determine whether any such issue has been made for other than "money, labor done or money or property actually received" in violation of the requirements of the constitution and the law of the commonwealth. In the event of such violation, it may

take the appropriate steps prescribed by the act for the drastic punishment of the individual and corporate offenders and the restraint of the consummation of the unlawful purpose. These provisions are supplemented by the requirement that the company shall report or account to the commission for the proper disposition and application of the proceeds of such issues in accordance with the purpose set forth in the published certificate of notification which remains on file with the commission. For such public service companies as desire to make application to the commission for the latter's certificate of valuation on the issue of stocks and securities, the way is left open, as they are given the option so to do. The effect of this certificate of valuation is specifically defined in the statute.

It would require too much space to attempt even a brief analysis of what is perhaps the best system yet devised in a statute of this character for the abolition of railroad and other grade crossings, dangerous to human life; and no railroad crossing of any character can be constructed, whether above grade or below grade or at grade, without the consent of the commission, evidenced by its certificate of public convenience being first had and obtained. Similar approval is necessary for the construction of other crossings including those of high tension electric power lines.

Every statute of the character of the public service company law of Pennsylvania contains provisions as to economic or legal policy about which the opinions of men, most competent to express them, might reasonably differ. Perfection in this kind of legislation perhaps must ever remain but an ideal toward the realization of which human effort in all probability can never reach more than an approximation. It is gratifying to know, however, that an authority, whose judgment is second to none in this country, has stated in a letter to the writer that "I certainly am not familiar with any law on the subject of public service companies which seems to me so good as that of Pennsylvania."

SOME DEFECTS IN THE PRESENT PENNSYLVANIA STATUTE ON PUBLIC UTILITIES

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The municipalities of Pennsylvania will be fortunate if they do not pay a heavy toll as a result of the mistaken policy of the public service company law of 1913 in dealing with the question of competition between municipalities and public service corporations. The lack of control by American cities over these corporations has resulted in an insistent demand that the states give to their cities power to exercise such control both by regulating these corporations and by enlarging the municipalities' power to engage in such enterprises. Aside also from any question of regulation, the steadily growing field of municipal functions has caused the cities constantly to enlarge the scope of their activities in the furnishing of public service. It is hardly germane to the purpose of this article to discuss the question of state regulation versus municipal regulation, but even if it be conceded that regulation by state commission is the proper method, there can be no justification for the restriction imposed by the act on the rights of municipalities to engage in the business of rendering public service.

The act provides that, before any municipal corporation may engage in the rendering or furnishing to the public of any service of the kind or character already rendered or furnished by any public service company in the municipality, the said municipality shall obtain the consent of the commission, except in certain cases where municipalities are already engaged in rendering such services. The commission may not give such consent unless it finds that the exercise of the right by the municipality is necessary and proper for the service, accommodation, convenience or safety of the public. This finding is subject to review by the courts. Since municipal competition will probably result in destroying or at least impairing the value of existing properties it must be an extreme case in which the commission and the courts will feel justified in consenting to such competition.

The protection from competition thus accorded to the public service companies is an asset of great value and should not have been given to these companies without exacting something in return. To do this it is not necessary to give municipalities the right of unrestricted competition. It is proper to protect public service companies from wanton destruction of their property, but in cases where the commission might refuse its consent to the municipality, the municipality should have been given the right to purchase the property of the private corporation at a valuation to be determined by the commission, which valuation should exclude any added value by reason of the protection from competition afforded by the act. It was proposed to accomplish this result by amending the provision so that municipalities should not be required to obtain the commission's consent except in cases where public service corporations had stipulated that they held their franchises upon indeterminate permits. This amendment was rejected by the legislature, probably because it applied the principle of the indeterminate franchise. In my own opinion, the legislature should have gone much further in this respect and provided for an indeterminate franchise not only in the cases specified in the amendment, but for all future grants. I include in my definition of the indeterminate franchise, of course, the obligation on the part of the municipality to purchase the property of the corporation when the franchise shall be terminated. The action of the legislature was a step backward that will tend to increase the tax paid by the public to the public service corporations, instead of lightening this burden.

The sections of the act dealing with the valuation of the property of public service corporations and the regulation of their securities issues will probably produce the same effects in their operation. When the bill passed the house the section dealing with valuations contained no reference to the stocks and bonds of the corporation or the earning capacity of the property. The senate inserted provisions permitting the commission to take into consideration the amount in market value of the corporation's stocks and bonds and the probable earning capacity of the property under particular rates prescribed by statute or ordinance or other municipal contracts or fixed or proposed by the commission.

It is true that this language has the sanction of the supreme court of the United States as expressed in the leading case of Smythe *vs.*

Ames. It must be remembered, however, that this case was a rate case, and the court expressly held that a fair rate was one based on the fair value of the property used in rendering the service. If the opinion had been followed in its entirety by the framers of the Pennsylvania statute, the language quoted would not have been so objectionable, although the case has always been subject to criticism for the reason that there is no necessary relation between the fair value of the corporation's property and the amount in market value of its stocks and bonds. The market value of the corporation's securities depends frequently upon the fact that it enjoys an unregulated monopoly, and has fixed its rates, not with a view to a fair return on the fair value of its property, but with the idea of charging what the traffic would bear. If it shall be held in such cases that the commission is bound to value the corporation's property with reference to the amount in market value of its bonds and stocks, since such valuation will furnish the basis for fixing the rates of the corporation, there will be a wide departure from the principle of Smythe *vs.* Ames.

In dealing with the vexed question of regulating the securities issues of public service corporations, the Pennsylvania law has adopted a compromise between the scheme of those who favored strict regulation and those who believed there should be no regulation at all. It may be conceded that it would be wise for the state not to interfere in this matter, if an ideal method of regulating rates and service could be devised, which would relieve operating officials from the double allegiance they now owe—to investors clamoring for dividends and to the public insisting on good service. So long as it is not possible to do this, I believe in the strict regulation of public service securities issues. Everybody admits that most of the trouble today is due to the over-capitalization of these properties. It seems obvious, then, that regulation to be effective should strike at the root of the evil and prohibit the issuing of these securities except for proper purposes to be defined in the law and in proper amounts to be determined by the commission.

I do not think the section in the act relating to this subject will prevent the issuing of watered stock. As the law now stands, a corporation may apply to the commission for a certificate of valuation before it issues any securities, or it may issue the securities first and notify the commission afterwards. It is urged in support of the latter provision that it is based on the recommendation of the Railroad Se-

curities Commission to Congress for the regulation of the issues of stocks and securities by interstate railroads. It must be remembered that the federal government has not the power in the first instance to control the security issues of corporations having state charters, and that the plan recommended to Congress is based on the only feasible method of regulation which the federal government can enforce. It is doubtful whether this method will be effective in this state for the reason that it leaves the determination of the purpose and amount of such issues to the corporations themselves. Under the constitution of Pennsylvania, corporations may issue stock for property or services. Now, the value of the property and services is a question of opinion, and opinions frequently differ widely. If the discretion is left to the corporation to decide the amount of stock to be issued in return for property or services, it will be possible to issue fictitious securities as easily in the future as in the past, and the prohibition in the act against the capitalization of franchises, leases and contracts of merger, will not prevent such practices, although this provision in the law, if it is sustained by the courts, will destroy the most fruitful source of watered stock in the past. I do not see, either, how the act will prevent the capitalizing of deficits and other improper practices. The New York law of 1907 limited the purposes for which securities could be issued to those which were proper charges to capital account and this should have been done also in Pennsylvania. It is not much use to prohibit the capitalizing of franchises if the corporation is permitted to issue stock or bonds to replace losses occasioned by extravagance, fraud or inefficiency.

In one other respect the act does not deal adequately with the question of securities issues. The commission is given power to investigate issues made after the date when the act becomes effective, and to institute proceedings for striking down fraudulent issues of such securities. It seems to me this power is too limited. I do not understand why fraud should have been privileged any more before January 1, 1914, than after that date. Aside from any question as to whether the commission should have the power to move to strike down fraudulent issues, there can be no doubt of the propriety of giving them ample power to investigate all issues. The act of Congress of 1913, under which the railroads of the country are being valued, granted the fullest power to the Interstate Commerce Commission in this respect, and it is necessary that any body charged with

investigating the history of a particular corporation should have the fullest power to inquire into its financial transactions.

A subject closely allied with the one just discussed is the acquisition of interests in public service corporations by other corporations. The act provides that no public service company may acquire a controlling interest in another such company or in its securities without the consent of the commission. It is well known that corporations are frequently controlled by minority interests. Even if this were not the case, the provision can be so easily evaded by dividing the control between two or more companies that it is hardly worth while to insert it in the act. It will be noticed also that no limitation is expressed upon the right of corporations other than public service companies to acquire such interest. The holding company as a rule is organized simply for the purpose of owning securities and is not affected by this provision. No control can be exercised in this matter without subjecting holding companies to the jurisdiction of the commission in this respect, as has been done in New York.

This discussion has up to this point dealt with the matters usually considered of most importance in public utilities legislation—franchises, valuations and capitalizations. I do not mean to overlook rates, as the rate question is without doubt the most important question. Some criticism is made of the law because it failed to provide that rates should be based on a fair return on the fair value of the corporate property used in rendering the service, in accordance with the principle of Smythe *vs.* Ames. There can be no doubt that this is the correct principle, but to place a declaration to this effect in the act would not make it any more binding on the courts, which must, in the end, pass upon all rate questions. I believe that the act has left the matter of rates just where it ought to be, and therefore do not feel it necessary to discuss this matter in this article. There are, however, a number of respects in which the law is technically defective, and these defects may cause more dissatisfaction in the practical workings of the law than those heretofore pointed out. These defects are principally cases where the commission is not granted any power, or sufficient power, to deal with a subject, and there can consequently be no corrective force of public opinion which may be depended upon to some extent to check evils resulting from the more important defects of the law, because in these cases the commission will have a rather wide discretion.

Article II of the act dealing with the duties and liabilities of public service companies omits several important provisions that were in the bill when it passed the house. By the provisions of clause c of section 1 of this article, public service companies are required to construct such extensions of their facilities as may be required to give adequate service. This does not include cases where the grant of a franchise is necessary before the extension can be constructed—for example, a street railway. The question of street railway extensions is one of the most difficult with which our cities have to deal. Public opinion today will not sanction the grant of street railway franchises upon the liberal terms in vogue twenty years ago, but the companies demand practically such terms before they will accept franchises for extensions. The result is a deadlock between the municipality and the company. Some parts of the community are left without transportation facilities and in other parts such facilities as are provided are inadequate. This is a condition which the municipality should have power to remedy without being obliged to grant franchises upon impossible conditions. If the city is willing to grant a franchise for an extension, the Public Service Commission should have the power to say whether or not the extension is reasonably necessary and whether the terms of the franchise are reasonable. If the commission should determine this to be the case then the street railway company should be required to build and operate the extension. The commission has the power to require gas and water companies to extend their mains. There is no good reason why street railway companies should not now be subjected to the same requirement. In practically every case the street railways of every urban district are operated as a unit and no opportunity exists for operating extensions independently. The law should take cognizance of this fact and require companies controlling the street railways of their respective districts to build the necessary extensions to their systems.

Another provision of the bill when it was originally introduced dealt with a subject similar to the one which has just been discussed; that is, the duty of one public service company to permit another company to use its facilities. This clause was stricken out entirely by the senate. If two public service companies are furnishing service to adjoining neighborhoods, it is desirable in many instances, if not necessary to the public convenience, that there should be an interchange of service between the two companies. It is true that the

supreme court of Pennsylvania in the case of Philadelphia, Morton and Swarthmore Street Railway Company's petition, 203, Pa., page 354 (1902), held the provision in the street railway acts of 1889 and 1895, giving one street railway company the right to use 2,500 feet of the tracks of another street railway company, to be unconstitutional. This decision was based, however, upon the view of the court that the legislature had no power to impose a servitude on the private property of one corporation for the benefit of another. If the Public Service Commission had been given the power to determine whether the proposed use was beneficial to the public interest, and could be exercised without substantial injustice to existing rights, and also the power of fixing the compensation to be paid for such use, it is probable that such a power would now be sustained by the courts.

The act does not deal satisfactorily with the subject of changes in tariffs and schedules. It leaves the right to initiate changes in tariffs and schedules with the public service companies but provides that no rate, practice or classification which shall have been determined by the commission shall be changed by the company within three years after such determination without the commission's consent. There is no objection to allowing the companies the right to make rates and tariffs, if this right be accompanied with the power on the part of the commission to suspend such rates or tariffs, pending an investigation, in which the burden of proof shall be upon the company to justify the change, as is now the case under the interstate commerce act.

In this connection it should be noted that the procedure before the commission is in accordance with the ordinary rule of law that the burden of proof is upon the complainant, except in cases where the complaint alleges an infraction of an order of the commission, in which cases the burden of proof is upon the parties complained against to establish the fact that they have complied with the order. The commission should have been given a wide discretion in matters of procedure, so that it might in any case require the public service company to assume the burden of proof. In contests between private individuals or municipalities and public service companies, the companies have a great advantage since the facts are almost entirely within their possession. In such cases, if the commission thinks it advisable, for the purpose of doing justice to all the parties to require the parties complained against to assume the burden of proof,

it should not only have the right to do this, but should also have the right to compel the defendant to submit inventories or other data pertinent to the issue before the case is tried.

The commission has not been given the power to deal with matters held to be optional with the public service companies, such as the granting of transit privileges by railroads on through shipments of freight and the carrying of express matter by street railways. In at least one of the large cities of the state the street railway company carries some newspapers and refuses to carry others and the court has held that with respect to this right the street railway is not a common carrier and has refused to prevent discrimination in its exercise. The result of course is the silencing of all adverse criticism by the papers enjoying the privilege.

A discussion of the defects of the law is hardly complete without some reference to the form of the measure, which is objectionable in several respects. There are too many definitions and they are not sufficiently concise. It does not add anything to the act to say that the term "common carriers" means "all common carriers, whether corporations or persons, engaged for profit in the conveyance of passengers or property, or both, between points within this commonwealth by, through, over, above, or under land or water or both." This appears to be simply saying that the term "common carrier" means "common carrier." Nor have I ever been able to understand why it was necessary to use nineteen lines in the attempt to define "facilities," only to conclude with the words "any and all other means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with, the business of any public service company."

Section 12 of article III is another example of the invitation to litigation contained in the prolixity of the author's language and the drawing in of irrelevant matters. The first clause of this section provides that every public service company shall be entitled to the full enjoyment and exercise of all and every of the rights, powers and privileges which it lawfully possesses or might possess at the time of the passage of this act except as herein otherwise expressly provided. The second clause of the section provides that the duties, etc., of public service companies shall be subject to certain constitutional provisions. The construction of the act is a question for the courts, so that it would not seem wise to say in the act itself what effect it

shall have, and as every act of the legislature is subject to the constitution there can be nothing gained by inserting an expression to this effect.

This concludes the discussion of what seem to me to be the most important defects in the measure. Some objection has been made to provisions which give the commission discretion in dealing with certain matters—for example, depreciation. This is hardly a fair criticism. It must be assumed that the commission will administer the act honestly.

It should be said in conclusion that the act was the result of a compromise, as all important legislation usually is, and that in its present form it is a great improvement over the measure originally introduced. It is to be hoped that it will be still further improved by the next legislature so as to bring it into harmony with the best modern thought on public utility regulation as expressed in the statutes of other states—notably New York, New Jersey and Wisconsin.

METHODS OF JUDICIAL REVIEW IN RELATION TO THE EFFECTIVENESS OF COMMISSION CONTROL

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The effectiveness of the control of municipal public utilities by state commissions is determined by the thoroughness of their findings, the justice of their rulings and the extent to which the proceedings and orders of the commissions are sustained by the courts or made final and conclusive by statutory enactments. While the strength of commission findings and the validity of the orders issued thereon depend upon the scope and accuracy of their investigations and the integrity of their rulings, the force and effect of commission control depend ultimately upon the authority conferred on the commissions by the legislatures in the first instance and the extent to which action by commissions is made conclusive of the controversy. The right of review or appeal to the courts from the proceedings of commissions limits and defines the sphere of their efficiency and determines the extent to which the courts may supplant, modify or set aside the action of commissions; thereby making their findings and orders conditional and qualified, and not absolute and final.

After an investigation of the facts on due notice, usually of not less than ten days, and a public hearing, the proceedings of the commission have been concluded and disposed of with an order or regulation, an interested party may generally apply to the commission for a rehearing because of additional evidence, changed conditions or errors and omissions in its original proceedings. The time within which a petition for rehearing may be filed is limited by statute in Ohio to thirty days,[1] and in Pennsylvania to fifteen days;[2] while in Illinois only one rehearing may be granted, which, however, does not prevent any party after two years from again applying to the commission upon a new and different state of facts,[3] and in

[1] *Laws 1911*, p. 549, sec. 45.

[2] *Laws 1913*, no. 854, art. VI, sec. 14.

[3] *Laws 1913*, p. 459, sec. 67.

Washington any public service corporation, being affected and aggrieved by any order of the commission, may after two years file a petition for rehearing, and in cases where the order has not been reviewed by the court but complied with by the company, the petition may be filed within six months.[4] An application for rehearing, which must specifically set forth the reasons therefor and be filed within a month, if not before the order takes effect, is frequently made a condition precedent to judicial review as in New Hampshire,[5] Missouri,[6] Ohio[7] and California.[8]

The commission may exercise its own discretion in granting a rehearing or dismissing the petition, and on a rehearing may in its discretion sustain, modify, or revoke its original action. The time within which a petition for rehearing shall be determined by the commission is fixed by statute in some states, being limited to thirty days after the same is finally submitted in Idaho,[9] Missouri,[10] and New York.[11] And it is sometimes expressly provided that no legal proceeding to contest any order or regulation of the commission can be taken until it acts upon an application for a hearing as in Illinois[12] and Nebraska.[13]

While the commission has authority to make summary investigations they are generally supplemented later by formal hearings on due notice, if in the opinion of the commission sufficient ground exists to justify a further hearing, in which case it may be granted on motion of the commission itself or upon application by an interested party, as provided by statute in Indiana,[14] Oregon,[15] Maine,[16] Wisconsin[17] and in the District of Columbia.[18]

[4] *Laws 1911*, c. 117, sec. 89, as amended 1913, c. 145.
[5] *Laws 1913*, c. 145, sec. 18.
[6] *Laws 1913*, p. 556, sec. 110.
[7] *Laws 1911*, p. 549, sec. 32.
[8] *Stats. 1911*, 1st ex. sess., c. 14, sec. 66.
[9] *Laws 1913*, c. 61, sec. 62.
[10] *Laws 1913*, p. 556, sec. 110.
[11] *Laws 1910*, c. 480, pub. ser. com. law sec. 22.
[12] *Laws 1913*, p. 459, sec. 68.
[13] *Stats. 1911*, sec. 10655.
[14] *Acts 1913*, c. 76, sec. 62.
[15] *Laws 1911*, c. 279, sec. 10.
[16] *Laws 1913*, c. 129, sec. 46, pending on referendum.
[17] *Stats. 1911*, sec. 1797 M-7.
[18] Appropriation act, March 4, 1913, sec. 9, par. 45.

Ample provision is made for a full and thorough investigation of all material facts after notice to interested parties and a complete public hearing in connection with practically all proceedings of any commission, which serves as the basis of the findings and orders or regulations in the forty or more jurisdictions which now have commissions. The commissions are created for the sole and express purpose of making such investigations and issuing the proper orders thereon. The members of the commissions are selected and trained especially for this service to which they devote their exclusive time and attention. They are peculiarly fitted for such work and their findings and orders are very properly and necessarily presumed to be reasonable, lawful and correct. The burden of proof is placed on the party attacking their action and unless the weight of evidence is clearly against the findings of the commission they will be sustained and their orders enforced on appeal to the courts, unless they are clearly illegal.

By statute in California the findings and conclusions of the commission on question of fact are properly made final and not subject to judicial review; and it is provided that questions of fact shall include ultimate facts and the findings and conclusions of the commission on reasonableness and discrimination.[19] In Colorado it is provided that the findings and conclusions of the commission on disputed questions of fact shall be final and shall not be subject to review by the courts.[20] The statutory provisions of Idaho make the findings and conclusions of the commission on questions of fact *prima facie* just, reasonable and correct; such questions of fact to include ultimate facts and the findings and conclusions of the commission on reasonableness and discrimination.[21] In Illinois the statute provides that the findings and conclusions of the commission on questions of fact shall be *prima facie* true, and their rules, regulations, orders or decisions *prima facie* reasonable; thereby shifting the burden of proof on all issues, as is done in practically all other states, upon the party appealing therefrom.[22] The New Hamsphire statute provides that all findings of the commission upon all questions of fact properly brought before it shall be *prima facie* lawful and rea-

[19] *Stats. 1911*, 1st ex. sess., c. 14, sec. 67.
[20] *Laws 1913*, c. 127, sec. 52.
[21] *Laws 1913*, c. 61, sec. 63.
[22] *Laws 1913*, p. 459, sec. 68.

sonable.[23] And in Pennsylvania the orders of the commission are made *prima facie* evidence of their reasonableness.[24]

Within a limited time, usually thirty days, after the final action of the commission, appeal therefrom lies to the county or district court where the matter in question arose, to such courts having jurisdiction where the commission sits or to the supreme or the court of last resort in the state. Appeals may be taken only within thirty days and directly to the supreme court in the state of California, where on review the court may only determine whether the commission has regularly pursued its authority and whether the order or decision being reviewed violates any constitutional right of the petitioner; and the judgment of the supreme court must either affirm or set aside the order or decision of the commission.[25] In Colorado the right of appeal is likewise limited to the supreme court which has authority in addition to that granted the California court to determine whether the order of the commission is just and reasonable and whether its conclusions are in accordance with the evidence, and the court may affirm, set aside or modify the order or decision of the commission.[26] Similar provisions for review on *certiorari* by the supreme court are made by the statutes of Idaho where, however, the judgment of the court must either affirm or set aside the action of the commissions.[27] In Maine the right of appeal is expressly limited to a decision by the supreme court on questions of law, submitted on an agreed statement of facts or on facts found by the commission which together with copies of the arguments of counsel must be filed with the court.[28] The supreme judicial court of Massachusetts is given jurisdiction in equity to review, annul, modify or amend rulings and orders of the commission in so far as they are unlawful.[29]

Any party affected and dissatisfied with the action of the commission in Nebraska may resort to the supreme court which may reverse, vacate, or modify such action.[30] In New Hampshire provi-

[23] *Laws 1913*, c. 145, sec. 18.
[24] *Laws 1913*, no. 854, art. VI, sec. 23.
[25] *Stats. 1911*, 1st ex. sess., c. 14, sec. 67.
[26] *Laws 1913*, c. 127, sec. 52.
[27] *Laws 1913*, c. 61, sec. 63.
[28] *Laws 1913*, c. 129, sec. 53, pending on referendum.
[29] *Acts 1913*, c. 784, sec. 27.
[30] *Stats. 1911*, sec. 10655.

sion is made for appeal direct to the supreme court which shall not set aside the order or decision of the commission except for errors of law unless the court is clearly satisfied under the evidence that the order is unjust and unreasonable, when in its judgment the court must dismiss the appeal or vacate the order in whole or in part, in which case the matter may be remanded to the commission for such further proceedings not inconsistent with the judgment, as in the opinion of the commission justice may require.[31] Review of the proceedings of the commission by the supreme court alone is also provided for in New Jersey,[32] New Mexico,[33] Ohio,[34] Oklahoma,[35] Rhode Island,[36] Vermont,[37] Virginia,[38] and in West Virginia.[39]

Within fifteen days after final action by the Connecticut commission, which it may extend to thirty days, an appeal lies to the superior court of the county in which the matter arose, or if the question is not local, to the court of Hartford County, the seat of the commission. The decision of this local court is made conclusive, subject to review by the supreme court of errors on questions of law.[40] In Georgia the court of Fulton County, the domicile of the commission, is given exclusive jurisdiction of appeals, except that the supreme court may be resorted to in enforcing penalties[41] as also in Alabama[42] and Arizona where the judgment of the local court is final unless notice of appeal therefrom is given at the time judgment is entered.[43] Within thirty days after action by the commission and a hearing or petition therefor under the statutes of Illinois appeal lies to the circuit court of Sangamon County, the seat of the commission, and from its decision to the supreme court within sixty days.[44] Similar

[31] *Laws 1913*, c. 145, sec. 18, adding sec. 22 to 1911, c. 164.
[32] *Laws 1911*, c. 195, sec. 38.
[33] Const., art. XI, sec. 7.
[34] *Laws 1911*, p. 549, sec. 33.
[35] Const., art. 9, sec. 20.
[36] *Laws 1912*, c. 795, sec. 34.
[37] *Laws 1908*, c. 116, sec. 12.
[38] Const., sec. 156.
[39] *Acts 1913*, c. 9, sec. 16.
[40] *Pub. acts 1911*, c. 128, as amended 1913, c. 225.
[41] *Code 1910*, secs. 2625, 2668.
[42] *Acts 1907*, sp. sess. no. 17, sec. 15.
[43] *Laws 1912*, c. 90, sec. 67.
[44] *Laws 1913*, p. 459, secs. 68, 69.

provisions for appeal to the court of the county in which the commission sits and thence to the supreme court of the state are made in Louisiana,[45] Pennsylvania,[46] Tennessee[47] and Wisconsin.[48]

In Indiana the appeal lies within sixty days to the court of any county in which the order is operative and thence within sixty days to the supreme court. A transcript of the evidence and of all the proceedings of the commission, as in most states, constitutes the record on appeal and the commission is required to file a certified copy of such transcript with the clerk of the court before the trial. The answer of the commission to the complaint or petition on appeal must be filed ten days after it is served with notice of the appeal, and all such actions are given precedence over other civil cases. If evidence is introduced in the trial on appeal which the court finds to be different from that considered by the commission or additional thereto, unless by agreement the parties stipulate to the contrary, the court must transmit a copy of such evidence to the commission and stay court proceedings for fifteen days. After considering such evidence the commission may sustain, modify or revoke its order and must report its action thereon to the court in ten days. The judgment of the court is then rendered on the case as modified, if any, by the commission.[49] Similar provisions as to additional or different evidence being transmitted to the commission, pending the consideration of which the court stays its proceedings, is made by statute in the District of Columbia,[50] Maryland,[51] Michigan,[52] Montana,[53] Nevada,[54] New Hampshire,[55] Oregon[56] and Wisconsin.[57]

Where new or different evidence is discovered in Pennsylvania the case may be remanded to the commission.[58] In this state, also,

[45] Const., art. 285.
[46] *Laws 1913*, no. 854, art. VI, sec. 17.
[47] *Acts 1913*, c. 32, sec. 13.
[48] *Stats. 1911*, sec. 1797 M–64.
[49] *Acts 1913*, c. 76, secs. 69–83.
[50] Appropriation act, March 4, 1913, sec. 8.
[51] *Ann. code 1911*, art. 23, sec. 458.
[52] *Pub. acts 1913*, no. 206, sec. 16.
[53] *Laws 1913*, c. 52, sec. 26.
[54] *Rev. laws 1912*, sec. 4564.
[55] *Laws 1913*, c. 145, sec. 18, adding section 22 to 1911, c. 164.
[56] *Laws 1911*, c. 279, sec. 56.
[57] *Stats. 1911*, c. 9, sec. 1797 M–67.
[58] *Laws 1913*, no. 854, art. VI, sec. 25.

it is interesting to note, the party taking the appeal must make affidavit that it is not taken for the purpose of delay but in the belief that injustice has been done. In Illinois, if the commission refuses to receive proper evidence, the court must remand the case to the commission with instructions to receive the same and enter a new order based upon all the evidence.[59] In Massachusetts a petition for appeal must be accompanied by a certificate of opinion that the case is a proper one for judicial inquiry and that the appeal is not intended for delay, and in the event the court finds to the contrary it shall assess double costs upon such appellant.[60]

The effectiveness of the orders of the commission and the extent of its control are largely determined by the conclusiveness of its findings and the validity of its orders pending appeals taken therefrom. For the same reasons and practically to the same extent that as a matter of evidence on appeal presumptions are indulged in favor of the action of the commission, their orders are generally not suspended while an appeal for judicial review is pending except on motion of the commission or by the court after notice and the giving of sufficient bond. For the commission to be most efficient and of the greatest practical value many of its orders and regulations issued after due investigation must become and remain effective with the final disposition of the commission. The necessary delay attending reviews by the courts and their lack of time and opportunity for investigating situations at first hand and as a current operating concern constitute at once the occasion and the chief reason for commission control. Suspending their orders pending appeals and while the same are being reviewed by the different courts interferes materially with the effectiveness of the commission, detracts from the validity of its action and often postpones indefinitely the enjoyment of the results of its investigations and findings.

By constitutional provision as well as statutory enactment in Arizona the rules, regulations, orders and decrees of the commission remain in force pending the decision of the courts.[61] In Florida it is expressly provided by statute that all orders, judgments or decrees of inferior courts in favor of the commission shall remain effective

[59] *Laws 1913*, p. 459, sec. 68.
[60] *Acts 1913*, c. 784, sec. 27.
[61] Const., art. XV, sec. 17; *Laws 1912*, c. 90, secs. 66–68.

until finally disposed of by the appellate court.[62] The constitution of Louisiana provides also that orders of the commission shall remain in force until set aside by the final judgment of a court of competent jurisdiction.[63] In Montana all rates fixed by the commission remain in full force and effect until final determination by the courts having jurisdiction,[64] and similar provision is made by statute in Nevada[65] and North Dakota.[66] When a rate which has been effective for a year or more is advanced, the order of the commission, reinstating the former rate in whole or in part, may not be suspended pending the final determination of the matter by the courts according to the provisions of the statutes in Illinois[67] and in Washington.[68]

In Connecticut, however, appeals supersede the order or decision appealed from as a rule, although the court may order to the contrary if the appeal is for purposes of delay, or if justice, public safety or expediency may require;[69] and this same provision is made by statute in Rhode Island;[70] while in Tennessee the rate, rule, order or regulation is suspended only in case legal proceedings are instituted within ten days, and then only upon injunction issued after notice and subject to large penalties if procured in bad faith.[71]

As a general rule in most jurisdictions having commissions their orders and regulations may be enjoined by the courts after a hearing and notice upon good cause shown and the giving of sufficient bond to cover costs and damages resulting in case the action for injunction was not well founded and the order is finally sustained; but the fact that a writ of appeal or review is pending does not suspend the order or regulation. In addition to the ordinary cost bond which is generally required as a condition of granting an injunction and suspending the order of the commission, the statutes in a number of jurisdictions having commissions, provide for the giving of a *super-*

[62] *Gen. stats. 1906*, sec. 2923.
[63] Const. art. 286, as amended 1908.
[64] *Laws 1913*, c. 52, sec. 26.
[65] *Rev. laws 1912*, sec. 4546.
[66] *Rev. codes 1905*, sec. 4351.
[67] *Laws 1913*, p. 459, sec. 71.
[68] *Laws 1911*, c. 117, sec. 82.
[69] *Pub. acts 1911*, c. 128, sec. 33.
[70] *Laws 1912*, c. 795, sec. 35.
[71] *Acts 1913*, c. 32, sec. 13.

sedeas or suspending bond conditioned and sufficient in amount to insure the prompt and complete refunding to all parties entitled thereto of all charges or rates for service paid in excess of the rate fixed by the commission and sustained by the courts on review. Verified accounts showing the amount of such excess rates and from whom received and to whom payable are often required of all parties as a condition for the suspension of any order or rate regulation of the commission, as is expressly provided in California,[72] Colorado,[73] Idaho,[74] Illinois,[75] Missouri,[76] Nebraska,[77] Ohio,[78] Oklahoma,[79] Oregon,[80] Pennsylvania,[81] South Dakota[82] and Washington.[83] In North Carolina the additional amount collected because of the excess rate being in effect must be paid to the state every three months.[84] In New Hampshire the conditions for securing the repayment of the amounts received under the excessive rates to the parties originally paying the same are fixed by the court, and a failure to make such repayments promptly as provided by the court is punishable as a contempt of court.[85]

The effectiveness of the control of municipal public utilities by state commissions is largely determined by the attitude of the courts in their construction of the public utility acts and in their review of commission findings and orders on appeal. That public utility commissions are practical business necessities and entirely consistent with constitutional rights has been fully recognized by all the courts which have been called upon to construe these statutory enactments, and their decisions freely admit that such state commissions are necessary administrative agencies and furnish the most satisfactory

[72] *Stats. 1911*, 1st ex. sess., c. 14, sec. 68.
[73] *Laws 1913*, c. 127, sec. 51.
[74] *Laws 1913*, c. 61, secs. 63–64.
[75] *Laws 1913*, p. 459, sec. 71.
[76] *Laws 1913*, p. 556, sec. 112.
[77] *Stats. 1911*, sec. 10655.
[78] *Laws 1913*, p. 804, secs. 37–41.
[79] Const., art. 9, sec. 21; *Laws 1913*, c. 10, sec. 3.
[80] *Laws 1911*, c. 279, sec. 55.
[81] *Laws 1913*, no. 854, art. VI, sec. 19.
[82] *Laws 1913*, c. 312, sec. 5.
[83] *Laws 1911*, c. 117, sec. 87.
[84] Rev. 1905, sec. 1082.
[85] *Laws 1913*, c. 145, sec. 18; adding sec. 22 to 1911, c. 164.

solution of the many intricate and comprehensive business questions that are constantly arising in increasing numbers in connection with the regulation and control of public utilities which everyone now regards as natural monopolies and every-day business necessities.

The federal court in the case of Des Moines Gas Company *vs.* Des Moines[86] frankly recognized the necessity and practical advantage of this method of regulation and control by conceding that:

> Much of this kind of litigation, and practically all of the expense, would be avoided if Iowa, like so many of the other, including some neighboring, states, had an impartial and city non-resident commission or tribunal, with power to fix these rates at a public hearing, all interested parties present, with the tribunal selecting its own engineers, auditors and accountants.

The court of New York concurring with those of many other jurisdictions expressed unqualified approval of the plan of commission control in the case of Saratoga Springs *vs.* Saratoga Gas, etc., Company[87] in saying:

> That the most appropriate method (speaking from a practical, not necessarily constitutional, point of view) is the creation of a commission or body of experts to determine the particular rates, has been said several times in the opinions rendered by the supreme court of the United States in the various railroad commission cases and in those of state courts.

And in the recent case of People ex rel. New York Edison Company *vs.* Willcox[88] this same court said:

> That law (i.e. public service commissions law) was enacted in response to a pronounced and insistent public opinion, and was a radical and important modification of the relations and policy of the people toward the corporations, which are its subjects. Its paramount purpose was to protect and enforce the rights of the public. It made the commission the guardians of the public by enabling them to prevent the issue of stock and bonds for other than statutory purposes, or in appreciable and unfair excess of the value of the assets securing them, and to prevent also unneeded or extortionate competition, or indifferent and unaccommodating methods of operation, or oppressive or discriminating charges or rates. It provides for a regulation and control which were intended to prevent, on the one hand, the evils of an unrestricted right of competition, and, on the other hand, the abuses of monopoly.

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[86] 199 Fed. 204.
[87] 190 N. Y. 562; 83 N. E. 693; 18 L. R. A. (N. S.) 713.
[88] 207 N. Y. 86; 100 N. E. 705.

The supreme court of Wisconsin has also fully sustained and very frankly approved the plan of commission control in the case of Calumet Service Company *vs.* Chilton,[89] where the court says:

> Control by the trained impartial state commission, so as to effect the one supreme purpose, i.e., the best service practicable at reasonable cost to consumers in all cases and as near a uniform rate for service as varying circumstances and conditions would permit [is] a condition as near the ideal probably as could be attained.

This uniformly favorable attitude of our courts towards the principle of commission control is pertinent and deserves consideration in connection with their holding that the right of appeal and judicial review is statutory and therefore subject to the will of the legislature within the constitutional limitations of due process and equal protection of the law with respect to the preservation of property and contract rights. The nature and extent of the right to appeal from the commission's action, together with the reason for the rule, are well expressed in the case of Minneapolis, etc., Company *vs.* Railroad Commissioners[90] where the court said:

> Being purely the creature of statute, the right of appeal from the decision of the commission to the district court, if it exists, must be found in express provisions of the act. . . . . But it is not to be presumed that the legislature intended to turn the courts into appellate railroad commissions, which should retry the facts, and pass upon matters of a purely administrative nature, relating to the maintenance and operation of railways, and involving merely questions of policy affecting the security or convenience of the public. Indeed, if the act assumed to confer upon the courts jurisdiction over matters so entirely foreign to the judicial function, it would be of doubtful validity to say the least of it.

There being no inherent right of appeal, the nature and extent of the power and authority of such commissions to issue orders, from which there is actually no such right, are concisely stated in the case of Interstate Commerce Commission *vs.* Union Pacific Railway Company[91] as follows:

> The orders of the commission are final unless (1) beyond the power which it could constitutionally exercise, or (2) beyond its statutory power, or (3)

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[89] 148 Wis. 334; 135 N. W. 131.
[90] 44 Minn. 336; 46 N. W. 559.
[91] 222 U. S. 541.

based upon a mistake of law. But questions of fact may be involved in the determination of questions of law, so that an order, regular on its face, may be set aside if it appears that (4) the rate is so low as to be confiscatory and in violation of the constitutional prohibition against taking property without due process of law, or (5) if the commission acted so arbitrarily and unjustly as to fix rates contrary to evidence, or without evidence to support it, or (6) if the authority therein involved has been exercised in such an unreasonable manner as to cause it to be within the elementary rule that the substance, and not the shadow, determines the validity of the exercise of the power. . . . . "The findings of the commission are made by law *prima facie* true and this court has ascribed to them the strength due to the judgments of a tribunal appointed by law and informed by experience. Its conclusion of course is subject to review, but, when supported by evidence, is accepted as final."

LOWER TELEPHONE RATES FOR NEW YORK CITY

By E. H. Outerbridge,

Chairman of the Committee on Public Utilities of the Merchants Association of New York.

In 1905 complaints were made to the Merchants Association by numbers of its members alleging that telephone charges were excessive. The association thereupon appointed a special committee to investigate the subject.

This committee gathered a large amount of data including the service rates for telephones in the principal cities of the United States. A great diversity was found to exist in these rates, as well as in the principles upon which they were based. The committee reached the conclusion that a comparison of rates without knowledge of the costs of operation and of the particular circumstances relating to the various localities would afford no sound basis for testing the equity of the rates in this city. The committee therefore entered upon negotiations directly with the telephone company, with the result that the company consented to give the committee's accountants access to its books and records for the purpose of learning the relation of the company's net earnings to the costs of operation and to the value of its property. The committee further stated that in its opinion the net earnings of the company (including dividends, provision for depreciation and reserve for contingencies) should be limited to 10 per cent upon the value of the property, and the company accepted this as a basis for a revision of its rates.

The committee's accountants made an examination of the company's books covering their operations during a period of sixteen years and found that the net earnings during that time had averaged between 11 and 12 per cent, but that during the year previous to that in which the examination was made the net earnings had been approximately 15 per cent. The company thereupon, acting in concert with the association's committee, prepared a new schedule of rates, adjusted, as near as practicable, to reduce their earnings to the stipulated 10 per cent. The aggregate amount of the reductions for the year 1906 was about $1,525,000.

Although all the members of the committee were very large users of the telephone company's service at the lowest rate then prevailing, it was the opinion of the committee that the reductions then made should mainly apply for the benefit of small users, and the maximum rate was therefore reduced from 10 cents per message to 8 cents per message in the case of measured service, with a corresponding reduction in those local areas where flat rate service prevailed. It was the view of the committee that as low a rate as possible should be made for small users in order to stimulate the use of the telephone by the class who would otherwise be debarred by its cost. Beginning with the maximum stated the successive rates at the higher part of the scale were likewise graduated downward, but no reduction was made in the message rate charged the larger users, although a concession in the annual charges for extra equipment was allowed.

The rates as revised in 1906 were received with very general public approbation, as was also the method of reaching an agreement by negotiation rather than by hostile legal proceedings.

In 1907 the public service commission's law was passed, whereby railroads, gas and electric companies were subjected to public regulation, but telephone companies were not included. Public sentiment in favor of subjecting telephone companies to regulation by the public service commission rapidly developed, and also manifested itself by the introduction in the legislature of successive bills for arbitrarily fixing the rates which the New York Telephone Company might charge. The maximum rate usually specified in these bills was 5 cents per message. Although these measures received considerable support none of them became law, but they had the effect of crystallizing the demand for public regulation of the telephone company's charges and in 1910 the public service commission's act was amended to include the regulation of telephone companies.

For a year or two after the telephone company was subjected to the public service commission's act no proceedings of importance were brought against it, although public dissatisfaction with its system of toll charges was steadily growing. Owing to the large area covered by the city of New York and the adjacent districts, as well as to the topography and distribution of the population, the zone system had been put in operation by the company. Under this system subscribers were entitled to the use of telephone service at

the regular message rate only within the zone within which they were respectively located, and an additional toll charge was exacted for communication with other zones.

The demand for a 5 cent maximum rate of service, co-extensive with the city became frequent. The matter was first brought to the public service commission in the form of a complaint against the toll charges for communication between Manhattan and Brooklyn. The zone system and the exaction of an excess charge for a communication between the different zones were sustained by the public service commission as reasonable, but certain of the zones were enlarged and the amount of the charge between Manhattan and Brooklyn materially reduced.

Meanwhile bills regularly appeared in the legislature seeking to fix the maximum charge of 5 cents per message, abolishing the zone system, and making the service for a single charge co-extensive with the city. Such a bill in 1913 passed both houses of the legislature, but owing to a defect in its form was withdrawn when before the governor.

Immediately thereafter two proceedings against the telephone company were brought before the Public Service Commission, the first seriously to attack the company's schedule of rates. One of these bills proposed to reduce the maximum charge per message from 8 cents to 5 cents and to abolish the zone system. The other proposed to reduce greatly the annual charge for extension telephones. A great deal of publicity was given to these proceedings and numerous small civic associations were induced to give their approval to the movement.

The Merchants Association was requested, among others, also to lend its support. A careful study of the scope of the pending proceedings was thereupon made, and it was found that, although sweeping reductions were demanded, the scope of the proceeding was in reality so limited as to deal very inadequately and unjustly with the situation. The reduction proposed would have affected only the small users of the telephone service who would have received a very large concession in rates, while large users would have received no benefit whatever. The latter class of users pay a message rate of 3 cents in addition to which they pay rental charges for extra equipment. Taking into consideration these rental charges, it was found that a subscriber having a 3 cent rate and using 4800

messages would in reality pay 5¼ cents per message, while a subscriber using but 600 calls per year would pay but 5 cents. As a result of the change proposed by the complaint, therefore, the large user would actually pay at a higher rate than the small user.

The association's committee further found that there were substantial differences in the conditions, and presumably in the cost of supplying service to the various classes of users, and that these differences in conditions and costs warranted a graduated scale of rates determined with relation to the varying costs.

The committee was further convinced that no readjustment of any part of the company's scale of charges could be intelligently made until the company's property had been appraised, the extent of that property applied to the service of various classes of users determined, and the cost of supplying each class of service fully developed. Instead, therefore, of supporting the pending proceedings to which it found such serious objections, its committee took the matter up directly with the New York Telephone Company, with the purpose of establishing a basis for a more comprehensive proceeding, which should cause a complete revision of the company's scale of charges based upon the cost of supplying each class of service.

The committee deemed that the first step in such a proceeding would be a valuation of the company's property, both with reference to its aggregate and to the portions used by different classes of users. It was found that the Public Service Commission was without funds to undertake so large and extensive a task, and application was therefore made to the Interstate Commerce Commission, which body was about to begin, under an act of Congress, an appraisal of the property of all public carriers. It was found however, that the Interstate Commerce Commission could not at the time definitely state when it could undertake the proposed appraisal. The Public Service Commission of this state, moreover, was unwilling to assent to the proposal that the appraisal should be made by the Interstate Commerce Commission, and it was also unwilling to suspend the pending proceedings unless such an appraisal were provided for. In view of the fact that the legislature had made no appropriation for such expenses, and further, that hostile bills reducing the rate to 5 cents would certainly be pressed in the legislature, this association suggested to the New York Telephone Company that it voluntarily consent to an appraisal by the public service

commission, that it pay the expenses thereof, and that, pending a general revision of its rates, it should make an allowance of 10 per cent upon certain of its existing charges.

These suggestions were favorably received by the telephone company, were presented by them to the Public Service Commission and accepted by the latter. This result was brought about by the fixed determination of the association to see that any review and alteration of rates were based upon a proper scientific determination, and that all users might share, in proper proportion to the cost of their respective services, in any reduction of rates.

The effect of the association's attitude, therefore, was to supersede the pending proceedings to which the association objected, and to substitute therefor a broad and comprehensive proceeding which should determine rates upon a scientific basis with due regard to the rights of all classes of users, and with justice to the company itself.

The basis contended for by the association having been accepted by the Public Service Commission and the New York Telephone Company, the actual work of revision yet remains to be done. This will be undertaken by a staff of engineers and examiners selected by, and solely under the control of, the Public Service Commission, all of the expenses being paid by the telephone company.

An appraisal of the company's property will be made, the value of the property applying to the use of any particular class of patrons will be determined, and operating and overhead charges will likewise be ascertained and distributed pro rata to each class of users. By this procedure the costs of each class of service will be fully developed and rates can be made, on the basis of such costs, that will be fairly proportioned thereto.

Hitherto such a distribution of costs and charges has been impracticable, and it has necessarily followed that the commission has been unable to exercise its rate-making power with a knowledge of the facts essential to just determination. A revision of rates on the basis proposed will undoubtedly result in a scale of charges which will be entirely equitable and satisfactory to the public.

EFFECTS OF STATE REGULATION UPON THE MUNICIPAL OWNERSHIP MOVEMENT

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The policy of regulating public utilities by state commission may be said to have been inaugurated by Governor Hughes of New York and Senator La Follette of Wisconsin in 1907. Prior to that time there had been a good deal of agitation in the United States for municipal ownership and operation of street railways and other local utilities. The reports of successful municipal operation in Great Britain and Germany, coupled with intense dissatisfaction in many American cities with the results of private operation here, had made municipal ownership a nation-wide local issue. Mr. Hearst had come within a very few votes of being elected mayor of New York City on this issue, and Mr. Dunne had been elected mayor of Chicago on the definite platform of immediate municipal ownership and operation of street railways. The policy of regulation by state commissions, injected into American politics by the political prestige and constructive genius of Hughes and La Follette, and subsequently strengthened by the support of such strong progressive state executives as Woodrow Wilson in New Jersey and Hiram Johnson in California, has displayed more aggressive vitality than almost any other constructive political idea ever launched in state politics. In seven years' time this policy has swept across the country until now two-thirds of the states having large cities within their borders have established strong state commissions with regulatory powers.

The public control of public utilities is a problem of far-reaching and rapidly increasing importance, and that it will continue to be such a problem for an indefinite period in the future, cannot be questioned. The social, civic and political importance of the issue can hardly be over-estimated. Rapidly as cities are growing, and rapidly as their debts and expenditures are increasing, the activities and the investments of public utilities are increasing even more rapidly. Indeed, public utilities are coming to be what might be called the artificial natural environment of urban communities. They are, so to

speak, the second nature of cities. They supplement the sunshine and the air.

When the policy of state regulation was launched seven years ago, it received the cordial support of three classes of citizens: (1) those who were utterly opposed to municipal ownership, but who recognized either the necessity or the inevitableness of stringent public control; (2) those who were uncertain about municipal ownership and deemed it desirable to try the experiment of regulation, with the hope that it might succeed and thus make public ownership unnecessary; and (3) those who were definitely convinced that municipal ownership was desirable or necessary as an ultimate policy, but believed that regulation would be a good thing as a stop-gap while public opinion and public administration were getting ready for the inevitable. Influenced by these various hopes and expectations, the supporters of the new policy formed a somewhat motley political group. They included not all, but the major portion of, the progressive citizens of the country who desired to redeem the state and local governments from the domination of public service corporations.

At first the opposition to state regulation was made up primarily of three elements, viz., (1) the public service corporations, which were naturally hostile to a movement promising more minute and more rigid public control of their activities, and which, much as they disliked the interference of local governments and state legislatures, had by long practice learned how to meet these interferences and, therefore, preferred to keep on fighting in the old way rather than to face a new enemy and have to learn new tactics; (2) the corrupt and semi-corrupt political leaders and organizations which had acquired and maintained their power largely through their alliances with public service corporations under the old system of "give and take;" and (3) a comparatively small number of uncompromising municipal ownership men and municipal home rule advocates, together with a number of city politicians who had made political capital out of local feuds with the public service corporations. This third element of opposition manifested itself in spots where, through long local agitation, cities thought they were getting near the municipal ownership goal, or at least were getting into a position where they could, through franchise contracts and local regulation, secure better conditions as to rates and service, and where they feared that the sudden transfer of all powers of control to a state commission, subject

to the domination of state politics, would constitute a serious setback locally.

The sentiment of those who were definitely opposed to municipal ownership, and who welcomed regulation as a permanent solution of the problem of the control of public utilities, found remarkable expression only two years ago in the majority opinion of the supreme court of the state of Washington in the celebrated Seattle telephone case.[1] In this case the Washington court upheld an order of the state public service commission raising the rates of the independent telephone company in Seattle above the schedule fixed in the local franchise which had been granted by the city a few years before on the company's application and which had been subsequently accepted and used. In its enthusiasm for state commission regulation, the court said:

> In its search for remedies and while seriously considering municipal, state or government ownership, the public, by reference to the police power of the state, has almost unwittingly—unwittingly in the sense that it is not generally appreciated—solved the problem, and has, by the application of fundamental as well as established relative propositions of law, gained every advantage of ownership without assuming its burdens. . . . . The benefit of ownership is enjoyed, while its dangers—not the least of which are the political activities of great armies of public employes—are no longer a menace to those who, to avoid the hazards of public ownership, have unwillingly subscribed to the conditions prevailing before this and other states entered upon the policy of public control.

While the Washington commission and the Washington courts have gone further than most other commissions and courts in undermining the power of cities to control local utilities either by franchise contract or by ordinance, the aggressive sentiments just quoted give articulate expression to the general trend of commission and court opinion.

In the same case the Washington court forcibly defended the increase in the Seattle telephone rates, even though it involved the abrogation of the contract between the city and the company. "If we assume the right to lower rates to make the return conform to a fair interest rate upon a fair valuation," said the court,

> it follows that we must, in conscience, yield the right to those affected to petition for a rate, though it be higher than a present one, that will accomplish

[1] State ex. rel. Webster *vs.* Superior Court of King County, 67 Wash. 37, decided January 27, 1912.

the purpose of the law. These principles have their foundations laid deep in the doctrine of common honesty between man and man, between the public and its servants. They are sustained upon the theory that the public is willing to pay a full return and no more, a fair return and no less, to those who have lent their capital for its benefit. . . . . To hold that the public service commission is without jurisdiction to raise rates to the point of fairness, as it finds that point to be, would deprive the commission of the right to lower rates. To dissent from these views would be to hold that the state could not relieve the people of a municipality of an improvident contract, or one entered into in defiance of the will of the people, instances of which might be easily multiplied were we called upon to do so.

Largely as a result of the attitude assumed by the regulating authorities as set forth in the quotations just given, the line-up of forces on the political issue involved in state regulation of public utilities has considerably changed from what it was seven years ago. The public service corporations themselves, instead of being unanimously hostile to state regulation, as they were in 1907, have veered about until they appear to furnish the chief motive power behind the movement in those communities where state regulation has not yet been fully established. Doubtless the corporations have been and still are greatly annoyed by some of the positive or negative requirements of state commissions, and doubtless some corporations would gladly go back to the old system of haphazard regulation rather than submit to the systematic regulatory procedure now in vogue. Nevertheless, most corporations have come to see advantages in regulation itself and very great advantages in state as opposed to local regulation. By means of state regulation, they escape from the annoyance of local nagging and the immediate political pressure for lower rates, and appear to feel that they are stealing a march on the municipal ownership forces by a short cut across country. They expect to get so far out of sight of the municipal ownership movement that they hope never to see it again, or be seen by it.

On the other hand, it is fairly certain that the general public has been as unhappily disappointed in the general results of state regulation as the companies themselves have been happily disappointed. As in the case of the corporations, the extent and nature of this disappointment are not uniform either in time or place. Some commissions, as notably the Railroad Commission of California (which, however, does not have uniform jurisdiction over strictly local utilities), have borne down upon the corporations with a pretty firm

hand, and have thereby maintained their prestige with the people, while at the same time they have disarmed the opposition of the companies by the fairness of their severity. Generally speaking, however, the popular prestige of public service commissions is waning. The people are disappointed in the results obtained for the money spent, and a great many are coming to fear that the commissions as organs of government are primarily organs of the public utility interests to protect themselves from the mosquito-bites of rampant democracy. At the same time, there is a noticeable revival in the movement for municipal ownership and a strengthening of local resistance to the practical abrogation of municipal home rule as it relates to public utilities.

In order fairly to determine the underlying basis of fact or fancy for these changes in public sentiment and these shifting political alliances, we need to examine somewhat analytically the direct and indirect effects of state regulation upon municipal ownership as a business proposition.

Let us first consider the direct changes in the powers of cities to undertake municipal ownership, resulting from the enactment of public utility laws.

The Wisconsin law and the Wisconsin commission probably typify the state regulation movement as it exists in practice better than those of any other state. In certain respects, the Wisconsin law is still in advance of most of the other commission laws. This is particularly true with reference to the indeterminate franchise, which has been made to apply by legislative mandate to all of the public utilities operating in Wisconsin. This law, while not depriving the municipalities of the right to withhold their consent to the operation of public utilities in their midst, makes every franchise heretofore or hereafter granted a perpetual franchise subject to termination on one condition only, viz., that the municipality shall purchase the plant of the utility at a valuation to be fixed by the state commission. Under this law, the legal right of the municipalities to embark upon the policy of municipal ownership of local public utilities has been made universal, but the cities have been deprived of any right to build competing public utilities without the consent of the state commission or to acquire existing utilities by negotiations or under the terms of franchise contracts. For example, it would appear that no city in Wisconsin now has the authority to grant a franchise under

which the utility would be required to withdraw its capital out of earnings and transfer its property to the city at some future time without payment. No method of bringing about municipal ownership is contemplated except the single method of paying for the property a sum equal to its value as fixed at the time of its transfer by the state commission.

Under these conditions about a dozen public utilities have been acquired by municipalities in Wisconsin during the past seven years, but for the most part, these utilities are in small towns and represent a comparatively small investment. No street railways have as yet been taken over in Wisconsin under this law. It is too early to predict with certainty just what practical effect the Wisconsin indeterminate franchise plan will have upon the municipal ownership movement, but it is clear that it provides an inflexible procedure with no opportunity for adjustment to the varying conditions of different localities, and that a city cannot proceed to municipal ownership without submitting to the judgment of the state commission in fixing the price to be paid for the property, and the terms and conditions of the purchase, subject to appeal by either party to the courts. Moreover, without the consent of the state commission no city can build a plant of its own in competition with an existing private plant.

In California, where the right of municipal ownership and operation has been established by constitutional provision and where the control of local utilities remains for the most part in the hands of the local authorities, the state commission, nevertheless, has it within its power to hinder and possibly to prevent municipal ownership in particular cases by refusing its consent to the sale of a public utility to a city on the terms agreed upon between the parties.

In New York and New Jersey franchises granted by local authorities require the approval of the state commissions, and in New Jersey, when such franchises are approved, the state commission may impose its own conditions as to construction, equipment, maintenance or operation.

These illustrations show the tendency of the more radical state commission laws to check the freedom of the municipalities to advance toward municipal ownership in their own way. Some of the commission laws bring municipal undertakings under the control of the state commission practically to the same extent as private undertakings, and while such regulation is not necessarily inimical to municipal

ownership, it may, in some instances, make cities feel uncomfortably dependent upon the will of a state commission, which may be hostile politically or otherwise to the cities' aims.

This restriction and definition of the methods by which municipal ownership may be attained, and even the supervision of municipal undertakings by the state commissions, may in practice help rather than hinder the municipal ownership movement. But whether they help or hinder, it certainly cannot be claimed that the movement will be unaffected by them.

The indirect effects of state regulation upon the municipal ownership movement are even more numerous and important than the direct effects.

Except in those cases where perpetual franchises have been granted or where franchises have been granted binding the municipality to acquire the property at the expiration of the grant, public utility investments have not been legally recognized as permanent. The ultimate status of the investments has been more or less uncertain, but the definite limitation of a franchise has itself constituted a warning that the company ought to calculate upon getting its capital back out of earnings during the franchise period. Regulation assumes, however, that the investment is to be permanent, and, therefore, that the franchise-holding corporation has no reason for withdrawing its capital. Regulation assumes continuity and permanency, and is surprised and annoyed when the local authorities do anything to interfere with such continuity and permanency. Regulation does not even permit the companies to invest their earnings in extensions of plant, but practically requires that all such extensions shall be provided for from the proceeds of the sale of additional stocks and bonds. In this way, regulation often encourages the increase of the nominal capitalization of a utility. The general theory of regulation is that the capital investment shall grow with all improvements and extensions, and shall never be diminished except to the extent that property disappears or is withdrawn from use.

This theory is modified in certain cases to meet the actual requirements of local franchise contracts, as for example, in the city of New York, where the limited franchise now granted by the city authorities provides for the reversion of the fixed property located within the street limits to the municipality at the final expiration of the grant. In providing for the capitalization of the corporations

constructing plants under such franchises, the state commission requires that provision shall be made for the amortization of that portion of the investment which, at the expiration of the franchise, will be transferred to municipal ownership without payment, but no provision is made for the amortization of any of the property not fixed within the streets, whether or not its value is dependent upon its continued use in connection with a franchise. If, for example, a street railway is laid out so that a portion of its route lies on a private right of way, even though this private right of way may already have been placed on the city map as a future public street, the cost of the track laid on the private right of way is excluded from the amortization requirements. Moreover, if the franchise runs for a period of twenty-five years with an option for a renewal for a like period on a readjustment of the compensation paid for it, the commission bases its amortization requirements on the assumption that the franchise will be held for fifty years. Indeed, if the commission permitted the company to amortize its investment except to the extent that such investment represents property which will definitely pass out of the company's ownership and control at a fixed time, it would be permitting the company to pay for its property out of earnings derived from the public and still retain the property itself. It is for this reason that, in the absence of a definite, conclusive contract providing for the transfer of property to city ownership, regulating commissions will not look with favor upon the amortization of capital, unless they abandon the public point of view in an effort to "help out" the corporations.

The only contrary instance that has come to my attention is in the case of Fuhrmann *vs.* Cataract Power and Conduit Company, decided by the Public Service Commission for the second district of New York, April 2, 1913. This was a rate case. The company had been handling its amortization upon the theory that the life of its property would be equal to the term of its franchise, which would expire in 1932. The commission approved this general policy and authorized the company to withdraw from earnings from time to time an amount sufficient to complete the amortization of its depreciable property within the franchise period. The commission then called attention to the fact that at the expiration of the franchise the company would be the owner of a well-equipped plant in excellent operating condition which would have been fully paid for by the public.

The commission warned the city of Buffalo, as a franchise-granting authority, to jot this fact down in its notebook for reference in 1932, with the suggestion that, should the franchise be renewed, the company would not be entitled to a return which would enable it to amortize this property all over again. By a curious piece of reasoning, however, the commission intimated that, although the property would have been paid for by the public, the company, under a renewal of its franchise, would still be entitled to the regular fair return for the use of the property. This exceptional instance shows that, where regulation departs from the general theory above set forth, the result is still advantageous to the company and disadvantageous to the public.

One of the ways in which state regulation indirectly affects the municipal ownership movement is by the control over public utility construction accounts and capitalization exercised by state commissions. It is not easy to predict either the nature or the extent of this effect. So far as state regulation of stock and bond issues results in the actual squeezing out of water from the existing capitalization of a company or in keeping water out of future capitalization, it would appear that regulation must tend to make municipalization easier rather than more difficult. On the other hand, the extent to which the sanction of the state commission has the effect of bolstering up existing over-capitalization or of putting the state's guaranty upon new capitalization which in the course of time may come to be out of proportion to the real value of the depreciated plant, just so far will regulation tend to make the purchase of public utilities by cities difficult and burdensome. The ruling of the United States supreme court in the Consolidated Gas case to the effect that franchise values, once capitalized with the consent of the public authorities of a state, become an inviolable portion of the capital investment of a company, upon which it is entitled to earn a fair return the same as on its tangible assets, makes it extremely important that public regulating bodies should exercise the utmost care in approving capitalization, lest it be found that such approval, though improvidently given, be interpreted by the courts as a final guaranty both for future rate and service regulation and for purchase.

The right of the state commission to fix the value of a public utility property for the purpose of municipal purchase, whether directly as under the Wisconsin law or indirectly through the prior

approval of stock and bond issues, goes to the very core of the municipal ownership problem. Only a few years ago, constitutional and statutory restrictions, or the mere absence of delegated power, constituted a serious legal obstacle to the general acquisition of public utilities in most states and cities. This legal obstacle is gradually being removed, and we may confidently expect that in the near future the abstract right of cities to own and operate public utilities will be all but universally recognized in the United States. The next important obstacle in the way of the actual realization of the municipal ownership policy is the contractual relations existing between the cities and private corporations under franchises already granted. So far as the indeterminate franchise principle is applied, this obstacle will be wholly removed, and wherever the limited term franchise applies, it will be removed as the franchises expire. Even where unlimited or perpetual franchises have been granted, this obstacle is being overcome in some cases, and may be overcome in all, by the enactment of laws conferring upon the cities the right to take over public utilities by condemnation proceedings. The third great obstacle, which is of much more permanent practical importance than the other two, is the financial difficulty of paying for the property either out of taxes or out of earnings, with the temporary assistance of municipal credit. The purchase price of the utility is bound to be the sticking point. If the price can be beaten down low enough, the movement for municipal ownership will thereby receive a great impetus. If, on the other hand, the price can be beaten up high enough, the movement will suffer a corresponding check. Both from the standpoint of the city and from the standpoint of the corporation, the desirability or undesirability of municipalization in any particular case will largely be a matter of the price. The action of the regulating commissions, therefore, in substantially guaranteeing investments and capitalization in advance of the determination of the purchase price is bound to exercise a far-reaching though indirect effect upon the municipal ownership movement.

Valuations have come to be the big thing in the public utility world. Though for the present these valuations are usually made to serve as a basis for rate regulation, it is clear from the attitude of the courts that still higher valuations would be required in many cases as a basis for municipal purchase. In the play for advantages in the regulatory system now being established, the public service corpo-

rations have not been slow to see the critical importance of the valuation. Accordingly, all their ingenuity, power and influence, direct and indirect, are being brought to bear upon the problem of discovering new elements of value, and of persuading or coercing the commissions and the courts to recognize them. In this way, the almost inevitable trend of valuations is upward. Commissions, both out of the desire to be fair and even liberal to the companies, and also out of fear that their decisions may be upset by the courts, are continually giving the benefit of the doubt in valuation cases to the corporations owning the property. It seems reasonably certain, therefore, that, while the most scandalous abuses in capitalization will be corrected by means of regulation, nevertheless the recognized value of the actual property will be gradually swollen until it includes every conceivable element of "overhead charges" so-called, with certain additions thrown in for good measure. This tendency is the more inevitable because the commissions usually make their valuations as a basis for rate fixing, and the rate of return allowed on capital investment is a much simpler element of the problem than the valuation itself. Therefore, it is much easier for public opinion to force the rate of return down, say from 10 per cent to 8 per cent, or from 7 per cent to 6 per cent, than it would be to effect a corresponding reduction in the recognized capital value.

The possible effect of this double tendency upon the municipal ownership movement can be readily seen. Under the theory of the permanency of the investment usually recognized by the state commissions, no provision will be allowed for the amortization or retirement of the capital except such as is included under so-called "general amortization," which is nothing more than provision for the replacement of the property when it is worn out or obsolete. But when the city comes to take over a utility or proposes to enter into a contract by which the utility shall be made to pay for itself pending its transfer to public ownership, it is apparent that the rates, which have been scaled down without any provision for the amortization of the capital, may have to be increased again in order to take care of this new factor. If this should prove to be the case, the movement for municipalization would lose much of its political driving power. There is reason to believe that the average citizen who favors municipal ownership is still moved primarily by the expectation that under it he would secure better service, or lower rates, or both, and if it became clear that

in order to make municipal ownership successful, the rates would have to be raised, it is more than likely that the citizen's enthusiasm for the change would cool off rapidly.

Clearly, the effect of any system of regulation upon the movement for municipal ownership must be considered very carefully from the point of view assumed relative to the permanency of the investment, the guaranty of capital value and the limitation of rates. If public regulation says that the utilities are here to stay and we need never pay for them, and fixes values and rates accordingly, then the municipal ownership movement, when it comes along, will have an additional obstacle to overcome; for all *public* improvements have to be paid for either out of earnings or out of taxes. The danger of making public utility rates so low as to hinder municipalization is not limited to the activities of state commissions, however. The same result may be brought about by local regulation or even by franchise contract. It is quite conceivable, for example, that the Cleveland plan of automatic rate regulation will result in holding street-car fares down to so low a point that it would be entirely impossible for the city to maintain the same fares under municipal ownership while retiring the capital out of earnings.

One of the most effective arguments in favor of state regulation of public utilities is the fact that, under modern conditions, comparatively few utilities are confined within the physical limits of a single municipality, while many utilities have spread themselves over numerous municipalities, and some have become state-wide or even interstate in their ramifications. It is said that every utility should be operated as a unit and that the attempt to regulate it in geographical sub-divisions by several independent local authorities is illogical and impossible. Obviously, this argument has even greater weight against municipal ownership and operation than it has against local regulation. In so far, therefore, as state regulation represents a triumph of the unified operation idea as opposed to the geographical sub-division idea, it makes municipalization logically and practically more difficult. While various municipalities are actively engaged in regulating the operations of a utility within their respective limits, it is not hard to see how they could severally take over the utility, making such mutual agreements and concessions as might be necessary to enable them to operate it. But when the very idea of local control has been abandoned in favor of unified state control, the difficulty that would be

encountered in reviving the belief in the possibility of independent municipal operation is sufficiently obvious.

As a further incidental result of the transfer of regulatory powers from the local authorities to state commissions, there comes an atrophy of the municipal organs previously engaged in regulatory efforts, which are naturally the very organs to be developed into more active functioning if the utility is to be taken over for municipal operation. In other words, if the regulation of public utilities is taken out of the hands of the cities, the very activities which might gradually prepare the cities for the responsibilities of ownership and operation are prevented, with the result that the city is likely to become less fit as time goes on for the enlargement of its functions. In brief, state regulation is likely to result in a case of arrested development so far as the municipality is concerned.

Another way in which state regulation is likely to have a tendency to check the municipal ownership movement is in the creation of a powerful organ of government, state-wide in its ramifications and interests, which, like all established organs of government, straightway develops a strong instinct of self-preservation and self-perpetuation. To the state commission, a movement for municipal ownership in general or in a particular locality spells an indictment of the commission's success as a regulating body, and also means the curtailment of its functions and influence in the future. For these reasons, it is clear that, on the whole, the commissions, with all their tremendous power over legislation, politics and finance, will be actively or passively hostile to the municipalization of utilities under their jurisdiction. This hostility may not manifest itself in unimportant cases and may not even be manifested openly in very important cases. But that such hostility should exist and make itself felt in a general way, is, I think, an inevitable result of the constitution of human nature as we know it in American politics.

There are some reasons on the other hand for expecting that state regulation will hasten rather than hinder the municipal ownership movement. In so far as regulation is effective it will result in the training of a large body of technical men to look at public utility problems from the public point of view. This development will make the municipalization of public utilities more practicable and the success of municipal operation more likely. From this point of view, regulation is merely training men for the more direct and far-reach-

ing responsibilities of public ownership and operation. Moreover, in so far as regulation is effective, it will eliminate the speculative element from public utility investments and thereby drive out of the field a great many gamblers who are seeking to make personal fortunes through the exploitation of public privileges. It is from them that the bitterest and most dogged resistance to municipalization now comes. With the steadying down of the business so that no one can have any hope of receiving more than a just reward for a just service rendered, many of the public utility magnates will get tired of the game, and there may be a great accession to the ranks of the municipal ownership enthusiasts from those of the promoters who would be glad to sell at the best price possible and withdraw to other fields. It is further to be expected that the public knowledge which comes from uniform, accurate and detailed publicity will make municipal ownership more feasible and private ownership less alluring than heretofore.

It is possible that state regulation, through its failures, may result in greatly strengthening the demand for municipal ownership at the same time that it puts new obstacles in its way. If this proves to be true, we shall have a repetition of the many lamentable experiences of the past in American cities where it has often been found that the people, though in favor of a particular policy by a great majority, are helpless to put it into effect, with the result that political discontent, cynicism and civic paralysis ensue.

Perhaps one of the most likely effects of state regulation will be to enlarge the ambitions of the state itself and to create a strong movement in favor of state ownership of the inter-municipal utilities such as interurban railways, water power developments and transmission lines. In several respects, a movement for *state* ownership of utilities not strictly local in their character would not be handicapped by the tendencies of state regulation to the same extent that the movement for *municipal* ownership of even strictly local utilities might be so handicapped.

EFFECT OF STATE REGULATION OF PUBLIC UTILITIES UPON MUNICIPAL HOME RULE

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That some form of public control must be exercised over the privately owned and operated utilities in cities is no longer an open question. It is now generally recognized that private corporations supplying such necessities of present day urban life, as gas, electric light and power, telephone service and street railway transportation, must be regulated by public authority in order to protect the people against poor and inadequate service and excessively high rates. The only question about which we have not yet been able to reach an agreement pertains to the choice of a regulating agency. Would adequate regulation be best secured by leaving the initiative in such matters in the hands of the local authorities directly interested, with such general and supervisory power in the state government as may be deemed necessary to protect all interests involved, or would it be better to take this power to regulate entirely out of the hands of cities and give to the state government exclusive control over such local utilities?

It is evident that the present tendency is strongly in the direction of exclusive state regulation. No other proposed reform in recent years has had so much influential support, or encountered so little opposition from the sources which usually offer more or less determined and effective resistance to every legislative proposal designed to increase popular control over corporations of this sort. But the fact that the corporations subject to regulation favor state as opposed to city control, is no evidence that this plan of dealing with the problem will benefit the public. If it has any significance, it doubtless means that the representatives of such interests expect less exacting treatment at the hands of the state than under a policy of local control.

The advocacy of exclusive state regulation is not confined, however, to the representatives of the public utility interests. Many who desire effective regulation believe that complete state control

offers the best solution of this difficult problem. This conviction is partly due to the belief that cities, as mere local governmental units, do not have and can not be expected to have, the powers needed for effective control, even when the principle of local self-government is fully recognized by the state. The ramifications of such corporations often extend, it is said, beyond the limits of a given city and therefore make the question of regulation more than a merely local one. That this is true in many cases must be admitted.

It is also claimed that municipal control over these matters has not been a conspicuous success. This contention may, however, be admitted without concurring in the belief that exclusive state control would be more advantageous than or even as advantageous as a policy under which cities exercise substantial powers of regulation. There are obvious reasons for the failure of local control in the past. In the first place municipal authorities have been too much restricted in the exercise of such powers. The failure of local regulation must to this extent be placed, where it properly belongs, upon the state government. The attitude of both state legislatures and courts has not been such as to give much encouragement to the hope that exclusive state control will be an entirely satisfactory solution.

Another reason for the failure of local regulation in the past has been the lack of what may be called municipal democracy. Cities have not had a form of local government adapted to local needs. Their organization for governmental purposes has been cumbersome and not directly responsive to local public opinion. For this situation also the state government is largely to blame. The people of American cities have had to make a long and often discouraging fight to secure from the state government permission to exercise powers needed for their protection and the right to adopt a type of local government suited to local needs.

It is an interesting coincidence that just at the time when cities are being reorganized in accordance with democratic principles, a nation-wide movement should be inaugurated to deprive them of all participation in the control of local public utilities. It is also significant that this movement, though ostensibly designed to give cities more effective protection against public utility abuses, has not had its origin in any popular demand from urban communities. The initiative in this matter seems to have come very largely from the public utility interests.

But whatever the facts may be as to the origin of this movement, it can hardly be denied that local participation in public utility control has not had sufficient trial, under conditions affording a fair test of its merits, to warrant the conclusion which is implied in the demand for exclusive state control. If experience is the criterion by which we should be guided in this matter, there is much that might be said against the policy of exclusive state control. Even with respect to matters that vitally concern the entire state, state regulation has not been always or even generally a conspicuous success.

Whether cities should have an active part in regulating local public utility corporations, or whether this power should be lodged wholly in the state government, is a question that should be decided in favor of that agency which seems most likely, in view of all the facts and forces involved, to guarantee adequate control. If it could be shown by the advocates of exclusive state control that a state commission is not only better able, but also as likely to exercise its powers to secure effective regulation in the interest of the local public, a strong point would be made in favor of state control. Nor could cities claim under any reasonable interpretation of the doctrine of local self-government the right to exercise a function that would be more efficiently exercised by the state.

It is not, however, merely a question of placing this function in the hands of that governmental agency which has most power and prestige behind it. For the power to exercise a particular function is of little consequence, unless there is an adequate guarantee that such power will be exercised in the interest of the local public for whose protection it is designed. Here is where we find the weak point in this new program of exclusive state control. A state appointed commission, theoretically responsible to the entire state, may be as satisfactory a device as it is possible to secure for the purpose of regulating utilities in which the entire state has a direct interest. But when such a commission is clothed with the power to regulate utilities that are purely local in character, this guarantee is in large measure lacking. A state commission, in exercising the power to regulate local utilities, can not be regarded as responsible to the state in the sense that it is responsible when exercising a power in which the whole state is directly and vitally interested. In the former case the commission is very largely in the position of an irresponsible authority. The community or communities directly affected by its acts lack the power

to control it. It is a well established principle of political science that to ensure an efficient exercise of a given power, it should be lodged in some governmental agency directly responsible to a constituency that would be benefited by having it enforced. It is for this reason that exclusive state control of local utilities fails to meet the requirements of democracy. In so far as it substitutes an irresponsible for a responsible control, it strikes at the foundation of that essential of democracy—local self-government.

Some of the arguments advanced in support of this policy of exclusive state control indicate an attitude of mind more or less unfriendly to municipal democracy. The suggestion that public utility corporations can not expect fair treatment at the hands of the local communities which they serve, is virtually an assertion that the basic principle of popular government is wrong. If the people of a local community are to be denied all power to regulate local public utility corporations merely because they would be benefited by effective regulation, it would also be true that the state as a whole should not be trusted with the power to regulate corporations in the control of which the people of the entire state are interested. The same line of argument would deny to the federal government the power to regulate railways and trusts. It is in reality a demand that the power to regulate, in so far as it applies to local public utilities, be placed beyond the control of the local public.

The question may properly be asked in reply to this suggestion whether the facts concerning local regulation support the contention that a local community, such as a city, can not be depended upon to deal justly with its public utility corporations. Indeed it may be said that if such power as local communities have had in this respect has been unwisely exercised, the mistakes have been those of leniency and undue concession of privileges rather than those of unjust and unreasonable regulation.

But even if local sentiment should insist upon unreasonable regulation, local public utility corporations would not be exposed to any real danger, inasmuch as there is always an appeal from this local authority to the courts. Just why so much emphasis is placed upon this alleged tendency on the part of a local regulating agency toward unjust treatment of such corporations is difficult to understand, in view of the fact that its acts are subject to review in the courts of the state. There is little evidence to support a belief that our state su-

preme courts are inclined to uphold acts of local authorities which have the effect of unjustly restricting the rights of public utility corporations. In view of all the circumstances, it is difficult to resist the conclusion that public utility corporations are opposed to the participation of the local public in the exercise of regulation, not because they fear injustice, but rather because they hope to secure through exclusive state control, advantages which it would be extremely difficult to obtain if the initiative in such matters remained with any authority which is responsible to local public opinion.

One fact which should be referred to in this connection is the disproportionately small representation in the legislature given to the large cities under some of the state constitutions. This is indicative of an attitude toward the city on the part of the state which has some bearing upon the question of state control. If a state government is really in the position of an irresponsible authority when it exercises a function that directly affects only the population of a single city, that irresponsibility is made more pronounced when by the constitution of the state the city is denied its proportionate share of representation in the state government.

It is not difficult to see why public utility corporations operating under franchises from cities should desire immunity from local regulation. The progress which has recently been made toward municipal democracy is an indication that such powers as municipal governments are allowed to have will be exercised more largely for the protection of the people than they have been in the past. The easy, indulgent attitude on the part of irresponsible municipal authorities, which heretofore has redounded so greatly to the advantage of public utility corporations, is giving place to a more solicitous regard for the interests of the municipal public. The period has now practically passed when corporations can secure from local authorities franchises without provisions safeguarding the rights of the public, or expect lax local regulation.

Having secured privileges under conditions such as these in the past, public utility corporations are now seeking to evade the consequences of democratic control. No general opposition on the part of these corporations to local participation was in evidence during the time that municipal government was amenable to corporate influence. It is only since the appearance of responsible municipal government that public utility interests have been so actively opposed to local

regulation. This may be regarded as merely one manifestation of that disapproval of local self-government, which has so often found expression in legislative acts and in court decisions. It is but natural that the present attitude of public utility corporations toward local regulation should reflect to some extent the old distrust of popular government. Efficient democratic organization necessarily means the strict regulation of such corporations. With the progress of democracy in city and state there is less opportunity than heretofore for the direct control of political agencies by corporate interests. From the point of view of those identified with the management of public utilities, popular government is a danger as real as class government was to the masses when the latter had little direct voice in public affairs. They are therefore as much interested in limiting effective popular control as the people were formerly in restricting control by a class. It is not easy to accomplish this, however, by an open and direct attack upon the principle of popular control.

As the sentiment in favor of democracy becomes more intelligent and active, the efforts to thwart democratic control must, in order to accomplish their purpose, employ means that are less obviously at variance with the predominant tendency of the time. It is for these reasons, in part at least, that so much impetus has been given to the movement to take the control of public utilities entirely out of the hands of cities. To establish a plausible justification for the policy, one which can be reconciled with the idea of democracy, an attempt is made to show that local participation in such control results in no real benefit to cities, that the greatest advantage to cities themselves lies in the direction of exclusive state regulation. But behind this argument, and only partially concealed from view, is the fear that municipal control will be too largely exercised from the view point of the local public and not sufficiently regardful of the interests of the corporations subject to its authority. To transfer a function which is properly a local one to the state government is to make the exercise of that power irresponsible and to defeat to that extent the purpose of government by the people.

Changes in economic conditions throw some light upon the origin of this movement for exclusive state control. If general prices had continued to decline as was the case throughout the period from 1873 to 1897 it is unlikely that franchise holding corporations would have been interested to the extent that they now are in securing immunity

from local regulation. Wherever a franchise fixes a maximum price which the company may charge, it has been treated as a contract under which the company has the right to charge up to that amount for service. During the period that general prices were declining, public utility corporations operating under franchises of this sort were in a peculiarly advantageous position as against the general public. The legal right to charge a fixed price, while prices in general were falling, was in effect the right to an increasing rate for service.

But when after 1897 the purchasing power of money began to decrease, this advantage disappeared. Such corporations were now confronted by increasing cost of operation along with a charge for service which was fixed in terms of money. One can easily see that, if prices should rise sufficiently, such corporations might find themselves in financial straits unless the effect of rising prices on cost of operation could be overcome by increase in the volume of business, or by more economical and efficient management. Of course it does not follow merely because the charge for service has been automatically reduced through the decrease in the purchasing power of money, that the price for service, as fixed in the franchise, is too low. It may still be higher than is sufficient with efficient management to ensure a reasonable return on the actual investment. It is true, however, that such companies have lost a very real advantage. The change in economic conditions has converted what was in effect a constantly increasing charge for service into one that is now decreasing. It is not surprising that corporations thus obligated to supply service on the basis of a fixed money charge should seek some means by which to avoid the consequences of rising prices. It is doubtless largely due to this desire to safeguard their interests that the representatives of public utility corporations are so actively pushing the movement for exclusive state control. They realize that cities may not easily be convinced that a franchise provision which protected the company against reduction in the price for service when all other prices were falling, should not also protect the public against an increase in the charge when all other prices are rising. If the franchise is in the nature of a contract, as has been held by the courts, then both parties are entitled to have it enforced for their protection. If a particular provision is enforced when it is advantageous to the company and disadvantageous to the public, the question naturally arises, why under changed conditions it should not also be enforced when it is advantageous to the public

and disadvantageous to the company. Any other view of the matter would jeopardize the rights of the local public. There is altogether too much tendency to regard a franchise as a contract only in so far as it protects the interests of the grantee. Indeed this seems to be one of the chief dangers of state control. The public utility corporations at the same time that they are seeking immunity from municipal regulation are claiming whatever legal rights and advantages they have secured from local franchise grants. There does not appear to be any indication that public utility interests now in favor of state control are willing to relinquish any of the advantages which are secured to them by having a franchise regarded as a contract; but while retaining these they hope to secure relief from such franchise provisions as have become burdensome.

It would doubtless be too much to expect that a responsible municipal government would take kindly to this view of the matter. It is more likely to act on the theory that, if the franchise binds the city, it also imposes a like obligation upon the company. For in no respect is local control more sensitive to local public opinion than when it concerns the question of advancing the price for a public utility service above the maximum fixed in the franchise. A change such as this, imposing as it would, an additional and obvious burden upon the public, could not secure popular approval, unless the people who are required to assume it were fully convinced of its justice.

The most serious objection to state control, from the point of view of municipal home rule, is the effect it may have upon publicly owned utilities. The efforts now being made, wherever public ownership exists, to bring municipally owned plants under state control, may be due only in part to public utility influence, but they are certainly in line with the political program of the public utility interests. Let the state determine the price to be charged for service by municipally owned plants, and private corporations will have less to fear from public ownership. This would be the most effective way of checking the increasing tendency to municipalize such industries.

It is now too soon after the inauguration of the movement for exclusive state control to permit any sweeping conclusion as to its results. These will depend upon the extent to which the urban communities within a state can make their influence felt in the state government and especially upon the attitude of the judiciary, state and federal, toward franchises and franchise legislation. Unless the courts

completely abandon the idea that a franchise is a contract, the new policy of exclusive state control is fraught with danger to the public. The power to authorize a local public utility corporation to increase the rate charged for service above the amount fixed in its franchise is one over which such corporations would have most influence when it is taken entirely out of the hands of the local government. And unless this power to raise rates is also accompanied by the power to reduce them below the maximum permitted by the franchise, cities have much to fear and little to gain from state control.

But even if exclusive state control of public utilities secured better and cheaper service, it would still be a questionable policy. An economic advantage such as this might be secured at too great a political sacrifice. The probable effect of state control upon the attitude of the people towards, and their interest in, municipal government, is of much more consequence than any possible material advantage. There is no problem in which the people of American cities are more actively and vitally interested than that of public utilities. To take from them all power to deal with this important local matter would necessarily weaken their interest in municipal politics. It is too much to expect an alert and active general interest in municipal government, unless it can be used to accomplish important local results. The failure on the part of the state to grant cities adequate powers of local self-government has been in no small degree responsible for the apathy and indifference of the public towards corruption and inefficiency.

The progress in recent years towards municipal democracy has made public ownership a more advantageous method of dealing with the public utility problem. With the extension of municipal activities in this direction, local government would acquire an importance which it has not had in the past. The effort now being made by private corporate interests to tie the hands of cities in relation to publicly owned utilities will, if it succeeds, be the most effective blow yet directed at the principle of municipal home rule.

STATE VERSUS LOCAL REGULATION

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Regulation of public utilities by the state, the popular program in the regulation field during the last few years, is receiving some serious setbacks of late.

The alleged Tammanyizing of the New York state commission under Governors Dix and Sulzer, and the later demoralization of the up-state commission through the influence of state politics, have called public attention to these bodies with such effect that they will be of little use in securing legislation of this character in the newer states. They are no longer assets to the state regulation propaganda. They are of more value, in fact, as examples of the possibilities for evil that the system contains. New Jersey and Maryland, the only other eastern states having state regulation in effect long enough to afford any test at all of its worth, have done little and some of that little so badly that they are not useful for "boosting" purposes, especially in states where there is a fair proportion of men of democratic minds. In California, where they are apparently doing some things well in this field, the public utility law is of such a character as to afford no fair comparison, as it gives communities the right of home rule, and has no city of considerable size as yet under its jurisdiction.

But there remains Wisconsin, which with New York was the pioneer in the movement for state regulation of public utilities. The system has been in effect there for almost seven years, ample time for a fair test of its merits. The experience of Wisconsin has been used everywhere to buttress the claims of the advocates of the state regulation principle. The most extravagant statements have gone forth of the success of the Wisconsin system of regulating its public utilities. Hardly a voice has been raised in opposition. Legislatures in many states have been induced to adopt similar legislation on the strength alone of the Wisconsin claims. The Wisconsin act has been a popular model for the laws of nearly all of the states that have adopted such legislation.

Now comes the Minnesota Home Rule League with an interesting story of an investigation of the results of state regulation in Wisconsin which, if it stands the test of controversy, will make it more difficult hereafter to use that state as an example for other commonwealths in this regard. The old claims will at least no longer pass unchallenged. The league puts the Wisconsin system under a pretty severe fire. The indictment is strong and comprehensive and uncompromising.

The inspiration for the league's investigation came from the controversy in the legislature of 1913 over the question of adopting a state regulation program for Minnesota. This was pushed strenuously by the governor, backed by the state machine, and behind the state machine the public utility companies of the three cities, which, with the big brewing companies and the job-holders, constitute the main gear of the state machine.

A bill modeled closely on the Wisconsin act was introduced and pressed. The progressives in the legislature were not particularly opposed in theory to the state regulation principle. On the contrary, they were rather disposed in its favor on account of its associations. But when the character of the bill and its chief support became apparent they swung hard and put the bill to sleep. The governor then in reprisal vetoed a couple of progressive bills: one whose purpose was to compel physical connection of telephones for the convenience of the farmer folks, the other to give the city of Minneapolis power to make rates for the electric monopoly of that city. And then the war was on. The governor, at the conclusion of the session, promptly gave notice that he would call a special session for later in the year to pass a state regulation act. With the purpose of blocking the governor's program, the men most prominent in the movement to defeat the state regulation bill at the regular session organized under the name before mentioned, and began probing for information on the subject. Facts regarding the practical results of state regulation were the prime necessity, and, as the first step, the league first proceeded to comb Wisconsin for information of the workings of the system in that state, then to make a long-distance study of the results in New York, New Jersey and Maryland.

This investigation covered more than eight months, and the results are contained in the matter before referred to and now just

published. This represents the first thoroughgoing critical study yet made of the situation in Wisconsin. Departing from the usual custom the league did not stop with getting estimates from the railroad commission of the value of its own work, nor with taking the word of the commission's biased friends, but studied closely official reports and court decisions, and then went to the cities of Wisconsin for direct evidence. In its studies of the subject it sought to ascertain the following facts: First, the inspiration for the present popular movement for state regulation; second, the character of the acts in the several states; third, the make-up of the commissions; fourth, the results of state regulation as expressed in rates and service, on the local politics, on the citizenship of the local communities and on the material welfare of the public utilities.

The evidence in its general application to the United States plainly clinches the following big facts:

1. That the latter-day inspiration for state regulation comes from the public utility companies to be regulated, reinforced by an element of the so-called progressives in some states who have been made to believe that state regulation is a progressive institution.

2. That the public utilities have sought to write the laws and have done so in some cases, and modified the laws in others; have used their influence upon the appointing power to name men of "right" minds on the commission; have sought to influence the attitude and to control the action of the commissions after appointment.

3. That with few exceptions the men occupying positions on state commissions had no technical or special qualifications for the work, and in most cases were selected for services past or prospective to the appointing power, and in other cases were men with public utility or allied affiliations, or men known to have a strong corporation or property bias.

4. That state regulation has not given the people the benefit of as favorable rates, nor as good service, as many cities with home rule powers have secured for themselves.

5. That it has not eliminated the public utilities from local politics, but on the contrary has compelled them to become more active then before.

6. That the effect on local citizenship has been disastrous, weakening the community in initiative, self-reliance and capacity for self-government.

7. That in the valuation field, both for rate making and purchase, the state commissions have shown a strong leaning toward the interests of the utility companies.

8. That the public utilities have found that state regulation serves their purposes admirably; that it protects them from unreasonable rates, assures them liberal dividends, imposes no unreasonable service obligations, by means of the indeterminate permit assures the permanency of their investments with opportunity to get out in the event of purchase by the city at a price considerably above the legitimate investment in the property, increases the market value of their securities, and, finally, in effect, through state supervision of bond and stock issues, guarantees the integrity of their securities.

The above indictment is general against the result of state regulations where it has been fairly tried out, with reservations in the case of California. As to the results in Wisconsin, the league testifies to the integrity and high personal character of the members of the railroad commission. Its criticism is directed against the essential principles of the public utility act and its administration by the commission. The attitude of the commission in the matter of charges for service is fairly shown in the study made last year for the league of the commission's reports for a period down to March, 1912, the date to which the printed reports come down. It contains a report of 134 cases. Of this number 38 were telephone cases. No steam railroad cases were included. The summary follows:

> Wisconsin cities and the public generally asked the Wisconsin commission in charge of public utilities for reductions in 39 cases. Substantial reductions were granted in but 3 cases, and small or nominal reductions in 8 additional cases.
>
> Public service corporations of Wisconsin asked the commission for increase of rates in 52 cases. Substantial increases were granted in 43 cases and small increases in 7 additional cases. In other words, some increase was granted in nearly every case where it was asked. Some were granted when not asked for.
>
> Cities or the public asked for better service in 32 cases. Better service was ordered in 20 cases, in some of these cases conditioned upon increased rates.
>
> Public service companies asked for relief of various kinds in 10 cases. It was granted in 9 cases.
>
> Citizens or cities asked relief in 10 cases; granted in 5 cases.
>
> To express the result in another way, the public was successful before the Wisconsin commission to a substantial extent in but 7 per cent of the cases

brought by it for rate reduction, and was given even the slightest relief in but 29 per cent of the cases.

Public service corporations were successful to some extent in more than 96 per cent of the cases they brought before the commission for rate increases, and were fully or substantially successful in more than 82 per cent of the cases where rate increases were asked for.

In a term of five years, during which the trend of public service charges was so strongly downward, the trend under the Wisconsin commission was uniformly upward.

The severest test of the state regulation system in Wisconsin is found in its handling of the problems of the cities. It is here that its failures are the more manifest, and the consequences the more serious. The cities of Wisconsin furnish many interesting instances—Milwaukee, Superior, Madison, La Crosse, Sheboygan, Racine, Oshkosh and others. The gas, street car and electric utilities in the Wisconsin cities have failed to meet reasonable public demands and the railroad commission has been unequal to the task of compelling them to. The commission has often moved with extreme deliberation. Its orders, when they really meant anything, have been ignored by the companies or appealed to the courts and litigated to the bitter end. Its methods have distinctly invited litigation, with the consequent delay and large expense to both parties.

The claims of the commission of the large savings to consumers of gas and electricity and patrons of street railway companies in the cities of Wisconsin are in part only savings on paper. Many of the estimated reductions made during the past year are held up awaiting the action of the court of last resort, with the people paying the old rates in the interim. Yet, it has been persistently told how the companies respect the decisions of the railroad commission, so unassailable are they as to law and facts.

The commission's policy of discriminating charges for gas and water has put it under severe criticism. In this respect it has overemphasized scientific methods at the expense of the larger welfare of the community and has at the same time determined matters of broad public policy which by every right the community should determine for itself. Milwaukee furnishes an instructive illustration. There was in effect here a step rate system of charging for gas, with a maximum charge of 75 cents, dropping down to 50 cents in five steps. Petitioned by the city to reduce the price to the small consumer, the commission, following an investigation covering

two years, made no change in the schedule except to reduce the price to the class of largest consumers to 45 cents. This class constitutes but 2.68 per cent of the total number of consumers. They had asked for no reduction in charges. The claims of the others received no recognition whatever from the commission.

Some months later, in the Waukesha case, the commission took similar action—reduced the price of gas 10 cents per thousand feet to four classes of consumers, constituting 6 per cent of the total number of users of gas, and passed up the claims of the other 94 per cent, those who were paying the top price.

It is one of the claims of the advocates of state regulation that under this system special rates and privileges are abolished. This is just the reverse of the facts in Wisconsin. It is the Wisconsin Railroad Commission that has developed to the highest point the classification of consumers of utility products. This is not the kind of regulation which the Wisconsin public expected when state regulation of public utilities was established, and many sharply question the wisdom of it, despite the commission's claim of scientific accuracy for its system. They contend that if they are to have such a system of discriminatory charges it should be determined by the public itself and not by a state commission sitting at Madison.

Later in the same year the railroad commission issued a tentative order in the matter of water rates in Milwaukee in which it applied the same discriminatory principle. Such a furious protest went up from the people that the commission withdrew its order—one of the rare instances when it has shown a disposition to yield in any way to public sentiment.

Street railway service in Milwaukee has been atrociously bad for many years. The commission has made several half-hearted attempts to better conditions. Its latest order, issued in 1913, six years after the city filed its original complaint, on its face gave promise of some relief. It made a fairly adequate standard of service for rush hours. The commission then went back to Madison and left to the citizens the enforcement of the terms of the order through the usual channels of official complaint to the commission. There is no improvement whatever in the situation, and no other result could be expected from such methods. In Minneapolis, the city council had previously adopted a quite similar order. Unlike the Wisconsin commission, it followed it up vigorously, made

arrests, secured convictions and brought the company to terms. The council keeps a man on the job all the time checking up conditions, and when a remedy is needed promptly provides it.

In the battle for lower street railway rates in Milwaukee there was the same vexatious delay in getting action from the commission, and then the inevitable litigation in the courts. After waiting seven years for results the street railway patrons received the benefit of a reduction from 12 tickets for 50 cents to 13 tickets for 50 cents. But this reduction had a string tied to it. The reduction is expressed in the form of a little black coupon which, if carefully treasured until the time when the United States supreme court adjudicates the case will be good for a trip over the line. Compare such a meager and uncertain result with what Cleveland, Columbus, Toledo and Detroit, with 3-cent fares, have secured for themselves through the direct action of their city councils!

The experience of Madison, the home of the railroad commission, clinches one big vital fact of state regulation in Wisconsin—that the public utility act, as enforced by the commission, protects the existing utility monopoly in a community no matter how inefficient its service or how excessive its charges. The people of Madison get their electric service from an antiquated steam plant, with unlimited cheap hydro-electric power available at the city limits, and pay rates based on cost of production under steam plant conditions.

Now why does the commission stand in the way of the citizens of Madison in their attempt to secure lower light and power rates? Simply because the commission has a theory to sustain: the existing monopoly must be protected. This instance emphasizes the fact that the public utility law, like all legislation conferring monopoly privileges on private corporations, not only does not secure economy, but encourages extravagance. How different this arbitrary attitude of extreme devotion to a theory with the practice of the California commission, and how different the results!

To secure its rights and give the city opportunity for industrial expansion the citizens of Madison have now organized, employed experts and stripped for battle. The commission, long hostile to the efforts of the Madison community to secure its rights, now shows a disposition to yield to some extent.

Baraboo, La Crosse and other cities furnish other instances of this attitude of slavish devotion to a monopoly theory at the expense of the public interests and in violation of the conservation so strongly upheld by other departments of the state. Wisconsin cities under the Wisconsin monopoly theory have but two alternatives—to buy from the local monopoly, or purchase its property, no matter how unsuited to its use or how obsolete its equipment, at a price named by the railroad commission, and this price based on the jug-handled theory of the reproduction value of the property.

The city of Superior has furnished exceptional opportunities for the study of the practical results of state regulation, together with comparative results, for just across the bay, in Minnesota, lies Duluth, operating under a home rule charter and with large powers to work out its own public utility problems.

Public utility conditions in Superior have been unsatisfactory all along the line—chronic high rates and poor service. During the six years between 1905 and 1911, the charge for gas was $1.40 per thousand feet. Over in Duluth, where home rule prevails, the price for the same years, for the same identical gas, coming from the same source, was 75 cents per thousand feet. Subsequent reductions in Superior were made voluntarily by the company. The railroad commission has been of no other assistance to the community in this regard than to confirm the company's voluntary reductions.

In 1912 the commission ordered a reduction in street railway rates from 5 cents straight to six fares for 25 cents. The company promptly appealed to the courts, where the case now rests. It is significant that Superior has today less street railway trackage in operation than it had twenty years ago, while the population has doubled in that time. The company refuses to make any extensions; the city is helpless to do anything for itself, and the railroad commission "sits tight" down at Madison. The sentiment of the Superior community toward this utility is shown by the fact that a year ago it voted seven to one to ask the legislature for authority to take over the property for municipal operation. This was granted, and the people will this spring vote on the direct issue of municipal ownership.

In Duluth the gas and water utilities are eliminated from local politics. The public service companies in Superior remain active

factors in city politics the same as before the state commission came into existence. In fact, they come pretty near to dominating the politics of that city.

In the foregoing I have only touched upon a few of the problems of the cities of Wisconsin, enough, however, to indicate some of the perplexities of the situation in that state and to show how the public utility act, as administered by the railroad commission, has failed to secure satisfactory results in rates and service. These constitute the important test of the system in the popular mind. Some of the principles enunciated by the commission in its application of the utility law and its methods in reaching conclusions as to the proper basis for rates and service seem to me to be the more vital consideration, and the one which shows more clearly the fundamental defects of the law and its operation.

Of prime importance is the tendency of the commission to take upon itself constantly more power and responsibilities. Already overburdened with work and complaining constantly of being undermanned, the commission encouraged the last legislature to add to its duties the administration of the water power act and the "blue sky" law. The commission's work has developed to such a point that it is compelled to delegate its duties as a commission to individual members. This is a significant and dangerous departure from the original purpose of the act and the past practice of the commission. Even cases of large importance are now decided by a single member. Instead of encouraging communities to assume some responsibilities for the settlement of their local utility problems, the commission persistently forces upon them the opinion that they are not competent to handle such matters, and takes from them all direction and control, even down to the smallest detail.

A dangerous development in this connection is the growing disposition of the commission to write legislation. In practical effect it controls the action of the legislature in the public utility field. The legislative body is hardly anything more than a rubber stamp for the commission. It shapes recommendations of the executives as well as writes legislation. It defeats measures initiated by municipalities designed to give them power to deal with bad local situations.

The operation of the indeterminate permit in Wisconsin is one of the things that has inspired much criticism. The results under

the interpretation of the railroad commission have been as follows: (1) It has prolonged the life of privately owned utilities through its obstructive effect on municipal ownership. (2) It has entrenched the companies in their monopoly grip upon the cities, with the result of continued excessive charges and inefficient service. (3) It has made it impossible for municipalities to secure cheaper or better street light service through the construction of municipal plants. (4) It has nullified existing contract obligations between cities and utility companies, often to the great advantage of the companies.

Valuation of public utility properties for rate making or purchase purposes has been another of the big functions of the Wisconsin commission. The attitude of the commission in this regard has been a large factor in determining rate and service results. Here again the commission has made itself subject to severe criticism. It has carried to the extreme limit the theory of reproduction value. It has put such emphasis upon this questionable theory as often to do violence to every sense of justice and fair dealing toward the public. The result has been that cities have been compelled to pay fancy prices for out-of-date plants with obsolete equipment, including liberal "overhead charges," property that came to the company through gift of consumers or the city, "going value" to a large amount, in purchase propositions large sums for paving over mains paid for by the public and which were never disturbed—in the Oshkosh case $58,000, in the Appleton case $17,000—and, as a final refinement of valuation to further fatten utility property values, an item described by the commission in the Milwaukee gas case as allowance for "unusual engineering skill and foresight." This item is in effect the capitalization of the business sagacity of a public utility company expressed in wise and economical construction of its property. The commission refuses to go on record as to the exact amount represented by this item, but it is certainly a substantial sum.

As evidence of the practice of capitalizing public donations note the following from the decision of the commission in the Ashland water works case:

> For purposes of proceedings like those herein, the utilities law does not inquire into the manner in which property of utility corporations devoted to the public use was originally obtained, whether by purchase, inheritance, gift or theft. The law simply compels the commission to value this property,

and to consider this valuation in taking official action with respect to rates and service. It therefore follows that the value of the donated land must be included in the value of the property devoted to the public use.

In the matter of including service connections paid for by the consumers, the commission declared in the same case: "from a legal point of view, the same position will doubtless have to be taken." In other words, the land donated by the city and the service connections paid for by consumers are used to pad valuation, while a rate for service is made that will secure a fair return to the company on such valuation. If there was any record of the commission seeking through legislative amendment to remedy this atrocious situation the case would look better.

In its treatment of going value, the commission includes this item as part of the capital investment of the company upon which the public must pay returns in perpetuity. In effect, it capitalizes the company's early losses, puts upon the public all the hazards of the business, and assures the utility of liberal returns on its investment from the very beginning of operation. The commission refuses to express going value in definite terms. The public has no means of knowing to what extent this factor has been included in the value of a utility. The commission contents itself with stating that it "has considered" going value in reaching its valuation. The Wisconsin supreme court upholds the correctness of this attitude. Note the logic of this situation: The railroad commission says it cannot express going value in definite terms. The supreme court agrees with it. Now, if the commission does not know how much this item should be, and the court does not, how can it be included in the valuation?

Again, the uncertainty and vagueness that characterize so many of the commission's decisions are well illustrated in this case by the inability of the Wisconsin circuit and supreme courts to agree as to whether the commission had fixed the going value or not. The former said it had, the latter that it had not. Apparently the Wisconsin courts are burdened with the task of deciphering what the commission means in addition to reviewing the legality of its orders. And to make it certain that this matter of going value never shall be cleared up, the supreme court, in the Appleton case, effectively stops future inquiry by declaring: "that the mental processes by which the final results (the valuation) are reached by a

commissioner, and the relative importance given by the mind to each element, as well as the legal or economical principles deemed by him to have a bearing on the result, are not subjects upon which a commissioner can properly be examined."

One of the popular claims for the public utility act is that it has taken the utilities out of city politics. This does not appear to be true to the facts. In all of the large cities of the state acute utility problems are demanding solution, and the leading questions are utility issues. There is much political unrest in the cities of Wisconsin; and public utility issues are the main contributing cause. To secure relief from intolerable conditions, city officials have had to take the initiative, and, when the commission fails them, appeal to the courts. Finally, unable to secure relief from any other source, they start agitating for public ownership. This compels the utility companies to go into politics harder than ever before in order to control the situations and protect their investments. In practically every municipality where the utility problems have been acute, the big local political battles have been fought over these questions.

Three notable principles marking progress in government and development of civic ideals are now permanently identified with the administration of government in the United States. Growth in genuine progressiveness may be measured by the degree of acceptance of these principles as fixed ideals of government. They are: First, civil service methods in the conduct of public business; second, conservation of the public resources; third, municipal ownership of public utilities. Yet, strange as it may seem, in Wisconsin, recognized as the leader of all the states in progressive policies, these now generally accepted and applied principles of progressive government are rejected by an institution loudly heralded the country over as the most progressive feature of the administration of this progressive commonwealth. The railroad commission has admittedly led all the other commissions of the state in evasions of the terms of the civil service act. In its interpretation of the indeterminate permit it has discouraged the development of available hydro-electric power and its use in the cities to displace steam plants. Its attitude toward municipal ownership, other than water works, has been distinctly obstructive at all times, on the theory that municipalities are not competent to perform such duties of city administration. Outside of water plants, only four private utility

properties have been municipalized during the seven years that the act has been in effect, and only one of these had a valuation to exceed $50,000.

The most significant fact to chronicle in concluding this article is the recent change in the attitude of the Wisconsin public toward the railroad commission and the public utility act. There is a rapidly rising tide of protest against the results and tendencies of the system. The public, long so acquiescent in the work of the commission, and so willing to accept its own estimate of its value to the state, are now studying the result for themselves and questioning sharply its program and policies. A condition of inquiry and unrest pervades the whole state.

The people in the past few years have seen their taxes go up by leaps and bounds, utility rates increasing, small improvement or none at all in service and the power to obtain relief for themselves denied them. A day of reckoning now seems to be at hand. A state-wide movement, non-partisan and inclusive in character, starting from Madison, the home of the commission, is rapidly gaining headway and seems likely to sweep the state and force a new political alignment in Wisconsin.

It is an unfortunate complication that others of the state commissions are involved in this controversy; also that many of the old stand-pat elements in Wisconsin are enlisted in the fight and may find in this contention the opportunity so to discredit the Wisconsin progressive movement as to wedge themselves back into power. It is equally unfortunate that the railroad commission could not have earlier discovered the rising dissatisfaction with its methods and secured legislation to relieve it.

Discontent over the results as seen in rates and service in the public utility field and rapidly growing tax burdens constitute only a part of the cause for the present situation. The unrest is more deeply seated and more fundamental. The people are becoming conscious of the rapidly growing power of the system over the politics and the policies of the state. The conviction is gaining with them that the commissions are ruling the people instead of serving them; taking away instead of protecting their liberties; destroying instead of conserving self-government—all the logical results of an irresponsible bureaucratic system.

The railroad commission, long so arbitrary in its attitude and so disregardful of public opinion, is bending to the storm in an apparent effort to mollify public sentiment. This is seen most significantly in the recent Waukesha gas case, where the commission changes its attitude radically in the matter of protection of utility monopolies in the control of the local fields. The commission has steadfastly refused to give communities relief from the oppressive rates of electric plants operated at a low efficiency or under conditions of obsolete equipment, and resisted all efforts of the communities to obtain it for themselves. The commission has so interpreted its duty under the Wisconsin public utility act. In this case it plainly reverses itself, declaring that it is not the intent of the law to make an indeterminate permit entirely exclusive; and that the commission may allow competition where the conditions warrant it. This will be welcome news to Madison and other cities long struggling with the problem of securing proper rates from a monopoly entrenched utility.

Again, the commission has authorized the issuance of nearly one billion dollars of securities of public utilities. It has consistently extolled the supervision of securities as one of the crowning glories of the Wisconsin act. Now comes Chairman John H. Roemer and sounds a warning against this feature of the law. He declares that it contains elements of grave menace to the public interests, involving what in fact may amount to state guaranty of the integrity of the securities authorized and possibly of all previous issues.

With the commission reversing itself on vital phases of the regulation act in such rapid sequence, what is the logical end? Can it be anything less than a return to the wholesome principles of home rule, leaving to the people of the municipalities to determine for themselves questions that concern only themselves; working out their local problems in their own way free from outside interference; and in the process acquiring self reliance and capacity for self-government. This is the foundation principle of the American system of democratic government, and the only system which will assure permanent conditions of honesty and efficiency in administration and genuine government by the people.

PUBLIC UTILITY REGULATION BY LOS ANGELES

By Charles K. Mohler,

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California cities have enjoyed a large measure of home rule granted by the state constitution. In this respect they are more fortunate than most American cities. A still greater latitude for the larger cities to work out their local problems is desirable. The city of Los Angeles has generally made good use of the privileges it enjoys in this respect. It has, however, in a measure fallen short of the best requirements in creating a strong and well equipped department for regulating public utilities.

Up to the time the board of public utilities was created by charter amendment the rate-making and regulating power was vested exclusively in the city council.

Board Created by Referendum

The Municipal League of Los Angeles started the movement in 1907 to secure a board of public utilities. After two years of agitation the city attorney was instructed by the city council, then about to retire, to prepare an ordinance to create a board. The city attorney's draft was rejected by the council and another substituted instead. This in turn did not meet with the approval of the Municipal League. The league prepared a substitute ordinance which was passed as an initiative measure by popular vote at the ensuing election by 16,626 for and 9,696 against.

Thus was first created a department of public utilities. On December 20, 1909, the mayor appointed the three commissioners to make up the board. The board was organized on December 27. As constituted under the provisions of this ordinance the rate-making powers of the board were limited to that given in the following language: "To recommend to the City Council . . . . a schedule of charges for the services specified . . . . "

Board Created by Charter Amendment

On March 25, 1911, fourteen city charter amendments were approved, article 15 of which provided for a department of public utilities. Previous to this charter amendment, as indicated above, the board could only recommend to the council the rates to be charged.

In preparing the draft of the charter amendment creating a board, the framers proposed to give it full power to fix rates subject to review only by the courts. The council refused absolutely to submit the amendment carrying that power for the board. They insisted that rate making was a prerogative that should not be given up by the council as it required their guardianship to stand between the people and the power of the corporations.

Three commissioners constitute the board, with a term of office of four years. They are appointed by the mayor subject to confirmation by the council. Up to March 1, 1912, all commissioners served without pay. Since that time the president has been allowed a salary of $3,600 a year and is expected to devote his entire time to the work of the board. The commissioners are subject to the recall as are all city officials.

Powers and Duties of the Board

The city charter provides that the powers and duties of the board of public utilities shall be as follows:

To make at such times as may be prescribed by ordinance a thorough investigation into the affairs of all persons, firms or corporations operating or maintaining water, electric lighting, power, gas or telephone systems, or street railways, or interurban railroads, or other public service utilities, in the city of Los Angeles. Such data shall include a valuation, a detailed statement of gross and net earnings, expenses, capitalization and indebtedness thereof, and such other matters as the board may deem proper, and also such facts and figures as may be obtainable regarding the operation and maintenance of similar systems and utilities in other municipalities.

To fix, *subject to approval, change or modification by the council*, the rates to be charged and collected for the service mentioned, for a period not less than one year, nor for a longer period than three years.

Any person interested in or affected by the rates specified in any such resolution *may file objections* thereto. *The council* may, upon any such petition, by a vote of two-thirds of its members, order a rehearing of the rates objected to, and *shall have the power to finally fix* such *rates*[1] by approving, changing or modifying the same. The affirmative vote of two-thirds of the entire council shall be necessary.

To investigate complaints against the service or charges of any person, firm or corporation operating any public service utility in the city.

To superintend the inspection of all public utilities operated, maintained or furnished by persons, firms or corporations, as to their compliance with their franchises, and with the law and ordinances of the city regulating the manner of conducting their business, and their treatment of the public, and to recommend such legislation, or executive action based on such investigation, as in their judgment may be required.

To prepare and keep a detailed and indexed record of all public service franchises granted by the city that are now in existence, or that may hereafter be granted, showing the date, location, term thereof, and all other essential facts, and a similar record, so far as practicable, of all other public franchises exercised in the city of Los Angeles.

To pass on applications for franchises. Every application to the city council for a franchise for any public service or utility shall be referred to the board of public utilities for its recommendation. No franchise shall be advertised for sale or granted contrary to the recommendation of said board except upon a three-fourths vote of the entire council.

To make and enforce subject to ordinances adopted by the council, rules and regulations respecting the operation of all public utilities.

To require attendance of witnesses, production of books, records, papers at investigations, hearings, etc. Each member of the board is empowered to administer oaths.

[1] Italics, the writer's.

Inadequacy of Powers

The powers of the board are too limited and are not as well defined in the charter as they should be. While the council has the power to enlarge and better define these powers and duties, this has not as yet been done in a satisfactory manner. The charter provisions as above quoted in abstract show a conspicuous example of apparent distrust and lack of confidence in the ability and integrity of appointed officials. The work laid out for the board is not only limited, but is hedged about with checks and balances. As might be expected its work cannot be undertaken with the degree of confidence and assurance essential for constructive efficiency.

On account of inadequate power and lack of support from the council, the personnel of the board's commissioners has changed on an average of about once a year since its organization. These men have not been partisan spoilsmen but, with rare exceptions, have been men of unquestioned ability and integrity.

Public Utility Concerns in Los Angeles

The number of utility concerns giving service in Los Angeles are: three steam or "interstate" railroads; two electric (city and interurban) railroads; three incline railways; two express (interstate) companies; three electric light and power systems; four gas systems; three telephone systems; two telegraph systems; eighteen water service systems. In addition to the above the board has a measure of supervision over local express and delivery service, as well as taxicabs and automobiles for hire. Water, gas and electric meters are tested by the board. The gas inspection and testing are done under the direction of the board.

Valuations Made of Utilities

Of the above utilities the board has made more or less complete valuations for rate-making purposes of two telephone companies, sixteen water companies, four gas companies, and three electric light and power companies.

The valuation of the local street railway comprised of something over three hundred and sixty miles of single track, narrow gauge line, was undertaken a year ago with the double object in view of rate

fixing and service requirements and a possible basis on which to base preliminary negotiations looking to the city's undertaking the purchase for municipal ownership and operation.

No valuation of the interurban system and its local lines within the city limits has been undertaken as this line is being appraised for the state railroad commission and it is expected the data required by the board will be available when that is completed.

Rates Fixed

Rates have been fixed for all gas, electric light and power, telephone and all of the water service concerns. In all cases but one the rates fixed by the board have been accepted by the utility service concerns. One water case has gone to court on the board's rates, and has not yet been decided. The company is now getting a rate higher than that fixed at the time by the board, and less than their old rates.

Where protests have been filed and the council has lowered the rates below those fixed by the board, all have been taken into court, except one of little importance, with the following results: In the telephone case, the city lost.

One water rate case is now pending in court. The court granted a temporary injunction and the company is now being allowed to charge the rates originally fixed by the board.

The extra expense in litigation, revaluation, etc., to the city in these cases lost has been about $16,000 while the gain to the protestants has been apparently nothing.

Practical Results: Rates and Service

The rates fixed by the board have in most cases been lower than those in effect prior to its organization. On the local street car system the fare is five cents with practically universal transfers over the system. On some of the local lines of the interurban system there are fares charged inside the city limits which are not considered entirely equitable. No reduction of street car fares has been undertaken by the board but some of the fares now in effect and the limited transfer situation will have to receive the attention of the board in the near future. Gas rates have been lowered from 80 cents to 70 cents for 1,000 cubic feet with an annual saving of a little

over $400,000 to consumers. There is a controversy on at the time of writing this article relating to fixing the rate for natural gas recently brought to the city, which may be a repetition of the telephone case above mentioned. The rate fixed by the board is 52 cents. The popular demand is for 30 cents per 1,000 cubic feet. Electric light and power rates have been lowered from an average of 9 cents to 6 cents for light and 5 cents for power per k.w.h. resulting in an annual saving to the consumers of from $400,000 to $500,000 per annum. Telephone rates have been equalized and for some classes of service slightly increased. As there are two systems the rates had already been cut by competition to little more than the cost of conducting the business. Water rates have been reduced in some cases. Water rates charged by private companies are high and in quite a number of cases poor service is rendered. The metered rate for private companies is in general from $1.25 to $1.88 for the first 1,000 cubic feet and 8 to 14 cents for each additional 100 cubic feet. The rate charged by the city is $0.75 for the first 1,000 cubic feet and 7 cents for each 100 cubic feet additional.

The service rendered by the local street car system compares favorably with that of any other in the country.

The local service rendered by the system engaged largely in interurban and suburban business is not fully satisfactory on all lines on account of fares and transfer privileges. This system comprises about 1,000 miles of single track in Los Angeles and vicinity. The interurban service is generally good, but in many cases too much standing room is used. There are some matters in connection with this service that will probably have to occupy the attention of both the state railroad commission and the board jointly.

The gas service is generally good. Natural gas has been piped to the city, a distance of 111 miles. For nearly a year past a mixture of natural and artificial gas has been furnished. The mixture is from 40 to 50 per cent natural gas, giving about 150 b.t.u. heat units over the artificial, which must not be below 600 per cubic foot. Under the supervision of the board the number of heat units for artificial gas has been raised from 560 to 622 b.t.u. for the daily average.

The electric light and power are generally reliable and well maintained. The city buys current for street lighting. Telephone service is generally reliable and fairly well maintained. The service from the private water companies is in many cases thoroughly unsat-

isfactory. In some the supply is insufficient, unreliable and hardly fit for use. No permanent relief can be expected in many cases until the city's service is established. Many of these enterprises had their origin in projects for selling real estate. They are practically all operating without a city franchise and the only thing that holds them to their obligation to furnish water is the state law which does not allow the discontinuance of water service, when it has once been established, unless the user voluntarily gives a release.

Complaints

The board receives a large number of complaints on service, bills rendered, treatment accorded the public, etc. As many of these as possible are handled in an informal way by the employees of the department. Generally the rule is enforced that all complaints to receive attention must be presented in writing. The large majority of all complaints are adjusted without formal action and orders from the board. In most cases the utility concerns have shown a willingness to comply with requests from the board to make reasonable changes and corrections in service, bills of charges, etc. There are still questions not well settled that are open to possible controversy affecting the powers of the board and the obligations of the utility concerns.

One of the most important functions of the board is to bring about wherever possible (and it is their earnest endeavor so to do), a better understanding and a more friendly feeling between the patrons and the utilities furnishing service. Complaints are of two kinds, those having a real and those having an imaginary basis. Both should receive impartial consideration. Imaginary grievances are real to the aggrieved party until they are shown to be groundless. Wherever complaints are well founded, they are investigated and the necessary remedies or corrections secured.

City and State Control

The relationship between the city and the state on some matters of jurisdiction where interstate and interurban railroads are concerned has not been finally passed on in all cases. The relations of the board with the state railroad commission are and have been friendly and a spirit of coöperation exists.

The "home rule" situation in California is perhaps unique. The state constitution as amended in 1911 provides that counties, cities and incorporated towns may vote to retain their powers of control and regulation over public utilities. After voting to retain control they can vote themselves under the state railroad commission control. After voting themselves under that control they can vote themselves out again. As to how many times this can be repeated the constitution fails to state.

A constitutional amendment to be voted on next fall, if adopted, will put rate-making in the hands of the state railroad commission. A county, city and county, or incorporated city or town may vote to retain local control and regulation of their utilities. If they fail to retain local control and it once passes to the state railroad commission, it cannot be again recovered.

American cities should have greater home rule rights than they now enjoy. The writer believes that the surrender of local control by a large and live municipality would be a misfortune.

Franchises, Permits and Terminals

The city has generally adopted the policy of short-term grants for franchises limited to twenty-one years with the right of the city to purchase or find a purchaser at the end of five years. Grants for elevated and subway lines may be for forty years with the right to renew for ten years more. The city will have the right to purchase or find a purchaser for the property at the end of the first grant period.

The right to build spur tracks for serving industries, etc., is usually given as a revocable permit, and for a term not to exceed twenty-one years. While the study and design of freight terminals should properly fall within the province of the board, funds have never been available for that purpose. A special commission for the purpose of studying the question has recently been appointed by the council. It is the purpose to bring about, if possible, the unification of all freight terminals with the city, a large if not the dominating and controlling factor.

The Local Transportation Problem and City Planning

It is believed without any question that the greatest need of Los Angeles at the present time is for a well worked out comprehensive city plan. The same can be said of most, if not all, American cities. The problem is an immensely bigger one than working out beauty schemes.

Transportation is an absolute necessity for the existence of the modern city. While that is a fact, no more real forethought is given to it, or provision made for properly providing, and taking care of it, than if it were an unheard or undreamed of city need.

The universal tendency is to concentrate the business district on the one hand and more and more expand and extend the residence districts into the outlying sections, on the other. We build *a solid mass of sky scrapers, fifteen, twenty, thirty and forty stories high on streets that are no wider than country roads.* On leaving the business district we pass by possibly thousands of vacant lots on almost any local transportation line. Every one knows the result, rush hour congestion and long-haul traffic which are now almost hopeless to handle properly and are getting worse every day. What can city planning do to remedy these conditions? A comprehensive plan carried out should undertake to accomplish among other things the following: (1) To limit the height of buildings in the business district to not over six or eight stories, depending on the capacity of the streets, on which they face or into which their occupants find their way, to carry traffic. (2) Encourage and direct the establishment of business and industrial centers outside of the main business center so that large portions of the population can walk to and from their work. Los Angeles is to a degree fortunate in having a hill section lying adjacent to the business district where a large number of its residents can walk to and from their work. On the other hand this same hill, lying as a barrier to the west and north of the business district, restricts and hampers the movement of traffic in and out on the streets available. (3) Control and restrict the laying out of sub-divisions which now goes on beyond any reasonable need or demand; that is, stop the conversion of good agricultural land into poor city property. (4) Adopt a system of taxation that will compel the occupancy and use of what would otherwise remain vacant property. Vacant property as we have it outside the

business and running through the residence districts is little other than a nuisance, if not worse. It results in a needless amount of improvements, not fully used, the costs of which have to be borne either directly or indirectly, by the community at large. Vacant lots past which sidewalks, pavements, sewers, water and gas mains, electric light and telephone conduits or wires and poles, street railways, etc., are built but not used, are factors of economic waste. In other words the service is spread out thin and the used property has to stand the burden of high costs. It seems only a reasonable proposition that land should not be subdivided until it is needed for use and that after it is laid out it should be used.

It is needless to say that these are only a few of the things that should receive attention for correction. While rush-hour congestion is one of the most aggravating, and we might say hopeless, problems we have to contend with, other improvements and utility service are handicapped and suffer from our lack of forethought and planning.

These are factors that are not as fully and generally recognized as they should be. While we are regulating the utility concerns and undertaking to exact good service at reasonable rates we have left real estate exploitation free to create conditions which impose needless burdens on the community.

New Standards of Civic Patriotism

The most blighting influence in retarding progress towards ideals is the element of uncontrolled selfishness. We freed ourselves of the tyranny of the inherited "divine right to rule," only to find ourselves all but enslaved by the tyranny of boss rule backed by so-called special privilege and its more vicious allies. Corruption of government and exploitation of the rights and interests of the citizens through those means have been the general experience of American cities.

While the results have been all but disastrous to representative self-government, this feature has not been recognized and condemned by the popular mind, so much as the burden of discrimination, overcharges, and bad service, which they have suffered. Corruption of government by selfish interests has only been a means to an end

We have been all but too slow in recognizing this influence on the functions of self-government.

If proper regulation will not remove these influences then we will have to undertake the municipal ownership of those activities that are necessary to the municipality and the absolute eradication of those that are not necessary.

With the wonderful initiative and enterprise of the American people the wonder is that we have thus far done so poorly in what should be our greatest work, well planned city building. If we do not build right and on broad lines, regulation of utilities, however done, can go only a small way toward making up deficiencies resulting from our neglect.

The success of the board of public utilities in carrying on an aggressive and constructive program has not been as great as we might have hoped that it should be. With the limitations and handicaps under which it has had to labor the results attained are more than commendable.

GOVERNMENTAL REGULATION OF ACCOUNTING PROCEDURE

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Governmental regulation of the accounting procedure of public utility enterprises is a means to an end. Like all other governmental regulation of private business accounting, it is employed to assist in enforcing governmental regulation of private business and that in turn is a part of the governmental regulation of human conduct in the interest of the common well-being. The justification of governmental regulation of the accounting procedure of any private business must, therefore, be found in the assistance which it renders in the enforcement of the governmental regulation of private business and private conduct; and that regulation must be approved or condemned by its influence or results in promoting or injuring the interests, welfare and happiness of the great majority. The other papers contained in this volume are, therefore, more fundamental than this since they deal primarily with the moral, legal and economic justification for and expediency of governmental regulation of public utilities when considered with reference to the greatest good of the greatest number. This paper is confined to a discussion of the relation of accounts and accounting to the most successful administration of business and to the enforcement of the governmental regulation of public utility and other enterprises in the interest of the community.

The governmental regulation of a public utility or other enterprise is a social experiment and, like the experiments of chemists and physicists, naturally calls for the establishment and maintenance of orderly and systematic records with reference to such experiments. The governmental regulation of the accounting procedure of a governmentally regulated enterprise is the establishment of standard records for measuring and recording the results of the social experiment involved in the regulation of the business affected. A discussion of the subject matter of this paper may, therefore, with propriety, be introduced by a brief consideration of what may be called,

from the point of view here noted, the records of the social experiment of governmental regulation of public utility and other private business.

A just and proper regulation of any private business, however simple it may be, can be maintained only when and where it is based upon complete and accurate information relating to the business regulated. In all cases that information must be at the command of the governmental officers who have supervision of the regulation and in a nation such as the United States, governed by a democracy, it must be provided for the people generally. These requisites for the just and proper governmental regulation of a private business are, in character, essentially the same as those for the successful and honest administration of a private business by its directors or managers, or those for the efficient and economical government of a state or municipality by those in authority therein. Such administration or government can be attained only when and where complete and accurate information relating to the business of the enterprise or of the state or municipality is at the command of those in places of responsibility or authority.

An apprehension of the fact last stated early led to the use of accounts and the evolution and application of the art of accounting in public and private business. This use and evolution followed necessarily from the purpose or function of the art of accounting. That function is to provide accurate and complete statements of the condition of business and of the results of its operation, and to furnish all other information which accounts can supply for its systematic and successful administration and regulation. The development of modern civilization and the accompanying increase in wealth, with the consequent increase in the volume and complexity of commercial and governmental business, early stimulated, if they did not force, improvements and new applications of the age-old art of accounting. These improvements and applications, in turn, have justified themselves in that they have afforded the wide-awake business manager and governmental official the added information needed in the complex state of modern society for honest and successful administration. The same factors have brought about the application and use of the newer accounting forms and practices as aids in securing what the race has always striven to attain, a just and proper regulation of all business and especially the regulation

of the business of our public utility enterprises. This has been the genesis of modern governmental regulation of the accounting procedure of many kinds of business, including that of public utility enterprises, or, in other words, the governmental use of the forms and procedure of accounting in connection with the social experiment of regulating public utilities.

The governmental regulation of public utility enterprises and the accompanying regulation of their accounting procedure have much in common with the governmental regulation of the business and accounting procedure of banking and insurance companies and other *quasi* trust corporations. Laws for the regulation of these corporations have long been enacted to protect, so far as laws can, the interests of the stockholders, depositors and policy-holders, from the wrongful, incompetent and careless acts of the directors and other officers and to make the officers, directors and stockholders responsible for the safekeeping of the money of the depositors and for the fulfillment of all obligations that have been assumed with reference to the policy-holders. The governmental regulation of the accounting procedure of the two kinds of business mentioned was designed to assist the honest banker and insurance man in complying with the primary regulations of his business and also to aid him, if possible, in a more successful conduct of it. It was further designed to disclose the existence of all careless, incompetent and unbusinesslike acts on the part of directors and other officers and to assist in detecting the beginnings of wrongful acts on the part of those officers.

Some of the governmental regulation of the accounting procedure of the corporations mentioned is direct but more of it is indirect. The corporations are required to make regular and systematic reports upon prescribed forms, and the ready and economical completion of accurate and trustworthy records necessitates the development and use of uniform accounting records and procedure. The accounting regulation calling for such reports is here referred to as indirect, to differentiate it from the more complete regulation which prescribes in detail the number and form of accounts to be employed and the methods to be observed in keeping each account and in summarizing the results and conditions of business as recorded in the accounts.

The governmental regulations of the business and accounting

procedure of public utility enterprises as well as those of banks and insurance companies rest upon the established fact that the evils and losses resulting from the ignorance, incompetence and carelessness of corporation officers are greater and therefore call for more safeguards than those which result from wilful wrongdoing. The unwise and improper acts of corporation employees originating in the factors first mentioned are, however, as a rule, readily disclosed by the formal reports, now very generally required from banks and insurance companies and are beginning to be required from public utility corporations. Hence it may be said that the indirect regulation of the accounting procedure of public utility and other enterprises is designed primarily as a safeguard against the evils and losses that result from the unwise and improper acts of well-intentioned officers. With wise supervision this accounting regulation accomplishes this end and also assists in detecting some of the conditions that result from wilful wrong-doing.

To enforce the governmental regulation of public utility enterprises which forbids specific acts as well as requires certain others, and to ensure the correctness of the reports here mentioned, the governmental inspection of such reports should be accompanied by formal examinations of the accounting records of the enterprise concerned. This examination should be made by experienced and thoroughly trained examiners and accountants. Such examination is necessary to enforce the governmental regulation of the enterprise itself as well as the regulation of the accounting procedure. Furthermore, this governmental examination of accounts is made comparatively easy if the accounts are kept in a scientific and orderly manner and with sufficient detail to provide all the data for a wise, honest, economical and efficient administration. An accounting procedure which provides these data should, therefore, be among the requirements specified in statutes and other governmental regulation of public utility and other business enterprises whose activities are of a *quasi* trust nature. In so far as the governmental regulation of the accounting procedure of these enterprises fails to provide the data mentioned, that regulation falls short of the ideal and is inferior to that which must sometime be attained by the accounts of the honest administrator who has learned to make the largest use of accounting in the conduct of his business and has thus made accounts a handmaid of the spirit of economy and efficiency in business operation.

The wise and complete regulation of any line of business is a social achievement that requires something more than the enactment of a single statute. That enactment, as some one has expressed it, merely establishes the condition for a social experiment. The discussion embodied in the other papers of this volume emphasizes this fact and shows how much more must be done by governments before our various public utilities will be operated in ways that will work the greatest good for the greatest number. In like manner we should recognize the fact that the wise and proper regulation of the accounting procedure of any kind of public utility enterprise is never established by a single statute, nor as the result of the effort of one man or a group of men in a short period of time. Hence in here expressing the opinion that the best accounting procedure now required from public utility enterprises in the United States is far from perfect, the writer does not wish to be understood as going further than to state that the regulation of such procedure, like the regulation of the utilities themselves, is in its earlier and thus necessarily incomplete state. Some illustrations of the slow development of fairly good regulation of the accounting procedure of banking and insurance corporations may aid in avoiding undue criticism of the present accounting procedure prescribed for our American public utility enterprises.

The state of New York early passed laws for the regulation of the business of banking which prescribed a proper accounting procedure and enforced such regulation by systematic examinations. The wrecking of a large savings bank by its officers after this accounting regulation and examination had been in force more than a generation disclosed the imperfection of that regulation and examination with respect to bank receipts and brought about changes that have proved most beneficial and for more than another generation have prevented the failure of a New York savings bank. The earlier accounting procedure, although under state supervision, did not accomplish all that the bank regulating acts had been framed to secure.

Life insurance companies were established in New York before 1850, and the state early assumed the duty of regulating them and to that end had sought indirectly to regulate their accounting procedure by requiring specified reports. But more than a half century after the enactment of the first of these laws, the Hughes inves-

tigation of the New York insurance companies disclosed a lamentable failure on the part of the companies to use the art of accounting in any scientific or complete way to show their success or failure, their efficiency or wastefulness of management. A half century of legislation and of effort on the part of state officials had failed to establish the proper regulation of the accounting procedure on the part of these great *quasi* public institutions.

The problems connected with the wise and proper regulation of the American public utilities, including our interstate, state and municipal transportation, telegraph and telephone companies and our gas and electric light and power companies, are more numerous and complex than those which, with a much earlier beginning, have been solved in the case of our banking and insurance corporations. In like manner, the problems, whose solution must be obtained before an efficient and altogether satisfactory regulation of the accounting procedure of these utilities is attained, are greater, more numerous and more complex than those met with in the case of the business undertakings mentioned.

In the case of these public utilities, the work of securing and enforcing governmental regulation of accounting procedure has been only recently attempted. It is, therefore, hardly to be expected that any accounting procedure enforced by governments with reference to these utilities will have attained the degree of perfection that has been developed with reference to lines of business whose regulation has been so much longer under governmental direction and control. Notwithstanding this fact, it is to be noted that the Interstate Commerce Commission of the United States government and the Public Service Commissions of the state of New York, and those of a few other states, have in recent years made most commendable progress in the preparation and introduction of standard accounting procedure on the part of the utilities subject to this supervision.

A comparison of the work of these governmental commissions with that of the average commercial accountant employed by the utility enterprises demonstrates the superiority of the procedure prescribed by the commissions. The commissions have, therefore, accomplished much under adverse circumstances. The imperfection of their work, and thus the distance that governmental regulation of the accounting procedure of these utilities must, even yet, ad-

vance, before anything like ideal results are attained, may be noted by the following facts. The regulations do not call for, and no public utility corporation seeks at the present time to present, a clean-cut statement of (1) the actual wealth in the possession or control of the enterprise, (2) the amount of the claims of creditors against it, or (3) the amount of the proprietary interests or property rights of its stockholders in the wealth in its possession or under its control.

The Interstate Commerce Commission in its tentative classification of general balance sheet accounts (revision of 1913) which includes a suggested form for a balance sheet has, however, taken a long step forward towards the adoption of a procedure that will secure the above described statements. In the pamphlet referred to, the commission has dropped the incorrect and misleading designation "reserves" from the titles to the accounts to which is credited the current depreciation of property and equipment which is debited to expense. · Further, the commission requires that all these "offsets" which have not been balanced by expenditures for replacements shall be shown in the balance sheet on the side of assets as deductions from the book value of the property and equipment, and not on the opposite side among the liabilities and proprietary interests. This procedure is a long way in advance of the practice of the average commercial accountant and is a step towards the preparation of balance sheets that will clearly provide the three statements above mentioned.

A balance sheet prepared as directed by the Interstate Commerce Commission and as described above gives a much less exaggerated statement of the wealth under the control of the railroad than used to be prepared by all public utility enterprises since it eliminates from the aggregate of so-called assets the value of the property and equipment that has been lost or wasted by depreciation. It includes however, as assets the "offsets" to the proprietary interests of the stockholders represented by the debit balances in the three accounts to which are given the designations "unextinguished discounts on capital stock," "unamortized debt discount and expense" and "property abandoned chargeable to operating expenses."

As a rule, the amounts to be reported by railroad companies after these three titles are small but the corresponding amounts included in the balance sheets of other public utility enterprises are considerable. But small or large in amount, the ledger debits re-

ferred to are never assets and never represent any property or wealth in the possession or control of the enterprise and hence, like the depreciation credits previously referred to, they should be shown as the Interstate Commerce Commission directs the depreciation credits as deductions from the items to which they are offsets.

But few of the commercial accountants of the past or the present in the preparation of balance sheets clearly differentiate the liabilities or claims of creditors of the enterprise from the proprietary interests or property rights of the stockholders. These liabilities and rights are both represented by credit balances in the ledger and should be shown on the same side of the balance sheet but should there be fully differentiated one from the other for reasons which have been so forcibly stated by Mr. Charles E. Sprague in his *Philosophy of Accounts* as follows:

> 1. The rights of the proprietor involve dominion over the assets and power to use them as he pleases, even to alienating them, while the creditor cannot interfere with him or them except in extraordinary circumstances.
>
> 2. The right of the creditor is limited to a definite sum which does not shrink when the assets shrink, while that of the proprietor is of an elastic value.
>
> 3. Losses, expenses, and shrinkage fall upon the proprietor alone, and profits, revenue and increase of value benefit him alone; not his creditors.

No differentiation of the claims of creditors from the rights of stockholders is prescribed for railroad balance sheets, by the Interstate Commerce Commission nor by other American public utility commissions so far as is known to the writer, and hence the balance sheets prepared in accordance with the instructions of these commissions do not make any clear-cut exhibits or statements of the creditors' claims as distinct from the stockholders' rights, and the latter are exaggerated by the amount of the three classes of offsets shown after the titles to which attention has already been called.

The latest Interstate Commerce Commission's instructions for balance sheet statements present a better classification of the credit items of the ledger than previously prescribed and a far better one than is usually shown by the balance sheets arranged by commercial accountants. The physical valuation of railroad property now begun by the Interstate Commerce Commission will naturally lead to clearer and more exact balance sheet statements along the lines that will cause a differentiation and more exact statement of the actual

wealth of utility enterprises—the actual claims of creditors and the actual property rights of the stockholders. Such accounting information will prove of great value in the taxation of public utility enterprises, in establishing rates for the utilities furnished and in securing a better administration of the utility corporations. Under the wise and conservative leadership of the Interstate Commerce Commission and other commissions the country is making substantial and steady progress towards the adoption of an intelligent and just accounting procedure.

ACCOUNTING IN PUBLIC SERVICE REGULATION

By Frank W. Stevens,

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In the practical working of commissions charged with regulating the operations of corporations engaged in selling service to the public, commonly known as public service corporations, scientific accounting is indispensable, and is the substantial foundation upon which the whole structure of regulation must be based. This fundamental truth is not thoroughly appreciated by either the public or the corporations interested, but a careful analysis of the practical working of regulation will demonstrate the undeniable correctness of the assertion.

Public service regulation as it now exists in the large part of the states covers the three great subjects of capitalization, rates and service. The term capitalization embraces the authorization by the commission to issue stocks, bonds, or other long time securities for the purpose of obtaining money for proper capital purposes. In case the application is for leave to issue such securities for the purpose of obtaining money for construction yet to be performed, the amount required is necessarily the subject of estimate. No method can be devised for determining in advance the precise cost of any physical work. The amount authorized by the commission, therefore, is necessarily approximate only to the real cost; it may be greater or less than such cost. The important point in this class of applications is to know, when the work is performed, how much has been really expended thereon and whether such expenditures have been made in a proper manner. If the cost proves to be greater than the estimate, additional funds must be supplied and if the cost proves less than the estimate, it then becomes necessary to determine what use or application should be made of the excess amount. In this class of applications nothing is easier than for the corporation if it be so minded to obtain authorization to procure money for one purpose and, when so procured, to use the money for other purposes than those specified in the authorization. Not all corporations would be guilty of this conduct, but some have been and doubtless others will be. This

fact and the necessity for supplying additional money if any be required and disposing of the surplus money if any there be, make it imperative that the authorization order shall provide for specific and detailed reports of the disposition made of the money, which reports, to be of any value, must be based upon accurate accounting. Such reports can be checked and their truthfulness verified only in cases where the accounting has been according to a proper system, enabling the examiner to verify the statements with complete accuracy.

In another class of capitalization cases the expenditure has already been made by the corporation from income or from moneys obtained by the issue of short-time securities for which authorization by the commission was not required by law. The company seeks by the issue of bonds to obtain funds to reimburse its treasury for the expenditure made, or to obtain the means of liquidating short time notes. A case of this class may cover expenditures running over a series of years and embracing many different classes. Unless there has been careful accounting during the progress of the work, it is impossible for the commission to ascertain whether the expenditures were in fact made for capital or other purposes. This is particularly true in the case of betterments which generally involve expenditures for replacements. Replacements are chargeable to operating expenses and are not capitalizable. Unless the corporation is required to observe with great care strict accounting rules with reference to replacements, it is possible in such an application to procure the capitalization of matters which should have been charged to operating expenses. In the case of corporations whose financial affairs are not in the most flourishing condition, there is great temptation to do this, especially if there appear to be urgent reasons for maintaining a given rate of dividend. A proper system of accounts rigidly enforced is essential and indispensable in all these and other cases which it is unnecessary to describe at this time.

In rate making a proper accounting is also indispensable. The theoretical basis of rates is that the corporation is entitled to such rates as will enable it to earn its operating expenses, a fair return upon the amount of its investment and such further return as will compensate it for property worn out or destroyed in the service. Unless its operations produce earnings to an amount sufficient for all these purposes, the corporation is on the sure road to bankruptcy. That bankruptcy may be delayed until its property or some sub-

stantial part thereof is worn out. If it then finds that it has no funds in hand, derived from earnings, with which to replace such worn out and destroyed property, its condition at once becomes serious. As to operating expenses the corporation is not fairly entitled to charge the public with extravagant expenditures or for inefficiency in operation. Accordingly, wherever it is possible in rate making, it is incumbent upon the commission to inquire into the operating expenses and ascertain whether they are such as should properly constitute a charge against the public. Accounting alone will not enable the commission to determine any such question, but without accounting the effort would be hopeless. With accounting supplemented by other investigations, a result reasonably approximate to correctness may be obtained.

The wearing out or destruction of property in the public service, involving as it does the element of depreciation, is at present the most difficult and obscure problem in accounting. It is obvious that no accounting rule can be laid down for the handling of depreciation without taking into account the facts which constitute depreciation, that is to say, how long any given piece of property will continue fit for the service. The life, as it is termed, of property in service is variable for articles of the same class. It is variable in different localities. It varies, of course, with the amount of service required in a given period of time. If follows that the experience of one company may be different from the experience of another and it is also true that the experience of the same company for different periods of time may be different. No records of experience have been preserved which would enable a commission to make any hard and fast rules with regard to the amount of depreciation which should be written off annually. This amount at best can be only an approximation and such approximation must be made from the experience of the corporation itself. If the corporation should create too large a depreciation reserve, something which is not unknown, the result is that the public unjustly suffers in the rate. If the corporation does not create a sufficient reserve, sooner or later it must suffer when its plant needs substantial renewal. It is not the purpose at this time to point out the various intricate problems arising in the treatment of depreciation. It is needful only to say enough to call attention to the fact that depreciation is essentially an accounting problem, and one which must be dealt with in some manner in the accounts of

the corporation, and the manner in which it is handled should always be known to and approved by the commission which undertakes to regulate rates.

This problem of depreciation is also in evidence in cases of capitalization, especially where the corporation seeks to reimburse its treasury for moneys expended from income. It is impracticable in many cases to determine how much has actually been expended for capital purposes without tracing out and thoroughly checking the treatment accorded by the corporation to depreciation.

In service matters it is plain that no service can be required which the revenues of the company do not justify. This does not mean that no service should be required which does not give a return equal to its cost, including in cost all proper overhead charges. Upon this point great difference of opinion exists and it is not designed to bring it into discussion at this time. A sufficiently accurate statement probably is that there is such a relation between service and revenue as to make it imperative to consider the cost of a new service which the commission contemplates requiring and of an existing service which the company contemplates discontinuing. It may very well be that such a service is one which the company is bound to render irrespective of the profit or loss resulting therefrom; and on the other hand it may be such that, unless the company can reimburse itself for operating expenses out of that particular service, it should never be required. It requires no particular discussion to demonstrate that the cost of service is an element to be considered in all cases. There is, however, nothing harder than to ascertain, where a variety of service is afforded, especially in railroad practice, the cost of a given service. It is made up of so many elements and is so intertwined and commingled with the cost of other services that it is at times beyond the power of any accounting schemes which have yet been devised to ascertain such cost with accuracy. Nevertheless, although perfection may not be obtained, the best approximation which can be made is always desirable if not indispensable.

One most important element of regulation is that there should be complete publicity of all corporate financial transactions. This is essential for the general public as well as for the stockholders and creditors of the corporation. Long and bitter experience has taught the truth of this observation to all; and no one now disputes either the propriety or the necessity of such publicity. There can be no

true publicity without correct accounting. Balance sheets as usually made up and published are worthless, not to say misleading, unless the basis upon which they are prepared is known and that basis is rigidly adhered to. In many cases it is easy for a skilled accountant to determine by glancing at its balance sheet that a corporation which apparently is in a prosperous condition, is really insolvent. The general public cannot do this. But very few people outside of trained accountants know how to read a balance sheet. For many years in one of the states, railroad corporations were required to report to the state certain details of their corporate transaction. They were not required, however, to keep accounts by a uniform system, nor were they required to report a balance sheet. Investigation has demonstrated that, because of these facts, the reports thus made to the public were practically worthless in many cases for the purpose of determining the true financial condition of the corporation. No one can tell the real condition of a corporation, not even its own directors, without knowing how depreciation is handled in the accounts.

From these considerations it follows that to make publicity of substantial value, the accounts of corporations of a given class must be kept uniformly and according to a prescribed system. It is not always easy for the most skillful accountant to determine the proper classification of an expenditure, but unless we know what system of classification the accountant is following we can know but little or nothing of what his accounts really mean.

Public service laws generally require that the commission shall keep informed as to the financial condition of corporations under their jurisdiction. It is obvious that they cannot obey such a provision of law unless they have control of the accounting methods of the corporation. This one fact makes it imperative that commissions should prescribe uniform systems of accounts. It is greatly desirable that these systems should be uniform throughout the country and should not vary in essential matters in different states. This is clearly demanded for the protection of the investors. Corporate reports and official compilations of such reports are not understandable except as the system of accounting from which they are compiled is known. Once a uniform system of accounting is adopted and prescribed it is generally assumed that it will be observed correctly by the corporations to which it applies. This is not the case. Large

numbers of the managers of minor corporations have never received any training in accounting and think that it is nothing but bookkeeping; have no conception of accounting problems and remit the whole matter to some low salaried bookkeeper. They do not understand the real function and importance of proper accounting in public service regulation and, what is most vital to them, in many cases, they do not understand its importance in their own corporate affairs. A bookkeeper with no training and inadequate experience becomes confused and discouraged and the whole matter is allowed to drift along in an uncertain shape until the corporation is obliged to make some application to the commission involving an examination of its accounts. The real situation is then discovered and ofttimes herculean efforts are required to pull the corporation out of the chaos into which it has thrown its own accounts. This is one of the practical results of the introduction of a new and uniform system of accounts without proper instructions and assistance given by the commission to the corporation.

In the case of large corporations the importance of accounting is usually most thoroughly understood, but in the case of some, their past financial history has been such that the introduction of a new system entails a severe wrench and is likely to bring to the front matters which they believe it would be far better to have unknown. There is with such corporations at times a severe struggle over the proper accounting disposition of matters which lie near the line of debate.

Reports to the commission are, of course, based upon the theory that accounts are kept in accordance with the prescribed system and the report is so drawn as to call for information which may easily be tabulated from the books of the corporation if correctly kept. Whenever the corporation has not kept its accounts in this manner, the making out of an annual report is an occasion of great trouble if not of mental agony. Some answer must be given to the questions, and the answer which would be perfectly easy if the books had been properly kept is almost impossible of ascertainment if they have been improperly kept. The not infrequent result is that the annual report is not much more than a series of guesses and conveys no reliable and accurate information upon many vital points. Checking in the office of the commission will disclose this and there follows a long correspondence extending through many months in what is frequently an

endeavor to get the correct answer and make the figures throughout the report harmonious and correct.

The situation here briefly outlined justifies the conclusion that there should be a periodical examination of the books of the corporation for the purpose of determining whether they are kept in accordance with the system. Such examination, when properly handled by an intelligent examiner, is of great assistance in enabling the smaller class and even many of the larger corporations to understand their own affairs. It is indispensable if correct reports and proper publicity of the affairs of the corporation are to be had. It is a melancholy fact that, without a prescribed system of accounts, the bookkeeping and accounting of large numbers of smaller corporations are deficient in the extreme. The writer has known of one instance of a street railroad corporation with operating revenues of approximately $100,000 annually, the entire bookkeeping of which consisted of an ordinary pocket bank pass book to show receipts, the stubs of the check book showing the disbursements and the time book showing the time of the men employed. This indeed was plain and simple, but the result was that the corporation itself had no proper understanding of its own affairs and the results which might be expected from management followed through a series of years. Legislators who are desirous that publicity should be enforced in the case of public service corporations should understand that publicity has no value without correctness; that correctness can only be attained by proper accounting and that proper accounting usually follows only from careful and systematic supervision, and that such supervision demands regular and careful examination of the books of the corporation. If such examination could be had, it would not make an end of corporate mismanagement, but that it would be a most important step in the improvement of conditions there can be no doubt.

EFFECTS OF THE INDETERMINATE FRANCHISE UNDER STATE REGULATION

By William J. Norton,
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The past history of public utility operation under franchises granted by municipalities or other public authorities is largely a history of mistaken policy resulting in harm to one or the other party or, more often, to both parties to the contract. A great variety of franchise provisions have been tried in innumerable combinations and it would seem that every type from the short-term franchise to the perpetual franchise has been tried under a wide range of conditions and circumstances. The experience has been on the whole an unfortunate one leading to a deep-seated distrust on the part of all concerned. A great conservatism has grown up so that, while the dissatisfaction with the old form of franchise is general and shared alike by the utilities and the public, past experience would cause them to look with suspicion upon any proposed change in practice. Thus when Wisconsin wrote the indeterminate permit provision into her public utilities law, the companies were slow to take advantage of it, fearing a possible new menace to their investment; and on the other hand the municipalities or the general public were equally cautious in their attitude toward the adoption of the new policy. Indiana included in its public utilities law the indeterminate permit provision as it was originally enacted in Wisconsin. As a result of its recent adoption by these two states, the indeterminate permit has attracted the renewed attention of every one interested in public utilities or public utility regulation. The general attitude toward the indeterminate permit is that it is a new thing and time alone can prove the wisdom of its adoption, overlooking the fact that the indeterminate franchise was in use long before it was incorporated in the Wisconsin utilities law.

The Indeterminate Franchise in Massachusetts

The earliest franchises granted to street railway companies in Massachusetts are of this type and its use has been continued throughout the state, down to the present time.[1] The parties to a term franchise attempt to foresee and provide for all possible contingencies that may arise during the term specified in the franchise. Such franchises are long and involved and yet prove to be inadequate and a restriction on progress and normal development. The franchise adopted in Massachusetts is a simple "grant of location" omitting all technicalities, reservations and safeguards. It contains no fixed time limit but provides for revocations at the will of the local boards.

In 1898 a special committee, appointed by the Massachusetts legislature, made its report on "Relations Between Cities and Towns and Street Railways." This committee did not depend upon secondary sources but made its own investigation of actual conditions in this country and in Europe. Extracts from this report follow:

> A more fixed tenure of franchises is, however, by the terms of the act creating the committee, one of the two points it is especially instructed to consider. The substitution for the present indefinite concessions of a specific and binding contract, covering a fixed term of years, setting forth the rights and obligations of the parties thereto and containing a rule of compensation for the purchase of the property in case of failure to renew, at once suggests itself as a measure of reform; and yet, in the course of the protracted hearings before the committee, it was very noticeable that no such charge was advocated by the representatives of the municipalities or of the companies, nor, apparently, did the suggestion of such change commend itself to either. Some amendments in details of the existing law and partial measures of protection against possible orders of sudden ill-considered or aggressive revocations were suggested, but it is evident that, while the municipalities wanted to retain as a weapon—a sort of discussion bludgeon—the right of revocation at will, the companies preferred, on the whole, a franchise practically permanent, though never absolutely certain, to a fixed contract tenure for a shorter term, subject to the danger of alteration at every periodic renewal. . . . .
>
> There is probably no possible system productive of only good results and in no respects open to criticism; but, in fairness, the committee found itself forced to conclude that the Massachusetts franchise, which might perhaps not improperly be termed a tenure during good behavior, would in its practical results compare favorably with any. . . . . The investigations of the committee have not led its members to believe that the public would derive

[1] *Relations Between Cities and Towns and Street Railways.* Massachusetts Special Committee, Charles Francis Adams, Secretary (1898), p. 17.

benefit from the substitution of any form of term franchise now in use in place of the prescriptive Massachusetts tenure."[2]

The committee speaks of this franchise as having given satisfaction for half a century. Some changes were suggested, however. (1) Local authorities should be granted explicit power, thereafter, to impose such terms and conditions as they deem the public interests demand. (2) Companies should be protected from new and perhaps unreasonable conditions sought to be imposed by way of alterations and extensions. (3) Companies should be granted the right to appeal from revocation to the board of railroad commissioners. (4) Moreover, the "grants of location" while providing for revocation at any time did not provide for purchase by the municipality at a fair compensation and the committee recommends that such a provision be incorporated.

Adoption by the Federal Government

The indeterminate franchise has been adopted by the national government. All franchises granted by Congress to public service corporations operating in the District of Columbia, Porto Rico and the Philippine Islands are indeterminate, subject to amendment or repeal at any time.[3] The use of this type of franchise has been extended to the various departments of the federal government. The water power permit granted in the department of the interior to the International Power and Manufacturing Company for the development of a large power project on Clark's Ford, Pend d'Oreille County, state of Washington,[4] is an example of such franchise policy. The permit is indeterminate but revocable after due notice and opportunity for hearing, for violation of the terms of the permit, of the provisions of the general regulations, or pursuant to the provisions of the act of Congress of February 15, 1901.[5]

[2] Ibid., pp. 18, 20.

[3] *The Indeterminate Franchise for Public Utilities*, Report by Commissioner Milo R. Maltbie, Chairman Public Service Commission, First District, pp. 25–28.

[4] *Development of Water Power*, Senate Document No. 147.

[5] 31 Stat., 790.

Chicago Traction Agreements

Since it has gained considerable attention among those interested in traction problems, the franchise agreement existing between Chicago and the street railway companies may be cited as another example of the indeterminate franchise. The report of the Chicago Street Railway Committee on "Public Control and Duration of Grants" in 1900 says:

> The street railway commission believes that the definite term grant, whatever its duration, is open to serious objections. It is of opinion that a grant of indefinite duration, but subject to termination at any time upon certain conditions, one of which should be the taking of the property of the grantee at a fair valuation, would be productive of much better results.

This is not a complete account of the extent of the adoption of the indeterminate permit. These examples, perhaps the best known, have been given to show that it is not an untried measure. The main object of this article, however, is to consider the use of this form of franchise under state regulation of public utilities.

Wisconsin Law and Practice

Naturally Wisconsin is the chief source of information in regard to the indeterminate permit provisions in state regulation of public utilities, the effect on the companies operating under such a permit, the benefits to the consumers or the public and, in general, the legal aspects of its adoption.

The law, as originally enacted, gave the companies the right to surrender their franchises and receive in lieu thereof indeterminate permits, fixing a definite time limit within which such action could be taken. Less than one in ten of the public service corporations availed themselves of the privilege.[6] Later legislation extended this time limit and by amendment in 1911 every franchise was, without action of the company, "altered and amended as to constitute and to be an 'indeterminate permit.'"

Commissioner Roemer, in commenting on the reluctance of the companies to surrender their franchises, states the chief objections offered by the utilities, as follows:

[6] *Some Features of State Regulation of Public Utilities*, by John H. Roemer, Member of the Wisconsin Railroad Commission, p. 22.

(1) A doubt as to the legal right of the directors and stockholders to make the surrender without the consent of the bondholders whose mortgage security covers and includes the franchises of the corporation, (2) the practical impossibility of ascertaining all the bondholders and acquiring their consent, and (3) the erroneous, though perhaps not ill-founded, conception of the value of such franchises. . . . . [7]

Similar objections have been urged by companies when the adoption of indeterminate permit was discussed in Indiana and Illinois. Commissioner Roemer, a lawyer whose long experience as a member of the Wisconsin commission makes him one of the highest authorities in this field, has this to say in answer to all such objections:

As all secondary or special franchises granted directly or indirectly by the legislature are non-exclusive, subject to eminent domain by municipalities, and resting entirely upon the good faith of the people of the state, as they may be repealed at any time by the legislature, I can see no element of value in such franchises that makes them a more desirable acquisition of a public service corporation than the practically perpetual exclusive franchises provided by the statute. . . . .

The legal question involved in the surrender of the franchise without the consent of the bondholders has never been decided by the courts. It is now presented before the district court of the United States in an appeal of certain bondholders of the Oshkosh Water Works Company to set aside the order of the Wisconsin commission in the matter of the purchase of the Oshkosh Water Works by the city of Oshkosh.

State commissions, delegated by the legislature to require public utilities to give adequate service at just and reasonable rates, have made rulings[8] contrary to the provisions of franchises between the company and the municipality and between the company and its customers. Such decisions have been upheld by the courts.[9] In view of such decisions, it would seem that, regardless of any possible

[7] Supra, p. 23.

[8] Ashland *vs.* Ashland Water Co., 4 W. R. C. R., p. 305; City of Washburn *vs.* Washburn Water Works, 6 W. R. C. R., 95; City of Neenah *vs.* Wis. Tr. Lt. H. & P. Co., et al., 6 W. R. C. R., 401, etc.

[9] Greenwood *vs.* Freight Company, 105 U. S., 13, 19; City of Ashland *vs.* Wheeler, 88 Wis., 607, 616; Milwaukee El. Ry. & Lt. Co. *vs.* Wisconsin Railroad Commission, 142 N. W., 496; Phillipsburg Horse Car Railroad Company, N. J., sup. ct.

advantageous provisions that may be included in a utility's franchise, there is little to lose and much to gain in the surrender of the franchise for an indeterminate permit under regulation similar to that provided in Wisconsin.

In decisions and public addresses[10] the Wisconsin commissioners have discussed various features of the indeterminate permit and have pointed out the advantages accruing to the company and the public.

In the Appleton case, the commission holds that the indeterminate permit is

> more valuable than the ordinary special franchises, because the company now has a legally protected monopoly and is subject to no different supervision and regulation than it would have been had it continued to operate under its original grant. Furthermore, its investment is now protected not only against the consequences of competition, but also against the possibility of total loss on the expiration of the original grant. It can never be deprived of its property except on the payment of the fair value thereof by the municipality. . . . . [11]

The indeterminate permit under the Wisconsin law and practice is explained in a later decision.

> By making a surrender of its franchise and accepting in lieu thereof an indeterminate permit, a public utility acquires, in effect, a legally protected monopoly and the right to continue its public service indefinitely. Such monopoly can not be destroyed except it be established that public convenience and necessity require a second public utility to engage in the same business in the municipality. By extending its plant to meet the public exigencies as they arise, and by discharging its public functions properly, a public service corporation may maintain its monopoly of the business as long as it continues operation. Neither can its enjoyment of such monopoly nor its right to remain in the public service be terminated by the municipality, except upon payment to it of "just compensation" for all its "property actually used and useful for the convenience of the public." As a consideration for the valuable privileges thus guaranteed, the law provides that the term of the license

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[10] *Wisconsin Public Utilities Law, Three Addresses* by B. H. Meyer, pp. 19–21, 30–31; "Commission Control of Public Utilities," by John H. Roemer (*Electrical World*, Sept. 13, 1913, p. 532), and "Regulation *vs.* Profit Sharing," by Halford Erickson (*Aera*, p. 797–799).

[11] City of Appleton *vs.* Appleton Water Works Co., 5 W. R. C. R., 215, 284–285.

or franchise authorizing the maintenance and operation of the plant be determinable at the will of the municipality.[12]

The legality of the indeterminate permit has not been questioned by the Wisconsin courts. The supreme court has held that all the conditions and limitations of the old contract have been extinguished and an exclusive privilege to operate has been secured by the utility subject only to the conditions and limitations of the public utility law.[13]

Indiana

Of Indiana there is less to say because of the short time during which the law has been in operation. The law leaves the acceptance of an indeterminate permit optional with the utility fixing a limited period within which to make the transfer, as in the original Wisconsin provisions. In an address[14] by Judge J. L. Clark, member of the commission, it is pointed out that the commission's power to regulate utilities is not dependent upon their acceptance of the indeterminate permit. To the company he points out the advantage of the safety of investment, the ease with which the right to develop and extend the plant and system may be secured and the protection from competition. Protection from competition of a municipal plant can only be secured under the Indiana law to those utilities operating under an indeterminate permit.

Judge Clark has also seen fit to answer the objection usually raised by the companies. He states:

The question has been raised as to the proper authority to execute the written surrender of a franchise. Some have contended that it requires the action of the stockholders and some have even contended that there can not

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[12] In re Appleton Water Works Co., 6 W. R. C. R., 97, 119.

Note. In the Appleton case and in a number of valuation cases the commission has held that an indeterminate permit does not have any value which can be included in a valuation for rate making purposes or in fixing the just compensation to be paid in case of purchase by the municipality.

[13] State ex rel Kenosha Gas & Elec. Co. *vs.* Kenosha Elec. Co., 145 Wis., 337; Manitowoc *vs.* Manitowoc & N. T. Co., Id., 13; La Crosse *vs.* La Crosse Gas & Electric Co., Id., 408; Calumet Service Company *vs.* City of Chilton. Decision of the Wisconsin supreme court.

[14] "The Indeterminate Permit," by Judge J. L. Clark, in *Fifth Annual Proceedings of the Indiana Electric Light Association*, pp. 26–39.

be a surrender so long as one stockholder withholds his consent, while still others go so far as to contend that the assent of bondholders must be obtained. These are all open questions, but it would seem that the procuring of a franchise for a corporation is the same as any other business transaction and may be handled entirely by the board of directors and the officers who execute their orders. Certainly bondholders can not be injured by surrendering a franchise of limited life and accepting one of indeterminate length of days.

New York

Commissioner Milo R. Maltbie made a report to the New York Public Service Commission, first district, upon the advantages and disadvantages of the indeterminate franchise. He discussed the bad effects of the short-term franchises which he says "have bound the industry so tightly that it could not progress or expand to meet the needs of the community," and of the long-term or perpetual franchises which have stood in the way of proper regulation. "The indeterminate franchise," he says, "in the main avoids these, and combines the desirable features of the short-term franchise by protecting public interests and of the perpetual franchise by stimulating private initiative. In one form or another it has been tried in many cities and found satisfactory."[15] In this report he does not urge its adoption but aims to report the whole question of franchises and leave it open for later decision. In 1909, however, the legislature, largely through Commissioner Maltbie's efforts,[16] amended the rapid transit act so as to provide for long-term franchises revocable at any time after the expiration of ten years upon the purchase of the property. Under this provision contracts have been drawn which are indeterminate and subject to regulation, for example the franchises of the McAdoo tunnels.[17] In Commissioner Maltbie's report, above mentioned, it is suggested that certain provisions should be included in an indeterminate permit. He advises provision for sale to another company as well as to the municipality. Other writers have advocated fixing the purchase price in advance, amortizing the original cost from earnings and various other provisions. These matters are either amply provided for or are entirely unnecessary and harmful under proper state regulation.

[15] *The Indeterminate Franchise for Public Utilities*, by Milo R. Maltbie, p. 4.

[16] Wilcox, *Municipal Franchises*, pp. 239–40, 518–551.

[17] Supra, p. 527.

Commissioner Maltbie alleged that, should the municipality exercise its right to purchase a utility's property before returns have been received sufficient to offset losses to capital either in the original construction or a subsequent extension of its plant or system, the commission or other arbitration body should make allowance to cover such losses to the company. Such an allowance should be taken into consideration in every purchase value, and this is the practice of the Wisconsin commission.

Other States

That public utilities are monopolies, natural monopolies, which should be protected from competiton and all unnecessary risks to capital eliminated, is the first step to be thoroughly recognized by those preparing the legal basis for state regulation. This is the fundamental principle which has led to the adoption of an indeterminate permit provision. Wisconsin and Indiana are the only states that have the indeterminate provision in their laws and Massachusetts has recognized its advantages and adopted it in practices. But this is not all. The fundamental principle of protected monopoly for public utility enterprises is more widely recognized and its recognition is becoming more general and is being more perfectly provided for. In the following states power has been given the railroad or public utilities commission to protect a company in a monopoly of its territory against a would-be competitor by requiring both private and municipal utilities under its jurisdiction to secure a certificate of public convenience and necessity from the commission before beginning operations: New York, Pennsylvania, Wisconsin, Indiana and Maryland.[18]

The following states provide such protection only as against the competition of private companies: Arizona, California, Colorado, Idaho, Illinois, Kansas, Maine (referendum now pending), Michigan, Missouri, New Hampshire and New Jersey.

No provision is made for such protection in Georgia, Oklahoma, Connecticut, Montana, Nevada and Rhode Island; and the Vermont law states that competition is not to be restricted.

[18] Baltimore is not required to obtain such a certificate before providing a municipal competitive plant.

In some instances as in Illinois and Missouri, the first draft of the bill provided for complete protection, that is, as against both private and municipal competition. Then interference came in and such terms were nullified or modified. The experts who draft the bill usually know what is best for the companies and the public. What is needed is more intelligent conception of economic facts upon the part of the legislatures enacting public utility laws.

The Georgia commission recognizes that its lack of jurisdiction to protect utilities from unnecessary competition is a great mistake and, in the recent Macon case,[19] has discussed the need for such powers and expressed its intention of asking the legislature to grant it the necessary jurisdiction. The Oklahoma Corporation Commission has made a similar request for jurisdiction to limit competition and unnecessary duplication.[20]

Constitutional Restrictions

In a number of states special laws or constitutional provisions limit the term of contract to from twenty-five to fifty years. And the question has been raised as to whether the indeterminate permit can be used in such states without a revocation of the law or the passing of a constitutional amendment.

The new constitution adopted in Michigan in 1908, effective January 1, 1909, limited the franchise period to thirty years. The city of Detroit has been granting "day-to-day" permits which are in reality indeterminate permits, and the question has been raised as to whether such permits can be granted under the constitutional limitation. This matter was discussed by Mr. James V. Oxtoby in a paper read before the Michigan Electric Light Association at Ottawa Beach in August, 1913, in which he says:

> If the meaning of the provisions in the constitution is that no term franchises can be granted by a municipality for a longer period than thirty years, then in my judgment it does not prevent the granting of special indeterminate permits. If it means that every franchise must be a time franchise, and must expire at some particular time, then we cannot have indeterminate permits.

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[19] Decided February 24, 1914.

[20] *1912 Annual Report*, vol. I, p. 11.

This question is before the supreme court of the state of Michigan in the case of Barton L. Peck *vs.* Detroit United Railway. Arguments and briefs have been submitted in this case. A decision in the matter will be of general interest as it will give some indication as to how serious these constitutional limitations will be in affording a delay to the general adoption of the indeterminate franchise.

Term Franchises versus Indeterminate Permit

Under state regulation, which assures the public adequate service at reasonable rates, a protection of the monopoly from competition and the elimination of all possible risks to capital invested result in benefits to all parties concerned. "Without protection of such monopolies only a limited supervision of their affairs by public authorities can be morally justified. This is almost axiomatic."[21]

Those advocates of the short-term restrictive franchise will discover sooner or later that burdens imposed upon public service companies rest heaviest upon the public served and that in order to secure the best service at the lowest rate the company must be given every advantage to develop and prosper. The Massachusetts committee sums up the situation in Great Britain as follows:

> The term franchise has there been universal since 1870 and the rights of the municipalities are so very carefully protected that their best interests have been systematically sacrificed. The municipalities have, in fact, been so afraid they would be outbargained that they have as a rule fairly overreached themselves; and now, after a lapse of twenty years, they are naturally served by undeveloped lines, with antiquated appliances, simply because they made it the distinct interest of the companies operating those lines to provide nothing better.[22]

They conclude that the indeterminate permit, even without the provision for the payment of a just compensation upon revocation of the grant by the municipality, has given a greater security to capital and induced markedly better service conditions.

[21] *Some Features of State Regulation of Public Utilities*, by John H. Roemer, p. 22.

[22] *Relations Between Cities and Towns and Street Railways*, Massachusetts Special Committee, Charles Francis Adams, Secretary (1898), p. 19; see also "Municipal and Private Operation of Public Utilities," in *National Civic Federation Report*. Part 1, vol. I, p. 464.

Operating under a franchise which is to expire at a certain time, the company is slow to make necessary expenditure for additions and betterments to the property as this means putting additional capital to the risk of partial or total loss. As a result, when the time arrives for settlement of the question of an extension of the franchise, the company is in a very disadvantageous position with its plant inadequate and its service open to severe criticism. The more exacting the terms imposed on the company the more exaggerated are the conditions. For example the Berlin street railway franchise (1891) provided that after a number of years street construction of all kinds was to revert to the city. The company was, therefore, forced to see that as little property as possible should be turned over to the city at the company's expense.

The utility is forced to connive for control in local politics. Litigation necessary to enforce contract terms or to meet circumstances which have not been provided for in the contract is a constant source of expense and usually results in bitter local feuds.[23] It is such conditions fostered by the term-franchise which are to be corrected by the indeterminate permit.

In the Calumet case, the Wisconsin supreme court held that the intent of the law is

> to displace the old situation, in its entirety, with all its complications, the growth of years, and we may add, with all its bitter controversies, the like of which is pictured in this case, and to substitute a new situation, all looking to unity, in practical effect, of a multitude of diverse units corresponding to the many outstanding franchises, and others in prospect, harmonizing by making them referable to a single standard, to wit: the public utility law, and to an ultimate single control, to wit: control by the trained impartial state commission, so as to effect the one supreme purpose, i.e., "the best service practicable at reasonable cost to consumers in all cases and as near a uniform rate for service as varying circumstances and conditions would permit—a condition as near the ideal probably as could be attained." Certain, that great object might well have aroused legislative ambition to a high plane, and inspired legislative wisdom accordingly, as it did in fact. Completeness of the law, so far as tested, and its success under the efficient conservative administration of it by the commission, bear witness to that. As, in effect, suggested in the LaCrosse case, evident purpose of the law to produce the ideal

[23] *The Causes and Effects of a Public Utility Commission*, by John H. Roemer, pp. 4–5; *Wisconsin Public Utilities Law, Three Addresses*, by B. H. Meyer, pp. 19–21; *The Indeterminate Franchise for Public Utilities*, by Milo R. Maltbie; *Regulation vs. Profit Sharing*, by Halford Erickson.

condition indicated, and the means designed to that end, are so plain, and, we may add, so legitimate from all constitutional viewpoints heretofore suggested, or reasonably apprehended, and from all viewpoints of public and private economy and sound public policy, that, if to leave the door open where there is an existing privilege covering the field, as in this case, to municipal invasions to any extent, would greatly disturb the harmony of the system the legislature purposed constructing, and prevent the full accomplishment of the end sought to be attained, judicial construction, if that were necessary to determine the meaning of the law, should rather lean toward preventing such result. . . . .[24]

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[24] Calumet Service Company *vs.* The City of Chilton. Decision of the Wisconsin supreme court, pp. 25–26.

SHOULD THE PUBLIC UTILITIES COMMISSION HAVE POWER TO CONTROL THE ISSUANCE OF SECURITIES?

By John M. Eshleman,

President, Railroad Commission of the State of California.

Inasmuch as this volume is devoted to a discussion of *State Regulation of Public Utilities*, and as I am not informed whether the issue to be discussed is the propriety of regulation of utilities at all, or, admitting the propriety of such regulation, whether to state or to municipal authorities should be accorded the right of regulation, I am somewhat at a loss how to attack the subject upon which I have been requested to contribute a paper. I shall assume, however, that it is desired that I discuss the issue whether the control of the issuance of securities should be assumed at all by whatever regulatory authority to which the work of regulation is entrusted.

The propriety of the regulation of securities of utilities, with particular reference to railroads, was the subject of a report to the National Association of Railway Commissioners at its annual session in Washington, October 28 to 31, 1913, by the committee on railway capitalization. The report of this committee advocating regulation of securities of railroads by the Interstate Commerce Commission was adopted, but not without considerable opposition. It was not there urged, however, by any one that there should not be some form of regulation, the principal question at issue being whether regulation should be by a method of control or a method of publicity. The report of the committee, which was adopted, recommended regulation by control as opposed to regulation by publicity. This report, with the discussion thereon, is found in the *Proceedings of the Twenty-ninth Annual Convention of the National Association of Railway Commissioners*, pages 114 to 223 and 238 to 257.

One of the first states which has attempted comprehensive regulation of the securities of utilities is Wisconsin. The fiscal affairs of utilities of that state, including railroads, have been under the jurisdiction of the Wisconsin Railroad Commission for several years. Regardless of that fact, the present chairman of the railroad commis-

sion of that state, a former chairman of that commission, now a member of the Interstate Commerce Commission, and the United States senator who has heretofore most strongly urged the necessity of the regulation of securities of utilities, are now apparently inclined to the belief that the regulation there prevailing is improper. Furthermore, the Railroad Securities Commission appointed by President Taft in 1910 and consisting of Arthur T. Hadley, President of Yale University, Chairman, Frederick N. Judson, Frederick Straus, Walter L. Fisher and B. H. Meyer, transmitted a report to the President, wherein, regardless of protestations on the part of members of this committee to the contrary, in my mind, is advocated a merely passive policy with reference to railroad securities and not at all a definite positive program looking to the correction of evils found by this commission to exist or the prevention of the recurrence of such evils in the future. This demands that cogent reasons be given by one who advocates active regulation of securities of utilities. In the face of these eminent authorities and with what I believe to be a careful consideration of every argument adduced by them, I state definitely my belief, first, that regulation of the securities of utilities is necessary, and, second, that such regulation must take the form of control by the public authority and is not satisfied by publicity alone. In the limit of this paper it will be impossible, however, for me to discuss in detail the merits of regulation by control as opposed to regulation by publicity. My views on that question are fully set forth in the report above referred to.

The opponents of regulation of the securities of utilities by control present two important objections to such regulation. First, they urge that the regulation of rates and service of utilities does not require the regulation of the securities of such utilities; and, second, the regulation of the securities of utilities brings about a guarantee by the government, if not in law at least in morals: (a) directly of the securities approved, and (b) indirectly of the securities already outstanding and issued prior to control by governmental authority.

Some of those presenting these objections urge that they are insurmountable and that no regulation whatsoever should be attempted. Others contend that they merely present difficulties inherent in the present scheme of regulation which is applied in Wisconsin, New York, California and other states. Those who urge that some method other than the method of control applying in

the states named should be applied, generally favor a system of publicity, and some there are who suggest that we should adopt a method similar to that imposed by the English companies act.

I join issue on each one of the objections raised. I am of the opinion that not one of them is valid against the system of regulation which is growing up in the various states following the lead of Wisconsin, wherein the affirmative approval of the governmental authority is required before stocks and bonds may be issued, and I shall discuss these objections in the order named to the extent that is possible in a paper such as this.

First, Can Adequate Regulation of Rates and Service of Utilities be brought about without Regulation of Stocks and Bonds?

On this question, Chairman Roemer of the Wisconsin commission, in a letter to the National Civic Federation, says:

"As I view the matter, the regulation of the issues of corporate securities is and must be for the benefit of the investors. It has no bearing independent of statutory provision upon the question of rates."

Mr. B. H. Meyer, formerly of the Wisconsin commission, now of the Interstate Commerce Commission, in discussing this matter before the National Association of Railway Commissioners in October last, said:

"With power to establish the value of the public utilities on the one hand, and adequate power to regulate rates and service on the other, I take it that the question of stocks and bonds is largely a question of public morals."

The Railroad Securities Commission has this to say on this point in its fifth recommendation:

> If we were compelled to assume that rates are to be materially influenced either in their making by the railroads or in their regulation by the government by the amount and face value of the stocks and bonds outstanding, it seems to your commission impossible to escape the conclusion that these securities should be issued only under governmental regulation. Your commission, however, believes that the amount and face value of outstanding securities have only an indirect effect upon the actual making of rates and that they should have little if any weight in their regulation.

Senator La Follette of Wisconsin, in the issue of *La Follette's Weekly* of January 31, 1914, editorially urges that regulation of the

securities of railroads is not necessary to the regulation of rates. In this connection he says:

"The fair value of the property is the true basis. The public need not concern itself with all the villainies of over-capitalization which abound in the history of every railroad in the country."

It may be well at this point to state that it is generally conceded that there is no difference in principle between the regulation of securities of railroads and those of other utilities, and herein I shall make no distinction between the several classes of utilities in this regard.

Eliminating any consideration of the investor, who, according to some of these eminent gentlemen, deserves no protection, it appears that two fundamental fallacies exist in their reasoning: first, that they have forgotten apparently that the amount of the rate is not all that must be considered, but the character of the service as well. While the rate may remain the same, if the service deteriorates or the character of the commodity furnished by the utility is impaired, plainly the patron of such utility is paying a higher rate, when we have regard to what he is getting for his outlay. Second, they have neglected to inform themselves that, although legally they are correct and legally the financial condition of a utility need not be taken into consideration in fixing rates and requiring service, yet actually such financial condition cannot be overlooked because it has always had and does now have a material effect on the rates and service of utilities.

That this is true in concrete cases is easily demonstrated. That it always will and must be the rule I believe is equally clear. Utilities, as other enterprises, are initiated, managed and owned by men. Men, in the main at least, prefer their own advantage. Thus the natural inclination of those controlling the destiny of any public utility leads them, when a choice must be made between public service and private advantage, to choose private advantage. Gain has been, is now, and always will be the prime motive of those engaged in public utility as well as any other business; and the service of the public is only secondary thereto. Therefore, we may naturally expect to find that procedure followed, in the absence of restraint, which is most likely to result in profits to those in control. In practice, those who initiate a public utility enterprise attempt to get as much out of it as is possible and put as little as possible in, with the

result that the enterprise starts with the maximum burden that can be imposed and not kill it in the beginning. Every dollar that is taken out, or rather withheld, by construction contracts, watered stock or discount on bonds, represents what is in effect a liability and a liability which, if it take the form of a debt as a bond or a note, *must* be paid and a liability which, if it represent water in stock, *will* be paid if those in charge of the property can possibly bring about such result. The design of every public utility manager is of course to pay his bond interest and then to bring his stock to par or better. These results are sought regardless of the amounts which have been received by the utility for such bonds and stock. If obligations which netted the utility less than par are carried and paid off in the end and if stock which has been sold for less than par ever goes to par, the extra funds to bring this about must come from the rates. When we view the history of utilities and see that in numerous cases the results here referred to have come about, we must conclude that in such cases at least capitalization *has* affected the rates; for such rates have been unquestionably higher by that amount than is necessary to pay the expense of doing the business and a reasonable return on the value of the property devoted to the public use. These men who have long studied this question, however, say that capitalization need not affect rates. We answer that historically it has done so, and we have no reason to believe that in the future it will not have a like effect. If we should put a certain amount of meal into a bag and go away and subsequently, on inspecting the bag, find more meal in it, we would probably be pardoned if we should conclude that the additional meal came from somewhere; and if only one person had had an opportunity to make the addition we probably would not be far wrong in concluding that this individual was responsible. And when in the case of a utility certain funds, ascertainable in amount, go in from proceeds of stocks and bonds, and thereafter we find there are funds much in excess of these amounts in the utility and the only source from which money has been acquired in the interim has been the rates, we must here again be pardoned for believing the extra funds came from these rates. Of course, this reasoning overlooks appreciation in lands and kindred property, but the valuation theory, urged as a solution of our rate troubles by the very men who say capitalization does not affect rates, presents this same complication. As a matter

of fact, however, practically the only public utility presenting the unearned increment problem as a substantial factor is the railroad. And can any one urge that the tremendous fortunes made from railroads by the Harrimans, the Goulds, the Hills, and others, not one of which resulted from dividends but from sale or retention of securities with small if any return to the railroad corporation itself, can be accounted for on the theory that the lands owned by these railroads increased in value to such an extent? It is well known that much of the property now in use by public utilities has been purchased and is being purchased from funds realized from rates. Consequently, such rates have been higher than necessary, and however able public authority is to make rates independent of and unaffected by capitalization it has not yet done so.

Because, then, of a perfectly natural inclination of mankind, the tendency is to put the minimum into the utility at the beginning and take the maximum out in the form of stocks and bonds. The same natural inclination leads men in control to take the maximum out thereafter in rates in order to restore the margin between the minimum contributed in funds and the maximum retained in securities. It is idle to say that these inclinations working on the one hand to get the maximum out of the utility and on the other to get the maximum out of the public, have no effect. Every one knows they have had an effect in the past and that, in the absence of restraint, they will have a like effect in the future.

It is very evident that corporations have but three sources from which to secure funds: stock, borrowed money, and earnings. With stock all, or mostly all, out at the beginning, with bonds issued to an approximation of the value of the property and with consequent inability to sell more, there is left but the rates from which to secure funds. When we meet a situation such as this it always is necessary to secure more from the rates in order to get extensions or betterments or else not have such extensions and betterments. We have today an exhibition of the result of impaired credit consequent upon the inability of the roads to sell more bonds under their present earning capacity, when we see the eastern roads applying to increase all of their rates in order that, with the higher earning power, additional money may be secured. When, as I have said, there is no possibility of getting money from the sale of stocks or bonds—the two main sources of revenue for the utility corporation—such corporation can-

not go forward unless it is enabled to do so from funds realized from its only remaining source of revenue, its rates. Thus by permitting those controlling the corporation without restraint to indulge their natural inclination and exhaust the two main sources from which revenue may be secured, as is always their tendency, we inevitably bring about a condition wherein through financial inability the utility cannot accord to its patrons those rates and that service to which they are entitled.

Thus, if no regulation is afforded, we will inevitably have utilities tending toward over-capitalization. This tendency will result either in higher rates, as it has in the past, or in poorer service, for you will have utility managers by natural inclination and often of necessity, when proper rates are imposed, curtailing expenses, restricting service and in every way possible tending toward the minimum service that can be rendered. Free to work their own will in their financial affairs and always tending, if not prevented, to over-capitalize and then held down to the minimum basis for earning through regulation of rates, utilities inevitably get into bad financial condition. This condition could be at least measurably prevented by putting restraint upon these natural inclinations by proper regulation of securities. I am prepared to cite examples from my own experience in regulation where needed extensions have not been made, added service denied and exorbitant rates maintained, because of the necessity of the managers of such utilities to pay interest upon debts which too nearly approximated or were in excess of the value of the property devoted to the public use. It would seem to be clear that it is better, both in the interest of efficiency of utility operation and of economy in governmental machinery, to prevent such a condition being brought about, rather than wait until it is produced and then seek to force a utility to give the service at the rates that are justified but beyond its financial ability to give, with the result that a long contest ensues during which service is impaired, investors defrauded and confidence shaken with no better condition after such contest than could have been brought about initially by proper regulation by the commission.

It appears, then, that failure to regulate securities permits bad financial conditions to grow up which impair the financial ability of the utility, and hence its service, until such bad financial conditions are remedied; and the remedy then unsettles conditions and

defrauds investors, while less effort by way of prevention would maintain the financial ability and bring about conditions naturally that now must be forced through receivers, courts and reorganization. In short, those who urge that the financial affairs of utilities should be let alone and that only rates should be regulated fail to see that they merely attempt to cure a condition which they admit is bad rather than try to prevent it. They further overlook the fact, that, if it is right to cure it, prevention is certainly justified. If, as we contend, over-capitalization naturally occurs in the absence of restraint and that over-capitalization is the usual condition which we meet, it readily appears that its cure must always be made at the expense of some one, as the money diverted through over-capitalization must be supplied from some source. Rarely will it be possible by human ingenuity to prevent its being supplied, partly, at least, from the rates; and what does not come from that source comes from the purchaser of securities. Prevention, on the contrary, through regulation, if effectively applied before it is too late, brings about readily the desired result and the imposition of reasonable rates and the requirement for efficient service are secured without injustice to any innocent party and without the long period of bad service always occurring when a utility loses its financial ability to do that which it is legally obligated to do.

Therefore, we conclude that the first objection that regulation of rates and service does not require regulation of securities is not well founded. It remains to consider the second objection which is that

Governmental Control of Stocks and Bonds Morally, at least, Commits Governmental Authority to Recognize Stocks and Bonds when finding Value for Rate-Fixing Purposes

Every argument I have yet met in support of this contention indulges, indirectly at least, the presumption that the governmental authority acting is not equal to the job. Now I quite readily admit, in the language of Dr. Milo R. Maltbie of New York, that "I would prefer to have no regulation to that which is not effective, for a form of regulation without substance is worse than no regulation." What I have to say has reference solely to competent and effective regulation.

Those empowered to regulate should, of course, be advised as to the legal effect of their acts. They should know, as Mr. Roemer of Wisconsin points out, that the contract between stockholders is protected against impairment by the federal Constitution and that "each share of any class is entitled to all the privileges of every other share of the same class." Likewise bonds issued under the same trust deed stand on the same footing regardless of when issued. And knowing these legal principles they should avoid taking any step with reference to present issues of either stocks or bonds out of issues authorized and partly out, without knowing the value behind those already issued. If, in the case of a corporation a part of whose securities have been issued before regulation was applied, it is found that over-capitalization exists, no new issue should be permitted which will be on a parity with what is already out, thereby becoming diluted by the water already in the enterprise. Under a proper stock and bond law the burden is upon the utility to satisfy the commission that the application is justified and unless those in control of the corporation will take such corporate steps as are necessary to overcome the difficulty presented by equal participation, then no securities should be permitted. The financing by preferred stock, which is now being done in various states, is an answer made by utility corporations themselves to the argument here considered, and an answer that will always be made if utilities commissions are firm and have an understanding of their work. The California commission, for example, has laid down the rule, and adheres to it strictly, that any utility in a financial condition which the commission would not approve if presented originally to it, but nevertheless not actually insolvent or in such a bad way that its condition is doubtful, may take any financial step which leaves it in a better financial state. It is allowed to progress toward a satisfactory financial condition but it must not go backward. Its option is to advance or issue no new securities of any sort. If an agency is actually, although not legally, insolvent by having debts in excess of its assets, it must reorganize before it can issue more securities. By this rule the burden is placed, as it should be, upon the utility to present a satisfactory plan of finance; and if any of the *legal* difficulties suggested by Mr. Roemer are still present the application is not approved. No utilities commission need, nor ever should, permit the issuance of stocks or bonds in any case where such permission will serve, by reason of partici-

pation, to imply a legal sanction of outstanding issues where such outstanding issues have not the proper property values behind them. In the case of doubt as to the property values behind the securities the commission can quite properly withhold its approval until the applicant utility shall have presented satisfactory evidence upon which the commission can act. With all due respect to the opinion of the eminent senator from Wisconsin, as voiced in his present opposition to the railroad securities bill pending before Congress, I am plainly of the opinion that he has overlooked the distinction between a rate case, where the burden is upon the public, and a securities case, where the burden is upon the utility. In the former some one wants something against the utility. In the latter, the utility wants something, and to get it, it must disclose and not suppress evidence. Overlooking this distinction the senator advises us, as regards railroads, to wait until the Interstate Commerce Commission shall have finished its labors in valuing railroad properties, and then by rates having proper relation to such value to get rid of the water then found to exist in the railroads by rendering them unable to pay their obligations which shall have been incurred in the meantime in excess of what should have been incurred. And it is also evident that it is thought that water now exists and that more water will go in in the future while the valuation is being made, for plainly if it were expected that nothing but the proper financing would take place there could be no objection to, although of course no need for, governmental action on the ground that such action would serve to recognize improper financing. In short, the very argument that no governmental restraint should be imposed, on the ground that improper securities might thereby be validated, presupposes, of course, the fact of the issuance of such improper securities in the case. We are justified in assuming that the lack of restraint hereafter pending the final completion of the stupendous work of valuation of railroads, as required by Congress, will leave the roads open to do more of this very thing and further to impair the financial standing of these properties.

And this is the advice of those who urge that we must not regulate securities because by so doing we incur a moral obligation with reference to such securities! Too many securities have been issued in the past under no regulation. Too many will be issued in the future we know. Yet in the face of this condition we should do

nothing because our hands may be soiled also with guilt! Having the power to prevent and not preventing a crime, it occurs to me, imposes some kind of moral obligation which possibly may be greater than that which attaches after an unsuccessful attempt to prevent such crime. Knowing that securities are being, and have been, issued and sold that should not be issued and sold, nevertheless let us permit it until in our good time we get ready to contract the earning power of the utilities through rates so they may no longer pay their obligations with consequent loss to investors and impairment of financial ability of the corporations properly to serve the public, all because of our fear of incurring a moral obligation by attempting to do something. Admitting we incur no legal obligation by regulation, as I think I have shown is the case when we ought to escape such legal obligation, there is not one cogent reason advanced which leads me to believe that we are not morally more bound by failure to regulate than by regulation. The corporation is the creature of the state. Every step which may be taken in issuing stock or authorizing bonded indebtedness must be taken in compliance with some statute. The state now regulates utility corporations, in this regard, as it does all corporations and by so doing empowers such corporations to take advantage of the public and empowers the officers of such corporations to take advantage of the corporations themselves to the hurt of such corporations and the public. Add to this the fact that government knows not only that these things may be done, but also that they have been and are being and will be done, and, to my mind, we have a pretty large moral obligation in itself and one that is minimized rather than accentuated by taking additional steps to prevent abuses possible under the authority already conferred. To relieve ourselves of any moral obligation at all we must dispense with the corporation itself. But having created the corporation with power of oppression under present economic conditions, can we excuse ourselves, if it oppresses, by the plea that, by an attempt to prevent such oppression, we become *particeps criminis?* Being entirely responsible for every power of this fictitious person wherein it issues securities, we cannot avoid responsibility for what it accomplishes by means of such powers.

As palpably erroneous is the contention that, by approving securities, we will mislead investors. The very able chairman of the Wisconsin commission in a letter to the National Civic Federation

states that, by authorizing the issuance of securities and directing their investment, the governmental authority involved

> is likely to cause certain investors who purchase such securities as an investment without knowing anything of the management of the corporation or the possibilities of the enterprise to rely upon the state's sanction of the issues. These are the investors who need protection and who, I am apprehensive, will often be the victims of investments in ill-advised and mismanaged public service corporations whose securities have been authorized by state commissions. The business man who deals in such securities needs no protection.

These views of Mr. Roemer deserve respect because of his great ability and long experience, but at the risk of appearing presumptuous, I respectfully suggest that a little analysis will show them to be fallacious. Who buys the bad securities today? Not the business man who deals in securities, for he, with or without regulation, makes his own independent investigation. So as to him regulation effects no change. Who then buys securities today under no regulation without making an investigation for himself? The unwary, of course. Who will buy them under regulation, according to this argument, without independent investigation? Here again the unwary. The whole argument then is "unwary investors are now misled into buying bad securities. Make your securities better by effective regulation and issue fewer of them for the same amount of property and thereby victimize the man by protecting him and giving him more for his money."

I have attempted to deal with the more important controverted questions involved in regulation of securities. I am strongly of the opinion that not one of the arguments advanced against regulation will bear analysis. I am convinced that these arguments are adduced in contemplation of ineffective regulation and are directed more against what has been and is being done in some quarters by way of regulation than against what the state can do under proper statute carefully and intelligently administered.

In summarizing the argument on the first objection it is well to have in mind what the Railroad Securities Commission had to say with reference thereto. In this connection I call attention to the following comment:

> They (the railroads) have therefore been less able to give the shippers or the travelers the facilities that are requisite no less for the convenience and safety of the public than for the profitable utilization of the railroad itself

> To the extent that we lessen the debt we shall increase the power of the railroads to raise money when the public needs added facilities and shall at the same time reduce the chance of default and lessen the severity of commercial crises.

And to what Dr. Maltbie of the New York Public Service Commission, first district, one of the clearest thinking men engaged in regulation work in the country, also says:

> The state owes a duty towards investors as well as it does towards shippers and passengers. Further, proper regulation of securities will ultimately affect rates and service. It may not immediately but in the long run better service and lower rates will be given by corporations that are upon a sound financial basis than by those having a great over-capitalization and unsound finances.

In short, as pointed out at length herein, whatever *ought* to be the result of over-capitalization and however much men may theorize, the fact remains that it *has* and *does now* affect rates and service and a proper regulation of rates and service cannot be had without regulation of securities.

In answer to the second objection, it appears that the state, by methods easily available, can regulate and is regulating securities without directly or indirectly validating or approving existing outstanding securities that should not be approved. Besides, the state incurs an obligation from an ethical standpoint in putting a corporation, by permission, in the way of doing a thing which results in a fraud and particularly is the state morally derelict if after having conferred power on a corporation and having seen such power used in a way to work injustice, at having the power to step in and prevent such injustice, fails to do so. And any restraint applied which tends to prevent such improper procedure on the part of corporations instead of morally involving the state to an extent beyond which it is now obligated, tends on the contrary, to lessen the moral responsibility.

As regards securities that are approved by the state, under the proper precautions pointed out herein, I can give myself no great concern as to the effect of such approval. If the public utility commission does its duty, the approved securities should be good and if it sees to it that the proceeds are honestly invested in the property and takes care that securities approved are not diluted through participation with other securities not approved, then why should not these securities be recognized in the rates? But regardless of

any difficulties that confront those empowered to regulate securities, the condition under regulation is so immeasurably better for utility, patron and investor, as far as can now be determined, that I am at a loss to understand the Jeremiah-like attitude of those who some years ago indulged the same childlike faith in the efficacy of regulation that some of the rest of us now display. But I could the better understand and perhaps agree with those formerly urging regulation and now so fearful of its results, if they would point out wherein it has failed where effectively applied, instead of contending that it may produce results that have not yet come upon us. The evils of over-capitalization are familiar to us all. The logic of regulation seems to me to be irrefutable. Where properly carried on it is certainly preferable to the former condition, and until something more substantial than mere fears of results that cannot be shown as yet to have materialized is urged against the propriety of regulating securities, such regulation certainly should not be rejected and a reversion to former admittedly bad conditions invited.

TEXAS STOCK AND BOND LAW

By Charles Shirley Potts,
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James Stephen Hogg, Governor of Texas from 1891 to 1895, was in many respects the first of the group of progressive leaders of whom Senator La Follette, Theodore Roosevelt and Woodrow Wilson are conspicuous illustrations in more recent times. By his vigorous enforcement of the laws of the state against the railways, as attorney-general from 1886 to 1890, Mr. Hogg won the reputation that made him the natural leader in the campaign of 1890, a campaign that ended in the adoption of an amendment to the constitution providing for the establishment of the railroad commission, thus bringing to an end a struggle that had extended over a decade. The legislature that met in January 1891 created the railroad commission and conferred upon it powers that at the time seemed very radical, though not especially so in the light of more recent railway legislation in other states.

Necessity for Regulating the Issue of Securities

Scarcely had the commission entered upon its duties and promulgated a general system of freight rates before it became evident that for any thorough regulation of rates it would be necessary for the commission to have power to control the issue of railway securities. The necessity for such control was forced upon the attention of the governor and the commission when certain foreign bondholders represented by the Farmers' Loan and Trust Company of Baltimore, went into a federal court and obtained an injunction suspending the rates fixed by the railway commission upon the complaint, among other things, that rates were not high enough to pay the expenses of operation and leave sufficient funds to take care of the interest on the outstanding bonds. "By that action," said Governor Hogg, "the point is sharply, boldly made, that the traffic rates of this country must be maintained to pay the interest on all the railway's bonds. It is material to the public, therefore, that none but honest bonds,

issued in pursuance and within the limits of the constitution directly, shall be permitted. . . . . Fictitious bonds are not capital nor the representatives of capital. They are the fruits of crime."

With such views as these, Governor Hogg in 1892 offered himself for reëlection upon a platform defending the work of the railroad commission and demanding a law that would place definite restriction upon the power of the railroads to mortgage their property. In his opening campaign speech, he pictured the evils of unrestricted bond issues in the following language:

> The railways of this state, according to their sworn reports filed last October with the comptroller, have outstanding against them $455,250,744 in stocks and bonds, or an amount more than one-half the assessed valuation of all the property within the state, including the railways themselves; or about $40,000,000 in excess of the assessed value of all the lands within the state. . . . . The news goes abroad, and the declaration is commonly made, that there were no railways built in Texas last year; yet during that period they have increased their bonds and stocks to the amount of over $40,000,000. . . . . I know of one road that, within a few weeks after it sold out for $8,000 a mile, was mortgaged to secure bonds issued to the amount of $37,000 a mile on it. I know another that sold for $9,500 cash a mile and was immediately mortgaged to secure bonds for $35,000 a mile. Neither of these roads was in the slightest degree improved in equipment or otherwise. There is hardly a road within the state that has not, year by year, increased its bonded indebtedness, until now they nearly all owe quadruple their value. By this illegal process millionaires are made. These roads are rendered for taxation at a valuation of $63,000,000, yet their stocks and bonds amount to $392,000,000 above that amount. For the last seven years these railways have increased their obligations on an average of $30,000,000 annually.

The Stock and Bond Law

After one of the bitterest struggles in the history of Texas politics, Governor Hogg was reëlected and the following year the present stock and bond law was placed upon the statute books. This law provides for the valuation of all the railways in the state by the railroad commission's engineers and declares null and void any mortgage or lien upon the railway's property in excess of the valuation that is placed upon the roads by the railroad commission. In cases of emergency involving the interests of the public or the preservation of the railway's property, an additional amount of bonds may be authorized, provided that in no case the railroad's outstanding

stocks and bonds combined shall exceed 150 per cent of the value as determined by the railroad commission. That is to say under ordinary circumstances the bonded indebtedness of the railroads, not including the capital stock, shall not exceed the full value of the property as ascertained by the commission, while 150 per cent is fixed as the maximum limit of both stocks and bonds in cases of emergency.

Two material amendments have been made in the law since its original adoption. One came in 1901 and pertained to the building of branches and extensions and the other in 1907 and authorized the issue of additional securities for the purchase of necessary rolling stock. By the latter amendment the commission was given power to require any railroad to purchase "such rolling stock and motive power as will properly equip such common carrier and facilitate the movement of all traffic," and to allow the issue of securities to pay for the equipment so required.

The amendment of 1901 was adopted to soften a rather too harsh interpretation of the original statute. The commission had held that when a company that was already over-capitalized extended its line by the construction of branches, it could not issue additional securities unless the combined actual value of the road and the extension together exceeded the outstanding securities, and then only an amount equal to the excess could be issued. The amendment of 1901 provided that the commission should allow the issue of new securities up to the total value of the new construction regardless of any formerly existing over-capitalization on the old mileage.

Results of the Law

It is always a matter of great difficulty to say positively what the results of any given piece of legislation have been. It is very difficult for example to know whether or not the Texas stock and bond law has retarded the building of railways in Texas or has hindered the expenditure of money for improvements and betterments, or has produced any material effect one way or the other on rates and fares. Of one result, however, we can speak with definite assurance, and that is that the law has not only stopped the increase of fictitious stocks and bonds but has actually resulted in a decrease in the average amount of the outstanding securities per mile of line. This result is

worthy of remark in view of the fact that the last twenty years have seen a marked increase of the outstanding capitalization on the other railroads in the United States. The average amount of capital stock per mile of line in Texas has been reduced from $15,000 in 1894, to $8,400 in 1913, or a decrease of more than 44 per cent. The bonded indebtedness per mile of line has been reduced from $25,700 per mile to $23,200, or a decrease in the mortgage debt of nearly 10 per cent. The total amount of both stocks and bonds has been reduced from $40,800 in 1894, to $31,600 in 1913, or a reduction of more than 22 per cent.

The following table will show at a glance the changes that have been made in the mileage, in the commission's valuation of the roads, and in the amount of stocks and bonds outstanding, for the years mentioned:

On June 30	Mileage against which securities were outstanding	Commission's value per mile[1]	Stock outstanding per mile	Bonds outstanding per mile	Total stocks and bonds per mile	Decrease per mile
1894	9,138.22	$15,926	$15,102	$25,771	$40,873	.....
1898	9,284.00	15,748	14,596	24,699	39,295	$1,578
1902	10,616.32	15,901	12,389	21,781	34,170	5,125
1905	11,662.46	16,520	10,985	21,035	32,020	2,150
1908	12,830.96	17,015	10,207	20,686	30,895	1,127
1913	15,286.88	18,824[2]	8,409	23,206	31,615	720[3]
Total reduction for nineteen years ..			$6,693	$2,565	.....	$9,258

[1] The figures given in this column are the average for such railroads as the commission had valued up to the dates for which the figures are given.

[2] This valuation is taken from the commission's report for the year 1912, but differs only slightly from the figures for 1913, which are not available at this writing.

[3] Increase.

It should be noted that in addition to the outstanding stocks and bonds, as indicated in the table, the roads owe about $6,400 per mile on the indebtedness grouped by the commission under the general headings, "equipment trust obligations" and "current and other liabilities." Nor does the table include some $18,000,000 of "certificates of indebtedness" due by the Gulf, Colorado and Santa Fé Railroad Company to the parent company, The Atchison, Topeka and Santa Fé Company. These obligations, however, are not mortgages on the property of the railways, but are presumably obligations that must be met out of the income.

Need of Revaluation

While the purposes of the stock and bond law are excellent and its operation has brought very desirable results, there are certain directions in which it is believed modifications of the law either in text or in administration could be made with advantage. In the first place it seems desirable that there should be a general revaluation of the railroads of the state. After the passage of the stock and bond law in 1893 the commission adopted as a basis of valuing the existing roads the cost of reproduction, while for the roads to be constructed in the future the cost of construction was adopted as the principal basis. With reproduction, then, as the basis of valuation, the commission organized a force of engineers, and during the years 1894 to 1896 made a valuation of the existing roads. As new roads have been constructed, they have been valued by the commission, until, at the present time, the commission has valued an aggregate of about 14,000 out of 15,000 miles in the state.

It is believed that a revaluation should be made for the following reasons:

1. The original work of evaluating the roads was hastily and inadequately done. The commission was limited in the number of engineers and accountants, and it felt the need of securing immediate results. As a consequence, the engineers passed over the roads hastily and at best could have made only a superficial estimate of the cost of grading and the value of materials used in construction. The cost of making the original valuations per mile of line was about $1.50, whereas the expenditures for similar work in other states has been several times as great, and former Interstate Commerce Commissioner Charles A. Prouty, now in charge of the federal valuation board, estimates that the cost to the government and the roads together of making the valuation of the roads of the country will be about $25,000,000, or about $100 per mile. The national board has employed a force of 1500 engineers, and 1000 real estate experts, clerks, and stenographers. Compared to the thorough-going inventory thus planned by the federal government, the valuations in Texas seem hopelessly inadequate.

2. In the second place, no allowance has been made for the settling and seasoning of the properties, for the increase in the values of the lands and other properties due to the general growth and

development of the community, or for the expenditures made for permanent improvements.

3. The values determined in 1896 are unfair to the roads, because they were made at a time when all values were abnormally low. The years 1894 to 1896 were the years when bedrock prices obtained throughout the country and when wages were lower than they had been for twenty years and much lower then they have ever been since. As a result, the values placed by the commission upon rights of way, the rails and ties, and the stations and rolling stock of the roads were such as would not begin to reproduce them in normal times. Probably from 30 to 50 per cent would have to be added to these values to make them representative of normal prices of materials and rates of wages.

4. Still another reason for a new valuation is to be found in the fact that the existing valuations are surprisingly unequal and unfair. Many of the valuations, as has been stated, were made in the nineties during the period of depression. Others have been made at different times as the roads have been constructed, and, as the cost of material and the rates of wages have varied greatly, the values have shown a corresponding variation. As a result, all the older roads which on account of settling of roadbed and the building up of industrial and commercial relations, one would naturally expect to be the more valuable, are in general valued by the commission at a much lower rate than the newer roads. Thus the Houston and Texas Central, one of the oldest roads in the state, with gross earnings of $7,449 per mile, is valued at $20,500 per mile, while the Trinity and Brazos Valley not yet ten years old, with an earning capacity of $5,553 per mile, is valued at $29,900 per mile. In like manner the Gulf, Colorado and Santa Fé, which probably has the best roadbed in the state and has an earning capacity of $7,320 is valued at $17,000 per mile, while the St. Louis, Brownsville and Mexico, completed about eight years ago, with gross earnings of $4,706 per mile, is valued at $26,000 per mile. The Galveston, Harrisburg and San Antonio, which is the oldest road in the state, with an earning capacity of $8,061 per mile, is valued at $18,800 per mile, while the Beaumont, Sour Lake and Western, of recent origin and with an earning capacity of $6,041, is valued at $25,600 per mile. The Texas and Pacific, the strongest of the Gould roads in Texas, with gross earnings of $10,200 per mile, is valued at $17,000 per mile, while the International and

Great Northern, another Gould property, which has but recently passed through a receivership, is valued at $29,000 per mile.

Other illustrations could be given, but these are quite sufficient to show the hopeless confusion into which the commission's valuations have fallen, a confusion from which the only escape seems to be a general revaluation of the roads. The results that might be expected from such a revaluation are very well illustrated by the case of the International and Great Northern Railway, referred to above. This road was one of the original roads valued in 1896, and the commission placed a value on its 771 miles of track of $13,942,000, or an average value of a little more than $18,000 per mile. As a result of the receivership through which the road has passed since 1907, and the consequent reorganization of the company, it became necessary for the commission to revalue the old portion of the road, as well as the additional mileage built since the former valuation, or, as the members of the commission express it, to bring the valuation down to date—a service which the commission stands ready to perform for any road upon request. The result of this work which was completed in June, 1913, is that the commission now values the road at $29,097 per mile. Thus one of the old roads which is not by any means among the best earners or in the best physical condition, has by revaluation had its value as fixed by the commission increased by $11,000 per mile, or an increase of 61 per cent. An even more striking result was obtained from a revaluation of the Galveston, Houston and Henderson, by which the commission's values were raised from $31,000 per mile to $63,000 per mile, or an increase of more than 100 per cent. That changes more or less similar would result from a revaluation of most of the older roads, there is very little reason to doubt.

Bonds for Betterment

In the second place, it is believed that the law should be so changed as to allow the issue of bonds for extensions and betterments yet to be made. The commission has interpreted the law as authorizing the issue of securities only after the money has been actually spent and the values created. This interpretation compels any road that may desire to make an extension or permanent improvement in its tracks to secure the money first and make the necessary improvements before the bonds will be authorized by the commission, whereas, the ordinary method of financing such improvements is to secure the

funds first by the sale of the company's bonds. It seems a bit inconsistent to require the company to spend the money first and raise it afterwards. It is contended that this provision of the law as interpreted by the commission has seriously retarded the extension and improvement of the roads by cutting off the one ready source of money supply, namely the use of the corporation's credit.

It is difficult to see any serious objection to allowing the corporations to issue their securities as a means of raising the funds with which to make extensions and betterments, provided always that the commission be given full and complete power to supervise the spending of the money so raised. Such a practice to be sure would result in an increased outstanding indebtedness, but if the commission has power to see that the money is properly expended on the improvements contemplated, this process would not result in an increase of overcapitalization, for every dollar would be used for improving the services or the earning capacity of the property. This modification of the stock and bond law has been introduced in a number of the more progressive states and has everywhere resulted in an improvement of the quality of the service. Thus the California law of 1912 provides that no public utility shall spend the proceeds of the sale of any stocks or bonds or other evidences of indebtedness without first securing an order from the railroad commission, and the commission is given power to require a strict accounting for all moneys so spent. Similar laws are in force in Arizona, Kansas, Wisconsin, New Hampshire, Massachusetts and New York.

Control of Interurbans

Another change that should be made in the law is to include in its provisions electric interurban railways. Up to the present time these companies have been entirely without regulation either as to rates and fares or as to the issue of securities. It is quite possible that the commission has ample power under the law creating the commission and under the stock and bond law to assume general regulation of interurbans as well as steam railways. These laws give the commission power to "regulate freight and passenger tariffs, to correct abuses, and prevent unjust discriminations and extortion in rates of freight and passenger tariffs on the different railroads in this state" and to authorize the issue of securities for such roads. Interur-

ban electric roads are certainly railroads and are engaged in carrying freight and passengers. The character of the motive power used by the roads is nowhere referred to in the law, and there would therefore seem to be no reason why the railroad commission should not assume the control of these newer forms of railway facilities. If, however, it be held that the commission has not the power under the present law, the law should be changed so as to bring interurbans under the control of the commission, not only in the matter of rates and fares, but in the issue of securities as well.

Should Refunding be Allowed?

Still another particular in which the existing law has been criticized is the fact that as interpreted and applied by the railroad commission, it does not permit roads that were over-capitalized at the time the law was passed to refund their maturing bonds. The law, as interpreted by the commission, permits the issue of mortgage bonds only up to the full face value of the property less the amount of the outstanding stock. And where that limit had already been exceeded, the commission will not allow the issue of new bonds in excess of the value of the road, and the difference in the amount of the old and new issues must be provided for in some other way. In case the road should not be able to make such provision, a receivership would be the necessary result.

It is argued by those who favor a change in the law to provide for the refunding of outstanding securities, even though the amount be in excess of the value of the property, that the refunding of the debt would not result in an increase of the mortgage, but would merely be a means of assisting the companies to meet their obligations. They contend further that to refuse to allow the refunding of the bonds would be virtually an impairment of the obligation of a contract, since it would deny to the railroads the means of paying off the obligations that they doubtless had in contemplation at the time the original debt was created. It is also pointed out that the punishment meted out by such a policy would not fall on the shoulders of the guilty parties who are responsible for the over-capitalizing, but upon the innocent purchasers of the bonds, many of whom may have been entirely ignorant of the fact that a wrong was done a quarter of a century before, when the bonds were issued. They point out, too, that the state itself is partly responsible for the over-capitalization,

because by its negligence and its failure to enact and enforce proper laws, the conditions complained of were allowed to come into existence. For the present, however, this subject is mainly one of academic interest, for up to date no road has been seriously embarrassed by the application of the present rule and no large issues of bonds will be maturing for another ten years. It is probably true, too, that if a thorough-going revaluation of the roads were made it would wipe out the margin of difference between the commission's values and the outstanding securities.

All things considered the conclusion may be safely stated that the Texas stock and bond law has accomplished good results. At the time it was enacted, it was probably the most advanced piece of legislation on the subject in the country, but such has been the veneration in which the law and its great author have been held by the people of Texas that they have feared to tamper with the measure lest its efficiency should be impaired. In fact many of the people of the state have looked with suspicion upon anyone who has had the temerity to propose a modification of the law, fearing lest it be a secret attempt to destroy it. As a result Texas has not kept pace with the progress made in other states and has failed to avail herself of the experience gained by others. Three things at least seem to be fairly clear: first, that there should be a revaluation of the railroads; second, that the commission should be given power to allow the issue of bonds for extensions and betterments, the proceeds to be expended under the commission's supervision; and third, that interurban roads should be brought under the control of the commission in matters of rates and fares, as well as the issue of securities.

RATE OF RETURN

By James E. Allison,

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The object of public valuation for rate making should be to establish a just amount which should earn returns and to determine the amount of those returns by means of a percentage factor called the rate of return. If it is granted that the result is to be just both to the investor and to the consumer it is seen that the ultimate object of all the investigation and regulation is to establish a proper return in money. The amount of capital upon which the returns are based and the percentage rate of return are merely steps in arriving at this ultimate object of the amount of returns.

The amount of return in reality determines the value of the property. No matter what sum is taken as the capital item or what percentage as a rate of return, the value of the property will be determined by a capitalization of the amount of net earning and, of course, the stability of those earnings. If the so-called valuation or determination of the capital item establishes an amount which appears to do justice to the investor and the consumer, then the rate of return and consequently the amount of returns must be such as will make this just amount the true value of the property, i.e., exchange value.

It is seen by following these steps that the true object of public regulation so far as valuation is concerned is to *create* a value which shall be just and is not to *find* an existing present exchange value. The present exchange value of a property undergoing rate or service regulation is problematical until the rulings of a court or commission establish the returns.

Having established by inventory and appraisal methods the "capital amount" upon which a reasonable return shall be based and having done this upon such principles as will result in justice, the next step is to determine upon what principles the rate of return and consequently the return shall be based. To the mind of the writer it seems clear that in order to preserve as an exchange value

the amount determined to be the just amount it is necessary to fix the rate of return at that point which will readily induce capital to flow into the particular enterprise under consideration. In other words, the returns should be such as will readily induce another set of investors to take the place of the investors already in the enterprise and to pay them a sum equal to the capital item determined upon as the just amount.

While this statement that the rate of return should be such as readily to induce one set of investors to take the place of another seems simple, the ascertainment of that rate is not by any means simple. The whole body of investors who have capital to place in public service enterprises is not homogeneous and conditions which will induce one to invest will not tempt another.

First, we have the ultra-conservative class which demands absolute security for its principal and must consequently be satisfied with a very low rate of return. Second, what may be called a conservative class which will invest in corporation bonds which have a small amount of apparent risk but which must be upon developed and matured properties. Third, we have a semi-conservative class which will take greater risks and will invest in preferred stock and bonds paying (discount included) a higher rate of return and bearing a corresponding amount of risk. In the fourth class, which might itself be divided into many classes, we have the more or less speculative investors who not only aim for high rates of return but demand a prospect of enhancement of capital.

All these different classes of investors willing to take part in the enterprises upon different conditions are the cause of the invention and issuance of the many grades of corporation securities. To obtain money for public service enterprises it is usual to try to appeal to all of these classes in the arrangement of the financiering plans and when a commission or court comes to select one single percentage as the proper rate of return which will preserve but not enhance the value of the investment the problem is always a difficult one. In fact it will seldom be possible to preserve exactly the just amount as the future exchange value of the property. This result, however, can be approximated and at least should be the aim of regulation.

The most feasible way to arrive at the proper rate of return upon a given property would seem to be to imagine a set of investors

willing to pay the established just amount intending to hold it without bonding or other financiering devices. The return at which they would accept this proposition is the return which will preserve the just amount as the true value and such return may be assumed as a reasonable return. But as an interesting feature of financiering, it is found that the division of the investment into classes of first mortgage bonds, second mortgage bonds, preferred stock, second preferred stock and common stock or any variation thereof, may act to create an exchange value for all the securities representing the property considerably in excess of what its value would be were all the securities of one single class. The cause of this is, of course, that each of the classes of investors heretofore mentioned being suited in its particular kind of security is willing to pay a higher rate than if all of them are required to accept securities not of the class they most approve of.

An illustration of this condition came under the notice of the writer in a recent valuation and regulation case where the whole property was valued at $18,000,000 and where the rate of return was fixed as reasonable at 8 per cent upon that amount of investment. This company had out $15,000,000 of bonds at 5 per cent which on the strength of a well-established business were worth par. It is seen that, of the $1,440,000 constituting the 8 per cent return allowed, only $750,000 was required to pay interest on the bonds, leaving $690,000 free to be proportioned as dividends on stock. This amount easily enabled the company to carry $10,000,000 in stock commanding par in the market. In this case it could not be denied that, if capitalists were to pay $18,000,000 flat for the property without bonds or classified stock, the money could not be obtained at less than 8 per cent, and yet by dividing the securities into classes to suit the desires of the different investors an exchange value of $25,000,000 was created. The regulating body in this case held that the public was justly treated in paying returns at which the capital would invest in simple unincumbered title to the property, and that arrangement made by the owners, under which by assuming all the risks they persuaded the investors to hold the bonds at 5 per cent, was a financial operation from which they were entitled to the full benefit. And unless the regulatory bodies are to enter into and prescribe the details of financiering it would seem that this position was the correct one.

One of the problems entering into rate of return is that of bond discount or discount of securities. It is seldom that a new enterprise sells its bonds at par although it could probably do so if the interest rate promised to be paid were high enough. Just why it seems necessary, and it does seem necessary, to offer bonds at less than par when the same result would be accomplished by a higher rate of interest is one of those problems involving the psychology of investors. One strong reason for it is that it is customary, and another probably is that the appearance of getting a bargain always has its weight in making a sale.

The question of bond discount has arisen in many public service cases and the weight of opinion seems to be that it is best not to capitalize it; although this is not so held in all cases. One of the strong arguments against capitalizing bond discount as a rule is the custom of issuing refunding bonds at less than par. Where this is done at heavy discount, as often happens, it can be seen that, if several refunding operations were taken into account, a large percentage of the capitalization might represent nothing but bond discount. This circumstance has had much to do with determining the regulating bodies in taking the stand that bond discount should be included in rate of return and not set up as permanent capital.

Capital under ordinary circumstances is probably as highly competitive a commodity as exists in the field of economics. But in public utilities we generally find a monopoly feature existing. The object of public regulation should be so to regulate rates that the returns upon capital shall be brought to a competitive basis, while at the same time the economic waste of competition in the utilities themselves shall be eliminated. In regulating returns, however, great care must be taken that the returns allowed do not fall below the competitive point, otherwise capital will not enter the utilities and stagnation and poor service will result.

The return upon capital cannot well be controlled by arbitrary rules whether established by statute or by courts or by commissions. Hence the duty of a rate regulating body would seem to be to investigate and find out the existing natural economic laws controlling the rate of return demanded by competitive capital in order to induce it to enter the particular enterprise being regulated and to establish their rules accordingly.

The rate of return is not always fully defined when we give the

percentage per annum to be earned. In many enterprises the return must be partly as a lump sum to be paid for extra hazards. One of the most important problems yet to be solved by the public service commissions is what inducement is to be offered to the capitalists who are expected to furnish the initial investment in new and untried enterprises. At present there is almost a stagnation in the building of public service plants or railways due in part to the uncertainty as to what capital may expect as a reward for this initial risk. If a group of capitalists should determine that a certain interurban railway would eventually pay, and if they were to foresee that they were under no circumstances to be allowed to earn upon this enterprise a return any greater than they could obtain from a similar already established investment, it is difficult to imagine that they would undertake it. Even if a commission were to assure them that they would be *permitted* to earn a very high rate of return for the first few years, as compensation for risk, the immediate answer would be that the circumstances of a new enterprise would probably prevent the earning of a high rate of return during the initial period even if permission to do so were assured. The investors therefore would conclude that they would have small chance of compensation for initial risk; for no matter how promising the enterprise appears the element of risk in a new business is always present.

As time goes on, and as the regulation of private capital in public service enterprises is better understood, it will probably be found necessary to allow a lump sum capitalization of initial risk as an inducement to obtain the capital, and this risk allowance will be permitted to earn reasonable returns as if it represented real money placed in the service of the public, the returns to be permitted after the enterprise has developed to the point where they can be earned.

In most of the published reports of judicial decisions or opinions and of findings of commissions there is no very clear process of mind shown by which these bodies have arrived at their conclusions as to a reasonable rate of return. In some of the court decisions and even in those of able commissions the legal rate of interest seems to have entered as a factor in determining a reasonable rate of return. There is of course no reason for this other than that it was grasped as a prop for lack of better reasoning. Because the legal rate of return in some states is 6 per cent is no reason for sup-

posing that this circumstance would have any effect upon investors in inducing them to enter a hazardous enterprise. Generally to the legal rate of return there has been added what is called profit as a reward for risk or for exertions of the managers and creators. This process does not consider economic laws but no doubt in many cases by such rule of thumbs an approximately correct result has been obtained.

One of the most curious features in the decisions of the courts has been in assuming that, while a rate of return may be too low, it is yet not confiscatory of property. This conclusion, and it seems rather well established as a principle, is to the "unlegal" mind, a curiosity in logic.

It can hardly be disputed that the returns create the value of the property and if the returns are admitted to be, we will say 25 per cent below what they should be, it seems difficult to avoid a conclusion that 25 per cent of the value of the property has been destroyed to the investors, and if the ruling is the result of a rate case, 25 per cent has been confiscated to the benefit of the consumer.

Throughout the whole mass of decisions of the courts on valuation and on rate of return there has been such a profound disregard for economic laws and there is such a great reverence by both the courts and the commissions for precedent even if it is a patently wrong precedent, that it is difficult to prophesy the results which will follow for the next few years. In the end the true economic laws will of course prevail but before that time there will probably be a considerable period during which new capital will hesitate to place itself under control of public regulation. Capital already in the public service will of course be injured by adherence to false precedent but it will suffer much greater injury because of the stoppage of new capital. Public service enterprises constantly need new capital because in most places the public demand for public services is constantly increasing. Whether or no the regulating bodies or the public itself will feel the curtailment of service soon enough to realize, before any great harm is done, that capital is free to stay out of public service, remains yet to be seen.

CAPITALIZATION OF EARNINGS OF PUBLIC SERVICE COMPANIES

By Morris Schaff,

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The expediency of adjusting the powers and privileges of monopolies, like our railroads, telephones, gas, electric light and water companies, to the ascertained requirements of the public and to the conditions which govern and secure to the companies themselves their own stability and efficiency has passed beyond the debatable point; for about all the states of the Union have, in response to the reasonableness and advisability of this expediency, created commissions for the supervision and regulation of public utilities which from the nature of the field of their operations are necessarily monopolies.

The only aim and purpose of these commissions are to secure two things, namely, the lowest price for an adequate service rendered, and the permanence and security of the investment. The body of principles to be observed in securing these mutual benefits is called public policy and this (it goes without saying) like any political agency has to adapt itself to circumstances and the growth of enlightened public opinion.

Let us bring into light with as much clearness as we can the factors on which the lowest possible prices depend and the conditions most favorable for the security and permanence of the investment.

The vital relation which the fitness and adaptation of the plant as a whole to its environment, its output, its situation in regard to the cost of material and labor, the zeal and intelligence with which its operations are carried on to the question of low prices are so obvious as to need no elaboration. They are facts, however, which, save in the matter of technical skill displayed in operation, are entirely local and beyond the control of either the company or the state, and the advantages and disadvantages they impose must be shared or borne by the community and the investment. But,

assuming the conditions that have prevailed and still prevail in the cities of our country that have been attended by a long and uninterrupted prosperity for our gas, electric light and water companies, and also that the tendency of monopoly to grow stagnate and indifferent through not feeling the spur of competition has been resisted and improvements and extensions have been attended to with public spirit, then it is equally obvious that the lighter the capital burden the lower may and should be the prices of the manufactured or supplied article to the consumer. Now as to capitalization:

In view of the fact that the issue of the securities of public service corporations is a joint exercise of authority vested by law in the directors of public service companies and the supervising commissions, the capital burden as a legalized creation is wholly in their hands, and hence the responsibilities as to the effect of its magnitude on consumer and investor must fall on the official bodies who give it lawful existence. What then are the duty and the opportunity of directors and commissions to do a great service to the public by making the burden on the helpless consumer the lightest, his prospect for the lowest prices the brightest and the investors' interest for permanency and security the safest! To accomplish this public-spirited end no labor is too great and none too little to be undergone by commissions and directors; for, with their hearty coöperation there must, or at least *should* follow, good will on the part of the public and solidly progressive stability and usefulness of the companies.

It cannot be conceived that there is place for discussion over the postulate that between two companies, one with and one without a substantial surplus in the plant, that the former is in every way the better for consumer and investor. If this be granted, and a little reflection be given to the matter, the question of capital and devotion of earnings ceases to be academic and boils down to one that is practical and one of business, namely, how shall a surplus with its potential strength be created and preserved, and what shall be the limit for its sufficiency?

A surplus, as we all know, is the fruit of profits, and, in the first instance, has no other source; later, however, it bears a fruit of its own in the way of premium which new incoming capital pays to enjoy the advantages of the old capital. Surplus has its being then as the result of prices; and as the prices which the directors of our gas and electric light and water companies set at such figures as

they see fit, and, without discussing for the moment the reasonableness of these unrestrained established prices as effecting a collective interest of the community in the enterprise, the devotion of resultant profits is equally an unrestrained exercise of the directors' volition. It is in their hands, after interest charges are paid, to say how much shall be distributed to the stockholders, and how much shall go back into the plant to create or maintain a surplus. So if a company has no surplus it is the fault of the directors and whatsoever good may come from it to community and to the investor is lost. This is a fact of such consequence that commissions should have the power, where companies are not creating a surplus over actually paid-up capital or are depleting one that has been created, to intervene and reduce dividends until the property has gained or regained a workable surplus. In the early days of our gas and electric companies such prices were fixed and conservative policies pursued as to dividends, that the result was that the companies in our growing cities had more or less substantial surpluses, with corresponding increase in the value of the stock.

Then, unfortunately for the consumer and to the misfortune of many an investor, came the day of reckless speculation in the securities of our gas and electric companies. For suddenly a band of financial adventurers, headed by Addicks, invaded the field. The old stockholders, who with courage and shrewdness had built up the plants, unwilling to face unscrupulous enemies, sold out at great profit, and, having seized control, the buyers at once began to prey on the surpluses by converting them into first and second mortgage bonds, preferred and heavily watered stock. This astounding exhibition of high finance, capitalizing not only surpluses but future earnings, has aroused the public to a thoughtful and serious inquiry as to its rights in these surpluses and the devotion of the monopolies' earnings. Hence the conflict, now raging before the courts between the speculators in our gas and electric companies and the public, became inevitable.

The legal battle ground is over two propositions: has the public that has created these surpluses, in addition to paying fair dividends, a collective interest in them which in the nature of things can only be reflected in rates? The second is: is the obligation of their capital burden based on the paid-up capital that has come out of the pockets of stockholders, or are they bound to pay on valua-

tions, including organization charges, overhead charges, franchise and going concern values, made by professional experts hired by the companies, on the one hand, and by the public on the other hand? I think that sooner or later our courts will falter before this proposition. For if it be finally held by our courts in rate cases that the reproductive value of the plant is the unqualified measure of the consumers' burden, regardless of the amount paid in by stockholders out of their own pockets, then there would seem to be little call for the state to bother itself about the issues of securities, either as to their amount or the conditions under which they may be authorized. Once the experts' figures thrown in the balance are the determining factors for justice, what becomes of the weight of public policy and the financial history of the surplus?

Some light is thrown on this battle ground in Massachusetts from the policy of the state itself and from the decisions of its board. As early as 1867 the state prohibited the capitalization of profits. In 1894 the board in a decision, ordering a reduction of rates, had this to say as to the obligation of consumers which touches the question of capitalization and devotion of earnings:

> When gas reaches the consumer it is burdened with three obligations: first, its fair cost; second, a fair dividend on a reasonable amount of capital; and third, such excess as will give the company sufficient surplus to enable it to meet extraordinary accidents and conduct its business with the highest economy. The consumer is in duty bound to pay these charges. If he pays more and the company converts this excess into new capital, increasing it to a figure beyond the fair amount demanded by the business, the consumer is burdened with too high a price for the gas in the first instance and thereafter with a dividend charge upon his own contributions. A company which pursues this policy and to this extent fails to appreciate its obligations to its customers must sooner or later pay the penalty. The growth of the company's capital and its policy in reference thereto are recognized by this board as facts which it is proper and necessary to consider in adjusting complaints by consumers.

Finally I believe that commission regulation cannot be successful without guarding against an excess of capital, and that rates fixed either by courts or commissions must reflect the consumers' inalienable equity in whatsoever there may be in the plant which they directly, or society indirectly, may have contributed in the way of accretions to values.

CERTAIN PRINCIPLES OF VALUATION IN RATE CASES

By Robert H. Whitten,

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As the valuation problem develops it becomes increasingly clear that the term "value" may be properly used in several different senses, and that what is value for one purpose is not necessarily value for another. The best results are undoubtedly obtained when the problem of valuation is worked out solely with reference to what is just and reasonable with regard to the specific purpose for which the valuation is to be used. Certain facts and certain elements of value will doubtless be considered in arriving at a judgment as to value for tax or rate or purchase purposes. This is particularly true of the important fact of cost of physical property, both actual cost and reproduction cost. But the degree of consideration given to certain facts may vary greatly with the purpose of the valuation, and certain facts and elements may be considered for one purpose and entirely excluded for another. This principle seems to be fully recognized in almost all of the recent court and commission decisions in relation to fair value for rate purposes.

Standard of Value

It has frequently been stated that there can be no rule or formula for the determination of fair value for rate purposes. Each case must be considered on its own merits, and such result or value arrived at as may be "just and right in each case." "It is not a matter of formulas, but there must be a reasonable judgment having its basis in a proper consideration of all relevant facts."[1] The supreme court has gone no further than to state that it is present, as distinct from past, fair value that is to be determined, and to mention certain of the elements to be considered in such determination. The court, however, has given no indication as to how these various elements should be combined to produce the final result. It does not indicate the

[1] The Minnesota Rate Cases, 230 U. S. 353, 434, June 9, 1913.

relative weight to be attached to the various elements nor does it indicate that in a particular case any weight need attach to certain elements. In view of the complexity of the problem it is probably fortunate that the courts have not as yet attempted a more illuminating definition of fair value. It is recognized that the entire problem is in a developmental stage and that there is danger of creating precedents that may compromise future action when the entire problem has been more fully disclosed.

In considering fair value for rate purposes it is important to bear constantly in mind that the determination of fair value is a part of the process of determining a reasonable rate of charge. By reasonable rate as here used we mean the reasonableness of the rate schedule as a whole and not the adjustment of the various specific rates that go to make up the complete rate schedule. A reasonable rate of charge in the sense of a reasonable rate schedule is a rate that gives the company reasonable compensation for the entire service which it renders the public. In the case of an appropriate and normally successful public utility enterprise, reasonable compensation is equivalent to the normal cost of production. Normal cost of production includes normal operating expenses plus a normal rate of return on a normal capital cost. The aim of public regulation is to accomplish what in other industries is assumed to be accomplished automatically by free competition, that is, to limit the price charged to the normal cost of production. There is no reason why in the case of a virtual monopoly the public should be required to pay more than the normal cost of production, and sound reason why in the long run the public cannot pay less. Normal cost of production is the amount which in the long run it is necessary to pay to secure the utilities demanded by the public. It is the amount that will secure an equilibrium between demand and supply.

In the case of a commodity requiring a large fixed investment the determination of a normal cost of production is a complex process, in the working out of which there is room for a wide divergence of opinion. To the normal cost of labor and materials there must be added a fair estimate for depreciation and a fair return on capital cost. The determination of a normal return upon a normal capital cost requires the determination of two very difficult and complex problems: (1) What is the amount of the normal capital cost, and, (2) what constitutes a normal return on such amount. Normal capi-

tal cost as applied to a new enterprise is a comparatively simple concept. But what is it as applied to a long-established enterprise—to a water supply plant, a gas plant or a railroad system? Is it normal cost at the time originally installed or last renewed, or, on the other hand, is it the present cost of reproduction? Is it actual cost or reproduction cost?

Appraisals of physical property considered in rate cases have largely been estimates of reproduction cost. The reproduction theory in its strict form involves the reproduction of the service rather than the reproduction of the identical plant. If the old plant were wiped out what would it cost at present to construct and operate a plant capable of performing the service now performed by the old plant? As thus stated, the reproduction method has so many difficulties that it is practically never employed. In most cases it is exceedingly difficult and expensive to determine the design of an equally efficient substitute plant. In the case of a railroad, for example, the cost of determining a substitute location and of estimating the operating cost thereon would be so great as to render it entirely impracticable as a factor in rate regulation. The cost of reproduction in practice, therefore, instead of meaning the cost of a substitute plant of the most modern approved design, capable of performing the same service as the existing plant, has come to mean the cost of a substantially identical reproduction of the existing plant. By a further modification of the cost of reproduction method which is coming more and more into use, the cost of reproduction is made to mean not the cost at present prices of land, labor and materials, of reproducing a substantially identical plant under *present conditions*, but the cost at present prices of land, labor and materials of reproducing a substantially identical plant under the *actual conditions* under which the existing plant was originally constructed. Under this method expenditures actually incurred in the development of the present property are fully allowed for, even though they would not be met with in a reproduction of an identical substitute plant. On the other hand, certain expenditures that have not been incurred in the development of the existing property but would be incurred in the reproduction of the existing property, are excluded. The reproduction method has been modified by the practical difficulties in the way of its strict application, and by the recognized equities created by actual cost and actual investment.

In failing to give even more consideration to actual cost in determining fair value, commissions and courts have often stated that the actual cost was impossible of determination. This it seems has been largely the result of a somewhat confused conception of actual cost. Actual cost properly considered may in a great majority of cases be determined with at least as great accuracy as reproduction cost. The confusion has arisen from identification of actual cost with book cost or first cost of original units, or both. Properly speaking, actual cost is the first cost of the identical units now in use and not the first cost of the original units. A first essential to the determination of either actual cost or reproduction cost is a complete inventory of property units in use. A second essential in both cases is the determination of the approximate time at which each such unit was installed. Records are usually available showing for any period the prevailing prices of labor and materials entering into construction costs. From such records, supplemented in many cases by fragmentary data obtainable from the books of the company, it is possible to apply unit costs. It is believed that such estimates will in most cases come nearer to the true actual cost than will present estimates of reproduction cost come to the true reproduction cost.

The St. Louis Public Service Commission has practically adopted actual cost as its standard as applied to structures and equipment, but in the case of land has used present market value. The New Hampshire Public Service Commission seems inclined to use actual cost as the normal controlling standard. The Nebraska commission, while adopting reproduction cost as the only practical method of obtaining a starting point, has recognized actual investment as the standard which should govern the future relations of the utility company and the public. The decisions of the California, Wisconsin and New York commissions show that they are inclined to give great weight to actual cost when such cost has been established.

The determination of a standard of value applicable to existing utilities will be worked out, if at all, by the slow and piecemeal process of court decision in numerous cases. The final answer can be given only by the supreme court of the United States. It would seem, however, that, as to the future, legislative bodies and commissions might at once adopt a standard. If normal actual capital cost were adopted as the rule for the future with reference to appropriately

located and successful enterprises, rate regulation and accounting methods would be much simplified and the relations between the utilities and the public placed on a much more equitable and dependable basis.

Land

In spite of the evident desire of a number of the commissions to give great weight to actual investment in determining fair value, an exception has apparently been made in the case of land. Here the decisions of the supreme court, stating that it is present value that is to be ascertained, have seemed to require that land should be taken either at its present market value or its reproduction cost.

In its decision in the Minnesota rate cases[2] the United States supreme court says that while "it is clear that in ascertaining the present value we are not limited to the consideration of the amount of the actual investment," yet there is no just ground for placing a value on railway lands in excess of the actual investment and in excess of the value of similar property owned by others merely on account of a conjectural cost of acquisition and consequential damages, and on account of percentages or other overhead expenses. The court concluded that "The company would certainly have no ground for complaint if it were allowed a value for these lands equal to the fair average market value of other land in the vicinity without additions by the use of multipliers or otherwise to cover hypothetical outlays."

In the case under consideration, the increment in the land value had been much more than adequate to cover all costs of acquisition and consequential damages, including any overhead expenses incurred for engineering, superintendence, legal expenses or for interest or taxes during construction. If the case had been that of a new road where there had been no increment in land value to offset these expenses connected with the acquisition of the land, it does not seem probable that the court would have refused to consider them in fixing the fair value for rate purposes. It seems that through the application of the principle laid down by the court in the Minnesota rate cases all of the advantage due to increment in land value does not inure to the benefit of the public service company, but that such increment is first used to offset or amortize all capital expenditures incurred in the acquisi-

[2] *Ibid.* 353.

tion of the land and the carrying charges on such outlay during the period of construction.

It seems, therefore, that in the case of railway land the court will measure the allowance chiefly by the market value of neighboring lands, but that it will also give some consideration at least to the actual cost to the railroad of acquiring its lands in case such cost is greater than the present market value of the land for other than railroad uses. The court specifically rejects the cost of reproduction method of estimating the value of railway land. In this it apparently makes a distinction between land and other physical property. Possibly such distinction is made on the theory that railway land differs from other railway structures in that it has a definite value for other uses. It is clear that railway structures other than land would have merely a scrap value for other than railway uses. The difference here, however, is merely one of degree, and its importance is greatly overestimated. Railway land can not be disposed of for other uses without scrapping the entire property. If a railroad right of way were sold for farm purposes, the loss due to the scrapping of the roadbed would more than offset any increment in the selling price of the land.

As we have already noted, fair value for rate purposes in the case of a virtual monopoly can not properly be based on exchange or market value. Value when used to denote the amount on which such a company shall be allowed to earn a fair return is normally based on cost, either actual cost or reproduction cost. It seems illogical to introduce any question of market or exchange value unless such market or exchange value has a direct bearing on either actual cost or reproduction cost.

Actual cost seems particularly appropriate as a standard of value in the case of land used by a public utility. Rates of charge should not be affected by real estate activity or reactions. The public utility is not formed to speculate in land. Though some compromise may be desirable as to the past, actual cost should be adopted as the normal standard for the future. But if this is not done it will be logical and just that appreciation in land value be treated as income or considered in fixing the rate of return. There can be no doubt that appreciation *upon which a return is earned* does constitute a profit of a very real sort. If a company claims a return on appreciated value it cannot equitably hold that such appreciation does not constitute a part of its income. Increments and profits of every kind

enjoyed by a company must necessarily be considered a part of the total compensation that the company receives from the public. In so far as there are increments and profits arising from increase in land values it is clear that such increments and profits should in a rate proceeding be considered either as income or as an offset in fixing the rate of return.

Pavement over Mains

Courts and commissions almost without exception have in numerous cases refused to include in fair value for rate purposes the cost of reproducing pavement laid over mains without expense to the company. Under the strict reproduction method such pavement would be included, as the existing plant and mains could not be reproduced without cutting through and reproducing the pavement. In refusing to include pavement laid without expense to the companies the commissions are in effect applying the modified reproduction method, that is, using the cost of reproduction at present prices of labor and materials but under the physical conditions under which the existing property was actually constructed.

In the Consolidated Gas case, Justice Peckham in delivering the opinion of the court made a general statement in regard to including property at its present appreciated value, which, while doubtless intended chiefly to apply to land valuation, might also be construed to include the valuation of mains and services, and thus to decide that the present replacement value of the mains should be considered regardless of the question of pavement laid by the city. The courts and commissions have not in general construed Justice Peckham's opinion in this way, and the more recent opinion of the court in the Minnesota rate cases rejecting the reproduction method as applied to land seems to confirm the belief that when the question of pavement over mains comes squarely before the supreme court the reproduction method in its strict form will also be rejected as applied to this item of property.

Accrued Depreciation

The United States supreme court in two cases has held that there must be a deduction from cost new to cover accrued depreciation in determining fair value for rate purposes.[3] Following this ruling

[3] Knoxville *vs.* Water Company, 212 U. S. 1, Jan. 4, 1909. Minnesota Rate Cases, 230 U. S. 352, June 9, 1913.

of the highest court the commissions have almost unanimously based fair value on cost-less-depreciation. The principal exception is that of the St. Louis Public Service Commission. In its report on the Southwestern Telegraph and Telephone Company, October 14, 1913, the St. Louis commission says, "Where there has been no regulation in the past and where it can be shown that there was no necessity of establishing a depreciation fund equal to the consumption of estimated life of each item of equipment, deduction for theoretical depreciation in a rate case involving a large 'piecemeal' built property in a normal and efficient state becomes in fact merely a confiscation of past profits."

Depreciation is a problem in cost accounting. It is concerned with the allocation to each year's operating accounts of the waste in the instruments of production attributable to the year's operations. The cost of materials purchased and entirely consumed in the course of the year's operations is invariably included in ordinary operating expenses. The capital required to purchase and carry such materials during the turn-over period is a part of the working capital. But some materials or instruments of production are not used up during the first year but have a life of 3, 10, 20, 50 and 100 years. They are consumed in operation just as surely as the former and constitute just as real a part of the cost of production. Their cost (exclusive of scrap value) must, however, be distributed over the full life period. The capital required to purchase and carry these long-lived consumable materials may also be considered a part of the working capital. It is this element of interest on capital that so greatly complicates the depreciation problem.

Depreciation is concerned with the maintenance of the integrity of the investment in depreciable property at a uniform annual cost. Such costs cannot be determined without some reference to interest on reserves and investment. The entire problem, therefore, may be simplified by considering depreciation as the adjustment necessary to secure a uniform investment cost. The supply of a public service must be considered a continuous process. Management or ownership may change but the plant and the service and the depreciation process are assumed to go on forever. The annual investment cost includes not only interest but also the repairs, renewals and replacements necessary to keep the property permanently in good working condition. The rights of the consumers using the supply at different periods de-

mand that the annual charges attributed directly to the investment shall be as uniform as possible.

As a problem in cost accounting the accrued depreciation and the annual allowance for depreciation are interdependent. Our theory in regard to an annual allowance for depreciation will necessarily control that in relation to the amount of accrued depreciation and vice versa.

It needs no extended argument to demonstrate that, if the moneys paid into the depreciation reserve are assumed to accumulate at compound interest for the sole benefit of the depreciation reserve, they do not constitute a return to the owner of any part of his original investment. Unless, therefore, he is allowed to earn a return on cost-new, a part of his actual investment is confiscated. There are, however, serious objections to the sinking-fund method of allowing for depreciation. It is assumed that a fund is set aside and made to accumulate at a prescribed rate of interest. Presumably it is to be invested in outside securities and kept as an entirely distinct fund. The assumption of a separate fund greatly complicates the accounts. It is usually merely an assumption both as to its existence and as to the rate at which it accumulates. Business practice recognizes that ordinarily the most natural, the most secure and the most profitable use that can be made of a depreciation reserve is to retain it in the business to meet the additional capital requirements for plant and working capital. Fundamentally the depreciation reserve is a part of the entire capital needed to carry on the enterprise. There is no reason why a part of the total capital should be set apart and assumed to accumulate at a rate different from that earned on the entire investment. The entire enterprise is a unit and the profits, whatever they may be, are the earnings of the entire investment. One part of the investment should not be assumed to earn at an arbitrary rate and the rest at a different rate.

The depreciation reserve is built up during the early years of the enterprise. It is during such earlier years that the payments into the depreciation reserve are normally greater than the annual expenditures for renewal. When a utility has settled down to a constant average of wear and age, the annual allowance for depreciation is, under the straight-line method, about equal to the annual expenditures for renewal, and, under the sinking-fund method, much less than such annual expenditures. As almost every utility is built

somewhat on the piecemeal plan and as it particularly is true that there are normally a considerable number of additions to capital during the first twenty years of an enterprise, there would seem to be abundant opportunity for the investment of the entire depreciation reserve in such additions. It is also to be noted that a large part of this reserve may be invested *permanently* in the business. When a utility has settled down to a constant average of wear and age, the depreciation reserve remains at a constant percentage of cost-new. It is particularly appropriate, therefore, that this permanent reserve should be permanently invested in the business. And if this is done why should it be assumed to be earning for a depreciation fund at the rate of 4 per cent while the business as a whole is earning 6 per cent?

The uniform investment-charge method takes account of the fact that ordinarily the safest and best use that can be made of a depreciation reserve is to invest it in the business; that the reserve, therefore, becomes an integral part of the entire business and cannot be assumed to earn at a different rate from that of the business as a whole; that the expenditures for renewals in the earlier years are much less than later when the *average* age of the various units constituting the plant is at a maximum; that the depreciation reserve is for the most part accumulated from the excess of the depreciation allowance over the actual renewals during the earlier years; that investment of the reserve in the business decreases the amount of capital to be furnished by the owners and correspondingly decreases the percentage return *as based on cost-new.*

With a declining percentage return as based on cost-new the only way to secure a uniform combined annual charge for interest and depreciation is so to adjust the depreciation allowance that the increase in percentage charge for depreciation based on cost-new will exactly offset the decline in the percentage return.

In order to determine the percentage on cost-new that will provide a uniform annual charge for return plus depreciation, add to the fair rate of return the per cent on cost-new, that, set aside annually and compounded at the same rate of interest as the fair rate of return, will, within the equated life of the depreciable property, exactly equal the cost-new of such depreciable property. Conversely, to find the accrued depreciation in an existing plant under the uniform-annual-investment-charge method, find the amount that should

be in the depreciation reserve, assuming that the annual depreciation allowance had been set aside from the initiation of the enterprise in accordance with the method above described.

Assuming the adoption of the uniform-annual-investment-charge method, the straight-line method or the sinking-fund method as the proper method for the treatment of depreciation as regards a new enterprise or as regards the future of an existing enterprise, is it necessary to qualify such method as regards assumptions as to the past of a company that has heretofore not been subject to regulation? Can we assume that the theory that we apply to the future has been in operation since the initiation of the enterprise? If we determine that the sinking-fund method is upon the whole most just and practicable, can we assume that a fund has been accumulating on this basis and is now earning interest and that the amount of such interest may be deducted from the annual allowance that would otherwise be required to meet current renewals? Or if we adopt the uniform-annual-investment-charge method, can we assume that the depreciation reserve is equal to the amount that it should have reached had this method been applied from the initiation of the enterprise and that, therefore, it is just to deduct this amount from cost-new to determine fair value for rate purposes? It seems that both these questions must be answered in the affirmative. There is no question that depreciation is an operating expense. There is no question but that it is an expense that must by some method be apportioned over the entire life of the depreciable property. There is no way that this can be done except by apportioning a fair share of the burden to the operating expenses of each year since the initiation of the enterprise. To be sure there may be cases where the past profits of an enterprise have been insufficient to pay a fair rate of return and at the same time set aside a proper depreciation reserve. The situation may demand that, in prescribing regulations for the future, the company be allowed to reimburse out of the earnings the amounts by which past earnings have failed to provide an amount adequate to pay operating expenses including depreciation and a fair return on the investment. It is important to note that this shortage is properly treated as a deficit to be reimbursed and not as additional outlay to be capitalized.

Going Value

We may take it as an established principle that the determination of fair value for rate purposes is normally one step in the process of determining what is a fair cost of production. Fair value is therefore normally based on cost, either actual cost or replacement cost. When, therefore, we speak of going value as an element of fair value for rate purposes it must be assumed that such value will be based on a necessary cost actually entering into the cost of production. It cannot logically be based on any monopoly or good will element, or any estimate of the value in money to the company of its developed earning power. As a reasonable rate of return is normally based on cost of production, either assuming the actual investment or assuming a present reproduction of the property, it would seem that going value must either be based on the actual cost of establishing the business or on the estimated cost of reproducing the business. This in general has been the attitude of courts and commissions in so far as they have considered going value in the determination of reasonable rates.

Courts and commissions have in most cases in recent years considered going value as the actual cost of establishing the business. The rule laid down in many cases by the Wisconsin Railroad Commission, and followed by various other authorities, is to consider as going value the uncompensated losses incurred in the development of the business. That is, going value is ordinarily the amount by which early failure to earn a fair return has not been offset by subsequent earnings in excess of a fair return. A few authorities, notably the two New York commissions, have approved in general this method of determining the cost of establishing the business, but have maintained that, inasmuch as it is only the net or uncompensated loss that is considered, it is scarcely appropriate to include such cost in fair value. It is more appropriately allowed for in the rate of return. If returns are impaired while the business is being established it seems appropriate that the impairment should be reimbursed by more liberal returns in profitable years. Under the theory adopted by the Wisconsin commission the cost of establishing the business is not a permanent sum, but varies from year to year as it is increased by failure to earn a fair return or reduced by returns in excess of a fair amount. It is treated not as a part of the capital

cost but as an amount to be reimbursed out of future earnings. It seems inconsistent, therefore, to consider such cost a part of fair value. It is appropriate to allow for it in fixing the rate of return.

In some exceptional cases public utility enterprises may find it necessary under conservative management to capitalize business development costs. Ordinarily, however, this is unnecessary and would be considered poor business management. The better way is to forego dividends until earnings are adequate to cover ordinary operating expenses, cost of securing new business and interest on bonds. As this is the rule approved by the best practice it seems appropriate to assume its existence in determining cost of production as the basis for a reasonable rate of charge. Ordinarily, therefore, cost of establishing the business will not be included in capital cost but will be reimbursed out of earnings.

In opposition to the method of reimbursing out of earnings the cost of establishing the business, it is argued that such cost is as much a part of the capital cost as is the cost of the physical property. This being so it is a cost that should be paid for by all users throughout the life of the utility and not by the users of the earlier years. By reimbursing this cost out of earnings the consumers during the period of such reimbursement are taxed for something that will be of as much benefit to the future consumers as to themselves. This argument is not convincing. The public as users of public utilities are as much interested in the future as in the present. Public policy with relation to public utility rates cannot be limited by an estimate of cost to a particular consumer at a particular moment. Public policy will look to the future as well as to the present, and adopt the rate policy that offers the largest measure of public advantage, even though the chief advantage be secured by future consumers rather than by those of the present. The rate paying public can well afford to bear the temporary extra cost of amortizing all intangible and questionable elements of capital cost. This will tend to safeguard the actual investment of the security holders and to reduce the cost of production and the rate of charge.

The New Jersey commission has included in going value not only the early deficits but also the cost of getting new business, including the cost of new business obtained in recent years and charged to operating expenses. In the case in question the commission had

to do with a heretofore unregulated utility. The inference is that, if a utility while subject to regulation charges the cost of obtaining new business to operating expenses, it will not be allowed to include such costs in the fair value of its property in any subsequent rate regulation proceeding.

Most commissions in considering the cost of establishing the business have considered the estimated actual cost and not the estimated reproduction cost of such establishment. Even where commissions have relied upon the reproduction method in determining the cost of the physical property, they have usually tried to estimate the actual rather than the reproduction cost of the established business. This seems strange in view of the fact that it is much more difficult to determine the actual cost of establishing the business than it is to determine the actual cost of physical property when such cost is taken as the first cost of the units now in place. A reason for turning to the actual cost method to determine the cost of the established business is found in the fact that it is considered that this allowance should cover only uncompensated losses, or the amount by which early failure to earn a fair return has not been offset by subsequent earnings in excess of a fair return. If this principle is accepted it is clear that a hypothetical reproduction process could scarcely be applied.

In a few recent cases the Wisconsin commission has considered an estimate of the cost of reproducing a paying business in fixing fair value. The reproduction method as thus used is not the comparative plant method, but an estimate of the losses that would be incurred assuming that the enterprise were to be started under present conditions. It only includes failure to earn a fair return up to the time when it is estimated that the business will have been placed on a paying basis. The estimate under this method is naturally much less than would ordinarily be found under the comparative plant method, and is ordinarily also less than the probable actual cost to the company of developing its business.

Franchise Value

The actual necessary cost of obtaining a franchise should, of course, be included in a valuation for rate purposes. Other than this the weight of practice and authority is distinctly against the

inclusion of an allowance for franchise value in a valuation for rate purposes. This position seems to be economically sound. There are two distinct functions of the franchise: One is to guarantee the integrity of the investment and the other is to make it possible for the investor to secure a reasonable reward for his enterprise in establishing the plant or railroad. The integrity of the investment is scrupulously recognized and provided for if in a valuation for rate purposes the tangible property is recognized as being rightfully in the streets or public places, and each part is valued with reference to its use in the existing operating system and not simply at its value as scrap. The function of the franchise in insuring to the investor the opportunity to secure if possible a reasonable reward for his enterprise and risk in establishing the public utility is recognized and provided for in a rate case if a rate of return on actual investment is allowed commensurate with the risk assumed. If the rate of return is fair and is based on the entire actual investment nothing further can in reason be expected.

A great deal of confusion has arisen in the consideration of this subject owing to a failure to see the fundamental distinction between valuation for rate making and valuation for public purchase. It is recognized that in a condemnation case the value of the franchise must be included. From this it is argued that unless the franchise is included also in the valuation for rate making the value of the franchise is in effect confiscated. If it is wrong and illegal to confiscate the value of the franchise in a condemnation case it is just as wrong and presumably just as illegal to confiscate such value indirectly through the rate making process. Deprivation of compensation for the use of property is no less confiscation than the actual taking of the property. The fallacy arises in a failure to realize that though in a condemnation case the valuation is the all important factor, in the determination of reasonable rates the essential thing is the total net income; and that this net income is not measured by the valuation alone but by the product of the valuation and the rate of return. If the capitalized value of the total net income allowed in a rate case is the same as the valuation for purchase purposes, due consideration will have been given to the franchise in both cases, even though in the valuation for purchase there has been a specific allowance for the franchise and in the valuation for rate purposes there has been no such allowance.

In a rate case due consideration is given to the franchise rights in the determination of the fair rate of return. The fact that the rate of return is fixed on the basis of a return adequate to induce investment in a new enterprise, although now that the enterprise in question has been successfully established persons will invest on a lower return basis, is a substantial recognition of the rights that it is the function of the franchise to protect. The franchise having thus been allowed for in the rate of return, it would be duplication to allow for it again in the valuation on which the rates are based.

DEPRECIATION

By James E. Allison,

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I

In public valuation for rate-making purposes there is probably more at stake in the problem of so-called depreciation than in any other one element. Yet a clear conception of what depreciation means and how and when it should be applied or omitted as an element in so-called valuations is rare among the engineers, commissions and courts upon whom rests the responsibility of determining the status of hundreds of millions of public service property.

To have a clear conception of the problem it is necessary in the first place to understand clearly in each case just what is meant by the term "value" or "fair value." To say that a property is worth so much money might mean that the sum arrived at is the one which in the judgment of the speaker the property ought to bring or he might mean that the amount stated was the sum which in his judgment it would bring under conditions of sale. In handling the discussion it is probably necessary to limit the meaning of the word "value," when unqualified, to the exchange value in money. In fact when we measure any value in money we must mean an exchange value and if the term value is unqualified it must mean that sum which the property in all likelihood *would* bring at a fair sale.

It should be evident that, in the case of public service properties, the value of the property as a whole means its value as an investment and the controlling factor in the value of an investment is the return upon the investment and the stability of that return. If this is true it must follow that the "present value" of a public service property depends largely upon the present net returns and their stability and that any change in rates or regulation of service which will change the returns will change the present value of the property. Therefore, if as is so often stated by commissions and courts, the object of so-called valuation work is to obtain "present value" the

very statement would prohibit any change in rates or operating expenses affecting the returns.

That there are other elements going to make up the present value of the property besides the net returns may be true but these elements are in fact subsidiary elements to the factor of net returns. If for instance a property is in a bad condition; in determining its present value the important circumstance to the prospective buyer or investor is that he will be deprived of returns upon his investment in order to put the property in condition or he will be obliged to make an added investment to bring it into condition and thus cut his rate of return on the whole capital invested. If we concede as seems necessary that in a rate or service regulation case the present value cannot be obtained unless it is granted that there is to be no change in the rates or expenses of service (which would make the whole work of valuation useless) then the necessary conclusion must be that the object of so-called valuation for rate making or regulation purposes is not to obtain a "present value."

It would seem that the only possible and the only dependable object of valuation work is to obtain what may be called a "just amount" upon which the investor should be allowed to earn reasonable returns. While this amount may or may not closely approximate a present exchange value this circumstance is merely accidental and the two things are fundamentally different in principle.

The history of values as established by our courts shows that, in the era preceding attempts at valuation for rate-making purposes, the principal object in establishing any value was for the purpose of sale under condemnation or for taxing purposes. In either of these cases it is seen that justice is accomplished by comparison; that is, if in the condemnation the owner receives a value comparing with what would be received under free sale for similar property he is justly treated and if the owner is taxed in proper comparison with other owners possessing property of similar exchange value he also will be justly treated, therefore the probable present exchange value of the property was properly the object sought.

The courts, and following them some of the public service commissions, have never been able to clear their minds of this idea of obtaining present exchange value in rate cases. They have of necessity recognized, however, that, in rate cases, the present returns, although the principal factor in determining present value, could not

be taken into consideration. They have, therefore, been forced to take the first step in a correct method of arriving at a "just amount" to be earned on. This step is a so-called valuation of the property by means of an inventory and assignment of unit costs, together with estimates of costs of establishing a going business, etc. It is seen that this step is not directly toward ascertaining present exchange value of the property as a whole but merely arrives at a summation of costs or at the present real investment in the service of the public.

Having ascertained as nearly as possible the full investment or full costs of the present property and organization in the service of the public, in other words having ascertained the money efficiently sacrificed by the investor to serve the public, the courts and commissions have then suffered mental lapse by introducing the question of present exchange value and have tried to arrive at it by saying "this property is not new therefore cannot be *worth* so much as when it was new, therefore we will depreciate it in an attempt to arrive at a present exchange value."

This reasoning attempts to arrive at a present exchange value of the property as a whole, first, by using the factor of costs or investment which in principle has little or nothing to do with present exchange value and second by using the age or condition of the property, which affect present exchange value only in so far as they influence returns. Fortunately in the principal decisions of the higher courts the term used in describing the object of public valuation is "*fair* value," and although what should be its true meaning has been much obscured by the muddled reasoning of the courts, yet it may be interpreted to mean that the result of a valuation will be such as, when a proper rate of return is allowed, will justly compensate the investor for his efficient sacrifices in the service of the public.

II

In applying depreciation calculations to properties, the engineers or accountants have developed two fundamental methods. One is called depreciation by observation of condition and the other depreciation by estimated remainder of life.

Depreciation by observation means merely that some one fully acquainted with all the parts or items of property similar to the one under consideration shall view the property carefully and estimate

how much it has been damaged by use and by deterioration due to natural causes and then in most cases shall estimate the loss in value due to progress in the art since the installation of the equipment and shall also estimate loss in value due to the changing conditions or prospective change of conditions in the services demanded.

Under the observation method it is supposed that the results are arrived at merely by judgment and with no definite rules or mathematical calculation. It will be seen later that the elements involved in such exercises of judgment are exactly similar to elements which are mathematically taken into consideration under the method of depreciating by calculated remainder of life, but it is also evident that, in establishing depreciation by observation, widely different results might be obtained by different men, each sincere in his attempt to reach an honest conclusion. Even the state of digestion of the valuator, the weather, or any thing which might influence his temperament could in all seriousness have a material effect on his opinion of the state of the property, and his friendship for or opposition to the owners of the property could have and probably would have a very marked effect on his conclusions without any conscious dishonesty or insincerity on his part.

The second method of depreciation by calculation of remainder of life is merely a refinement of the observation method and introduces mathematical steps which in themselves are correct but which unfortunately are based upon data whose correctness cannot be established in most cases. This method, therefore, on account of the speciousness of correct calculations based on unreliable data is dangerous and has in all probability caused a great amount of injustice to be accepted by the victims because the very speciousness of the method has persuaded them that the results were logical.

The controlling factor in depreciation by the remainder of life method is the estimated duration of life assigned to the item of equipment upon which the depreciation is to be calculated. With the exception of very few of the items of equipment of public service properties (especially the municipal utilities) there does not exist any correct collection of data which will give reliable periods of useful life to the different items of equipment used. There may be more or less correct collections of data on such equipment as poles or railroad ties, which will give an approximately correct average life on this kind of equipment, and it might be that on these items,

where the forces of nature are the principal destructive agents, the average life will not in most cases vary greatly as between different properties. Even this statement is, however, somewhat broad and unreliable and a correct application of an average would depend considerably upon the size of the property. If we were calculating depreciation on all the poles in the United States or on a company whose property was scattered throughout the country, the average life might bring a just result. But on the other hand, if we were calculating on a small property where local soil conditions or other natural destructive forces were in any way peculiar, our results would not be correct.

Departing from such equipment as poles and ties it can be said that the life of similar items of equipment of each particular property may vary to such an extent as to make the acceptance of average life, even if correctly obtained, a very reckless proceeding in determining the amount of property upon which investors should receive a reasonable return. The use of the property, the adequacy of its maintenance, the changes in local conditions as to demands for service and many other elements will so influence the life of equipment in any one case that its relationship to any average will be materially distorted.

It has been the custom of engineers and of some commissions to publish life tables in their reports setting forth the estimated life of each particular class of equipment. It may be noticed that nearly all of these tables very closely agree in the estimated life of the different classes of property, and to the layman or even to the superficial technical man, this agreement tends to cause the acceptance of the figures as basic data without much question. The facts are that, on such items as buildings, stationary engines, auxiliaries, piping, etc., there exist no reliable data to base an average estimate of life. On other items such as rails, cars, etc., where the elements of use and maintenance are vital to the life, there can also be no correctly calculated life which will apply throughout the whole class of equipment. On such items as underground conduit or even water and gas piping, time has not yet been long enough to establish life definitely for even local properties. Added to this is the fact that the forces of obsolescense and inadequacy are not capable of calculation. The fact that the before-mentioned tables of

life of equipment do agree very closely is due to nothing except that the first man made a guess and the rest having very little ground upon which to base a difference have followed him very closely.

Depreciation by the method of the remainder of life has been followed out in a number of different systems. The most obvious method, and the simplest, is called the straight line system. This means that the estimated life is taken, say at twenty years and each year the item is supposed to have lost one-twentieth of its original cost or value. Another system is called the sinking fund system by which an estimated life is taken and the property is supposed to have lost each year that amount in value which, if set aside at compound interest, would, at the end of the estimated life, amount to a fund equal to the original cost or value. It is seen by this method that the value of the property is determined to a great extent by the rate of interest at which the depreciation fund may in the future be invested. It is evident that a considerable difference between the present depreciated value of a property might rest on whether the prophesied rate of return on the fund would be 3 per cent or 6 per cent. This system, while somewhat logical for establishing depreciation charges for accounting, is entirely illogical and wholly speculative when used to establish a substitute for present value.

Another system of depreciation by the remainder of life method is sometimes called the diminishing value system. By this method the property is diminished in each year by a fixed percentage of the remainder of value after the deductions for depreciation for preceding years have been made from the principal. This method is very seldom used and is merely an accountant's device for setting up general depreciation charges and, as it has no rational place in establishing a so-called depreciated value of the property as a whole, it need not be dwelt upon here.

In preceding paragraphs it has been the writer's principal aim to show the extreme unreliability of depreciation calculations, even if it were conceded that it were proper to apply depreciation deductions to arrive at an amount upon which reasonable returns should be based. This unreliability of basic data should in itself demonstrate the recklessness with which such calculations have been applied in depriving investors of property by depriving them of the earnings of capital placed in good faith in the service of the public.

III

The general idea of the depreciation of a property as accepted by the layman and as seemingly accepted by many courts and some commissions is that a public service property begins with a value as a whole of 100 per cent and then gradually sinks to zero. This supposition may be theoretically true of one item of property. A boiler for instance begins with a value equal to its cost and of course at the end of its life, whenever that may be, there remains only the scrap or second-hand value.

This steady deterioration in value (measured by remainder of life) from 100 per cent to scrap value may be true of one item of equipment, but it is not true of a whole property. If a property composed of numerous units were installed all at one time, the theoretical depreciation by remainder of life, if it could be correctly calculated, would show that the property as a whole could not reach zero or the composite scrap value until a period of years have lapsed equal to the least common multiple of all the lives correctly estimated for each different class of equipment. In even the simplest property it is evident that this period would theoretically stretch out into centuries. It is assumed in this statement that we are speaking of the composite life of a property and that each particular item of equipment is renewed at the end of its life. If it were not renewed and were a vital part, the value of the whole property would be immediately destroyed by its non-replacement and under these conditions the calculation is correct that the composite life of the whole plant will not be ended until such time as the ends of the renewed lives of all the items of equipment coincide, which will be as stated, at the end of that period which is the least common multiple of all the lives.

The above statement is true of a property built all at one time. But immediately that we install equipment at different times with any two installations having the same life we find that the termination of all the lives of all the equipment will, theoretically, never coincide, and that therefore, the composite value of the property based upon the remainder of life will never reach zero nor the scrap value and that the curve of remainder of life will never ascend to 100 per cent. The curve of the composite remainder of life will in fact describe a series of cycles, each cycle representing the least common

multiple of all the lives. Under ordinary conditions of establishment of utility properties there are successive installations and a constant growth in the property so that, in any property of sufficient size, the curve of the composite remainder of life will eventually tend toward a level halfway between 100 per cent and scrap value.

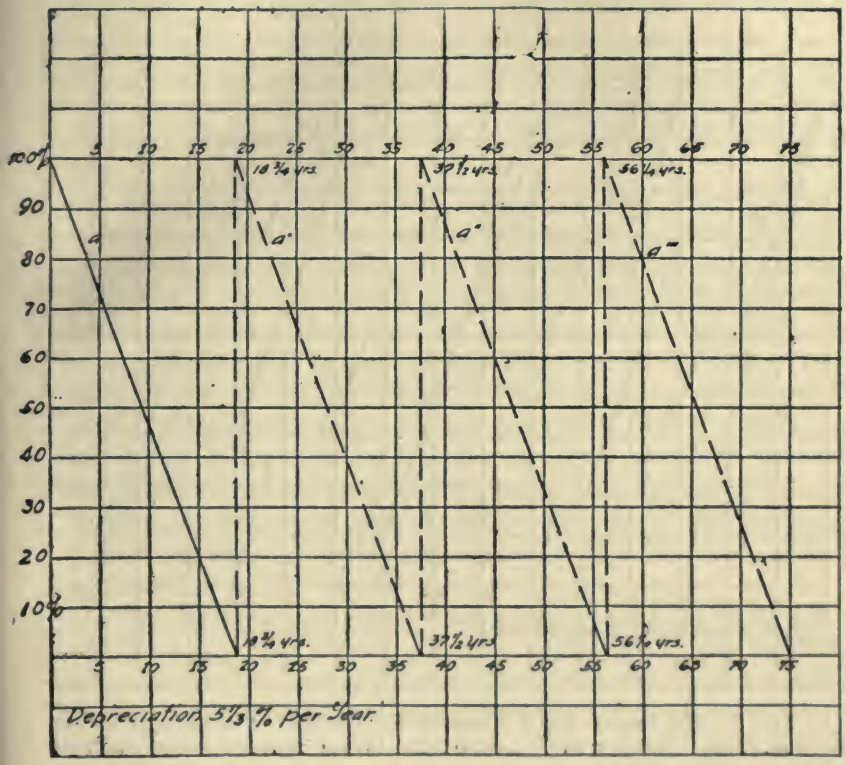

Fig. 1. The line a represents one item of equipment with a life of 18¾ years. The broken lines a' a'' a''' represent successive renewals of a. Years are indicated by figures in horizontal lines at top and bottom of diagram.

The foregoing truths and principles pertaining to such composite lives are illustrated in the following diagrams.

Figure 1 shows the remainder of life curve for one item of equipment. It is this curve that is fallaciously accepted by the laymen as the true curve of the life of a property.

Figure 2 shows the effect on the composite remainder of life of even such a simple condition as having only two items of equipment, of equal costs, one with a fifteen-year life and the other with a twenty-five-year life.

It will be seen that the heavy line which represents the mathematical composite life of the two items of equipment or their renewals

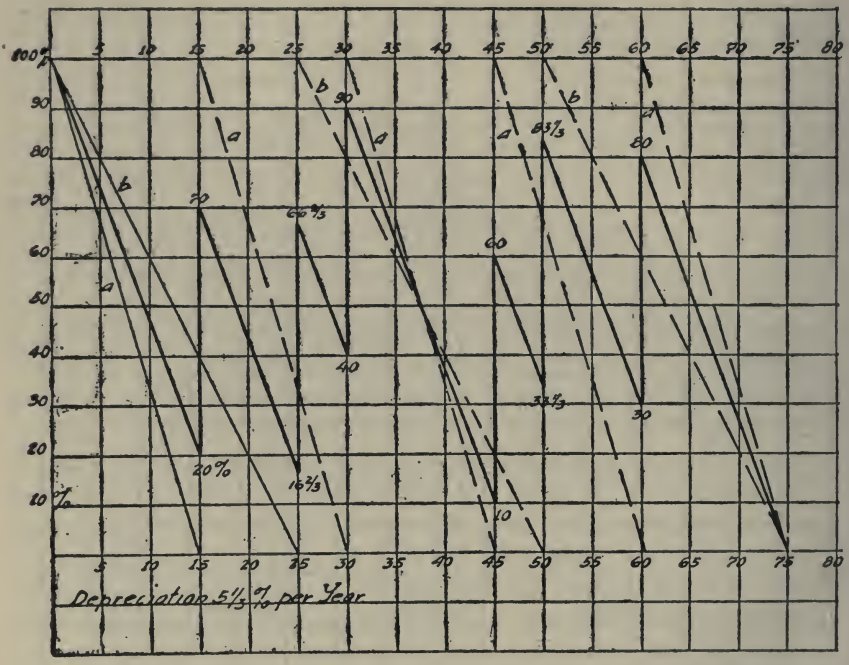

Fig. 2. The lines *a* and *b* represent installations of equipment having lines of 15 and 25 years respectively. The broken lines represent renewals of *a* and *b*. The heavy line represents the composite theoretical remainder of life curve of *a* and *b*. Figures at top and bottom of diagram are years.

does not go straight from 100 per cent to zero, but influenced by successive renewals it takes a course of irregular oscillations across the 50 per cent line, finally reaching zero at the end of seventy-five years when the ends of life of the renewed two items of equipment coincide. Seventy-five years is the least common multiple of fifteen and twenty-five.

Figure 3 shows the effect on the composite remainder of life curve of introducing installations of equipment at different times. The elements in the diagram represent four items of equipment, two having fifteen-year life and two having twenty-five-year life, one item of each life being installed at the beginning of the plant and the other ten years thereafter. It will be seen that the effect of this very simple installation made at two different periods is to bring the composite remainder of life curve into closer correspondence to the 50 per cent level. The composite remainder of life curve can under these circumstances never reach zero and never go to the 100 per cent but will follow cycles of the least common multiple of all the lives.

From figure 1 to figure 3 we trace the effect of added equipment installed at different times and of different lives under the simplest theoretical condition. When we take into consideration the innumerable items of a large plant and the steady leveling of yearly investments which may take place in a large property and the further factor of the varying values of the different items having different lives, we will see that, in a large piecemeal built property, the composite remainder of life curve will eventually closely approximate the results shown in figure 4, where we have a composite remainder of life curve straightened out in close correspondence with a line halfway between scrap and 100 per cent. This is theoretically the permanent state of a large piecemeal-built and well-maintained property.

To illustrate how closely this purely theoretical remainder of life curve will approximate a similar application of the theoretical estimates of life to a real property, there is shown in figure 5 a carefully calculated composite remainder of life line for a large street railway property in actual existence. This curve is built up upon inventory, cost data and estimated life applied to each class of equipment entering into the property.

In this curve it is seen that the composite remainder of life line at times rises nearly 10 per cent above the normal remainder of life line and at times falls nearly 10 per cent below. But this is only a very slight variation, all things considered. It is probable that, if the property is well managed, these variations would tend to disappear owing to the effort to distribute expenditure for renewal as evenly as possible each year. The result of the study of these curves

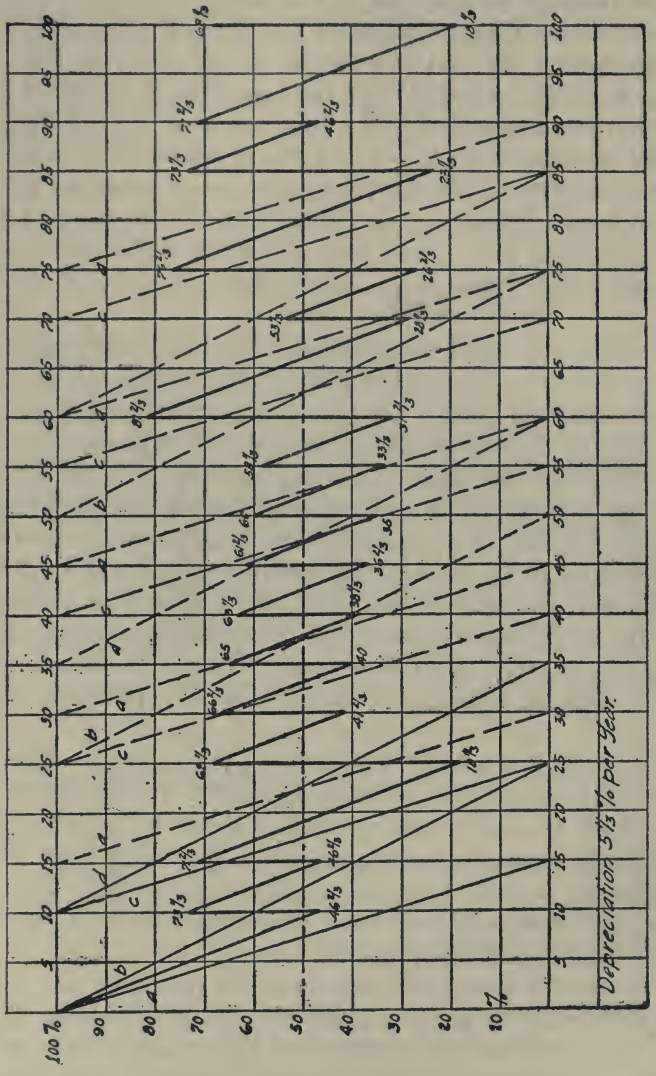

Fig. 3. Lines *a*, *b*, *c* and *d* represent installations of equipment. Broken lines represent renewals of *a*, *b*, *c* and *d*. The heavy line represents the composite theoretical remainder of life curve of *a*, *b*, *c* and *d*. Figures at top and bottom of diagram are years.

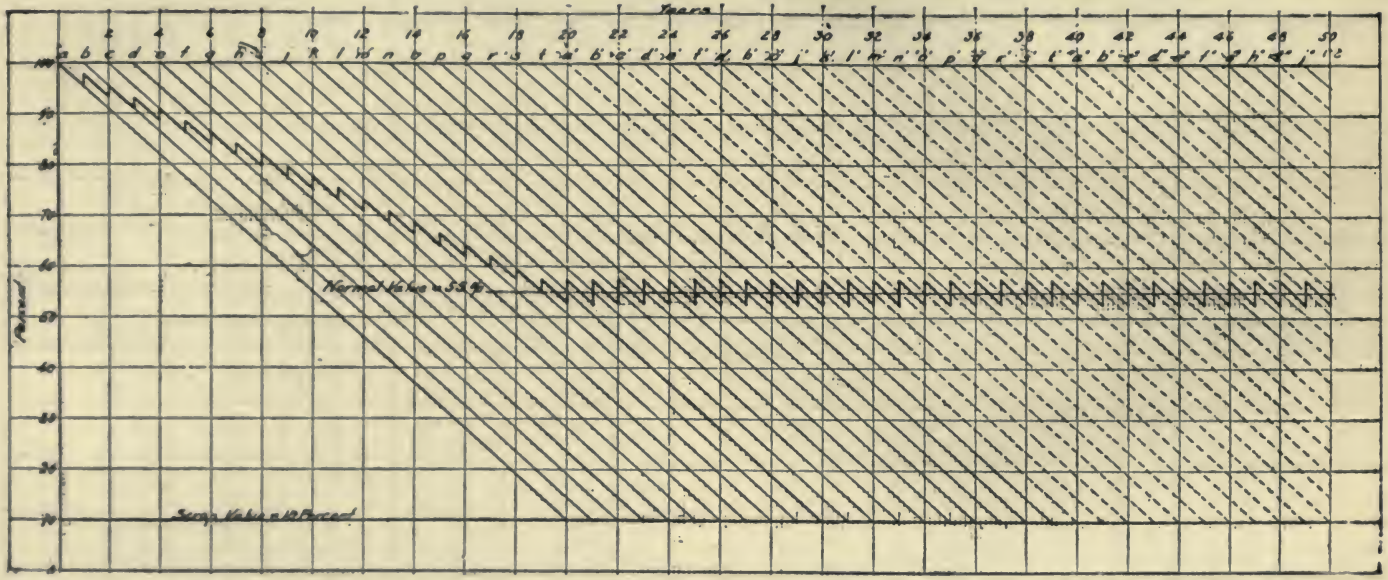

Fig. 4. Lines a to t represent equal annual installments of equipments. Broken lines a' to t', etc., represent renewals.

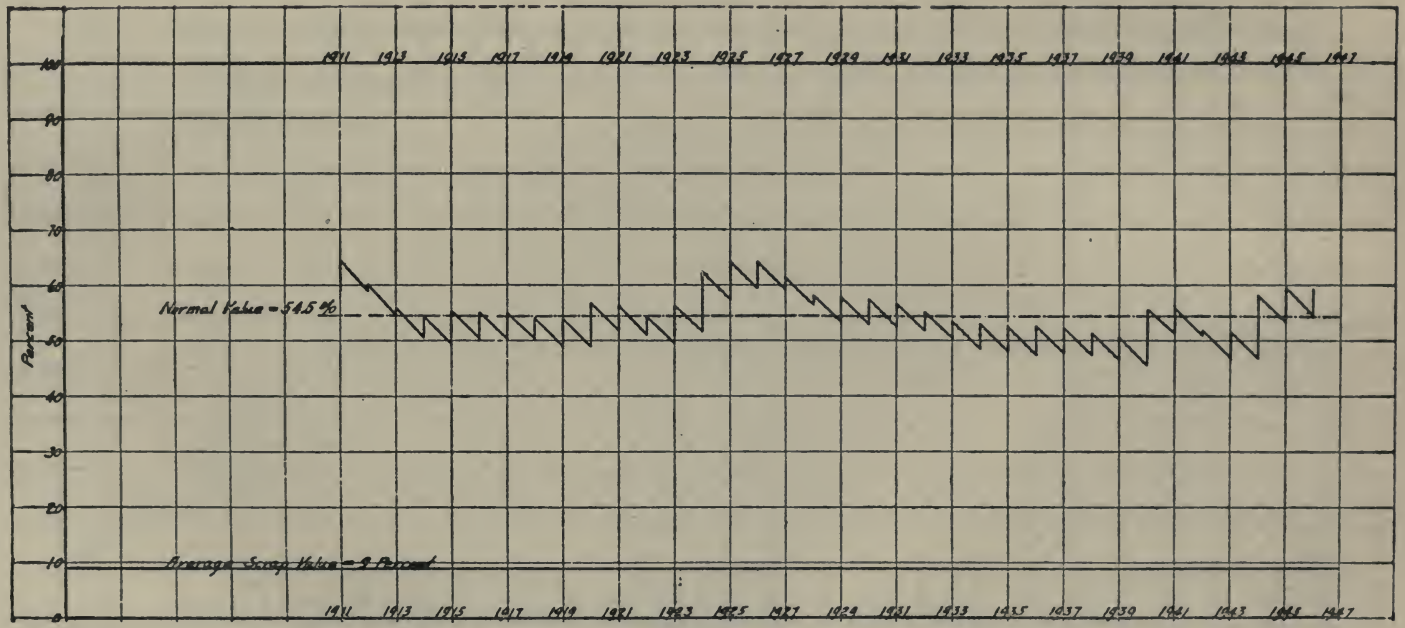

Fig. 5. Total composite theoretical remainder of life curve of the depreciable property of the United Railways Company of St. Louis.

goes to show that large piecemeal-built properties attain a normal condition of remainder of life which approximates the line halfway between scrap value and 100 per cent. While the above conclusions and illustrations have been the result of using the straight line system only, practically similar results will follow the use of the sinking fund system. In this paper there is room for considering only straight line depreciation.

It is not contended that the level remainder of life line or the permanent composite age of the property will continue if additions or extensions are made. In that case the composite curve will ascend toward the 100 per cent level in proportion to the magnitude of the additions and extensions and will then tend to return to the normal level. But this circumstance does not in the least affect the conclusions which the writer wishes to draw from the fact that the present existing property of an enterprise which has gone through the adjustment period has a comparatively level and permanent state of composite age or remainder of life.

Conclusions

From part I we see that any use of depreciation to obtain the capital amount upon which to base returns is merely a useless attempt to establish a present exchange or market value where the only vital factor of a true exchange value, namely the return, is of necessity in a rate case left out of the calculation.

From part II it is shown that, even if it were proper to depreciate, the calculations on estimated life are unreliable in the extreme.

From part III the conclusion is reached that piecemeal-built properties, if maintained, do not come to an end by depreciation but reach an approximately permanent state in regard to composite age and in that state are the most efficient as to economy of operation (maintenance and replacement considered). Any attempt to raise the curve must be done by throwing away property not yet having served its useful life. And if we assume as we ought, that the life of a piece of equipment ends when it begins to give poor service, then we see that the owners of the property are, by maintaining it on the normal theoretical age line, performing their duty toward the consumer by giving service as good if not better than from a new plant.

No one can be so foolish as to assume that investors can construct or maintain a plant which will remain new. But they can maintain it so as to give a service practically as good as from a new plant. The fact is that they really pay their full investment in plant for the normal and permanent state of the plant at which it will give good service continually, and if for any reason a depreciated value should be assigned as the capital to be earned on when the plant is in a permanent state and giving good service, then the amount of such deduction for so-called depreciation might well be called a cost of establishing business and therefore a legitimate part of "fair value."

A study of any theoretical depreciation curve will show that, if the theoretical depreciation charges have been made from the installation of each item, the accumulation in the depreciation fund will always equal the amount of depreciation, i.e., the sum of the depreciated value, and the accumulated fund will always equal the original investment, and, when on account of the straightening out of the curve along the normal age line there cease to be any wide fluctuations for large renewal at any one time, then a great part of the fund will be a needless accumulation as it can never be used for replacement or renewal.

The stock argument of the advocates of allowing earnings only on a depreciated investment is that a large depreciation fund is necessary and that if the company has not laid it by it is evidence that the amount of it has been wrongfully diverted as profits into the pockets of the owners. It has been shown by the preceding diagrams that, in the larger properties at least, the accumulation of a depreciation fund on the basis of estimated life would have been a useless charge upon the consumer or upon the investor as the case may be. So to assume arbitrarily that this theoretical fund should have been set aside by the owners, and if not set aside to penalize them in the earning power of a normal property to the amount of the determined hypothetical fund, is unreasonable in the extreme. Where there could have been no such fund set up in the past without depriving the investor of all or the greater part of the returns as is generally the case, the injustice is evident on its face and where profits have been such as to have enabled the setting up of the fund in addition to the payment of returns the device of depreciating (the fund being needless) becomes merely a means of depriving the investors of past profits which may or may not have been excessive.

Notwithstanding the many respectable authorities who uphold the practice of deduction from earning power on account of theoretical depreciation there appear to be equally respectable reasons for assuming that present exchange value or any attempt at it is not the proper base for returns in rate regulation and that the proper amount to establish as a "fair value" is the capital efficiently placed in the service of the public in order to produce a plant and business in its normal and permanent state.

NON-PHYSICAL OR GOING CONCERN VALUES

By Halbert Powers Gillette,
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In the appraisal of all public utility properties, whether for rate making or for sale, it is now recognized that a "value" should be assigned to the attached business that gives to the physical plant its real or market value. The "value" of the attached business is often called the "non-physical value" of the property. Sometimes the term "intangible value" is used to designate the "non-physical value." There are several other terms in common use, but each is coming gradually to be associated with some particular theory upon which the appraisal is based.

No appraisal can be consistent unless it is based upon some theory. This holds as true of an appraisal of physical property as of non-physical property. Two distinct appraisal theories have evolved, and a careful study of their evolution shows that, in the final analysis, one theory arises from the conception that a public service company is a public agent, while the other theory arises from the conception that a public service company is subject to competitive conditions.

The agency theory leads logically to an appraisal of the actual cost of the physical and non-physical property.

The competitive theory leads logically to an appraisal of the market value of the physical and non-physical property.

It does not fall within the scope of this paper to discuss the effects of applying these two theories in the appraisal of the physical property of a public service company. But one or two deductions may serve to illuminate the essential difference between the two theories.

The agency theory gives us: (1) Original conditions and actual quantities involved in producing the plant; (2) actual unit costs incurred under those conditions; (3) actual prices paid for real estate; and (4) actual deficits in fair return during the development period.

The competitive theory gives us: (1) Present conditions and quantities that would now be involved in reproducing the plant; (2) present unit costs; (3) present market value of real estate; and (4) the capitalized net profits (after deducting interest) derivable from the business.

Our present discussion relates to the fourth item in each of the above enumerations.

Development cost is the "non-physical value" that arises from an application of the agency theory. Development cost may be defined as being the residual deficit in "fair return" on the investment.

The "fair return" is the sum of the interest and the profit. If, for example, the annual interest rate is 6 per cent and the profit rate is 2 per cent, the fair return rate is 8 per cent. In calculating the development cost, the method is, briefly, this:

To the operating expenses (including depreciation and taxes) for the first year add the fair return, and subtract this sum from the gross income for the year. If the result is a minus quantity, a deficit in fair return, add it to the investment in plant, and with this total as a base start a similar calculation for the following year. If this method is applied from the beginning of operation down to the date of the appraisal, there will usually be found to be a residual deficit in fair return, which is the development cost. This method is often called the Wisconsin method. The Wisconsin Railroad Commission has used this method for about five years, and they call the residual deficit the going value, instead of calling it development cost. Although the method is simple in principle, there arise many interesting questions as to the details of its application in any given case.[1]

Franchise value is the term often used to denote the non-physical value of a public utility property, where the competitive theory is used in appraisal. If the franchise is without limit, the franchise value is the capitalized net profits derivable from the property. Profit is here used to mean the balance remaining after deducting from gross operating revenue the sum of the operating expenses (including depreciation and taxes) and the interest (say, at 6 per cent) on the investment in the physical plant. The annual profit if capitalized (that is, divided by 6 per cent in this illustration) gives the franchise value of an unlimited franchise, on the assumption that the annual profit will neither rise nor fall and that the interest rate will likewise remain constant. Where the franchise is limited, or where profits are likely to change, proper allowances must be made to arrive at the present worth of future profits. This method is of the same

[1] I have covered many of these details in an article on "Development Cost" in *Engineering and Contracting*, June 26, 1912, which is available as a pamphlet reprint that can be secured upon request.

nature as is used in deducing the good will value of an established competitive business of any sort. It has been frequently used in the appraisal of railway and other public service company property for taxation purposes. In the original appraisal of the railways for the Michigan Board of State Tax Commissioners, the capitalized profit method was applied. I would note that it seems to me to have been incorrectly applied in that case.[2]

Since capitalizing existing profits involves some reasoning in a circle if the values thus deduced are to be used as a basis for rate making, the tendency has been to abandon this method in rate cases. Nevertheless, it seems to me that it merits consideration even in a rate case.

A third theory of appraising public utility property has come into very extensive application. It partakes of the nature of the agency theory in some respects and of the competitive theory in other respects. This theory may be called the reproduction or replacement theory. It resembles the competitive theory in respect to its use of present prices and present conditions for determining the "value" of the physical plant. But it somewhat resembles the agency theory in respect to the determination of the "non-physical value." The cost of establishing the business, or the going concern value as it is often called, is deduced upon the hypothesis that a number of years would be required to build the plant and secure the business now attached to it. Not only would there be a deficit in fair return during this hypothetical period, but considerable money would be spent in advertising, canvassing and soliciting, in order to build up the existing business within this limited time.

Although the development period is hypothetical in a sense, it is, nevertheless, calculable within reasonable limits. It must not be so short a period that the saving in interest on the capital will not be wiped out by the increased costs incident to building the entire plant in a rush. The following are the main items of cost that are included in the cost of establishing the business, according to the reproduction theory.

[2] *United States Census Bulletin 21*, "Commercial Valuation of Railway Operating Property in the United States: 1904," contains one of the most complete published discussions of this method.

1. Organization cost:
   (a) Legal, etc.
   (b) Franchises, permits, etc.
   (c) Patents, licenses, etc.
   (d) Experiments and investigations
   (e) Securing and training the staff
   (f) Selling securities (brokerage, etc.)
   (g) General and office (associated with organization cost)
2. Selling service:
   (a) Advertising
   (b) Canvassing and soliciting
   (c) Other inducements to attract business (*e.g.*, "free house wiring")
   (d) General and office (associated with selling service)
3. Deficit in fair return during the construction and development period.

There are a number of strong arguments in favor of the reproduction theory, as to its application to non-physical as well as to physical property. Obviously it can be applied in a uniform manner to all utilities, regardless of the existence or non-existence of old accounting records. Questions as to conditions, prices, rates of fair return, etc., in years long past, are not raised. It may be noted, however, that in calculating the cost of establishing the business it may be necessary to assume rates for service that differ from existing rates, for the whole object is to show what it would cost to establish the existing amount of service when fair rates for that service are charged.

We have seen that "non-physical value" based on the competitive theory (the franchise value) is objected to on the ground that it involves reasoning in a circle where rates are involved. So, too, the "non-physical value" based on the agency theory (the development cost) finds opposition on the ground that the most unfortunate and worst managed company shows the greatest non-physical value.

No appraisal theory ever proposed has been free from criticism. Yet some theory or theories must be used if there is to be any consistency in the findings.

If public service companies had always been true and complete agents of the public, there could be but one theory for appraisals—the agency theory. But public service companies have only recently been *considered* as true agents. They have never been *treated* as true agents in any state. And in several states that now have laws

for enforcing an agency relation, we still witness the grossest forms of competition between municipally owned and privately owned utilities. In the state of Washington, for example, the railroad commission recently authorized the consolidation of two competing telephone companies, and now the federal government has begun action to break up the consolidation on the grounds that it is prohibited by the Sherman act.

These and numberless other facts show the futility of trying to make the agency theory retroactive in great degree, for it is not even very active now. Yet it seems wise in any rate case to present an analysis of the development cost based on the agency theory, as well as an analysis of the cost of establishing the business based on the reproduction theory. Also the capitalized net profits, or franchise value, should be presented. While no one of these methods may be conclusive in itself, obviously a conclusion is quickly reached where all three methods yield essentially the same result, as not infrequently happens. Moreover, the three methods at least determine the limits between which the non-physical value lies.

In this transitional period during which we are passing from a competitive theory to an agency theory of regulation of public utility rates, there is, of necessity, no single, clear-cut standard by which to arrive at public utility "values." Even the word "value" must often be taken to mean "cost," much as this jars the sense of propriety. And "cost" itself is often not actual but hypothetical, not what it actually was but what some one estimates it would be under assumed conditions.

Although the general drift of favor has been towards the reproduction theory, there are still many who believe in the soundness of Justice Harlan's decision in the Smyth *vs.* Ames case, namely, that all factors bearing upon value and cost should be considered by a rate-making body.

RECENT TENDENCIES IN VALUATIONS FOR RATE-MAKING PURPOSES

By Edwin Gruhl,

Assistant to President, The North American Company.

The investor in public utility securities has frequently expressed regret that there has been no definite, authoritative statement of the principles of the "rate-making" value. The facilities for the regulation of rates have, within the past few years, been materially increased. Commissions, with broad powers of regulation, are now provided in most states. The procedure with which investigations may be started is relatively simple. A rate case is no longer the indication of widespread dissatisfaction in the community, but more often the result of individual complaint. Nor have the possible consequences in any way been lessened. The inquiry in rate cases is usually directed toward the income and thus the "investment" value of the entire public utility. Under prevailing practices the testimony does not concern itself principally with the reasonableness of the rate, but with the size of the resulting return upon the investment. This situation has developed the need for some unqualified declaration of principles by which the prospective investor may assure himself in a preliminary manner of the clear title of the investment to which he is about to contribute. With a number of utilities, inquiries as to the reasonableness of prevailing rates have already run their course and the relation of the investment to the customer has been more or less definitely determined. In the vast majority of cases, however, these assurances are still lacking. The examination of decisions as to the elements of value for rate-making purposes are, therefore, no longer of theoretical or academic interest, but have assumed large practical importance.

The indefiniteness in decisions as to the principles of "rate-making" value are probably due to two reasons: The equities of investor and customer are a complex relationship which cannot readily be encompassed and defined as a single arithmetical process to be applied to any set of facts. The court of last resort, moreover, in reviewing the determination of value by local authorities and commissions, has

not been concerned so much with the examination of economic doctrines or the wisdom of legislative policies of regulation as with the application of a particular rate to the property rights involved. It is, therefore, not surprising that the language in the leading case, Smyth *vs.* Ames, 169, U.S. 466, decided in 1898—

> We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public. And in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property—

should be reiterated rather than more definitely stated in the Minnesota rate cases, 230 U.S. 352, 434, decided June 9, 1913—

> The ascertainment of that value is not controlled by artificial rules. It is not a matter of formulas, but there must be a reasonable judgment having its basis in a proper consideration of all relevant facts.

It would be reasonable to suppose, however, that the state commissions dealing with the detailed evidence as to values would proceed in an identical manner and adopt common practices and theories. But this is far from being the case, although there are certain tendencies which point toward uniformity. The earlier rate decisions have already been summarized in various texts and it would be repetition to refer to them in detail in a short discussion. Attention is therefore directed, in this article, to the more recent cases covering the latter part of the year 1912 and the year 1913, which particularly reveal departures from previous rulings. Comparisons of this kind are seldom conclusive. It is probably true that a study of the actual facts and conditions surrounding each particular case with which the commission was undoubtedly familiar, but to which there are only meager clews in the reading of the decision, would probably disclose that what rate regulation is endeavoring to accomplish is full and abstract justice, and that much of the theoretical background for these decisions has been filled in and elaborated in extended dicta,

after and not before the actual decision has been reached. In no other way is one able to explain the great diversity of viewpoint with which one is confronted in any comparative analysis of the so-called principles of value for rate-making purposes.

It is reasonable to assume also that if any single economic law underlies the proper rate-making value it will not be established until every available viewpoint and application have been exhausted. Economic principles of money, of international trade and of taxation have taken a long time to mature and have been preceded by innumerable theories and propagandas before they have finally reached the stage where generalization has been proper. Such sweeping and conflicting conclusions as those of Professor John H. Gray, former director of investigation of the National Civic Federation, before the American Economic Association, that

> on any sound principle there should be no valuation for rate regulation but history, that is, a statement of outlay, of money spent and services rendered, nothing more. . . . . As an agent, the utility exercises the right of eminent domain, must give an account of its stewardship, is subject to continuous control, is liable for compulsory service, and must coöperate with all other public agents of its principal, the state,

or those of a committee of the American Society of Civil Engineers upon the subject of valuation for purposes of rate making that

> . . . . the committee believes a valuation of an old property based on its actual cost to be generally impracticable, making it necessary to adopt the cost of reproduction method. . . .
>
> In the opinion of the committee it would be entirely just and equitable . . . to provide by law that future public service properties should be valued on the basis of their actual reasonable existing investment, and to determine or limit rates upon such a valuation if the service rendered permits,

seem both, in the light of present decisions and practices, premature.

In the recent rate cases the cost of reproduction new has continued to be the factor of value given the greater attention. It is accepted as an important element in the Minnesota cases, 230 U.S. 352, 452:

> The cost-of-reproduction method is of service in ascertaining the present value of the plant, when it is reasonably applied and when the cost of reproducing the property may be ascertained with a proper degree of certainty. But it does not justify the acceptance of results which depend upon mere conjecture.

But estimates of the increased value of right-of-way real estate are limited to the normal market value of land in the vicinity, and the court cautions against the use of hypothetical additions over and above such normal values:

> Assuming that the company is entitled to a reasonable share in the general prosperity of the communities which it serves, and thus to attribute to its property an increase in value, still the increase so allowed, apart from any improvements it may make, cannot properly extend beyond the fair average of the normal market value of land in the vicinity having a similar character. Otherwise we enter the realm of mere conjecture. We, therefore, hold that it was error to base the estimates of value of the right-of-way, yards and terminals upon the so-called "railway value" of the property. The company would certainly have no ground of complaint if it were allowed a value for these lands equal to the fair average market value of similar land in the vicinity, without additions by the use of multipliers, or otherwise, to cover hypothetical outlays.

A better recognition of the limitations of appraisal by engineers and the necessity of providing against omissions in estimating costs other than those of mere labor and material have led to an increase in the percentage allowance for so-called overhead items of the construction, including superintendence, legal expenses, interest during construction, engineering and contingencies. It is noted that the Wisconsin commission, which, in its earlier cases, allowed 12 per cent for such items, has finally made an increase of its allowance to 15 per cent. In its decision City of Milwaukee *vs.* Milwaukee Gas Light Company, decided August 14, 1913, 12 W.R.C.R. 441, 444, the commission held:

> The proper allowance for this item cannot be stated in general since it depends upon many variable conditions, particularly upon the make-up of the unit prices to the sum of which it is to be applied. All of this overhead might be added to the individual items, but since a great deal of it is not easily assigned to any particular item, it is customary to add it to the total. Practice, however, is not at all uniform as to what should properly be included in unit prices and what should be carried as overhead. A knowledge of the make-up of unit prices is therefore absolutely essential to the determination of the proper allowance for overhead.

The commission has pointed out in the case City of Milwaukee *vs.* The Milwaukee Electric Railway and Light Company, 10 W.R.C.R. 1, 107, 108, that its unit prices rather than the percentage allowance include some of the so-called overhead items:

As regards the unit costs used in appraising the inventory, it is to be noted that these are in most instances five year average prices, designed to include contractor's and sub-contractor's commissions, the enhanced cost of piecemeal as compared with continuous construction, and the cost of handling material and labor until both items enter into the actual construction.

Care is also taken in pointing out in the recent case Oshkosh Water Works Company *vs.* the City of Oshkosh, 12 W.R.C.R. 602, 608, 609, that these allowances are not fictitious:

The allowance under discussion is not made to cover fictitious expenses, something by way of good measure as it were, to swell the physical valuation, but is designed to cover, as near as may be, only those expenses which would actually be incurred in the construction of a plant and which would not otherwise be taken into consideration. The fact that the original plant was built under contract would only go to show that the company met these expenses in the contract price instead of directly. An explanation of this allowance in a recent case before the commission is so pertinent in this connection, that it is here quoted:

> "Apart from the expense of labor and material incurred in constructing the plant, many additional costs must be met *which do not appear in the appraiser's inventory of tangible property*. Among these are the expenses of organization preliminary to the construction of the property, usually consisting of engineering and legal expenses; the expenses of supervising, including the wages of all contractors, superintendence and necessary administrative organization; contingent costs due to loss of time and material and unexpected obstacles occurring during the progress of construction; and, finally, the expenses of financing the construction, consisting principally of interest on money advanced prior to operation. Construction costs of this character are analogous to the overhead or expense burden encountered in the analysis of operating costs. Allowances for such expenditures are usually made in appraisals of public utility properties, and have in all instances been made by the commission."

It is noted that the California Railroad Commission in the case Palo Alto *vs.* Palo Alto Gas Company, decided March 12, 1913, adds 15 per cent as an overhead percentage to the detailed appraisal. The New Jersey Board of Public Utility Commissioners, which in earlier cases adopted 12 per cent as the proper percentage addition, in the Passaic gas case, decided December 26, 1912, places the allowance at 17.6 per cent. The Nebraska State Railway Commission in the Lincoln telephone case, decided June 26, 1913, states:

The commission is convinced that the amount of 17.2 per cent for general expenditures allowed by our engineers is conservative, particularly in view of the manner in which they have built up their unit cost.

In the Brooklyn Borough gas case, decided July 8, 1913, the New York Public Service Commission, first district, evidently placed the percentage addition at 15.4 per cent.

The much mooted question whether the cost of reproduction new should be depreciated has been considered in various cases. Justice Hughes in delivering the opinion of the court in the Minnesota rate cases, 230 U.S. 352, holds that when an estimate of value is based upon the cost of reproduction new the extent of existing depreciation should be shown and deducted, thus approving the rule in the Knoxville case, 212 U.S. 1:

> The master allowed the cost of reproduction new without deduction for depreciation. It was not denied that there was depreciation in fact. . . . . But it was found that this depreciation was more than offset by appreciation; that "the roadbed was constantly increasing in value;" that it "becomes solidified, embankments and slopes or excavations become settled and stable and so the better resist the effects of rains and frost;" that it "becomes adjusted to surface drainage, and the adjustment is made permanent by concrete structures and rip-rap;" and that in other ways, a roadbed long in use "is far more valuable than one newly constructed." It was said that "a large part of the depreciation is taken care of by constant repairs, renewals, additions and replacements, a sufficient sum being annually set aside and devoted to this purpose, so that this, with the application of roadbed adaptation to the needs of the country and of the public served, together with working capital . . . . . fully offsets all depreciation and renders the physical properties of the road not less valuable than their cost of reproduction new." And in a further statement upon the point, the "knowledge derived from experience" and "readiness to serve" were mentioned as additional offsets.
>
> We cannot approve this disposition of the matter of depreciation. . . . It would seem to be inevitable that in many parts of the plant there should be such depreciation, as for example in old structures and equipment remaining on hand. And when an estimate of value is made on the basis of reproduction new, the extent of existing depreciation should be shown and deducted. . . . If there are items entering into the estimate of cost which should be credited with appreciation, this also should appear, so that instead of a broad comparison there should be specific findings showing the items which enter into the account of physical valuation on both sides.
>
> It must be remembered that we are concerned with a charge of confiscation of property by the denial of a fair return for its use; and to determine the truth of the charge there is sought to be ascertained the present value of the property. The realization of the benefits of property must always depend in large degree on the ability and sagacity of those who employ it, but the appraisement is of an instrument of public service, as property, not of the skill of users. And when particular physical items are estimated as worth so much new, if in fact they be depreciated, this amount should be found and allowed for. If this is

not done, the physical valuation is manifestly incomplete. And it must be regarded as incomplete in this case.

The New York Public Service Commission, second district, in the Buffalo Gas Company case, decided February 4, 1913, evidently places little weight upon the cost of reproduction value as a basis for rate making, but raises an interesting question as to its attitude toward the Knoxville rule:

> If the cost of reproduction new were to be taken as the basis upon which the rate is to be computed, we would likely be compelled to deduct therefrom the accrued depreciation in obedience to the rule laid down by the United States supreme court in Knoxville *vs.* Knoxville Water Company (212 U.S. 1), whether we considered that rule economically sound or otherwise. The uncertainties in this case as to original cost and cost of reproduction new, as well as to the actual condition of the physical property, make a discussion of the proper handling of depreciation in a rate case entirely academic. It is clear that the treatment of depreciation in any given case depends upon facts which are not clear in this case, and to lay down principles which cannot be applied would serve no useful end. Our views on this important question which was much discussed during the hearings will be more appropriate in other cases before us in which the facts are more clearly ascertainable.

The New York Public Service Commission, first district, in the Brooklyn Borough Gas Company case, decided July 8, 1913, does not deduct the full accrued depreciation in determining a fair value of the property for rate-making purposes.

The argument that a depreciated plant renders service identical with that of a new plant and that its value for purposes of rate making should therefore be identical, is advanced in the recent decision of the Montana Public Service Commission, decided November 3, 1913:

> . . . . It will be obvious that there can be no fixed percentage of depreciation applicable to a utility that had been "kept up" from year to year by constant effort, and the purchase of improved devices, as compared with one that had been allowed to deteriorate through neglect, hence the principle of an arbitrarily established measure of depreciation is untenable. . . . . Let us assume that an investment is made in 1903 of $100,000 under a twenty-year franchise, rate of interest allowable 10 per cent per annum, and figuring 5 per cent per annum depreciation. At the end of ten years, or in 1913, the property will have depreciated $50,000 and has a remaining value of a like amount. Then, if rates are made, based on the depreciated value, they must be one-half of the original rates, although the service may be just as efficient as it ever was, and in ten years, more, the physical value of the plant would be nil, and likewise upon the same basis of reasoning, the utility would not be permitted to charge anything.

A contrary view to this proposition is expressed by the California Railroad Commission in the case Palo Alto *vs.* Palo Alto Gas Company, decided March 12, 1913:

> To the theory expressed, that as long as a plant can do its work, it should be regarded for rate-making purposes as having 100 per cent value, this commission cannot give adherence.

The same view is expressed by the supreme court, appellate division, of New York in People ex rel. Kings County Lighting Company *vs.* Willcox, 141 N.Y. Supp. 677, 683:

> Mr. Mathewson as *amicus curiae* files an interesting brief presenting an elaborate argument in support of the proposition that as it is conceded that the plant of the relator operates at 100 per cent of efficiency there should be no deduction for so-called "accrued depreciation." This term is used to designate, somewhat inartificially, the liability presently accrued toward the ultimate cost of replacement of still efficient apparatus. He therefore repudiates the concession to scrap value and claims that as the company, being a public service corporation, must always keep its plant up to efficiency, and must replace property when worn out, it is entitled to a rate based upon 100 per cent efficiency because it will never be allowed to capitalize replacement but must provide it when necessary. It therefore must be allowed to provide a replacement fund out of its earnings. He argues that it makes no difference to the consumer whether that fund is actually accumulated and on hand or not, because the replacement must be made, if there is such a fund, from it; if not, by the stockholders directly. If, on the other hand, the valuation of the tangibles is reduced by a percentage, in this case 21 per cent, it can never be provided for in the only proper way—out of earnings.
>
> We are unable to adopt Mr. Mathewson's interesting theories for these reasons:
>
> (1) It seems to be thoroughly established that the value of the tangible property upon which the company is entitled to a rate which will procure a fair and just return is the present value; that is, at the time of the appraisement for rate-making purposes.
>
> (2) That in the absence of accurate evidence as to actual value the cost of reproduction new takes the place thereof.
>
> (3) That as the property being valued is not new, in order that "cost of reproduction new" may represent the actual condition—the amount presently invested—there must be a deduction therefrom.
>
> (4) That this represents the amount required to replace apparatus still in use, but in process of wearing out, at the end of useful service.
>
> (5) That this allowance for depreciation has been made in various kinds of cases where present value is required to be estimated.

The New Jersey Board of Public Service Commissioners in applying the Knoxville rule limits its deduction in the Passaic gas case, de-

cided December 26, 1912, to the depreciation obtained by observation and inspection, a deduction somewhat in excess of 4 per cent. It states:

> In so far as physical property is concerned, it appears to be well settled that the proper valuation is the present value as obtained by deducting depreciation. We are confronted, however, with the contrasted methods of estimating depreciation referred to above, and we must decide whether theoretical depreciation by inspection should be deducted. Undoubtedly an allowance for theoretical depreciation will much exceed the depreciation obtained in the other way.

And in a later case, Gately and Hurley *vs.* D. & A. T. & T. Co., decided January 7, 1913, this same commission elaborated upon its reasons for such deductions. These are, in substance, that a public service corporation is indebted to the utility for certain replacements and that this indebtedness, when the circumstances and conditions clearly indicate that it can be carried out, must be taken into consideration when determining the value for rate-making purposes.

> The considerations adduced in the preceding paragraph fail to take due cognizance of the fact that a public utility lies under a peculiar obligation not similarly incumbent upon the ordinary business concern. This obligation consists in the continuous requirement of putting back into the tangible equipment such items as are necessary from time to time to afford to consumers service in quality and extent equal to the service which could be afforded by a brand new plant of the same magnitude. This obligation to replace said items does not allow the public utility to obtain the funds therefor from increased rates or charges, nor from the issue and sale of additional securities. . . . . The magnitude of the utility's responsibility is therefore the sum of the unexpired service value of tangible property *plus* the pecuniary liability to make replacements as needed from its own pocket. As its responsibility is measured by a sum in excess of the unexpired service value of its tangibles, it would seem to us that the equitable base upon which it is entitled to a return is in excess of the unexpired service value of its apparatus, and approaches as a limit the total replacement cost new of its tangible property.

The commission, however, points out that where there is greater assurance of the prompt and adequate addition of needed items of replacement, such as is possible where the corporation has accrued a sufficient reserve, less consideration should be given to the deduction for accrued depreciation than is the case where the corporation "simply lies under the naked obligation to make such replacement as required." Such a rule it holds is in keeping with the Knoxville rule:

While therefore it may be only a first approximation to justice in distinguishing between utilities of the two contrasted classes, a deduction in the case of the less meritorious or less capably projected utility may well be made. Where such deduction is moderate in extent, and serves only to cover such expired service value as has resulted demonstrably from age and wear, we are of opinion that said deduction may fairly be made. While we are not confident that in the Knoxville water case the supreme court of the United States had before it any record of each and every consideration properly to be considered in the matter of making deductions from the replacement value new of tangible property, it is tolerably clear that this deduction or abatement here proposed is wholly in keeping with the valuation rule that seemingly may be deduced from that opinion. Such abatement or deduction is only a fraction of the total expired service value of tangible property in this particular case. This moderate reduction has also this advantage: that it is based upon certainly ascertained inspection or investigation, and not upon the more or less conjectural allowances for depreciation estimated by tables purporting to give the expectation of life of various parts of the utility's plant. . . . .

Such also has been the finding of the New Hampshire Public Service Commission in the Berlin Electric Light Company case, decided August 30, 1913:

We do not hold that the full amount of depreciation should in every case be deducted from the cost of reproduction. It is merely one of the facts to be considered in making a finding of fair value. It stands in the same category as original cost of physical properties, other necessary early expenditures, present reproduction cost of physical properties, and other facts concerning which inquiry is made, all of which should be determined as accurately as possible, but none of which has a uniform fixed value in each case. There may be cases where plants well conceived and well managed have suffered depreciation which in fact represents a part of the cost of developing the business to a point where a fair return can be secured. In other cases, as, for example, where adequate returns have been received to afford a fair return and to maintain a depreciation reserve, but have been entirely paid out in dividends, the entire amount may properly be deducted from present cost of reproduction in coming to the final conclusion as to fair value. Between these two extremes the proper course will vary according to the circumstances in each case. But in every case it is desirable to determine, for the purpose of consideration, the full depreciation as accurately as possible.

A similar rule, conversely stated, that the depreciation fund of the corporation is properly an asset of the utility to be considered in determining the value for rate-making purposes, is that held by the United States district court for the district of Arizona, in the case Wm. P. Bonbright et al. *vs.* W. P. Geary et al., a case on appeal from

the ruling of the Corporation Commission of Arizona, in the Phoenix case, dated November 19, 1913:

> This brings us to a peculiar feature of this case. There was on hand in the treasury of the company at the time of the valuation of the plant the sum of $64,292.67, accumulated for the purpose of meeting the expense of current repairs and for replacing such parts of the property as had been worn out and the life of the part ended. The fund had been withheld from the stockholders that it might be used in preserving the plant in good condition and in proper efficiency. This was good business judgment on the part of the officers of the corporation and must be approved. Public service corporations are to be encouraged in maintaining their plants in a proper state of efficiency. We are of the opinion that the Corporation Commission was in error in its estimate of depreciation of this plant and particularly was in error in omitting this fund from its valuation of the plant.

This also, it appears, has been the practice of the Wisconsin Railroad Commission in its rate cases.

A notable departure in the recent decisions from what hitherto had almost uniformly been the rule with state commissions relates to the inclusion of the cost of removing and relaying paving over all mains in any determination of the cost of reproduction new. Although it appears that such an allowance had been specifically made in the Consolidated Gas Company case 157 Fed. 849, and that such revisions had been affirmed in 212 U.S. 19, commissions such as New York Public Service Commission, second district, in the Buffalo gas case, February 4, 1913, New Jersey Board of Public Utility Commissioners in the Passaic gas case, December 26, 1912, and the Wisconsin Railroad Commission in City of Ashland *vs.* Ashland Water Company, 4 W.R.C.R. 273, 306–308, and cases following have cited and evidently followed the example of excluding such paving cost in Cedar Rapids Gas Light Company *vs.* City of Cedar Rapids, 120 N.W. Rep. 966, 970, and limited the allowance for paving to the costs actually incurred by the utility, and excluded paving laid subsequent to the laying of mains.

In a case on appeal from a decision of the New York Public Service Commission, first district, the New York supreme court, appellate division, in People *vs.* Willcox, 141 N.Y. Supp. 677, 681, has held that such allowances are properly included in the value for rate-making purposes. Citing the Consolidated Gas Company cases, Justice Clarke, speaking for the court, states:

It seems to me that we ought to regard that question as settled. The fact that these streets have been paved and the region generally improved has caused sales of land, the building of houses, and the increase in population, which have enabled the company within the last few years to make profits, and declare dividends which for many years it was unable to do. The argument that streets paved or unpaved make no difference in the earning power of a gas company is unsound. The earning power of a gas plant depends upon its constituency. If it has nobody to sell gas to, it can make no profits; and, if there are no decent streets, there will be few people. The value of a plant of any kind is certainly affected by its location and the demand for its products. If a new company undertook to install a duplicate plant, the cost of repaving under the present streets would properly be allowed for. Hence it is a necessary element of reproduction value. It is a valuable advantage which the present owner has which a prospective buyer would have to pay for. Like increased land values a school of thought might condemn it as "unearned increment," but the law does not yet refuse to include it in its definition of property capable of ownership and entitled to protection.

Such an allowance is also affirmed by the Wisconsin supreme court in Appleton Water Works Company *vs.* Railroad Commission, 154 Wis. 121, but there is excluded paving over service pipes upon the theory that such paving would under common practices be laid by customers of a new plant.

Cost of reproduction must mean the cost which will be necessarily incurred by a reasonably prudent and careful man, using ordinarily careful business methods, in reproducing a plant of equal efficiency. Anything which under such a conduct of the business would cost nothing to reproduce cannot logically be included. It is not denied that if the city or a new water company were to establish a new plant the consumers could be required, as a condition of receiving water service, to do the work in question, and even furnish the pipe. . . . . So it seems that there would be no question but that it would be entirely practicable, and in fact the only reasonably prudent policy, for a new company to require consumers to lay their own service pipes.

This is not the case where land or other property of value has been voluntarily donated to the old company. With regard to such property it has been held in cases involving the fixing of rates that it is rightfully to be considered in arriving at the cost of reproduction. This result is reached on the idea that a new company could not count on receiving such gifts. Whether the logic of these cases be correct or not we do not decide, but in any event the principle does not apply to expenses which may legally be assessed, and in the exercise of good business judgment ought to be assessed, against the consumer. For purchase purposes at least the only expenses which should be considered in the estimate of the cost of reproduction are those which are reasonably necessary in a prudently conducted reproduction.

The principle of including the cost of removing and relaying all paving is accepted "as probably settled in this state" by the Wisconsin Rail-

road Commission in the Oshkosh Water Works case, 12 W.R.C.R. 602, 662.

Somewhat akin to the inclusion of the cost of disturbing paving in the value of pipe, is the question of appreciation of real estate. It has been the practice of the New York Public Service Commission, first district, to allow the present value of real estate in its valuation for rate-making purposes, but to include also the annual appreciation as income.

It is a matter of particular interest that the state supreme court, appellate division, People *vs.* Willcox, 141 N.Y. Supp. 677, 687, has placed its stamp of disapproval upon this theory:

> In its calculation of income, however, it has included an item of $35,000 as the annual increase in the value of the land of the company. This we regard as erroneous. The land is used for the business of the company, and is appropriate therefor. So long as the land is held and used for such purpose increase in value cannot be considered as income or as available for the payment of debts, taxes or dividends.

While it appears that the California Railroad Commission has not adopted a similar practice, dicta in a recent case, Application of North Coast Water Company, decided December 3, 1913, seem to indicate that it has given the matter consideration. Commissioner Thelen states:

> While it is not necessary to decide this point here for reasons which will hereinafter appear, I desire at this point to draw attention to this question of the value to be assigned to land in rate-fixing inquiries, which question is one of the most important which can possibly arise in a rate-fixing inquiry. This question tests squarely the correctness of the so-called reproduction value or present value theories on the one hand and the original cost or investment theory on the other. In this connection I desire to refer to the language of Mr. Justice Van Fleet in San Diego Water Company *vs.* San Diego, 118 Cal. 556, who expresses what he believes to be the fundamental relationship between the public and a public utility, which is one of principal and agent. At page 570, Mr. Justice Van Fleet says:
>
> "As we have said, it is not the water or the distributing works which the company may be said to own, and the value of which is to be ascertained. *They were acquired and contributed for the use of the public; the public may be said to be the real owner and the company only the agent of the public to administer their use. . . . . It is the money reasonably and properly expended in the acquisition and construction of the works actually and properly in use for that purpose, which constitutes the investment on which the compensation is to be computed.*"

The foregoing conclusion was worked out by Mr. Justice Van Fleet logically and on principle from the fundamental relationship existing between the public and its public utilities. The use of the present value or reproduction value theories does not spring in any way out of that relationship and has no necessary connection with it. As Mr. Justice Van Fleet clearly points out, the use of either the present value or the reproduction value theories may be as clearly unjust to the public utilities on the one hand, in case prices have gone down, as it is to the public on the other hand, in case prices have gone up. In logic and justice, the public utility should receive a return on the moneys reasonably and properly expended in the acquisition and construction of its works actually and properly in use to carry out its agency—no more and no less. If care is exercised in thus ascertaining the valuation on which a return is to be allowed and if a liberal return is then allowed on that basis, as is the practice of the California commission, the utility will be receiving full justice while the consumer on the other hand will be paying no more than he ought reasonably to be called upon to pay to his agent.

The "unearned increment" has also been referred to as a factor of value for rate-making purposes by the Massachusetts Board of Gas and Electric Light Commissioners, in the Attleborough petition, decided February 7, 1913, and has in effect been expanded until it comprises the whole single tax theory:

There is a growing recognition of the truth of the proposition that a public service company is not entitled to a return upon the unearned increment in value of its real estate, but investment out of profits which it has been able to make solely through the general growth of the community which it serves has many similar attributes. It will commonly be found that a company's surplus is based on managerial skill and foresight, needlessly high rates or the general prosperity of the community; or, more frequently, on two or more of these combined; and while it may be difficult to determine what proportion is justly attributable to any one of these causes, there can be little question that the general growth of the community is an important factor. . . . . It is difficult to see why the reasonable amount of return or the reasonable rate of return based upon the full value of the company's property should not be affected in the same manner by that portion of the investment made from what may be termed the unearned increment in its profits as by the unearned increment of value in its real estate; in other words, the reasonable rate of return upon a company's entire investment is lower where an appreciable part is derived from the two sources described than where it is entirely derived from the contributions of the shareholders in their payments for its stock.

To these theories the New York Public Service Commission, second district, has expressed dissent in the Buffalo gas case, decided February 4, 1913:

. . . . what is called the fixing of the value of the property in the public service for the purpose of rate making is not a fixing of value in any proper sense of that word as it is correctly used in our language. It is a determination of what under all the facts and circumstances of the case is a just and equitable amount upon which the return allowed to the corporation is to be computed. If the time the determination is made happens to be at or near the time the plant is put in operation, the investment or original cost may be the predominant factor. If the time of determination is remote from the time of investment, the factor of appreciation or diminution in values arising from changes in costs of labor and materials may enter largely into the result. If the plant is unreasonably disproportionate in size to the service required of it, the cost of reproduction new cannot be the sole test. If the actual investment has been reckless and extravagant, the owners should bear the loss and not the public. If the general scale of prices and values in the community has been increased or diminished since the plant was built, the owners may be fairly called upon to share the general diminution; and on the other hand, may justly demand a share in the general appreciation to which the existence of their property has, it may fairly be assumed, contributed at least its proportionate share.

And this conclusion is substantiated in Fuhrmann *vs.* The Cataract Power and Conduit Company, decided April 2, 1913, wherein the commission points out that it declined to recognize or capitalize past deficits upon the ground "that it produced the somewhat curious result that the greater the loss the greater the value of the property."

A similar finding is made by the New Jersey Board of Public Utility Commissioners in the Passaic gas case:

. . . . If, in the past, this gas company, out of the rates exacted from consumers, had met its operating expenses and depreciation, and in addition thereto had obtained enough to pay returns to investors, and to build an actual structure used in the business, would this structure aforesaid be the lawful property of the company? The answer, it seems to us, must be in the affirmative. If the company had paid out, in addition to other payments to investors, dividends equal to the cost of building this structure, and then had issued additional stock in value, equal to the cost of this structure, in order to repossess itself of the money required to build it, there can be no doubt that the structure built out of the proceeds of the additional securities thus sold would be the lawful property of the company. It would be none the less the company's lawful property if built out of current earnings without the issue of additional securities. . . . . It is true that the cost of new business in this last decade has been charged to operation and paid out of rates. But as we have indicated above, the business thus acquired must be regarded as a legitimate part of the property of the company. We cannot equitably project back into the unregulated past a norm of prices that might today be regarded as fair and adequate, and assume that actual rates exacted in the past, in so far as they exceed what are now deemed fair, have not lawfully become the property of the

company. If these high rates in the past have been employed by the company to acquire an intangible property in the shape of extensive patronage, that expectation of patronage is theirs, and on its fair value the company is entitled to a return. It may or may not be a subject of regret that regulation was so long deferred; but deferred regulation is no excuse for refusing at present to allow a fair return upon what is the lawful property of the company.

And these conclusions seem to be established in the decision in the Minnesota rate cases, 230 U.S. 352, 454.

There is no better illustration of the effect of carrying the theory of "principal and agent" to its logical conclusion than that presented in the Superior case, decided by the Wisconsin commission on November 13, 1912. It appears that the real estate was purchased and a large-sized plant constructed during a "boom" period and "that no more property was purchased than was actually necessary at the time nor greater amounts paid than the prevailing market prices." Expenditures measured by standards at that time were apparently legitimate and necessary. The subsequent slow period of recovery after the panic in 1893 developed large deficits upon the actual investment. It is significant that the commission's ruling is a citation to a case in which it had occasion to recognize appreciation rather than depreciation of land values.

This commission has had occasion in former cases to pass upon the question of appreciation of land values. It was held in the Madison case:

That the law as well as our social system recognizes such gains in practically all other undertakings is evident from the fact that rents and interest charges usually vary with the natural increase in the value of the property they cover. As the cost of reproduction of a plant usually plays perhaps the most important part in determining its value, it is more than likely that the owners would have to bear losses in case land and other property had depreciated instead of appreciated. It would seem only just that the rule would work both ways. . . . . In view of these facts there would seem to be good ground, from both a legal and economic viewpoint, for giving such appreciations in value consideration in appraising public utilities. At any rate we cannot now see good reasons upon which to exclude these elements from the appraisal of utility properties. State Journal Prtg. Co., *vs.* Madison G. & El. Co., 1910, 4 W.R.C.R. 501, 579.

Original cost or investment is recognized as an important, if not determining, factor in the cases of the New York Public Service Commission, second district, in the Buffalo Gas and the Cataract Power and Conduit Company cases. It has likewise evidently been given

consideration in the decision of the Wisconsin commission in the Milwaukee fare cases, 10 W.R.C.R. 1.

The exclusion of going value as an element of the value for rate making by the New York Public Service Commission, first district, is ruled to be in error by the state supreme court, appellate division, in Kings County *vs.* Willcox, 141 N.Y. Supp. 677, 681. Justice Clarke points out that while it is true that the United States supreme court has not directly decided the propriety of including going value in fixing the value of the property of a public utility for rate-making purposes, it has done so in purchase cases:

> I am unable to perceive a logical difference between allowing "going value" in the valuation of a plant when it is to be taken entirely by the public and allowing the same element when valuing the same plant for rate-making purposes. In each case the thing to be done is the fair appraisement of present value. What difference in principle can there be because in one instance all is taken for the use of the public and in the other the public limits the earnings? In the case at bar the commission says it "disallowed this claim in determining fair value, ... but did consider it in fixing the rate of return." If so, there is no proof of that fact in the record.

The basis of determining going cost or value by past deficits laid down by the Wisconsin commission in the Antigo case 3 W.R.C.R. 623, is evidently accepted by the California and New Jersey commissions. The California Railroad Commission in the case Palo Alto *vs.* Palo Alto Gas Company, decided March 12, 1913, while recognizing such costs, reserves decision as to whether this element of value should be added to the capital account or amortized in the near future. It states:

> That there are certain actual costs incurred in developing the business during its early stages, for which costs the utility is entitled to be reimbursed, just as clearly as it is entitled to a return on the physical portions of its plant, seems to be too obvious for argument. The investor must go into his pocket to meet one kind of cost as clearly as the other. There are two schools of thought with reference to the manner in which the so-called "going concern" value or "development cost" should be met. The supporters of one school are of the view that these items should be added to capital account, while those of the other school believe that they should be taken care of by rates higher than would otherwise be in effect, during the first years of the utility's existence. The difficulty with the first view is that its adoption will result in the increase of the permanent capital account and the consequent payment of higher rates for all time to come. The difficulty with the latter view is that it casts upon the patrons during the first years the duty of paying rates even

higher than the usual relatively high rates which are paid at the outset of a utility's history. I am of the opinion that such costs, legitimately and wisely incurred, should be taken care of in some way, but the exact method to be pursued, and the extent to which consideration should be given to such items, will depend upon the facts of each particular case. It might well be, for instance, that if the utility is unwisely conceived or struggles against unusual difficulties, the cost of developing the business including the early losses may run up to almost the entire value of the physical plant, if not in excess thereof. It may happen, also, that while in one case the addition of these costs to capital account might be perfectly fair, in another case justice will require that these costs be reimbursed out of higher rates during the first few years, or that some combination of these theories be adopted.

Going cost is recognized as a proper addition to the rate-making value by the New Jersey Board of Public Service Commissioners in the case Gately & Hurley *vs.* D. & A. T. & T. Co., decided January 7, 1913, and in the Passaic gas case, decided December 26, 1912, and such inclusion has been affirmed in the appeal case 87 Atl. (N.J.) 651, decided on July 1, 1913. In the former case the commission stated:

. . . . it appears just and reasonable that a fair present day estimate of the capital necessarily and judiciously sunk in establishing the business and not thereafter recouped from revenue should enter as an element into the base upon which a fair return should be allowed. Not to include such part of the outlay or investment as is necessarily and judiciously made at the start in canvassing for and enlisting customers, or as is necessarily and wisely incurred by reason of foregoing returns during the construction period when money is locked up, acts to repel future enterprises from similar ventures.

That the value used as the basis for taxation must be taken into consideration as an element in fixing the valuation for rate-making purposes is well brought out in the case of the Maryland Public Service Commission, Bachrach et al. *vs.* Consolidated Gas, Electric Light and Power Company, decided January 13, 1913, in which it was held that the value of $5,000,000 placed upon the easements of the company in the streets of Baltimore is a portion of the assets of the utility upon which it is entitled to a reasonable return.

These comparisons summarize the significant changes appearing in the year 1913 and the latter part of the year 1912, in the more important decisions discussing "rate-making" value. The conclusions which seem proper from such a comparative review are as follows:

1. When appraisals of the cost of reproduction new are considered in determining the present value for rate-making purposes, experience

has proven the necessity of making more liberal additions for overhead percentages, not to cover mere conjectural values, but to include costs which do not appear in the appraisor's inventory.

2. When the present value for rate-making purposes is based upon the cost of reproduction new, deduction may properly be made for the depreciation in value. The amount of such deduction, however, may vary with the care with which the owners of the property or corporation have provided against such depreciation and there is a tendency to measure the deduction by inspection rather than theoretical estimates of expired life. Where the owners of the property or corporation have given evidence of their responsibility to replace depreciated property, such fact may be taken into consideration in determining value for rate-making purposes. Likewise the reserve accrued by the owners of the property or corporation to offset depreciation is properly considered an asset of the utility for rate-making purposes.

3. Where the cost of reproduction new is determined, inclusion is properly made for the cost of repaving over mains, even though it has not been necessary for the utility to disturb such paving during the course of construction.

4. Where the present value for rate-making purposes is determined, inclusion must be made for appreciation as well as depreciation of real estate. It does not seem proper that any portion of such appreciation should be construed as income upon which dividends or taxes may be paid. With few exceptions the recent proposal to deduct the so-called "unearned increment" from the value for rate-making purposes upon the theory of a relation of "principal and agent" is dissented from upon the ground that such a policy would carry with it the necessity of underwriting past losses. As yet no attempt has evidently been made to apply this principle in practice.

5. There has been a reiteration and elaboration of the necessity of including going concern value in the present value for rate-making purposes.

ELECTRIC LIGHTING AND POWER RATES

By Halford Erickson,

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Electric lighting and power plants like other public utilities must furnish adequate service at reasonable rates without unjust discrimination. What constitutes adequate service and reasonable rates is largely a question of facts. Adequate service requires efficient and well-maintained equipment, uniform and well kept-up voltage, accurate meters and many other things that can only be had through close supervision. What are reasonable rates is a matter that depends very largely on the circumstances under which the service is furnished. Plants that are operating under abnormal conditions may have to accept business at rates that yield much less than what might otherwise be regarded as reasonable compensation. When conditions are normal, the plants are in law entitled to rates that will cover reasonable allowances for operating expenses, including depreciation, and interest and profits on a fair value of the plant and the business. Such allowances may be said to constitute the normal cost of the service. As normal costs are also the economic basis for normal prices, there appears to be a close relation between the legal and the economic bases for rates.

The work involved in the making of reasonable rates for electric and other utilities is thus largely made up of determining what is the fair total cost of the service and what proportion of this cost should be borne by each of the different branches of the service and by the different classes of customers or individual customers in each of these branches. In order to find these costs, it is necessary to determine the fair value of the property and business that is employed in serving the public, the rates that constitute reasonable allowances thereon for interest, profits and depreciation on this value, as well as what is a fair allowance for other operating expenses.

The fair value of the property and the business is largely determined from those facts which show their original cost and what it would cost to reproduce them, both new and in their existing con-

dition. The rate of returns for interest and profits is mostly found from facts which indicate the rate at which the capital and the business ability for the plant in question, and for other enterprises where conditions are similar, can be had, the condition of the investment market generally and from other facts of this nature. The amount to be allowed for depreciation is usually found from the cost of and the length of the useful life of the property actually involved, as well as from the total cost and composite life of the plant as a whole. The fair cost of operation is mostly determined from close studies of the management, its methods and practices, the condition of the equipment, and the circumstances under which the services are rendered. In all inquiries of this kind, comparisons as between different plants and other facts in point are of much importance.

It is hardly necessary to say that, since the cost of the service is the basis for the rates, it is very important that this cost so found, not only for the plant as a whole, but also for each branch and class of the service, should be the correct or fair cost. The rates charged for utility service may vitally affect not only the social income and its distribution, but the industrial and commercial development of entire communities, and the conditions under which individual enterprises are carried on. Unless such rates are fair and equitable, it is almost certain that some plants will earn more and others less than they should earn, and some customers will have to bear more than a fair share of the total cost, while others are charged less. Such inequalities frequently spell success for some customers at the expense and even ruin of others. Owing to the fact that the theories and facts involved in this are often conflicting and very complicated, it is usually rather difficult to determine, not only the fair cost of the service, but also what is an equitable rate for the same. These obstacles, however, are not so serious that they cannot be overcome. Through close studies of the facts and conditions in each case, and by the application of correct methods to the calculations and the apportionments that are required, it is usually both possible and practicable to arrive at a fair result.

Ordinarily the cost of utility service is divided into the operating expenses proper, and fixed charges. The former include the expenses of operating the plant, or those items which would stop if operation were discontinued. The fixed charges cover such outlays of taxes, the depreciation due to the time or the elements, and interest

and profits; that is, those costs which go on even if operations are stopped. Both of these classes of costs are actually as well as relatively higher for some branches and classes of the service than for others, depending upon whether the service is furnished closer to or farther away from the power plant, upon whether the service demanded is for a longer or shorter period daily, and upon other local conditions.

Under normal conditions each branch should bear its own operating expenses, together with its full share of the interest charges. When conditions are abnormal, it may be necessary to so shift the interest charges that some branches bear less and others more than their normal share of the same. Ordinarily no part of the service should be allowed rates that are so low as not to cover the operating expenses plus at least something for the interest on the investment. For business that cannot be had on better bases, the cost may have to be so construed as to mean only the additional costs that are incurred in taking such business on. Mere inequalities in rates are not regarded as unjust until the point is reached where they result in some injustice to some one else. What is thus true in these respects for the different branches of the service is also true for the various classes of customers in each branch.

In the public utility field, where monopoly conditions largely prevail, this cost is about the only available basis for a fair price. While this is generally admitted, there is some division of opinion as to whether the rate should be governed by the average cost per unit that is obtained when the total cost is divided by the total units sold, or by the amounts per unit that are obtained when, in computing them, the demand, the length of daily use of the installation, and other factors in point are also considered. That the latter method furnishes the most equitable units for rate-making purposes becomes quite apparent when the nature of the electric energy business and the conditions by which it is surrounded are taken into account.

The nature of the electric utility is such that its product is more of a service than a commodity. The service it renders must be used in connection with the plant because it cannot be stored except to a limited extent. As electricity is largely used for lighting, the greatest demand on the plant is in the evening. While this maximum demand may not last long, the plant must be large enough to meet it. The demand on the plant also varies with the seasons, being

much greater during the winter than during the summer months. The effect of such variation in the demand is that for the greater part of the time as much and more than 80 per cent of the capacity of most plants remains idle.

Public utility service is also decidedly a service of decreasing costs. As much as two-thirds or more of the total expense of the service, when fixed charges are included therein, are often independent of the amount of current or energy generated and are about as great when the output of current is smaller as when it is greater. Hence, the greater the amount of current that can be sold, up to the point where the full capacity of the plant is constantly utilized, the better is the load factor and the lower the cost per unit of current will be.

In order to illustrate this point let us assume a plant that has a capacity of 300 kilowatts; that has an average daily use of current of about four hours; that has an operating expense including taxes and interest on the investment of $18,000 per year, of which 60 per cent is covered by the fixed and 40 per cent by the variable expenses; and that has an instantaneous demand that about equals the capacity of the plant. The fixed expenses, on the basis stated, amount to a total of $10,800 for the year, or $36 per kilowatt of demand per year. This expense remains the same whether the plant is operated one, two or three hours daily or even if it is in operation all day. Such being the case it must follow that the fixed cost per kilowatt hour decreases with the increase in the output. If the plant were operated only one hour each day, it would be operated 365 days in a year and the fixed cost per kilowatt hour of output would be 9.86 cents. If the plant were operated two hours each day the output would just be doubled and the fixed charge per kilowatt hour would be halved. Thus the fixed cost per kilowatt hour for different hours daily operation of the plant is as follows:

When the plant is in operation 1 hour daily 9.86 cents.
When the plant is in operation 2 hours daily 4.93 cents.
When the plant is in operation 3 hours daily 3.29 cents.
When the plant is in operation 5 hours daily 1.97 cents.
When the plant is in operation 10 hours daily .99 cents.

The variable expenses, according to our assumption, amount to $7,200 a year when the plant is in full operation an average of

four hours a day. This means a variable cost of 1.65 cents per kilowatt hour, which increases or decreases in exact proportion to the increase or decrease in the number of kilowatt hours generated.

The total cost of current, as stated, is thus made up of a fixed and a variable expense. When these are reduced to a unit basis and added together, the results shown in the following table are obtained:

Number of hours plant is operated daily	Fixed	Variable	Total
			cents per k.w. hour
1	9.86	+ 1.65 =	11.51
2	4.93	+ 1.65 =	6.58
3	3.29	+ 1.65 =	4.94
5	1.97	+ 1.65 =	3.62
10	0.99	+ 1.65 =	2.64

These facts better than anything else show the fallacies of a uniform rate per kilowatt hour, and indicate that the consumer who uses his installation only a short time each day should not be given the same rate as the one who uses his installation a comparatively longer time.

In view of these and other facts, in order that they may become proper bases for rates, it is necessary to analyze closely the expenses of a plant and to classify them in accordance with their nature, branches of the service and classes of customers. In thus studying their nature, it is found that some of the cost items depend directly on the capacity of the plant and vary with this capacity; that others depend directly on the customers of the plant, and vary with the number of customers; and that there are still other items which depend directly on the output of energy and vary with variations in the amount of this output. It is further found that there are also many items in the cost of the service which do not depend directly upon the demand, the customers, or the output, but which are indirectly dependent upon two or more of them. They are in the nature of overhead charges. In addition to this, it is also found that some of these expense items are relatively higher for some branches or parts of the service than for others.

In order to establish rates that are equitable to all it is necessary to separate those expenses which depend directly on the demand, the customers, and the output into their respective classes. It is

further necessary to apportion properly the indirect or overhead expenses between these classes in such a way that each class is made to bear its proper share thereof. In addition to this it is also necessary to apportion properly these classes of expenses between the different branches of the service. Likewise the customers must also be classified by branches of the service, while those in each branch may have to be grouped in accordance with their demand on the plant and other characteristics of the service they obtain.

Now, these conditions and apportionments are logical and well within reason. If this is the case then it would also seem equally logical and reasonable that each customer or class of customers should bear his or their just proportion of such of the three classes of expenses that were named. That is, they should bear demand costs in proportion to their respective demand in kilowatt on the plant; they should bear customers' cost in proportion to the number of customers; they should bear output costs in proportion to the respective amounts of current or energy used.

When the demand costs are thus allotted to the customer on the basis of the proportion of his kilowatt demand; when the consumer costs are assigned to him on the basis of the number of customers; and when the output costs are apportioned to him on the basis of the kilowatt hours used, it is of course found that, while each customer bears only his just share of the respective demand, consumer and output costs, the average cost per kilowatt hour is much higher for those customers who use their service or installation a short time only each day than for those who use their installation for longer periods each day.

These facts possibly can best be illustrated by an example. The following table shows the expenses of an electric plant including fixed charges apportioned among the different classes of consumers and between consumer, demand and output.

	Consumer	Demand	Output	Total	Cost per kilowatt hour sold
					cents
Lighting.....	$37,702.09	$51,308.90	$52,857.55	$141,868.54	6.2
Power.....	1,953.94	14,112.47	21,194.51	37,260.92	4.2
Street lighting.....		8,740.47	7,444.19	16,184.66	5.2
Traction.....		10,895.20	14,917.20	25,813.14	1.9
Total.....	$39,656.03	$85,057.04	$96,413.45	$221,127.26	4.5

The column to the right shows the average cost per kilowatt hour sold for each class of service and also the average cost for the plant as a whole.

A rate schedule under which each customer is made to bear his just proportion, in each case, of the demand, the consumer and the output expenses thus results in higher average rates per kilowatt hour for short than for long hour users. This difference in the rate or cost is just. Since residences or lighting customers are usually short hour users, and power customers are often long hours users, it also follows that the average rate paid per kilowatt hour is higher in the former case.

Those who have analyzed the expenses and the operating conditions generally of public utilities do not find it hard to understand that there are certain items such as fixed charges and stand-by costs that depend on the capacity of the plant, which capacity in turn is determined by the joint demand upon it by the consumers, and that since such is the case these demand costs should also be borne by the consumers in proportion to their demand upon the plant, rather than on any other basis. There surely is a closer relation between those expenses and the demand in question than between those expenses and the kilowatt hours used. Likewise it is quite clear that certain expenses, such as keeping customers' records, collecting the bills and other items of this nature, depend on the consumer; that they are about as great for small as for large customers; that they are much more closely related to the customer than to the kilowatt hours used or any other unit and that for these reasons they ought to be borne in proportion to the number of customers. When it comes to the output costs, however, it is quite obvious that these depend more closely on the kilowatt hours used than on any other unit and that they should therefore be distributed on this basis. Such distributions of the expenses as those just outlined furnish material for the proper kind of cost curves, such curves as are used for scientific and other purposes where accuracy and sound conclusions are required. They especially furnish sound basis for equitable rate schedules.

It is well known that apportionments of the expenses that are required in the classifications outlined can be so made as to be fair to all concerned. There is in the case of all utilities a considerable proportion of items which depend directly upon each branch of the service, and upon each class of customers. Such items can be classi-

fied directly under the branch of the service and under that class for which they were incurred. There are also a considerable number of expense items which are common to two or more classes and two or more branches of service which can be fairly apportioned either on closely related units or on the direct expenses. While such apportionments are often complicated, their trustworthiness when carefully made has repeatedly been established.

The cost basis of rate making thus outlined is also elastic enough to be adjusted to the various conditions that arise in this field. Under it consideration can be given to the long hour user who in addition is also an off-peak user; to the long hour user whose use also extends into the peak hours; to the short hour but off-peak user; to the short hour users whose use also comes during the peak hours and to practically all other conditions that may arise.

Thus in the table shown above we find that the cost per kilowatt hour for street lighting is 5.2 cents. This is for service from dusk until midnight. Let us suppose that it is proposed to burn these lights all night. The question then arises as to what shall be the charge for the additional service. Under a uniform rate the charge would be 5.2 cents per kilowatt hour for all additional current needed. This rate, however, would be too high, because the increased service would not occasion a proportionate increase in the expense. Under the cost basis of rate making the only additional charge that would be made would be one sufficient to cover the increased expense. The following table shows both the direct expense and the expense burden for street lighting separated between demand and output.

Expense	Demand	Output	Total
Direct	$3,960.75	$3,521.66	$7,482.41
Expense burden	4,799.72	3,922.53	8,702.25
Total	$8,760.47	$7,444.19	$16,184.66

It is obvious that the only item that will be affected by an increase in the length of time the lights burn will be the direct portion of the output expense, which in this instance amounts to $3,521.66. If the lights are burned all night the amount of current needed will be doubled and consequently this item will be increased and the total cost of street lighting will be raised to $19,706.32. It will be remem-

bered that the average cost of current when the lamps were burned from dusk until midnight was 5.2 cents per kilowatt hour; if the lamps are burned all night the average cost will be reduced to 3.2 cents per kilowatt hour. This is due to the large proportion of expenses that are fixed in supplying electric service. In other words, it is an industry decidedly subject to the law of decreasing cost. Proper adjustments of this kind are possible only under the cost basis of making rates.

When it comes to the method of charging, however, which, as stated above, is represented by the average cost per kilowatt hour of all the current sold by the plant, the situation is different. The rate thus obtained will be the same regardless of the conditions. Under it the power user would pay the same rate as the lighting user and the long hour user in both cases would be charged as much per unit as the short hour user. If all customers were in the same class, if their demand was the same and also came at the same time, if they used the same amount of current, if there were no competitive or other conditions of this nature to contend against, if, in short, the similarities between them in the situation under which the services were rendered extended to every condition by which the price of the current could be affected, then a uniform meter rate which is the same for all customers would no doubt be practicable. But such similarities are seldom if ever encountered. In actual practice it is found that the demand, the quantity of current used, and other conditions vary, not only as between the different branches of the service, but also as between the different customers or classes of customers in each branch. These differences do not only extend to factors which affect the cost to the plant furnishing the service, but they also cover conditions which measure what the customers can afford to pay for it.

Under a rate schedule, the rates in which represent the average cost for the plant and are therefore the same for all branches of the service and for all classes of customers, the cost for power and for long hour users generally would be so high that the service could not be generally used for industrial and commercial purposes. Manufacturers, for instance, who are producing for the open market cannot afford to use current for power or other purposes unless it can be had at as low cost as power produced by other means. For most plants the average rate is much too high, not only for competitive

business, but for much of the long hour service. Being too high, it also follows that they will not bring the business. Loss of business means loss of revenue. It means more than this. Since the cost per unit of producing current decreases with increases in the business, such restriction in the output not only reduces the revenue, but it increases the costs per unit. It tends to reduce profits and to increase rates and hence results in losses to the plant and higher rates to its customers. No current should be sold at a loss, but the more of it that can be sold at a profit, the better for all concerned. These facts are well understood by the wide-awake manager but seem to be hidden to a large proportion on the outside.

These illustrations may even be carried further. Business which cannot be had on better terms should be taken even if the revenues it produces only slightly exceed the additional cost the plant is put to by taking it on, provided this can be done without unjust discrimination. The amount by which the receipts are greater than such additional cost may be counted as profits, for it aids in meeting the fixed charges of the plant and by its amount reduces the share that otherwise would have to be borne by the rest of the customers. Under the average cost of rate, however, business of this kind could not be had and such rates would therefore tend to restrict the business of the plant at the expense of all concerned.

To make these points a little more clear, let us consider a concrete case. In the table above, which shows the cost of the different classes of service for a particular plant, it will be noted that the total cost assessed to traction is $25,813.14, which is equal to about 1.9 cents per kilowatt hour. One of the reasons that the cost for traction service is so much lower than the other classes is that this current is taken at the switchboard; consequently it is not charged with any of the expenses of distribution. It so happens that 1.9 cents per kilowatt hour is the best price that the utility could get from the traction company. When the costs were apportioned to the different classes of service, it was found, however, that the traction company should have paid $31,790.81, or at the rate of about 2.3 cents per kilowatt hour. But the traction company would rather generate its own current than pay more than 1.9 cents per kilowatt hour. The question then arises whether it is advisable for the utility to take this business at the price named, also whether the other classes of consumers will be injured or benefited if the utility does sell cur-

rent to one consumer at less than cost. In order to answer this question it is necessary to ascertain what additional costs the traction service necessitates, or in other words, what items of expense would be eliminated if the utility stopped supplying current to the traction company, and compare the cost obtained with the revenue that will result from supplying current at the highest rate that the traction company can be induced to pay.

The facts can be set forth as follows:

	Apportioned cost basis	Additional cost basis
Generation expense	$17,443.42	$10,000.00
General expense	2,422.39	.....
Interest, depreciation and taxes	11,925.00	6,982.50
Total	$31,790.81	$16,982.50
Revenue from railway	$25,813.14	$25,813.14
Excess of apportioned cost over revenue	5,977.67	.....
Excess of revenue over additional cost	.....	8,830.64

The load factor of the traction service is about 34 per cent as compared with a load factor of 24 per cent for all other classes combined. This, together with the fact that the traction company takes about 26 per cent of the entire output of the station, seems to indicate that the additional cost for power would not be over $10,000. It will be noted that under the apportioned basis $2,422.39 of the general expenses have been included. Considered from the standpoint of the additional expenses that would be occasioned, none of this item would be assessed to traction.

The generating station has a capacity of 4,200 kilowatts and cost about $103 per kilowatt. Of the total capacity about 900 kilowatts are used for the traction service. It is estimated that if the station had been constructed only large enough to meet the demands of the other classes of service, it would have cost about $115 per kilowatt. The additional investment, then, necessary to furnish current to the traction company amounts to $52,500 or about $58 per kilowatt. Interest, depreciation and taxes on this additional investment, plus the $10,000 of additional operating expense, give a total additional cost of $16,982.50, which leaves an excess of revenue over cost of $8,830.64 to be used in reducing the cost to the other classes

of consumers, as compared with the apparent deficit of $5,977.67, which results when traction is assessed with its proportionate part of all expenses.

The effect on the cost to the other classes of selling current to the traction company at less than the proportionate cost of supplying it, can be readily seen by comparing the cost per kilowatt hour for the other classes of service when current is furnished the traction company, with the cost as it would be if current were not furnished to this company. Under the former condition, the average cost per kilowatt hour is 5.6 cents; under the latter the average cost to the remaining consumers would be 5.85 cents. While this difference appears slight, when presented in this manner, yet it nevertheless proves the point.

The justification of this method of treating some customers when their business cannot be had on a better basis is exhibited a little more vividly when a comparison is made between the cost curve of the business as a whole when traction is included and when traction is excluded, as shown in the following table:

Number hours plant is operated daily	Cost of supplying current when traction is included			Cost of supplying current when traction is excluded		
	Capacity	Output	Total	Capacity	Output	Total
	cents	*cents*	*cents*	*cents*	*cents*	*cents*
1	8.13	1.98	10.11	10.00	2.39	12.39
2	4.06	1.98	6.04	5.00	2.39	7.39
3	2.71	1.98	4.69	3.33	2.39	5.72
5	1.62	1.98	3.60	2.00	2.39	4.39
10	.81	1.98	2.79	1.00	2.39	3.39

It might be well to explain here that the term "capacity" as used in this table is the sum of the "consumer" and "demand" expenses shown in a previous table and is the same as the "fixed" expenses shown in the first illustration; also the "output" expenses are the same as the "variable" expenses referred to above.

It will be noted that the total cost when traction is included starts as 10.11 cents when the plant is operated one hour a day and decreases to 2.79 cents, when the plant is operated ten hours a day. Compared with this the cost when traction is excluded starts at 12.39 cents when the plant is operated one hour a day and decreases to 3.39 cents when the plant is operated ten hours a day. The differ-

ence between the two sets of figures decreases with the increase in the number of hours the plant is operated each day. For one hour of operation this difference is 2.28 cents and for ten hours it is 0.6 cent; consequently rate schedules modeled respectively after these cost curves will show a greater divergence for short hour than for long hour use. From this it follows that the customers who are most benefited by selling current to the traction company at less than the proportionate cost of supplying it, are the customers who use their installations comparatively a short time each day. These are usually residence consumers, the very ones on whom this manner of handling certain consumers is supposed to throw an additional burden. Under a uniform rate such adjustments, of course, would be impossible, and the result would be that regular consumers would have to pay more for current.

A high load factor stands for low costs but a satisfactory load cannot possibly be obtained without rate schedules that for each branch and class of service are as closely adjusted to the cost as is practicable under the circumstances. In the operation and management of a public utility, there is no feature that is of greater importance either to the utility or its customers than a properly adjusted rate schedule.

That such unit costs as those outlined above are of the greatest value in building up proper rate schedules for electrical plants is obvious. They constitute in fact the most important material for these purposes that it is possible to obtain. This is as true when the rate schedules are so constructed as to give separately the customer, the demand and the output charges, as when the customer and the demand charges are covered by meter rates, which decrease in amount with increases in the daily use of the service or installation. In connection with the form alone of the rate schedules, there is much to be said, but the space allowed for this paper does not permit a full analysis of the same.

ELEMENTS TO BE CONSIDERED IN FIXING WATER RATES

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The modern cry for what has been happily termed the "square deal" is exercising a material influence on the management and operation of public utilities, particularly in their relation to the public. It is considered essential that all service rendered by a public utility shall be paid for by the recipient of this service, and that the payment for this service shall be proportioned to its cost to the public utility, so that no one consumer, large or small, shall receive special favors and benefit by rates lower than is fair, or suffer from rates higher than is fair. The basic principle of all rate making for public utilities is that a fair rate of profit shall be assured to the public service corporation, and that this profit shall be made up of a correspondingly uniform rate of profit on all portions of the service rendered. Wholesale rates or quantity discounts are to be justified only in so far as they are based upon a lesser cost of service under such conditions.

The public water supply company, which is probably the most important of all such public utilities, one which comes into most intimate contact with individual consumers, and whose proper management and fair dealing comes quickest home to the health and welfare of the individual, must make its rate to its customers on this basic idea.

Confusing Conditions

The cost of service and rates to be charged for water supply has in the past usually been, and still is, seriously confused by the special conditions attending this service. Some of the supplies are operated by the public themselves through their municipal government; others are operated by private companies for their individual profit; still a third class by a combined system in which the management of a private company is to some extent controlled by the public administration. Again, of the public water supplies, some are operated practically at cost, with the idea that the furnishing of

water to the citizens is a civic activity for the welfare of the citizens and that no profit should be charged for this service but only the cost of the service returned to the government. Some city governments supply this water at a loss, charging materially less than the cost and making up the deficit by a general tax levy. Still a third class charge a price for the water materially higher than its cost, bringing in a considerable profit, which is credited to the general income of the administration.

A further complication arises from the fact that water service for fire protection is often furnished either by the city or by the private water company free of any charge to the city government or to individuals. The water for public use for the municipal buildings, schoolhouses, hospitals, and prisons, is likewise furnished free of charge. In some cases water furnished for institutions maintained for philanthropic or charitable purposes, such as churches, hospitals and cemeteries, is not paid for.

Basic Principle

Such confusing and undesirable complications of bookkeeping make more difficult the determining and charging of equitable rates for the various classes of service. For the proper fair dealing to all, certain basic principles must be established.

1. All water furnished by the water service company should be billed and charged for at a fair rate, proportioned to the service, to pay a fair profit to the water company or to the public water service.

2. Water furnished for general public use or for fire protection or to any class of users to whom the city wishes to make a subsidy should be charged for at the normal rates. If the conditions of the franchise are such that such water must be furnished free by the water company, the service should still for proper bookkeeping be determined and charged even if it must be balanced by a credit which is practically a tax on the water company equal to the amount of this water bill.

On this principle there will be neither greater nor lesser income, either gross or net, to the public water service or water company, but there will be a clear understanding of the proper charge for each class of service, and charges can then be fairly divided.

The old forms of water rates which have in the past been based on no understanding of or care for the cost to the service were usually

flat rates, depending on the frontage of the property, the number and class of fixtures connected in the property, or the size of the tap to the street mains. Such a method of charge alone was highly undesirable and uneconomical. Waste of water was greatly encouraged and charges made to the various properties were almost invariably without any real relation to the cost and value of the service rendered. This method has been superseded in many cases by a straight meter system, in which the charge is made at a uniform rate based on the quantity of water actually registered. This charge is made high enough so that the total income produced will be the necessary amount to pay all fixed and operating charges and to leave a fair allowance of profit. The entire cost is then on the consumer alone and the apparent fairness of such a method has made it undeservedly popular and it has often been compared to the same method of charging for gas delivered.

The fairness of this method of charging is, however, only apparent and not real. The true cost of the service is no more to be properly based only on the amount of water consumed than it is to be based only on the number of fixtures connected in a house. It is not too much to say that there are even cases where the old-fashioned flat rate method of charging is actually fairer than this meter rate. The cost of service includes not only the cost of the water actually consumed on the premises, but it includes a large "readiness to serve" charge, which is always a material item in the cost and depends on many other factors apart from the amount of water used.

Elements of Rates

The elements to be considered in fixing water rates are fundamentally:

1. The total cost of service.
2. The division between the cost of service to the public generally and the cost to the individual consumer.
3. The division in the cost of service to the individual consumer between those elements of cost comprised in the phrase "readiness to serve" and those elements of cost proportioned to the amount of water actually consumed.

Plant Value

The total value of the utility is a very difficult quantity to determine properly, and it can be judged only by considering the question of appraisal from a number of standpoints. One important indicator is the book cost, showing what has actually been expended on the property after making suitable allowance to bring the bookkeeping methods up to what is required by modern practice. This book cost will, of course, make no allowance for changes between the value at the time the works were constructed and the present time, during which period the costs of material may have either increased or decreased and the costs of labor usually increased. It will, however, include practically all other elements of value.

The earning power of the utility under current rates is of itself no indication of the fair value of the plant. It is possible, however, to get some suggestive ideas by considering what would be the earning power of this utility at rates which are current and accepted as satisfactory with other waterworks property of somewhat similar nature and making due allowance for the actual conditions of operating expenses and other charges peculiar to the locality in question.

The most common and most generally accepted method of deriving the value of a waterworks plant is to make an appraisal of the cost of reproduction of its physical plant new, taking as unit prices averages of those current for material and labor over, say, the last five years. An addition to the net reproduction cost of physical plant must be made for engineering, legal expenses, clerical work, administration, and contingencies, ranging from 12 to 18 per cent, depending on local conditions.

In addition to these, an allowance must be made for interest on money invested during the period of construction. This period will vary according to the size and nature of the property, but will rarely be less than two years, and the cost of this interest may be taken at 6 per cent on one-half the reproduction value of the property for each year it is estimated the period of construction will last.

Other items of overhead expense which are often logically and fairly incurred are discount on bonds and the cost of promotion services. There are some cases where such charges are not properly to be included, but in the great majority of private waterworks properties these are fair elements of value and represent money ac-

tually expended. The amount of these items cannot be averaged, and must be judged from the nature of the property and its peculiar conditions.

A further item to be included in the value of the property is a fair allowance for working capital. This for an average property may be taken as a sum amounting to six months' operating expenses.

A further element of cost is what is usually called "water rights." If the owners of the waterworks property have an exclusive private ownership of the right to take the water needed for the purpose from certain places, this right represents a value which must be allowed for. In some cases the value of this water right can be measured by the difference of cost occasioned by attempting to get water from some substitute source. For those cases where no substitute source is possible, there is no concrete basis for evaluating the water rights, and an allowance must be made which seems fair in the judgment of the appraiser.

The last of the elements going to make up value is an item sometimes called "development expense" or "going value." This going value represents the difference between the actual live working utility and a plant which would have all its other assets and properties, except that of being in operation, having customers, and actually supplying them with water. Many arithmetical systems of calculating this going value have been suggested, but in the last analysis it comes to a question of judgment and the amount which, in the best judgment of experienced men, is to be allowed for this item will vary according to the nature of the property, ordinarily ranging from 10 to 20 per cent of the sum of all other elements of value.

Having obtained in this way a sum representing the total value of the utility under present conditions, all returns in the nature of interest and profit will be based in the majority of cases on the value of this property in its new condition. In some cases the depreciated value obtained by deducting the physical depreciation from the value new is a proper basis for returns. In still other cases an intermediate value is a fair one. There is no simple, universal rule for determining this proper basis, as it will largely depend on the adequacy or inadequacy of the income of the property properly to provide a suitable depreciation fund to maintain the property and to return its value to the investor at the end of the period of his franchise, if this is a limited one.

Cost of Service

The total cost of service is made up of a number of elements. The first of these is operation, and the second maintenance. These are entirely dependent on local conditions and cannot in any way be averaged or prejudged. The third element is the depreciation charge sufficient to maintain the property in first-class operating condition at all periods of its life, to renew any wornout or obsolete parts, and generally to provide a sufficient fund so that the investment may be maintained intact. This depreciation fund varies according to conditions, but may be assumed in the absence of special information to range from 1 to 2 per cent per year. The fourth element is interest on the investment, which may be taken as 6 per cent of the total value of the utility. The fifth and last element is profit, and this may be taken in addition to the interest allowance to be an average from 1 to 2 per cent of the total investment.

The sum of these elements fix what must be the gross income of the water supply utility. In considering the division between public service and private service, it will often be found that public service is not directly charged for. If the water supply is provided by the city government itself, the water department should bill against the general tax fund a fair charge for this public water service, and this public water service should be paid for not by the water consumers alone, who do not get the only benefit for this service, but by the city at large, for it is the city at large that benefits. If, on the other hand, a private water company is forced by the terms of its contract to give such water service without charge, or if partly paid for to give this service for an inadequate payment, the total cost for the excess of cost above payment of this class of service should be properly determined, and if it is necessary to charge it against the water consumers, as unfortunately it sometimes is, it should be charged not against the actual gallons of water consumed, but as an overhead charge in the form of "readiness to serve" charge.

With this preliminary consideration of cases where rates cannot be properly billed as they should be, the determination of fair water rates can be made.

Fire Protection

The investments for fire protection purposes include a number of elements which are obvious and a number which, though not so easily seen, are just as real. For the purpose of supplying the needed water for fire protection there will be required additional expense on all parts of the construction of the system, starting with intakes, conduits, and continuing through pumping station reservoirs, purification plants, distribution system, hydrants, and connections. For operating service there will not be required a large volume of water for fire purposes, but the fixed part of the operating expense not depending upon the amount of the water supplied must be in part charged to this fire service. In addition, a fair proportion of losses from the mains in the form of leakage which may amount to 25 per cent of the total water distributed is fairly chargeable to this part of the service. The ultimate proportion of the total investment and maintenance occasioned by or needed for fire protection will depend on the nature of the water supply system and the size of the plant. A water supply system delivering water by gravity from a large reservoir will have only a portion of the reservoir and distributing mains chargeable to fire protection. A direct pressure pumping system, however, will have a portion of all parts of the system needed for fire protection alone, and this element of the service will sometimes occasion a greater expense than the actual water consumed. A large system obviously need be extended only moderately to provide additional water and distribution facilities for fire service, while a small system must be heavily reinforced for this purpose.

The part of the water system properly chargeable to fire protection may range in a general way from 5 per cent in a town of 300,000 inhabitants up to 75 per cent in a town of 5,000 inhabitants, according to the local conditions.

An additional element is introduced under conditions where private consumers are encouraged or permitted to have connections for fire protection service, and the question arises whether such private fire protection should be charged to this individual consumer or whether it should be borne by the public. A decision on this disputed question will never be agreed to by all, but must remain a matter of opinion. It is our opinion that it is to the best interests of the public at large to encourage the use of such connections for

fire protection, and that the cost of these connections should be borne by the public, together with the costs of all other items of fire protection service.

The commonest way of charging for this public fire protection is in the form of a rental for hydrants installed. This method is not in every case an absolutely equitable one, as the cost of the water property is not entirely to be measured in proportion to the number of hydrants connected. If, however, the number of hydrant connections is a reasonable one and the rate of hydrant rental service is properly proportioned to the costs of the particular service and its conditions, this method of charging should be perfectly satisfactory.

The hydrant rentals common in this country range from nothing or nominal amounts to about $60 per hydrant per year, with an average over the country of about $40 per hydrant per year. On the basis of population the cost of this fire protection service will probably range from $0.15 to $1 per capita per year.

Public Consumption

Water supplied for public use is that delivered to the city for use in public fountains, for use for street sprinkling and street flushing, for municipal buildings, school buildings, and in addition water donated by the city to charitable institutions of various classes. The total amount of this may average 10 per cent of the total amount of water delivered. As we have above stated, all water used in this way should be considered and charged to the public exactly as water delivered to any other consumer, and will not affect fair average rates.

Private Consumption

The cost of water service to the water consumer is the next division which is to be considered. This should be fairly separated from other items of water service noted above, and only this portion of the water utilities cost should be charged to the consumer as a consumer. All other elements of expense are for the general public welfare and should be borne by the general public and not assessed against the water consumer alone. The consumers' rates should properly be such as will return to the public utility a profit on the cost of this particular service.

Having separated that portion of the total cost which is to be collected from the water consumer, there are two classes of charges which are to be made. The first of these is a service charge made against any consumer connected with the water system and embraces those elements of cost which are occasioned by the water utility being ready to deliver to the consumer his maximum required amount of water. The second of these is the water charge, and covers only the cost of the water consumed.

Service Charge

The general popular opinion which, aiming at justice, overshoots the mark, is that equity is observed in charging all consumers in proportion to the amount of water for use. The heavy costs of the "readiness to serve" charge are not fully appreciated. It costs the water company almost as much to connect a meter to a vacant house and stand ready to supply water at all times as it does to deliver the ordinary water consumption to a house using the average amount of water. The only difference between the two is this second element or charge for water alone.

The service charge which must be based on the maximum amount of water demanded by the consumer includes interest, depreciation, and profit on the investment of so much of the water company's property as is needed to deliver this maximum amount of water. This part of the property is usually the great bulk of the total. In the extreme case of a gravity water supply of an impounded water delivered to the consumer without purification and without pumping, it will cost the water company no more to deliver continuously over the twenty-four hours a quantity of say 4 gallons a minute to the consumer than it will cost to deliver to him the same amount only for one-half hour a day, particularly as the small consumer is almost sure to use his small quota of water at the peak of the load on the distribution system, and the distribution system must be proportioned to his maximum demands, though they are of short duration. For such conditions a meter system has only a limited function and a limited value, and has any value at all only because the times of water consumption, though roughly the same, will not exactly coincide, and the overlapping or maximum consumption of individual consumers will mean a slightly lesser total than the aggregate of

maximum demands. Another element of the "readiness to serve" charge is the overhead expense of administration, the expense of maintenance of the distribution system, the expense of supplying and maintaining meters, reading meters, making bills, etc.

Another element of the "readiness to serve" charge is leakage of street distribution mains. This leakage will seldom be less than 20 per cent and may easily exceed 40 per cent of the total amount of water handled. There is no reason why this leakage should be charged to the water consumer alone. It should rather be charged to all connected consumers, including the public service and public fire protection and all private consumers in the form of a service charge.

The last element of the service charge will be what is sometimes called "under-registry of meters." This is really occasioned by the condition that a continuous small leakage from the plumbing fittings in the house causes a loss of several gallons per hour, which is at too small a rate to register on the meter. This loss may range from 5 to 20 per cent of the total. It is, of course, in no sense proportionate to the actual registered consumption of the connected consumer, but is rather roughly proportionate to the service charge which is more nearly in the ratio with the number of fittings the consumer has connected.

The aggregate of all these costs should be charged against the individual consumer in the form of a service charge which should be proportionate either to the size of his meter or tap connection to the main or else the number of fixtures connected. The latter basis is probably a trifle more equitable than the former, but for the sake of simplicity it is probably desirable to base this service charge only on the size of the meter. The amount of this service charge, while varying with the nature of the water service, in all likelihood should never be less than $5 per year for a $\frac{5}{8}$-inch meter, which is the smallest in ordinary use, and in some cases it may fairly run to more than double this amount.

Water Charge

The final element of water service charges is the amount to be charged for the water actually consumed, as registered by meters. This will also vary according to the conditions of the water supply,

and may run from a very small figure to a very high one. It will comprise the costs actually expended for water delivered, including such elements as labor, pumping operation, returns on capital invested for water delivered, and other similar charges. The fair charge for such water delivered and actually registered will probably run from 4 cents to 20 cents per thousand gallons, in addition to the "readiness to serve" charge, which, as above stated, will run from $5 to say $15 per year for the ¾-inch meter connection.

In brief, then, the income of the water utility, whether publicly or privately managed, should make an operating fund to cover the cost of operation, the maintenance of the property to take care of current repairs, a depreciation fund to cover the fund maintenance and repairs, obsolescence, and in general maintain the property at its maximum efficiency, interest on the value of the property both tangible and intangible, and finally, an allowance for profit. This income is to be derived:

1. From the public purse for services rendered to the public at large.

2. From a service charge made against all connected consumers, whether public or private.

3. From a meter charge for water actually consumed.

In the past the making of water rates has suffered from the fact that the bias of the rate makers towards certain ends has been substituted for a straightforward analysis of the elements of expense. On the one hand, the flat-rate system has been used only for the purpose of getting the desired income in the simplest way. On the other hand, the straight meter rate faddist has aimed at a straight fixed rate only for such water as is metered, so as to reduce waste.

The only fair method is to charge for any service what it is worth, which means here a combination of service charge and a moderate water rate charge. By such means it is possible that meters may find a ready acceptance in some places in which they have so far been unable to make entrance.

REGULATING THE QUALITY OF PUBLIC UTILITY SERVICE

By J. N. Cadby, E.E.,

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The popular conception of the usefulness of a public utility commission and of the relative importance of its various functions is undergoing a change. Occasionally these bodies are spoken of as "rate commissions," but as they become more thoroughly established, it becomes apparent that rate regulation is not their only important function. Thus far it has only been possible to revise rates by making rather elaborate investigations of the individual utilities concerned, and consequently relatively few people have been benefited by rate revisions during the first few years under commission regulation. In any large group of utilities some will be found where rate wars or other conditions have brought about abnormally low rates. These utilities are naturally among the first to apply for readjustment and thus the general effect of the first few years' work measured by rate reductions alone is often rather discouraging to those advocating commission regulation of public utilities. The authority of commissions to regulate the quality of service furnished by the utilities gives an opportunity to benefit practically all consumers of public utility service from the first. The service is improved from the time the utilities and commission's staff begin discussing and considering standards of service. Where the quality of service is not regulated, a reduction in rates may be followed by a reduction in quality of service and in this way the commission's order may be even worse than valueless. Reduction in gas rates could be counteracted or more than counteracted by a reduction in heat value.

The laws in many states give the commissions authority to regulate the service furnished by public utilities, but some prescribe, to a greater or less extent, the quality of service to be furnished and the methods to be employed by the commission in order to maintain this service. Perhaps the most common example of this feature in a public utilities law is that of requiring the commission to test

and seal each gas meter before it can be used in the state. A more effective method and one which has many advantages is to give the commission authority to ascertain and fix standards of service, as is embodied in the Wisconsin law.[1] This not only permits a careful study of conditions and requirements before standards are adopted, but also allows revisions to be made from time to time to take advantage of the progress in manufacture, utilization, regulation and testing.

In administering a law regulating the quality of service of public utilities, two general methods may be employed. The commission may do all the testing and inspecting or it may require the utilities to make inspections and tests which will be supplemented by tests and supervision by the commission. This latter method is much more efficient and satisfactory to all concerned. The utilities can test their own meters more cheaply than the commission can test them, and can check up pressure conditions with the extending of the system and variations in load that are bound to take place.

There are many advantages in having the service inspected by some one who is not actually assisting in furnishing the service. There are also many advantages in connection with the traveling about from one city to another, giving each operator the advantage of the experience of many others in dealing with much the same problems. Many of the smaller utilities and municipalities could not afford local inspectors or complete testing equipment. In the large cities, however, this is not the case. In the smaller municipalities the only people familiar with public utility operation are those connected with the public utility itself. Where the state organizes a technical staff to take care of the service of a few hundred public

[1] Sec. 1797m-2. The Railroad Commission of Wisconsin is vested with power and jurisdiction to supervise and regulate every public utility in this state and to do all things necessary aud convenient in the exercise of such power and jurisdiction.

Sec. 1797m-23. The commission shall ascertain and fix adequate and serviceable standards for the measurement of quality, pressure, initial voltage or other condition pertaining to the supply of the product or service rendered by any public utility and prescribe reasonable regulations for examination and testing of such product or service and for the measurement thereof.

It shall establish reasonable rules, regulations, specifications and standards to secure the accuracy of all meters and appliances for measurements, and every public utility is required to carry into effect all orders issued by the commission relative thereto.

utilities, a high grade of work can be expected with but slight expense for each city affected. Carrying this a step further, however, and regulating the service of all utilities in the country from one central bureau or department decreases the effectiveness as well as the economy and gives such a wide diversity of conditions of the manufacture and utilization that uniform service rules would probably be impracticable. In some sections of the country natural gas is used almost exclusively, while in others it is not used at all. In some states open flame burners for illumination are common, while in others they are seldom found. In some localities gas is used principally for fuel and in others principally for illumination. It therefore appears to the writer that the state is the logical authority to regulate the quality of service furnished by the public utilities, and it is hoped that the following discussion will demonstrate this fact.

The general methods employed by the Wisconsin commission in administering that portion of the public utilities law which relates to the quality of service may be of interest. Here the general plan of procedure is begun with a preliminary study of the operating conditions and the quality of service already being furnished, together with an analysis of the complaints received from consumers in regard to their service. A public hearing is then called and all interested parties are given an opportunity to discuss the various elements which go to make up adequate service, and in some instances to discuss a tentative set of rules, covering these matters, which has been prepared by the commission's engineers. Before the commission's order is issued establishing standards of service in the form of definite rules, the utilities have begun to examine the service they are furnishing and to study the demands of adequate service. With the issuing of the order, the utilities begin making specific tests and keeping prescribed records and the commission's inspectors travel about the state unannounced to determine the degree with which each utility complies with the standards in force, and to examine its records. This commission has jurisdiction over all utilities furnishing gas, electric, telephone, telegraph, water, heating or transportation service. The commission regulating railroads was given authority to regulate all the public utilities in 1907. During the latter part of that year inspection and study were begun with regard to the quality of gas service then being furnished in the state,

which was followed and supplemented by investigations of gas and electric service usually in connection with formal and informal complaints before the commission. In the spring of 1908 a public hearing was conducted at which standards for gas and electric service were discussed, and in July, 1908, a formal order was issued establishing standards for gas and electric service. With the establishing of these standards the number of inspectors was increased and all plants in the state visited from one to six times a year, depending upon the conditions observed.

These standards of gas and electric service were administered with but few exemptions and modifications, until August, 1913, when they were superseded by a revised set of rules. Under this revision more of the detail work is carried on by the utilities, including the tabulation of certain phases of their testing work. Several changes have been made regarding the methods of testing electricity meters. Standards for telephone service have been discussed in conventions and in a public hearing, but the formal order of the commission establishing these standards has not yet been issued. The service of other public utilities has been investigated in connection with complaints, but as yet no formal standards have been adopted governing service other than gas or electric.

Gas utilities in Wisconsin are required to keep their meters correct to within 2 per cent and to test each meter before it is installed and at least once every four years. The complete original record must be kept of every gas meter test and proper precautions taken to insure accurate and reliable testing. Consumers may have their meters tested by requesting the utility to do so provided such test is not requested oftener than once in six months. Where consumers prefer to have the tests made by a representative of the commission they can do so. For these referee tests a fee of from $2 to $8 per meter is charged depending upon the size of the meter. This fee is paid by the consumer if the meter is correct or slow and by the utility if the meter is more than 2 per cent fast. Meter readings and dates are required to be entered upon the bills so that consumers can verify them.

The gas must have an average of not less than 600 British thermal units per cubic foot and the minimum heat value should never fall below 550. The larger companies are all required to have calorimeter outfits for determining the heat value and to make these

determinations at least three days each week. The pressure must be kept within prescribed limits and each utility is required to make a survey of its system to demonstrate that the pressure conditions are satisfactory. The amount of sulphur and sulphureted hydrogen allowed in the gas is limited and the companies are required to keep a record of all complaints made regarding the service, together with the time the complaint is made, its nature, remedy and time of completing the work.

Electric utilities are required to maintain their meters correct within 4 per cent from one-tenth load to full load. These meters are required to be tested at installation and at intervals of from six to twenty-four months thereafter, depending upon the type and characteristics of the meter. Requirements similar to the gas rules are in force covering meter tests, records and billing. The utilities are required to make all reasonable effort to eliminate interruptions in service and are required to keep records of these interruptions and of the station operation. They are required to maintain the voltage throughout their systems wi hin prescribed requirements and to make plans to demonstrate their compliance with these requirements. They are also required to inform consumers of conditions under which efficient service may be secured, and to render assistance in securing lamps and appliances best adapted to the service.

The inspections are brief, but cover the various items enumerated above. The inspectors usually complete an inspection in one or two days, but sometimes are obliged to spend a week or more in one place. The plan adopted consists of beginning the tests, if possible, before the inspector's presence is known. Before leaving, the inspector goes over the records of the utility, interviews the municipal and utility officials and consumers, follows up any irregularities reported in connection with the former inspection and by the aid of indicating and graphic recording instruments determines accurately the conditions prevailing at the time of the inspection. The inspector's report, together with maps, records and newspaper clippings, is sent to the office of the commission where the report is checked over and a letter is written to the utility giving the results of the inspection and calling attention to irregularities which may exist together with suggestions and recommendations when these seem necessary.

If the service is found to be inadequate and steps are not taken

to make proper improvements when these matters are taken up informally, the utility is notified to appear before the commission in a public hearing and show why the penalty for violating the orders of the commission should not be imposed. Frequently the improvements are made before the hearing or so soon thereafter that no further order or action is necessary. Sometimes orders to make specific improvements are issued, but it is seldom necessary to do so.

The efficiency of having state regulation of the service furnished by these utilities is particularly apparent in the case of gas inspections. In order to determine the heating value of gas a rather expensive and complicated testing outfit is required. It would be something of a burden for the individual cities to obtain an outfit of this kind together with a man to properly carry on the tests. In the state of Wisconsin there are thirty-six gas plants, which are regularly inspected by the commission's representative and this work is all done with one testing outfit which is shipped about the state in a trunk. As a matter of fact, the entire time of the one inspector has never been devoted to the inspection of gas service.

For the inspection of the service furnished by nearly three hundred electric plants, the state has been divided into districts. Four or five district inspectors are able to check up the quality of service furnished by these plants. These inspectors incidentally report on telephone service and extension matters, railway service, dangerous construction and operation, and other miscellaneous matters.

In order to administer these standards it is necessary to have a high grade of inspectors. In Wisconsin these men are all technically trained and in addition have had several years of practical experience. The inspectors keep in touch with the latest developments in the lighting business through the technical press and membership in technical societies. They attend conventions and have their own conferences semi-annually. A little over a year ago the standards laboratory at the state university was enlarged and is now run jointly by the university and the commission. Here the equipment of the commission's inspectors is kept in adjustment and that of the utilities, taken care of. Here also apparatus can occasionally be rented by utilities. This has facilitated to a considerable extent the inspection work.

It might be anticipated that this inspection work would be ex-

pensive, but this is not the case as will be seen from the analysis of costs of the work of the commission. Including supervision and general office and overhead expense of the engineering staff, stenographic work, railroad fare, express and repairs to equipment, the average cost of the gas inspections for the year ending June 30, 1913, was $35. This makes a total cost per city served for that year of approximately $65 for gas inspections. The electrical inspections made during that year cost about $26.50 each, and since those plants giving fairly adequate service were visited only once, the average cost per city visited did not exceed $34 for this year. The street lighting investigations made during this period are not included with the regular service inspection expense, as this work was rather elaborate and included research and experimental investigation. Many telephone service inspections were made, in which from 40 to 100 test calls showed the promptness and accuracy of operators, the conditions of maintenance and general adequacy of the service. The average cost of these inspections during the year was $27. With the revised standards for gas and electric service and definite standards for telephone service, still lower costs can be expected within the next few years.

The economy indicated by the above statements would not be possible except for the fact that the utilities are encouraged and required to criticise and inspect the quality of service they are furnishing, and to do the detail meter work themselves. The commission does not attempt to locate all places where irregular service conditions prevail, but leaves this responsibility with the utilities. The service now being furnished by the public utilities in Wisconsin is considerably better than what it was six years ago and is better than that in many neighboring states.

SERVICE REGULATIONS FOR GAS

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When it is understood that the business of the gas utilities of this country furnishing manufactured gas amounts to over $100,000,000 annually, to say nothing of the tremendous natural gas business, the need of definite standards for the conduct of a service that affects the majority of homes in every urban district becomes apparent. The larger cities have for many years exercised considerable supervision over the gas service of their respective communities but it is within a very few years that the regulation of gas utilities has been made a part of the responsibilities devolving upon the public service commissions of the states. Circular No. 32 of the bureau of standards shows the regulation of the gas utilities for 229 cities of more than 25,000 population to be as follows:

	Number of cities
State rules enforced	76
State commission has authority (unexercised)	94
City ordinances enforced	78
No artificial gas supply	21
No rules enforced and no state commission in authority	12
Ordinances pending	4
Municipal operation	3
Total, less duplicates	229

Twenty-one states do not attempt regulation of such companies and of the twenty-seven states that have the power, but few have commissions that have prescribed definite rules or have taken steps to regulate the character and quality of the gas supplied. Massachusetts is reported as the first state to enforce regulations of gas service, a state inspector having been appointed in 1861. A state commission was appointed in 1902 which has controlled such matters since that date. In 1907 the Railroad Commission of Wisconsin was given power to supervise and regulate every public utility in the state. Several state commissions have been organized within the

past five years and the work now being carried on under the direction of these commissions is attracting conspicuous attention as the purpose, efficiency and fair-mindedness of these organizations become better known.

In preparing rules for the regulation of any public utility the underlying principle should always be one of fair treatment for both the public served by the utility and the utility itself. The stringent regulations that might be consistently met by certain large gas companies in the larger cities might prove absolutely prohibitive when imposed upon the smaller companies of a state with limited financial backing. The rules adopted by a state commission must, therefore, be thoughtfully and fairly drawn. On the one hand, they must impose high standards of gas quality, pressure and uniformity of service and on the other they must impose no undue hardships upon the smaller companies. Any rules or regulations that place excessive demands upon a utility result in increased expense and any increase in the cost of manufacture or distribution must ultimately be borne by the public. It is, however, but fair that the price charged shall warrant adequate and satisfactory service and shall allow a fair return on the invested capital.

A thinking public is willing to pay a fair price for efficient gas service but is not willing to meet an increased price with no apparent increase in efficiency of service or quality of gas. In formulating rules, to govern the production, sale or distribution of gas it is important that they be so drawn as to be fair in every detail to both the public and the utility company. It is also important that, although the requirements must be rigid, they should not be so rigid as to prohibit the possibility of their proper enforcement.

From utilities furnishing gas service the public has a right to expect

1. Gas of good and reasonably uniform quality.
2. Satisfactory and reasonably uniform gas pressure.
3. Correct appliances for measuring the gas used by each customer.
4. Freedom from interruptions to service and avoidance of accidents.
5. Reasonable prices for the service rendered.
6. Proper distribution and readiness to serve all communities within the natural territory supplied by the utility.

For a great many years the quality of gas was largely determined by means of the so-called candle power requirement and many

ordinances and regulations today still cling to the candle power test. When open flame gas burners were in general use the candle power standard was undoubtedly the most effective and altogether satisfactory one. Today, however, when probably not over 10 per cent of the total gas used is consumed in open burners it is questionable whether the candle power standard is of any real service in determining gas quality. For use in connection with gas ranges for cooking, incandescent mantles for lighting, furnaces, ovens and pits for heating, and gas engines for power development, a quality requirement based on the heating value of the gas seems to be more consistent today than a candle power requirement and the double standard recommended by some seems quite unnecessary. Experts in the field of gas manufacture seem to be almost unanimous in the feeling that proper regulation of heating value can be more readily obtained than of candle power. They are, therefore, distinctly of the opinion that in general the one standard, heating value, is the desirable one. It is undoubtedly true that in certain sections of the older cities open flame burners are more or less in use and it is possible that in a few of these cities these burners may utilize as much as 25 per cent of the gas supplied to these communities but these burners are rapidly being displaced by the mantle type and when natural gas is taken into consideration it is probable that the total gas utilized in open flame burners will fall well below the 10 per cent limit indicated above. The need, therefore, of the candle power standard seems to be obsolete. Assuming that, for state regulation, the single standard of heating value is to be adopted, it becomes necessary to determine the definite heating values which shall serve as limits in the regulations imposed. At least two heating value standards must be recognized, one for manufactured gas and one for natural gas.

Several kinds of manufactured gas have to be considered. Usually they are coal gas, carbureted water gas, coke oven gas, mixed gas and oil gas. Coal gas is made by the destructive distillation of coal in retorts which are externally heated. Approximately 5 cubic feet of gas are secured per pound of coal and the heat value of such gas usually ranges from 550 to 630 b.t.u. per cubic foot. Carbureted water gas is the result of a combination of two gas-making processes. Water gas is generated by turning a jet of steam upon an incandescent fuel bed. This water gas is usually enriched by the addition of gas generated from oil, the resultant gas being known as carbureted

water gas. The larger portion of the illuminating gas in this country is of this type. Carbureted water gas usually has a heating value ranging from 500 to 650 b.t.u. per cubic foot. Coke oven gas is practically a regular coal gas but the process of manufacture is somewhat different from that of the so-called coal gas. The primary object of the coke plant is the manufacture of coke and the gas generated is practically a by-product. The heating value of coke oven gas is usually somewhat lower than that of ordinary coal gas. Mixed gas—many plants today are manufacturing a so-called mixed gas which is nothing more nor less than a mechanical mixture of carbureted water gas and coal or coke oven gas. Oil gas—in the oil districts of the country large quantities of gas are made directly from crude oil.

In determining the proper standard for the heating value of gas in any community it is essential that the types of gas manufactured in that territory be carefully considered and that the efficiency of the processes of manufacture or the individual standards of the companies furnishing this commodity be taken into account when first establishing a basis for regulation. This is essential because it is important that sufficient leeway be granted to meet the commercial conditions involved in the manufacture of the different types of gas of reasonable quality supplied in the different sections of a state. It should further be recognized that to impose too rigorous conditions during the early application of new laws may mean either excessive expense to the smaller companies, resulting in an abnormal increase in the cost of gas to the public or the impossibility on the part of the utility to carry out the requirements imposed. An examination of the heating value standards of various states and cities shows the average to be about 600 b.t.u. per cubic foot; but in the majority of these cases the gas is limited to the three varieties, namely, coal gas, carbureted water gas or mixed gas. It is usually customary in all such regulations to permit a maximum variation of 50 heat units below the average monthly requirement, that is, the usual stipulation is that the utility furnishing manufactured gas service must supply gas of not less than 600 b.t.u. total heating value per cubic foot as referred to standard condition of temperature and pressure and that the minimum heating value shall never fall below 550 b.t.u.

It is undoubtedly true that many companies are today manufacturing gas of a considerably lower heat value than they imagine.

Owing to the fact that they have not been working under strict regulations they have never actually made any heat value determinations but assume that the gas which they manufacture is necessarily equal in heat value to that of certain other plants from which they have obtained information. A recent report of a joint committee on calorimetry of the public service commission and gas corporations of a state that has been living under gas regulation for several years indicates that even without considering coke oven gas the 600 heat unit standard seems high and this committee has seen fit to recommend an average standard of 570 b.t.u. If coke oven gas becomes an important factor it seems consistent to make the standard even lower than that recommended by this committee.

As a summary of the various recommendations and of the regulations now in force, the following requirements seem consistent for the best results today:

For states already working under gas regulations and in which the manufactured gas supply consists entirely of coal gas, carbureted water gas and mixed gas, a standard of 570 b.t.u. per cubic foot for the monthly average seems to be very satisfactory, although for states in which gas regulation is just being introduced or in which coke oven gas plays an important part, this heat value standard may in some instances be wisely reduced slightly below these figures, with a minimum in each case, as previously outlined, of 50 heat units below the monthly average.

The heat value of natural gas ranges from about 700 to over 1100 b.t.u. per cubic foot. It seems to be consistent to require a quality of natural gas that shall insure a heat value of not less than 800 heat units as a minimum. These heat value determinations of the gas are made on the basis of recognized standard conditions of temperature and pressure.

Gas manufacturers who have been accustomed to no special standards can undoubtedly improve the uniformity of the quality of the gas supplied by their plants and it is quite consistent for a state commission to increase its requirements from time to time.

The phrase "quality of gas" not only relates to its heating value but also to freedom from impurities. Manufacturers of gas are expected satisfactorily to control, among other impurities, the proportions of hydrogen sulphide, total sulphur and ammonia. Gas engineers seem to differ radically as to the seriousness of a trace of hy-

drogen sulphide in gas. Some claim that a trace does absolutely no harm save that the odor produced when the gas is burned is objectionable. Others claim that this odor serves a useful purpose in warning of leaks or open valves. The removal of hydrogen sulphide is a comparatively simple process and the gas company that has any interest in the attitude of its customers will see that its gas is free from this somewhat offensive impurity. It seems, therefore, hardly necessary to include any requirements regarding hydrogen sulphide, but gas regulations should specify the total amount of sulphur that will be permitted. Inasmuch as it is quite possible in good practice with the grades of coal used today to reduce the amount of sulphur to 20 grains or less per 100 cubic feet of gas produced, it has become customary to make the maximum limit as prescribed in the regulations, 30 grains of total sulphur per 100 cubic feet. This serves as a regulator and at the same time cannot be regarded as a hardship.

The regulation of the pressure at which gas is supplied to the customer's appliances seems to be imperative if service is to be of a thoroughly satisfactory nature. This is emphasized distinctly in the following passage from the 1909 report of the Wisconsin Railroad Commission:

> It has been shown that in general the gas furnished in cities of this state has been of good quality and the value has been uniform. In spite of this fact, complaint is frequently heard of "poor gas." The summary of gas complaints and our own experience have shown "poor gas," as the consumer uses the term, to be synonymous with "poor pressure" and may be due to one or more of a number of causes. It may be that the pressure furnished to the mains is inadequate, that the service or house piping is inadequate or otherwise faulty, or that the pressure is unsuited to the adjustment of the appliances in which gas is used. In most cases, however, it goes back to the matter of pressure. For this reason, the control of the gas pressure is the most important single factor in securing satisfactory service. The use of gas has been greatly extended in the last few years and all of the appliances which have come into use require a higher pressure than the old open flame burner. It is stated in the discussion of pressure in a former bulletin that the pressure under 1½ inches is unsatisfactory. Most of the companies in the state maintain a standard pressure of about 2½ inches, and it has been noticed in general, where the pressure drops below 2 inches, complaints are heard.

Owing to this tendency to increase gas pressures, the majority of gas appliances are today regulated for pressures of from 2 to

6 inches of water pressure when operating on manufactured gas and for a somewhat higher range of pressures when operating on natural gas. Experience seems to show that the most satisfactory results are secured with incandescent mantles, gas ranges and other household appliances when the pressure is greater than 2 inches. When gas appliances have been adjusted for certain definite pressures it is exceedingly difficult to get satisfactory results if the pressure is allowed to fluctuate through wide ranges or at frequent intervals. It becomes incumbent upon the gas companies, therefore, to hold pressures within certain ranges and to control the daily variation within reasonable limits. Such pressure requirements as the following seem to protect the public on the one hand and to be entirely fair to the utility on the other.

Each utility furnishing manufactured gas shall maintain at the consumer's meter outlet a gas pressure of not less than 1½ inches nor more than 8 inches of water pressure and within said limits the daily variation of pressure at the outlet of any one meter on the system shall never be greater than 100 per cent of the minimum pressure. Each utility furnishing natural gas shall maintain at the consumer's meter outlet a gas pressure of not less than 1½ inches nor more than 14 inches of water pressure, except when greater pressure is specifically provided in the contract between the utility and the consumer, provided there shall be no unfair and unreasonable discrimination or preference, and within the said limits the daily variation of pressure at the outlet of any one meter on the system shall never exceed four inches of water pressure above or below the normal pressure maintained at such point of delivery, unless it can be shown to the commission that such greater variation is due to extraordinary demand in extreme weather. Provided, that variations in pressure caused by operation of the customer's apparatus in violation of contract or the rules of the utility or from causes entirely beyond the control of the utility shall not be considered a violation of this rule.

In order that the consumer may be assured of the correctness of bills submitted for gas service rendered, it becomes imperative that some definite standard of reliability be adopted for meters used in measuring the gas. In general it has been found that the accuracy of properly constructed gas meters may easily be maintained within two per cent when passing gas at a rate of flow common in commercial use. It is, therefore, consistent to stipulate that no gas meter shall

be placed in service which shows in comparison with a standard gas prover an error greater than 2 per cent when passing gas at its standard test rate of flow. It also becomes important in the interest of good service that the accuracy of such meters shall be definitely checked periodically. Each utility should, therefore, be required to check the accuracy of all meters within stated periods and to readjust them if found to be incorrect. Experience has shown that such meters should be checked for accuracy at least every five years.

From time to time consumers feel that their gas meters are inaccurate and that their bills are excessive. Although meters may register in favor of the gas company, yet as a rule when they are in error, their registration is favorable to the consumer. The impression regarding the inaccuracy of a meter is sometimes due to natural but overlooked causes, such as extreme weather conditions, social functions, or other temporary but excessive gas demands.

It is customary, therefore, to make provision for the checking of any meter at the request of any consumer under certain specified conditions. Among other conditions imposed it seems consistent to require the consumer to pay a reasonable fee for such special test if the meter so tested shall be found to be accurate within the limits specified by the regulations, but if the meter is not so found, then the cost of the test should not fall upon the consumer.

Satisfactory service from a gas company implies continuity of service at all times and a reasonable protection from injury to persons or property resulting from defective equipment or carelessness. With this in view, service regulations should require of the utility an inspection of its equipment and facilities with the necessary tests for water and leaks therein. The utility should also be required to supply records and reports of the conditions found upon inspection, of interruptions to service and of any and all accidents related in any way to the company's equipment or facilities, necessary to give the commission all desired information.

Modern business methods accompanied by improved systems of manufacture and distribution have tended toward a reduction in the price of gas, but this reduction has been largely offset by the increased cost of materials, fuel and labor. Higher standards of service are constantly demanded by the public, but any attempt on the part of a utility to increase prices is met with stubborn resistance. Disinterested, impartial, and fair regulation is needed in such cases.

A public service commission is the natural body to adjust such matters and the public should recognize the propriety of an increase in the price of gas just as much as a decrease when the character of the service rendered warrants it or requires it in order to guarantee a reasonable financial return.

It is important that utilities supplying gas in a community be ready to serve the entire community within the natural territory supplied. Discrimination cannot be permitted and districts reasonably populated have a right to expect reasonable consideration. The general responsibility of gas utilities to the public is to furnish and maintain such service, including facilities, as shall in all respects be just, reasonably adequate and practically sufficient for the accommodation of its patrons, employees, and the public.

In conclusion, it should be said that it is today the policy of many gas companies to maintain standards of service and of gas quality that are superior to any demands that would be made by any regulations that would, in general, be just to both utility and consumer. There are, however, companies in every community that have never known any standard and a definite basis for their future procedure is required. A sane application of reasonable regulations will result in high standards of gas quality and service, uniformly fair prices and reasonable financial returns; a more cordial relation between the public and gas companies, and finally, a better understanding of the underlying principles that make for good government and a square deal for all.

SOME NOTES ON THE REGULATION OF GAS SERVICE

By Judson C. Dickerman,
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The ideas expressed herein are based on the experience of several years in actual inspection of gas service, and upon two or three fundamental concepts as to the relations between the public and a utility corporation, and as to the object of any rules or requirements to be promulgated.

First. I assume that a utility accepting a franchise allowing it special privileges in the use of public property, without which it would be unable to do business at all, or at least without prohibitive cost, utilizing these privileges without adequate payment for same, must therefore be obligated to give the best possible service and lowest prices consistent with a fair reward for conducting and improving the business.

Second. I assume as operative, the modern conception that the proper public officials have and exercise the right to investigate conditions and cost of service, to fix standards of service, and to determine a reasonable selling price.

Third. I assume that any assumption of regulatory powers is either to safeguard the public health and safety, or to produce the greatest measure of service for the least cost.

With this modern viewpoint, we can divide regulatory requirements into several groups:

1. Fullest measure of service to any and all consumers in the community ready to pay the reasonable price, consistent with the principle that the cost of serving any one consumer or group be not so out of proportion to usual costs as to put an undue burden on the balance of the consumers.

2. A minimum average standard of effectiveness of the service rendered which subdivides into (a) inherent qualities of the gas and (b) condition of delivery to the consumer.

3. Means of measuring service both as to quantity and quality.

4. Price to be paid for the unit of measure of service.

5. Methods of inspection, to determine that requirements are met.

1. Fullest Measure of Service to Consumers

To develop the idea a little more clearly, a citizen of the town or city who happens to reside so remote from other citizens that it would cost hundreds of dollars to lay mains to reach him from the nearest point of reasonable consumption, his probable business representing almost no returns on the investment, cannot in justice expect such special investment. Neither should service to an individual citizen be denied because probable consumption would not pay regular profits on cost of reaching him. As a taxpayer and inhabitant, he contributes in a variety of ways to the successful maintenance of the more closely settled districts, where it is easy to figure profits on each customer which insure the success of the utility. Therefore, an expense of installation, somewhat greater than that which his particular business at that point will pay a usual or average profit upon, is his of right. How to generalize this expense must be left to local calculation. The basis sometimes used of 100 feet appears to me to be too small, probably 200 to 250 feet from nearest previous installation would not be unreasonable.

2. Minimum Average Standard of Effective Service

Inherent useful qualities are those for which the gas is bought, namely, as a source of light and heat. Under present conditions and as far as we can see in the immediate future, it is not economical to distribute in ordinary towns and cities distinctly low grade gas (that is gas with small heating power per unit of volume) because of the great expense of a distribution system of sufficient capacity. Under present conditions, methods of manufacture producing a quality of gas economical to distribute, produce gas of good heating value and of some open flame illuminating value. Since the great bulk of the gas sold, as well as the requirements of the greatest number of consumers is for heating effects, it is sufficient to establish a standard for heating value only. American standard practice calls for 600 B.t.u. gross per cubic foot. European practice utilizes much gas at about 500 B.t.u. with excellent results. This standard as well as all others must be therefore set at such a figure as prevents careless operation, but permits of utilization of serviceable gas which, while possibly of lower B.t.u. than other grades, may be distributed and sold at such

a figure as to give more service at less cost, compared with gas meeting a higher requirement. I consider that a range of requirement calling for a monthly average of either 500, 550 or 600 B.t.u. gross, depending on local conditions, should be sufficient with no requirement as to candle power.

For good service it is necessary that this heating value does not radically or frequently change, as might happen if high B.t.u. natural gas should occasionally be mixed with ordinary coal gas. With only a heating power requirement for the gas, it might be possible to limit the fluctuation to 75 or 100 B.t.u. above the minimum required, or possibly better, a fluctuation of not more than 75 to 100 B.t.u. at any consumer's supply, above the minimum actually delivered at that consumer's supply, based on monthly series of tests. While such a rule has never been discussed to my knowledge, my experience would indicate its feasibility and its desirability in preventing irregularity of service.

Other inherent qualities are associated with the possible presence of preventable impurities in the unburned gas. Impurities in the unburned gas are only of interest when they affect the quality of service by corroding or stopping up fixtures, and producing obnoxious products of combustion. I believe it is a fair requirement that the presence of hydrogen sulphide be kept down to only traces when gas is tested with lead acetate paper, for in removing this impurity other impurities are largely eliminated, or the manufacturer of gas is obliged to use fairly good materials to avoid excessive expense in removing hydrogen sulphide. I would omit all requirements as to the total sulphur, ammonia, tar, or chemical constitution.

In the matter of delivery of gas to the consumer we have to consider conditions of pressure in the supply pipes, and means of measuring the amount of gas consumed.

A requirement of not less than 2 inch water column pressure at the consumer's meter at all times is essential to passable service and safety. It insures continuity of service. I do not believe it wise or necessary to fix an upper limit for pressure but it is essential to fix a limit on the daily and monthly fluctuation in pressure at any consumer's meter or service pipe. Not setting a maximum allowable pressure, I cannot set the limits in fluctuation as now customary, on a percentage of the minimum or maximum actually reached. I incline to a definite range in inches. I find a limit of 2-inch fluctuation

can be readily realized and it is not inconsistent either with good service or reasonable cost. Not over 3-inch fluctuation should be tolerated in any ordinary circumstance. Since all evidence goes to show the possibilities of more efficient utilization by the consumers of gas under high pressure, and higher pressure increases the capacity of an existing distribution system thus reducing capital charges, no hindrance should be placed on the use of higher pressures than now prevail, except that the gas utility should give due and direct notice to all consumers that a definite change in usual pressure is to be made, and then follow up the change with assistance in readjusting appliances to the new condition. The progress of the industry for most consumers should not be held back to enable a few consumers to continue to use antiquated appliances, which is too nearly the attitude of the present service requirements.

3. Means of Measuring Service

The present day commercial gas meter is an instrument of fair but not close accuracy. Without undue expense it can be made and kept so as to register more accurately than normal conditions affecting the volume of gas itself can be maintained. That is, the temperature and barometrical changes in the course of the seasons cause a variation in the volume occupied by a given amount of gas substance of from 10 to 15 per cent under ordinary conditions. Therefore attempts to hold meters to a very close degree of accuracy at considerable expense are unjustifiable. It is a fair requirement that all meters when put in service shall be in good order, that they shall have been carefully adjusted to register between 98 per cent and 101 per cent of correct where tested by usual commercial method, such final adjustment preferably being verified and meter sealed by a sworn tester; that meters should not remain in service longer than five years before being removed, tested for accuracy and inspected; and that consumers suspicious of the accuracy of their meters have the right to have their meters tested by a sworn tester at any time by paying a part of the cost of the test. A meter so removed for test and showing within 3 per cent of correct registration should be considered commercially correct, any excess of 3 per cent to be the subject of allowance on bills for not exceeding preceding six months' service of that meter. Probably the return by the company to the

complaining consumer of his deposit towards expense of test in case his meter is fast beyond 3 per cent is justifiable as a penalty against the company, since the company should expend sufficient money to maintain its meters within 3 per cent, and if it has not done so the individual consumer should not have to pay the large proportion on his particular meter. Any such penalties ought to be charged against the profit account of the utility and not reckoned as operating expense. Consideration of the construction of meters and experience show that in common sizes of gas meters, if properly adjusted when put in service, they cannot get faster than 5 or 6 per cent, while leaks developing may cause any percentage slow up to 100 per cent or non-registration.

4. Price

Under our assumption that price is subject to adjustment on basis of costs of production, etc., it is as much a matter of justice to the average consumer that slow meters be not left in service, as that individuals shall not suffer from excessive charges due to fast meters. The fundamental idea is that the cost of production shall be figured on the same relative amount of material as is delivered to and paid for by the consumer.

5. Methods of Inspection

The extent of the inspection depends on the ratio of cost of the same to the business done. A fundamental principle is that those who benefit by the inspection pay the cost and not the general taxpayer. So a logical situation is that, in figuring the selling price, a certain small allowance be made for cost of supporting public inspection, say 1 mill per thousand cubic feet sold. This money should be turned over to the proper public authority, which shall expend it wholly in inspection work as it sees fit, unhampered in any way by the company. The inspector's equipment, be it meagre or extensive, should be at all times wholly in his control, also tests made by him at any and all times and the service rendered judged by them, subject only to the privilege of the company occasionally to inspect and test the apparatus and observe the methods used, that it may be informed of the conditions under which tests are made. But this privilege in no wise gives the company a right to be notified when and where tests are to be made or to participate in the tests and have

their tests part of the results reported as the inspector's tests. Also, whatever tests are made by the inspector upon which complaint of poor service is based must be sufficient in number and obtained in localities to be typical of average or ordinary service conditions.

The question of the location of the test places is immediately associated with the standard of service adopted, especially in our larger cities. The financial success of high pressure and long distance transmission favors the concentration of manufacture. Even well-made gas commonly decreases in candle power and heating value by transmission. In the old days of relatively short transmission, a distance of a mile from works was adopted as giving an average condition, but such is far from being the case in many large and some small cities. Standard and test conditions which are more or less fictitious as compared with real results to most consumers should be avoided. Therefore, a standard low enough to ensure the more distant consumer a definite value and tests made to meet that requirement should be provided for. For this reason I avoid stating a certain distance or location and prefer a requirement based on "any consumer's meter," possibly qualified to exclude consumers in extremely bad situations where conditions are especially deleterious to the quality of gas used, such situations not approximating to the average conditions of any considerable number of consumers.

To summarize the principles of requirements, rules should be as few as possible and only those which tend to emphasize the important features of the service and can be readily verified. Such rules should really measure the service to all consumers in ordinary situations in the territory served, should be flexible enough to allow the introductions of improvements without delay, should be ample to insure uniformity of service within commercial possibility and reasonable expense, and rigid enough to prevent careless or slip-shod methods in management. All regulations should be held subject to change upon demonstration that any suggested change means more service for less cost to the majority of consumers, even if such change disturbs the occasional consumer who wants to avoid purchasing modern efficient apparatus, or altering his routine. Our present regulations on the gas industry seem to consider far too much the desires of the unprogressive members of the community, a consideration which is not given in matters of transportation, water, electricity and other utilities.

Rules relating to service must not be formulated on the basis of

obtaining the best possible in service only, but with a clear idea of the effect on the cost of the whole service. The whole matter, under right conditions, is the simple financial question of how to get the largest measure of satisfactory use from the dollar expended.

Of course, in communities having little or no control over the selling price, but authorized to regulate quality of service, the only way to get the most for their money is to raise the standard as high as possible, so 600 or 625 B.t.u. and even a candle power requirement of 18 to 22 is justifiable, and ought to be enforced if conditions indicate that the utility can get a fair return at its fixed price.

SERVICE REGULATIONS FOR ELECTRICAL UTILITIES

By L. H. Harris,
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It is the purpose of this article to present, in condensed form, some of the present day conditions in the field occupied by the electrical utilities, and to outline briefly what principles should govern the formation of the rules of a public service commission pertaining to such utilities. Underlying all rules must be the fundamental principle of fair play—a just return to the public in the form of safe and adequate service on the one hand, and a fair compensation to the utility for the service demanded, on the other.

Many difficulties are to be met with in attempting the solution of this problem. The standards of service must be higher under some conditions than others. Care must be exercised that the utilities are not compelled to supply, and the communities to pay for, a quality of service not commensurate with their needs. The development of small and outlying districts should not be retarded by prohibitive rates. Rules must be so worded that they can be observed and yet not appear to give official sanction to a lowering of the standards of service. It is very difficult in many cases to draw the line between the end sought and the means to that end. The rules should unquestionably set the standards and wherever possible should define satisfactory service, but under no avoidable circumstances should they prescribe methods of management unless absolutely essential to secure the desired results. Every possible freedom should be given to the management not positively inimical to the carrying out of the service requirements.

Full use should be made of the state association where such an organization exists, and of the National Electrical Light Association. Credit should be given to the work of these bodies and wherever possible the standards of service, the methods of procedure, and all requirements should be in accord with those which have received the approval of these associations. The influence which such organizations can and do bring to bear on men engaged in the same line of work are fully as effective as any pressure from without, and should be encouraged to the fullest extent.

Too much importance cannot be attached to the value of the good will and coöperation of the utilities themselves. Much can be done to disarm the rather natural suspicion and gain the confidence of the men representing the utilities by the exercise of tact and by giving due consideration to the opinions of these men who have spent years in the work. Once they are convinced that a commission is disposed to be perfectly fair; that it is as ready to protect a utility from an unreasonable public as to protect a public from an unreasonable utility, one of the greatest barriers to satisfactory regulation is removed. The existence of a commission of the proper character should give stability to the industry and peace of mind to the conscientious management. Few men in responsible positions prefer to give poor service. Competition and the fear of competition are as often the cause of low quality as they are of low prices.

In the effort to follow standard practices, considerable care should be taken that the rules of other commissions are not followed blindly. Every state presents some peculiar conditions that deserve consideration. A prairie state which has no water power, no cheap fuel, which is essentially an agricultural district with few if any large cities, certainly differs from one with large urban centers, which abounds in natural resources, and which possesses many large isolated power users.

Summarizing briefly, then, it seems that the principles that should in some measure govern the formation of the rules are:

1. There should be as few rules as possible.
2. They should deal only with such things as are pertinent to the rendering of good service.
3. They should be of such character that they can be observed by every well intentioned company.
4. They should be worded in the simplest and most direct language, even if this robs them entirely of their legal aspect.
5. They should disturb established business routine as little as possible, and should require just as little additional work and expense as will insure the successful operation of the rule.
6. They should, in so far as possible, conform to the recommendations of the state and national societies working to the same end, and should encourage coöperation from these bodies.
7. They should carefully distinguish between the object of the rule and the means necessary to secure that object, and should religiously avoid infringement on the field of the manager.
8. They should encourage rather than discourage the development of the industry.

In the following it is assumed that a commission is concerned only with those things that go to make up the quality of the service rendered to the public. No effort is here made to formulate definite rules, but rather to discuss briefly the general nature and limitations of such rules as are intended to control directly the elements of service. These elements are:

a. Continuity. This is without question the most important. No human agency, much less a mere rule, can insure it. In a system covering miles of territory and with a dozen different links in the chain, many things can happen that will interrupt the service on all or a portion of the system, and which cannot by any chance be foreseen. There are, however, two precautionary measures which should be adopted and rigidly enforced, and which will greatly reduce the likelihood of interruptions. One is to require the utilities to make thorough, systematic, and periodic inspections of all the various links where prevention is possible. The second is to require a detailed record of all such interruptions. The first, if properly done, will greatly reduce the preventable accidents, while the second will furnish the moral stimulus conducive to sustained and wholehearted effort for the elimination of such occurrences.

b. Constancy of Voltage. In almost all classes of service this will rank second in importance. This can best be discussed under the two sub-heads, lighting and power. In lighting, particularly, the question of permissible variation in voltage is complicated by the fact that not only the magnitude of the variation, but also the duration and the frequency with which variations occur, are of importance. The voltage on a house lighting circuit may drop, momentarily, 10 per cent or more below the normal, and, if this happens but rarely, cause nothing more serious than curiosity; or the voltage may vary 4 or 5 per cent above or below normal, and if the change take place gradually, be scarcely noticed. If, however, a variation of so little as 1 per cent occur at the critical frequency, say once every second, it may become a very serious matter.

For power circuits the same change in voltage is not so serious, though wide variations in the voltage of alternating current circuits cause considerable change in the speed of induction motors, and in the heating of all induction apparatus. Direct current power circuits should meet about the same requirements as alternating current circuits, except possibly the rare instances where power is sold from

direct current trolley wires, in which case they should be exempt from specified voltage regulations.

There are two ways of covering the matter. One is by a rule setting definite limits beyond which no utility should permit its fluctuations in voltage to extend. This has the disadvantage that it is difficult to set limits wide enough so that they can in all cases be met, and yet not appear to give official sanction to a quality of service poorer than the public is used to and has a right to demand. Where the rule takes this form the permissible limit should be set at about 5 per cent above or below the normal voltage, and such wide variations should be permitted to occur but seldom and then only gradually. Even with this limited range, the lamps, if rated at the normal voltage of the circuit, will be subject to changes in life and candle power of approximately 20 per cent above and below normal life and candle power. The permissible variation on power circuits could justly be double that named above. The other form of the rule would simply indicate what variations would ordinarily be allowed, or considered reasonable service, and leave all questions pertaining to such cases as actually do constitute poor service for adjustment in the individual cases. This would permit the setting of higher standards, say a maximum permissible variation of 3 per cent above and below normal for lighting circuits and double this for power circuits. In any case each utility should adopt standard service voltages for the different centers, or districts, or zones, and should provide every reasonable facility for maintaining the voltage practically constant at all times during which service is supplied.

c. Variations in Frequency. Such variations in frequency as are likely to occur in practice are not objectionable on lighting circuits. They might become so on power circuits due to the change in the speed of alternating current motors and the increased heating in induction apparatus on frequencies lower than normal. A 5 per cent variation either way should be sufficient.

d. Meters. At no other point does the utility meet so intimately such a large portion of its public as at the meters. The meter is the ever-present agent of the company, and upon its integrity depends to a large extent the reputation of its owner. No management which values the good will of its patrons can afford to have its meters fast, neither can it, in justice to its stockholders, permit meters to become slow. The rules pertaining to meters should contemplate and provide for:

1. Periodic tests of service meters.
2. Complaint or request tests.
3. Limitations of permissible inaccuracy.
4. Specified procedure for determining the accuracy.
5. A penalty on the utility in the shape of a refund to the consumer for meters fast beyond the allowable limits.
6. Tests with and without such accessories as instrument transformers.
7. Tests at appropriate power factors, and
8. The possession by each utility of adequate and satisfactory testing facilities.

1. Periodic Tests. All service watt-hour meters should be tested periodically, preferably by the utility in their place of installation, with approved equipment, and without charge to the consumer. The length of the period between such tests may vary from three years for the modern low capacity induction type of meter to one year for the larger self-contained polyphase meters and the commutator and mercury types.

2. Complaint Tests. Every consumer should have the privilege of having his meter tested at any time that he is in doubt as to its accuracy. To prevent an aggrieved citizen from taking an unfair advantage of the utility, the consumer should be required to deposit a sum sufficient to cover the cost of making the test and which he would forfeit to the utility in case the meter was found to be correct within the established limits. In case the meter be found to be fast or slow beyond the established limits, the utility should bear the burden of making the test and the deposit returned to the consumer. The justice of this is evident when it is remembered that it is the duty of the utility to maintain its meters approximately correct.

3. Limitations of Permissible Inaccuracy. These limits are set in practice by the inherent qualities of the meters and by the economic balance between the time required to make fine adjustments and the benefits gained thereby. Meters which register from 98 to 102 per cent of the energy passing through them are usually considered correct, and no penalties should be imposed until the accuracy falls without the limits represented by 96 per cent and 104 per cent.

4. Method of Determining the Accuracy. The methods of measuring the accuracy of a meter vary, due to the difference in the definition of the expression "accuracy of the meter." The actual error of a meter depends upon the load at which it is measured, hence the necessity for the definition of the term. It is usually de-

fined in terms of the accuracy at two or more different load points, e.g., it might be the average of the accuracy at "light load" and the accuracy at "full load" or "heavy load," these terms being defined; or it might be considered as the average of the accuracy at "light," "normal," and "heavy" loads, giving more weight to the accuracy at "normal" load. This necessitates the definition of still another term—normal load. The normal load is based upon the class of service in question and may, of course, be different from the actual normal load for a particular meter. In some cases the half load point is used for the normal load point. All are approximations and since the calibration curves for the modern meter are fairly straight, it would seem that the simplest is the best for all practical purposes.

5. Penalty for Fast Meters. There seems to be no question about the justness of making some reparation to the consumer in cases where the meter has been found to be unreasonably fast. The argument here hinges entirely on how far back the refund should go. Since experience shows that for every meter that runs fast in excess of the limit, there are about six that run slow in excess of the same limit, it would seem that the utility should not be required to make refund beyond the current bill.

6. Meters used in conjunction with instrument transformers are usually of small capacity, and are much more easily tested as self-contained units. This should be permitted on condition that the ratios of the transformers are known. The testing of instrument transformers is not an easy matter and, wherever possible, the ratio of the manufacturer's test should be accepted. If no tests have ever been made on the transformer, it should be compared with another and calibrated transformer at least once to establish an acceptable ratio.

7. Power Factor Tests. Most modern alternating current meters are provided with an adjustable compensation for low power factors, or are adjusted for correct registration in the factory, on such low power factors. If this has not been done the meters should be tested in service for low power factor accuracy in all cases where the load is inductive.

8. Facilities for Testing. Whether the testing of service meters be done by the commission or by the utilities, the integrity of the testing apparatus should be beyond question. This duty of supervising the character of the testing facilities belongs to the state.

As to the exact nature of these facilities, much depends upon the magnitude of the scale upon which the testing must be done. For service meters the rotating standards are usually best adapted, while for check meters the indicating types may be most suitable.

. The last and not the least important of all the rules which are necessary is the one pertaining to the records which should be kept. This constitutes a valuable part of the work, and, while it can easily be made burdensome, yet if indulged in, in moderation and in reason, it furnishes a trustworthy guide to the activities of the utility and in many instances constitutes the only witness for the defense in cases on complaint before the commission.

TEN RULES FOR SERVICE

PRINCIPLES APPLIED BY THE RAILROAD COMMISSION OF CALIFORNIA TO THE REGULATION OF PUBLIC UTILITY SERVICE

By P. A. Sinsheimer,

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Only in recent years has the importance of service been recognized in public utility regulation. Regulating bodies addressed themselves primarily to rates. This disclosed inevitably the interrelationship between rates and service. As this inter-dependence has come to be thoroughly understood, service issues have become predominant.

It is not my purpose to enumerate merely those regulations which have been adopted by the California commission, but rather to outline the broader principles which have guided it. Nor shall I assume to present the views of the California commissioners, but rather to interpret their decisions in the light of my own understanding.

A presentation of service principles must be predicated upon a proper understanding of the necessity for such service regulation. I shall, therefore, begin with a discussion of the necessity for service regulation; pass to the consideration of service principles; and conclude with an analysis of their practical application.

The necessity for the regulation of utility service is inherent in the very nature of these utilities. They are privately owned and operated for profit. Service is incidental and given only in so far as conducive to profit. Unbridled, a public utility gives a minimum of service for a maximum of rate. Individual protest proved futile. Collective opposition followed and then ensued public regulation.

It is upon this basic idea of service that public ownership of utilities finds its logical argument. A utility, publicly owned, is conceived for public service. It is not born solely for profit.

Considerations of service are elements of growth. Public utility enterprises differ from other enterprises primarily in the degree of the public interest attached thereto. We have been accustomed to think of public utilities as separable from other industries by reason

of their use *of* public property. We are now coming to regard them as separable from other industries by reason of the public's use *in* their properties. It is upon this premise that utility service assumes primal importance in utility regulation. We admit the public's use in a utility property, and we are called upon inevitably to determine the extent of that use.

We need go back barely a page in our history to discover that arbitrary usage and high-handed practices were substituted for efficient public utility service. To recall these conditions or to view them where they still exist is merely to remember that kings have been tyrants and would again be tyrants. Stranger, though, and difficult of understanding, were they not a certain outcrop of economic formations, are the many headstrong and stupid regulations which were enforced by the public utility against the public, but even more against itself.

The right of the public to adequate service has become axiomatic. It must be given by the utility either voluntarily or under compulsion; and if it can not be given under compulsion, the utility and not the public must give way. The public has always been a partner in public utility enterprises. It is no longer a silent partner. It may not have the majority of the stock, but it has the majority interest.

We therefore offer as Rule No. 1:

Service must be measured primarily by the needs of the public and only secondarily by the ability of a given utility.

Much of the earlier effort to regulate utilities was in retaliation. This took the form of revenue reductions. It was the most obvious point of attack and there was undoubtedly a certain sense of satisfaction that it hurt the most. But it followed as a natural sequence that the utility could shrink its service to meet the rate. Thus came the full understanding that rates and service are so closely entwined as to be inseparable.

Not so widely understood, but equally fundamental, is the fact that service is just as closely interwoven with securities. We may complete the trinity, for securities and rates are joined economically beyond the power of man to separate. We may assume at the outset, therefore, that the regulation of public utility service can not be disassociated from the regulation of public utility rates and finances.

The principles of service established by a regulating body may be as broad and no broader than the law from which that regulating body takes its authority. The public utilities act of California confers upon its railroad commission plenary powers of service regulation. The service jurisdiction is delegated directly through a grant of service authority and indirectly through grants of related power. These indirect powers come from the commission's jurisdiction over

1. Franchises
2. Consolidations
3. Rates
4. Finances

The principles of service as established by the California commission have been founded largely upon this related jurisdiction.

1. Franchise Power

The public utilities act of California, in common with similar acts in most of the states of the union, provides that no utility may enter a new field without the commission's certificate of public convenience and necessity. This certificate is fundamentally a franchise. The California commission, like many other commissions, has not encouraged plant duplication. In many states this policy has been carried to the extent of apportioning permanently a fixed territory to a given utility. The California commission has never adopted this policy. It has protected utilities against competition in their given fields, but has given this protection only in so far and for such time as the utility rendered proper service at proper rates. The commission has held that the public, as a matter of right, was entitled to the best service at the lowest reasonable rate. It has held further that, if one utility occupied a field and another utility sought to enter, the first utility could be protected in its monopoly only if its service had been as adequate and its rate as reasonable as the new utility could give.

In one of its most important cases the commission found that a gas and electric company had not given adequate service and that its rates had been unduly high, and therefore, when a second utility sought to enter, the commission granted the necessary certificate. In another case which assumed state-wide importance, the commission found that the gas and electric company serving the city of

Stockton was rendering as complete service as the new applicant could offer and that the rates proposed in competition were not sufficiently different from those in force to warrant the substitution of the dual for the single agency.

In the case of the Pacific Gas and Electric Company against the Great Western Power Company the commission expressed its idea in these words:

> We announce the rule that only until the time of threatened competition shall the existing utility be allowed to put itself in such a position with reference to its patrons, that this commission may find that such patrons are adequately served at reasonable rates. By announcing this principle, we hope we shall hold out to the existing utilities an incentive which will induce them voluntarily, without burdening this commission, or other governmental authorities, to accord to the communities of this state those rates and that service to which they are in justice entitled, and to the new utilities we shall likewise hold out the incentive that on the discovery by them of territory which is not accorded reasonable service and just rates, they may have the privilege of entering therein if they are willing to accord fair treatment to such territory.

This principle was reiterated in the case of the application of the Oro Electric Corporation for a certificate of public convenience and necessity to serve the city of Stockton.

In this way there has developed in California a sort of potential competition which of itself has aided greatly in the regulation of monopoly utilities. It has given, in effect, competition without duplication. It has brought about all that competition could bring about in the way of service improvement, and it has prevented those ills in the form of duplication of investment which flow from unregulated competition. In practice, the commission has found that this policy has served to bring about voluntary service improvements and voluntary rate reductions. It has been an automatic regulator, so to speak.

The enunciation of this principle has been followed by a marked decrease in minor complaints against utilities. It has, for instance, brought about the creation of special service, complaint and adjustment departments in most of the utilities. At the same time the entire level of rates, particularly in the electrical field, has been voluntarily reduced throughout three-fourths of California.

It has been found necessary in some instances where a local utility could not give the service, to allow the second utility to come

in, and where this has been done it has always been justified by the vast improvement in service and the reduction in rates.

The only danger to the public interest in this general policy lies in a possible apportionment of state territory by agreement among the utilities themselves. The commission has already, in a recent decision, issued a warning against such a compact, and holds as a weapon of prevention its positive powers of service, rate and financial regulation.

We therefore offer as Rule No. 2:

Adequate service is the price a utility must pay to hold a field free from competition.

2. Consolidations

The California commission has authority to authorize the consolidation of utility properties. When matters of this kind come before it, the commission's inquiry goes to two matters: service and rates. If the consolidation will substantially improve the service and reduce the rates, the commission holds it to be in the public interest and therefore gives its approval. It does not encourage competition as such, but looks to the public interest to be subserved. If the consolidation is intended either to restrict service or to increase the rates, it is vetoed.

In actual practice, these consolidations have been in the public interest. The two schools of economists now wrestling with the nation's problems are divided upon this issue. The California commission, however, is repeatedly on record in favor of utility mergers in the public interest. Within the past year these two schools of economic thought have been brought into sharp contrast on California issues. The present national administration, through its attorney-general, after severing the Southern Pacific Railroad control from the Union Pacific directed that the Southern Pacific should divest itself of the Central Pacific. The purpose, as expressed, was to destroy monopoly and restore competition. It so happened that the California commission had jurisdiction over related features of this general plan. While the commission recognized the authority of the federal government so to proceed as it saw fit and as it interpreted the law, it expressed its belief that the railroad service would be impaired by the severance.

Within recent date the national administration, through the

attorney-general, has brought about the so-called dissolution of the American Telephone and Telegraph Company. The fundamental idea is presumably to restore competition. The California commission has repeatedly authorized the consolidation of telephone companies in California, always looking to betterment of service and decrease in charges upon the public. The attorney-general announces with some pride that he has persuaded the American Telephone and Telegraph Company to allow interchange with independent companies. The California commission has long since adopted as a definite policy compulsory interchange. This form of interchange means the substitution of a joint agency for a dual and competitive agency.

The California commission has gone a step further in its willingness to recognize the advantages of a single agency. Competition between telephone companies, for instance, carried to its ultimate conclusion, would entail a condition wherein a given city were served by two telephone companies with equal investment and with parallel and equal facilities; every householder possessed of two telephones; and the two agencies each performing one-half of the required service, although either could, with half the investment of the two, handle it all. Either the patrons must pay a return upon twice the required investment, or both of the telephone companies must go into bankruptcy, and bankruptcy, of course, means disruption of service.

We offer, therefore, as Rule No. 3:

The highest type of service may best be obtained through a single agency.

3. Rates

It is an aphorism that one gets what he pays for. So it is with public utility service. Service cannot be measured of and by itself. It bears a fixed relationship to rate. If a regulating body fixes a rate for utility service and then neglects to maintain a standard of service, it might as well never have fixed the rate. The public pays in rates a fixed sum for which it should receive a fixed return in service. The natural tendency of man being to profit himself, utilities, unregulated, would give a minimum of service for the rate. Eggs are not more infinite in their variety than is service; as with eggs one gets what he pays for, so with service.

This principle has been uniformly recognized by the California commission. Not only does the commission fix rates in relation to the service but when it finds a utility alone in a given field and unable to render service, it readjusts the rate to correspond to the deficient service. In a water case in southern California the commission, finding the flumes of the company inadequate and deficient and the service barely tolerable, ordered that the company's rates be reduced until such time as the service was made adequate.

President Ripley of the Santa Fé Railway, in contrast with some of his railway colleagues, has taken the position than an increase in rates is desirable for the betterment of service. In his testimony before the railroad commission he said: "It is almost true that we have only imitations for railroads. We haven't got what we ought to have. We haven't got properties that are going to be equal to the strain on them if we continue to grow, in a few years more." He had reference to the necessity of making those improvements which went directly to the benefit of service.

Following its investigation of a wreck upon the electric line of the San Francisco, Napa Valley and Calistoga Railway, the California commission indicated the necessity of capital expenditures primarily in the interest of safety. Recognizing the inseparable relation to rates, the commission said:

> Most of these interurban lines should be protected by block signals, and our engineer has been directed to have a thorough investigation made of all these roads with a view to requiring the installation of block signals at once in the more urgent cases and gradually in all cases. If the installation of the necessary safety devices requires an increase of the rates of these utilities, such increase will be allowed. The traveling public has a right to be protected, and should be willing to pay for such protection. Up to the present time, however, in this state, it can not be said by any public utility that its failure to install proper safety devices is due to inadequate rates. No suggestion has come from any one of them that this commission permit an increase in rates for this purpose. The commission stands ready at all times, however, to permit rates high enough to pay a reasonable return upon the fair value of the property devoted to the public service, good wages to experienced men, and installation of such appliances as may be necessary to promote the safety of the traveling public and employees of the utilities under its jurisdiction.

We offer, therefore, as Rule No. 4:

Utility rates should be adjusted to fit the quality of service rendered.

4. Finances

There are some thinking men who still doubt the wisdom of public regulation of utility securities. The regulation of stocks and bonds, however, has become one of the most important functions of the California commission. As this work has broadened the commission has been impressed with its necessity. It is difficult to understand how doubt can still exist on this question when recent revelations have shown the ugly manipulations in the unregulated issues of New Haven, Rock Island and "Frisco" securities.

An over-capitalized utility can pay return upon its securities only through exorbitant rates or inadequate service. The regulating body may prevent the exorbitant rate but it must be at the sacrifice of service. In most of our American cities, the 5-cent street railway fare has been accepted as fixed. Obviously, earnings can be paid on over-capitalization only through the impairment of service. It is safe to say that a majority of the street railway enterprises in the large American cities have been so over-capitalized that their whole endeavor has been to make good this capitalization through neglect of service. This has in some instances given our large American cities merely the shadow instead of the substance of service. Routing is restricted to the congested districts; the outlying sections are unserved; an insufficient number of cars are operated; the roadbed is not maintained; a public clamor ensues; there is much talk but no service.

In its regulation of security issues the California commission has endeavored to authorize only those securities upon which return might reasonably be paid under a proper operating rate wherein adequate service is maintained. In all security regulation the California commission insists that the financial structure of a utility shall be such as to limit charges so as to leave a net earning of sufficient size to insure proper continuance of service. Where necessary, the commission has directed utilities to reorganize in the interest of service. It has not waited for bankruptcy but required the re-casting of the financial frame so as to admit of the service to which it holds the public entitled.

We offer, therefore, as Rule No. 5:

Security issues should be so regulated as to render the utility financially able to meet all reasonable demands for service improvements.

5. *Jurisdiction over Service and Extensions*

The direct grant of service authority in the California law enables the commission to prescribe first, the extent of service; and second, the character of service. A somewhat general provision of the act gives the commission whatever latitude may be required in the exercise of its jurisdiction to regulate public utilities. This confers jurisdiction over any matters of service which might have been omitted from the act or which may hereafter be necessary. We may assume, however, that the entire field may be covered by regulating the extent and character of service.

The California commission has authority in prescribing the extent of utility service to require utilities to extend their facilities, to restrict their facilities, or to unite their facilities.

In the broad exercise of its authority to require extension service, the commission has held that the utilities must make such extensions as are reasonably required for the public convenience in their respective fields. This authority has been construed to require utilities both to extend their operations into new fields and to widen their operations in fields already served.

The San José Railroad, for instance, was directed to construct a standard gauge line of railway to connect with its previously constructed line to Alum Rock Park. A water company in southern California was directed to take over and operate a water system in a territory which it had not previously undertaken to serve. The Pacific Telephone and Telegraph Company was directed to give service in the town of Saratoga, in Santa Clara County, although at the time it had not undertaken to serve the territory.

The commission has required of all utilities that they make reasonable extensions. Utilities have been obliged to pay the cost of ordinary service connections and meters, and to lay such mains as may be necessary for the maintenance of a proper supply. The commission has provided that unusual extensions, the cost of which would throw an additional burden upon existing patrons, may be provided by a division of the cost thereof between the utility and the patron or patrons to be served by the extraordinary extension.

The California commission has had a special problem in the regulation of irrigation service. The season of 1913 was rated as a dry year. Irrigation service fell off and complaints poured in upon the

commission. As a solution, the commission directed the irrigation utilities to make the expenditures necessary to enlarge their water supplies, and in return directed that the patrons should pay additional rates as a return upon the added investment of the water corporations. The effect was to give a greatly improved irrigation service at a very small increase in rate. Only in rare instances was there objection to this policy, either from the water utility or its patrons.

We therefore offer as Rule No. 6:

Every utility must make such extensions or provide such additions as may be reasonably required so far as its rates will enable it to earn a fair return upon its property.

The California commission has power to restrict the extent of service of water utilities. This power was given to correct the tendency of irrigation companies to undertake to serve a greater acreage than their supply of water would permit. Lands were marketed in the belief that they would have an inherent right in the water, but in practice it developed that large acreages were left unserved or only partly served because the amount of water available was insufficient. Under the authority thus conferred, the commission has restricted the territory of water companies to the limits which they can adequately serve. This policy has been adopted in irrigation and domestic use.

The same primary idea prevails in the regulations adopted by the commission for the distribution of natural gas which restrict sale for domestic use and admit of sale for industrial purposes only after the domestic demand has been adequately met.

We therefore offer as Rule No. 7:

A utility with limited product must be restricted in its operation to the area in which it can render adequate service.

The joint use of facilities has been adopted by the California commission as a means of bringing about a desired service by united agency where the single agency was not equipped for its performance. The commission has required that through routes and joint rates be established between steam and electric lines. This has augmented to a remarkable degree the transportation service of rural communities. Carrying forward the same policy, independent telephone companies have been required to make physical connection when such connection would serve the public interest. In the so-called Union

Pacific-Southern Pacific merger case, an arrangement was sought by the railroads whereby the Southern Pacific and Union Pacific should interchange and each use the other's facilities. The commission found no objection to this in and of itself, but insisted that this arrangement could be legalized only if both parties extended the same right to any other carrier which might desire it. The commission's purpose was not to restrict, but to enlarge the policy of joint usage and interchange. The advantages of such a service requirement are manifest. The entire principle is based upon public convenience.

We offer, therefore, as Rule No. 8:

Every utility must extend the use of its facilities to any other utility to perform a service which the first utility is, itself, not able to perform.

When we pass from a consideration of the extent of service to the character of service, we enter upon a wide realm. It is not my purpose to detail the manifold rules and regulations upon which the character of service is based, but to indicate merely the broader foundations upon which it is grounded.

The regulation of the character of service must be in the interest of (1) public convenience and (2) public safety. The California commission has prescribed a series of rules providing for proper train schedules, train stops, for the care of railway facilities, and for the convenience of passengers while using these facilities. Blanket orders have been issued prohibiting any curtailment of facilities without the express authority of the commission. Such new service requirements as appear to be necessary from time to time are prescribed for each branch of utility enterprise. Regulations have been put into effect in different communities for gas service and telephone service prescribing in minute detail the quality, pressure, etc., for gas, and the switching regulations and time allowances for telephone services.

In addition, the commission has undertaken broader inquiries into utility service where the prime consideration was the convenience of the public. Such an issue was involved in the commission's inquiry into the proposed contracts between the Southern Pacific and the Union Pacific railroads. Service to the shipping and traveling public was the prime motive of the commission's research. In another instance the commission called into question all of the prac-

tices of the Pullman Company, delving into the system in its most minute ramifications.

A broad inquiry that has had for its purpose both public convenience and public safety has been the extensive investigation into inductive interference between high tension power lines and telephone lines. Complaint was made to the commission by telephone companies that the construction of high tension power lines in close proximity to their wires produced inductive interference and rendered the telephone lines non-commercial. Danger to human life was put forth as a secondary complaint. Neither the telephone corporations nor the power corporations could assert a prior right in a public highway and the very nature of the two enterprises made it necessary that their lines should come into close proximity at certain points.

The issue was such a large one that the California commission appointed a joint committee composed of representatives of the commission and representatives of both the power companies and the telephone companies of the state. This committee was instructed to conduct experiments and scientific research and formulate a plan by which this inductive interference could be eliminated. This committee has conducted field experiments over a period of a year and has already made such headway as to encourage the belief that some effective solution may be evolved.

We offer as Rule No. 9:

Utility service regulations must combine a maximum of convenience to the public with a maximum degree of protection to the utility.

I have chosen to emphasize the importance of safety in service regulation by construing it as a finality. In any consideration of the subject the principle that recognizes the priority of safety finds no dissenters and the problem reduces itself merely to the means of bringing about the desired result. Block systems, automatic crossing signals, interlocking devices, flagmen, steel equipment, all have been tried and all have brought beneficent results but we still find that wrecks occur. It is being impressed upon the minds of the regulating authorities that, while they have placed heavy reliance upon the efficacy of mechanical protection, they have overlooked the human element. This apparently is the conclusion which the Interstate Commerce Commission has now reached. We quote from

the last annual report of the Interstate Commerce Commission for the year ending December, 1913:

> The commission again is compelled to note the exceedingly large proportion of train accidents due to dereliction of duty on the part of employees. Fifty-six of the accidents investigated during the year, or nearly 74 per cent of the whole number, were directly caused by mistakes of employees. These mistakes were of the same nature as those noted by the Commission in its last annual report, namely, disregard of fixed signals; improper flagging; failure to obey train orders; improper checking of train register; misunderstanding of orders; occupying main track of superior train; block operator allowed train to enter occupied block; dispatcher gave lap order or used improper form of order; operator made mistake in copying order; switch left open in face of approaching train; excessive speed; failure to identify train that was met.
>
> These errors are exactly the ones which figure in the causes of train accidents year after year. Their persistence, leading always to the same harrowing results, points inevitably to the truth of one or the other of the following alternatives: Either a great majority of these deplorable railroad disasters are unavoidable or there exists a widespread lack of intelligent and well directed effort to minimize the mistakes of employees in the operation of trains. It is not believed that all those accidents which are caused by the mistakes of employees are unavoidable. It is quite true that man is prone to error, and as long as absolute reliance is placed upon the human element in the operation of trains, accidents are bound to occur, but until it can be shown that all reasonable and proper measures have been taken for its prevention no accident can be classed as unavoidable.
>
> All of the mistakes noted above are violations of simple rules which should have been easily understood by men of sufficient intelligence to be entrusted with the operation of trains. The evidence is that in the main the rules are understood, but they are habitually violated by employees who are charged with responsibility for the safe movement of trains. The evidence also is that in many cases operating officers are cognizant of this habitual disregard of rules and no proper steps are taken to correct the evil. Many operating officers seem to proceed upon the theory that their responsibility ends with the promulgation of rules, apparently overlooking the fact that no matter how inherently good a rule may be, it is of no force unless it is obeyed. On very many railroads there is little or no system of inspection or supervision of the work of train service employees so far as pertains to those matters which vitally affect safety. Employees are not examined on the operating rules except at the time of their promotion, and only the most perfunctory efforts are made to determine their fitness to perform duties assigned to them from time to time.

In thus expressing itself the Interstate Commerce Commission has affirmed a belief expressed by the California commission and duly acted upon. The California commission took the view that

many of these wrecks were due plainly to the human element and addressed itself to the problem of minimizing as far as might be the human liability to err. The commission did not assume to place responsibility upon the employees but put it squarely on the shoulders of the operating officials of the carriers.

The California commission, in passing upon the wreck on the San Francisco, Napa Valley and Calistoga Railroad, in which 13 persons were killed and 28 injured, said:

> It is manifestly impossible for this commission to require employees of utilities to comply in all respects with the rules adopted by such utilities unless it be given a force sufficienty large to operate the utilities of the state. Of course this can not be done and it should not be expected, but the commission and other public authorities can and will require the officials of these companies to see that their rules are complied with or assume the legal consequences of such failure. Regard for the public welfare, if not for the property under their control, should induce managers and owners of public utilities to see that they are safely operated. While we shall to the extent of our ability check the violations of the rules, still we must look to the officials of the companies to see that the rules are complied with. One of the main causes of wrecks from violations of rules, in our opinion, is the failure of officials of railroads to see that violations of rules are punished regardless of the result of such violations. The practice too common is merely to discharge or punish that employee whose violation of the rules has resulted in disaster. Violation of a rule which results in no disaster should and must be as severely dealt with as the violation which is not successful and which results in loss of property or life. We desire to impress this fact upon the public utility officials and owners and to insist that it is their duty to see that the proper rules are complied with in every respect and they should not feel that they have acquitted themselves properly when they discharge or punish the employee when disaster has been the consequence of his failure to comply with the rules. We can reach no other conclusion than that many officials of railroads at present connive at and in effect sanction departure from or violation of important rules of safety in those instances when no damage results therefrom. This practice must be discontinued.

In its findings upon the wreck of the Pacific Electric Railway Company when 16 persons were killed, the commission again found that the operating officials of the road were responsible through failure properly to instruct and train their employees. In this case the commission passed upon the roadbed, rails, equipment and general operating conditions of the railroad. As a result of its inquiry, it directed the company to prepare plans to block signal its system, to safeguard its dangerous crossings by automatic signals or grade

eliminations and to submit plans for the proper drilling of its trainmen. These matters are now under way. It is of particular interest, however, that the company has, following the suggestion of the commission, opened a school of instruction for its men. In this school are taught all of the operating rules and regulations until they are thoroughly mastered. Not the least interesting feature of this school is the use of moving pictures for purposes of illustration.

Previous to both of these accidents, however, the California commission had organized a service staff consisting of two men. One had formerly been the general superintendent of a large railroad, and the other had been the chief dispatcher of one of the large transcontinental railways. These two men were sent throughout the state and investigated the operating rules of every carrier, paying particular heed to the method of their enforcement.

It was one of those rare coincidences that the commission had, on the day of the accident on the San Francisco, Calistoga and Napa Valley Railroad, sent instructions to that company to revise its operating rules and to eliminate therefrom the very practices which resulted in the wreck. This line of safety work has been carried into other utility fields and is being extended constantly by the California commission.

We offer, therefore, finally but foremost, Rule No. 10:

The first consideration in utility service must be safety.

BOOK DEPARTMENT

NOTES

ABBOT, E. V. *Justice and the Modern Law.* Pp. xiv, 299. Price $1.60. Boston: Houghton, Mifflin Company, 1913.

ACLAND, A. H. and RANSOME, C. *A Handbook in Outline of the Political History of England to 1913.* Pp. xii, 391. Price, $2.00. New York: Longmans, Green and Company, 1913.

This new edition of the well-known outline brings the chronology down to 1913. Aside from the few pages added for this purpose there appear to have been no changes. Erroneous statements made in earlier editions are again repeated (e.g., pp. 7, 29, 35, 73), and the text does not appear to have been revised in the light of subsequent historical research since the original edition of 1881.

ANDERSON, J. D. *The Peoples of India.* Pp. x, 118. Price, 40 cents. New York: G. P. Putnam's Sons, 1913.

A hundred small octavo pages cannot of course give more than a bird's eye view of the peoples of India. Mr. Anderson does not attempt more. The material is, as the author repeatedly points out, very largely drawn from standard works of reference. The discussion is divided into chapters on race and caste, languages and religions. The style is excellent and the proportion well maintained. A bibliography gives a select list of the best authorities and there are two excellent maps showing the density of population and the location of the chief language groups.

BABSON, ROGER W. and MAY, RALPH. *Commercial Paper.* Pp. 253. Price, $2.00. Wellesley Hills, Mass.: Babson's Statistical Organization.

Although as Mr. Babson states, "this book is primarily written for the officers of our nation's twenty thousand banks," it contains material which will prove of importance to all engaged in commercial pursuits. Chapters on the form of commercial paper and the rediscounting of commercial paper are of special interest at the present time since the new currency act has again impressed upon the banking community and public alike, the necessity of sound commercial paper and an open discount market.

BELLOM, MAURICE. *La Prévoyance Légale en Faveur des Employés.* Pp. 105. Paris: G. et M. Ravisse, Editeurs, 1913.

This pamphlet deals with one of the more recent developments of social insurance—that which furnishes protection to the salaried worker. Previous movements have dealt with the manual worker, but Austria and Germany have

now undertaken to protect from sickness and old age this other group. M. Bellom discusses these systems under the following headings:—the beneficiaries, returns and premiums, the payment of premiums, the machinery of administration, the payments of insurance. He analyzes and compares the laws in two countries with special reference to the difficulties encountered by the older of the two, the Austrian. A series of careful recommendations dealing with all phases of the law completes the study.

BELLOM, MAURICE. *La Statistique International de L'Assurance Contre L'Invalidite.* Pp. 35. Vienna: Imprimerie Frederic Jasper, 1913.

This tract embodies a report to the International Institute of Statistics and presents a discussion of the subject of international statistics of invalidity. Formulas for deducing costs are given followed by an analysis of tables and statistics now in existence showing probabilities of invalidity, of mortality among invalids, of invalids again becoming well, of the well remaining well and of mortality among healthy risks. These data are based largely on experience in Germany and Austria. The content of a general body of statistics is carefully outlined and is followed by an enumeration of studies thus far made of insurance against invalidity. Two reports by actuaries, M. Maingie and M. Hamza and two by the governments of Austria and Sweden respectively complete the list. In conclusion M. Bellom finds several difficulties facing a development of international statistics of invalidity: (1) the difficulty of defining invalidity; (2) an insufficiency in the amount of data on which tables are based; and (3) the impossibility of obtaining correct knowledge regarding the cessation of invalidity or the death of invalids. This report embodies an invaluable addition to the subject of invalidity statistics.

BOND, FREDERIC. *Stock Prices: Factors in their Rise and Fall.* Pp. 124. Price, $1.00. New York: Moody's Magazine Book Department.

Considering the magnitude of the subject treated, Mr. Bond has succeeded remarkably well in presenting in a comparatively few pages the sum and substance of what can knowingly be written on the movement of stock prices. He delves into theory only so far as the past has proved the theory to be correct, and while he advances no startling new truths, he treats the known factors of stock prices in a clear and readable way. The chapter on distribution of profit and loss in the market is most convincing and all statements are well substantiated by actual illustrations, which drive home the points made.

BOOTH, CHARLES. *Industrial Unrest and Trade Union Policy.* Pp. 32. Price, 10 cents. New York: The Macmillan Company, 1913.

Claiming that trade unions have done little to increase the production of wealth and less to secure more equitable distribution and almost nothing to increase the efficiency of labor, Mr. Booth feels that for the most part they have been economically useless. He lays down a broad program for better understanding between employers and employees on the basis of increased efficiency in the individual worker.

BROWN, W. J. *The Underlying Principles of Modern Legislation.* Pp. xx, 331. Price, 10/6. London: John Murray.

BURTON, THEODORE E. *Corporations and the State.* Pp. xvi, 249. Price, $1.25. New York: D. Appleton and Company.

Although the title *Corporations and the State* would not lead one to suppose that information and discussion of the monetary and banking problems were contained therein, nevertheless, a chapter on banking corporations treats these subjects very thoroughly. The chapter on regulation of corporations is of timely interest, confronted as we are with legislation on this subject. The historical section of the book, treating the subject of origin and development of corporations, is most thorough and interesting, throwing, as it does, light on one phase of the subject which is rarely touched upon.

BUSSELL, F. W. *A New Government for the British Empire.* Pp. xii, 108. Price $1.25. New York: Longmans, Green and Company.

This belongs to the large class of transitory literature produced by the recent political crises in England. Mr. Bussell, evidently much perturbed by the current trend of party politics (pp. v, vi), decides that contemporary democracy is "an empty imposture, disguising absolute government in an anonymous and peculiarly distasteful form; as precarious in tenure as the older despotisms, and far less dignified, continuous and efficient in its policy" (p. 9). His remedy is reversion to government by king and aristocracy. He would permit popular control of local concerns by "home rule all around," but imperial affairs should be managed by a monarch with the advice of ministers actually selected by himself and by a deliberative chamber of elected hereditary peers and colonial representatives. Only by some such method, he concludes, can *imperium* and *libertas* both be preserved.

CHILDS, MARY L. *Actual Government in Illinois.* Pp. 224. Price, 50 cents. New York: The Century Company, 1914.

As a handbook giving the knowledge of the machinery and structural form of local and state government in Illinois, this volume is eminently satisfactory. Its foreword to the teacher is suggestive of the volume yet to be written that will be a laboratory manual for the study of "actual" government out of the things daily seen, read and heard by the high school or grade student. To this end also the questions at the end of each chapter are helpful. One is disappointed, however, after noting the word "actual" in the title, to find that the volume treats only of the formal machinery in a traditional way and says not a word of the actual law-creating and government-directing social forces, such as public opinion, political parties, citizens' associations and publicity.

CROCE, BENEDETTO. *Philosophy of the Practical.* (Translated by Douglas Ainslie.) Pp. xxxvii, 591. Price, $3.25. New York: The Macmillan Company, 1913.

This is a contribution to ethical theory of interest primarily to students of philosophy. In viewpoint idealistic, and in method Hegelian—by its use

of a refined dialectic—it demonstrates the unity of the theoretic and the practical. Spirit shows itself in these two forms. The practical is thought which realizes itself. The practical, therefore, presupposes the theoretical. Will is impossible without knowledge; as is knowledge, so is will. No third form can exist. The introduction of a third form, "feeling," has been of provisional assistance in getting away from the bad determinateness of intellectualistic philosophy, but its service is transient.

Economic science receives some share of attention. Its propositions are excluded from philosophical, historical or naturalistic science. It is reduced, therefore, to the position of a mathematic "applied to the concept of human action and to its sub-species. It does not inquire what human action is; but having posited certain concepts of action, it creates formulae for the prompt recognition of the necessary connections." It is a "simple descriptive or quantitative discipline treated with much elegance."

DOWDING, W. E. *The Tariff Reform Mirage.* Pp. xiv, 351. Price, 3/6. London: Methuen and Company, Ltd., 1913.

This is an interesting addition to the somewhat voluminous literature appearing in England on the subject of tariff reform. The author considers that the tariff reformers have merely "schemed to fill the air with alluring and deceptive shapes and they have schemed so well that they have overdone it." His discussion is in the form of a history of the tariff reform crusade which is written by weaving together the declarations and publications of the reformers themselves. Their appeals to the agriculturist, the imperialist, the merchant and the workingman are all held up to ridicule by pointing out various absurdities and inconsistencies. Each quotation has been verified, the references when not in the text being given in an appendix.

ELLWOOD, CHARLES A. *Sociology and Modern Social Problems.* Pp. 394. Price, $1.00. New York: American Book Company, 1913.

This is a revised edition of the work first issued in 1910. The author has incorporated the 1910 census figures and has added two chapters, the bearing of modern psychology on social problems and theoretical summary. The last is a brief sketch of the origin and nature of society, theories of progress, etc. The original volume has been widely used as a text book for study classes and the revision will make it more valuable for that purpose.

EMERY, HENRY C. *Politician, Party and People.* Pp. 183. Price, $1.25. New Haven: Yale University Press, 1913.

This is a series of four addresses in the Page lecture series, delivered before the senior class of the Sheffield Scientific School, Yale University, by Prof. Henry Crosby Emery. The lectures are entitled respectively—The Voter and the Facts, The Voter and the Party, The Voter and His Representative, The Representative and His Constituency, and The Representative and His Party. The essays present an incisive analysis of the relation of the man of affairs to the forces and facts in his actual government. They are happily devoid

of ultra-idealism and replete with the comment and knowledge of one intimate with the law-creating and the actual law-making and enforcing agencies of the day.

FARWELL, PARRIS T. *Village Improvement.* Pp. xi, 362. Price, $1.00. New York: Sturgis and Walton Company, 1913.

This is an admirable handbook on things that have been and may be done for village improvement. It is not a "harangue," teeming with exhortations for the "up-lift" of the country dweller; quite to the contrary, it is full of constructive suggestions as to what is being done and what can be done in every phase of industrial, economic and social life in the small town to make life in the community more attractive and fruitful. It is overflowing with sane suggestions on how to improve the home and its surroundings; how to plant trees and make park improvements; how to plan and equip country roads and village streets; how to plan parks, large and small; the essentials as to public buildings and institutions; how to conduct a "clean-up" campaign; how to make the public school a social center; the need of play for young and old; the country church; improvements in school buildings; marketing clubs; farmers' clubs; neighborhood houses, etc. It is just the kind of a book needed for use in the small town where needs are many and means for satisfying them seldom at hand.

FRASER, JOHN F. *Panama and What It Means.* Pp. ix, 291. Price, $1.75. New York: Funk and Wagnalls Company, 1913.

GASKELL, THOMAS P. *Protection Paves the Path of Prosperity.* Pp. xii, 147. Price, 3/6. London: P. S. King and Son, 1913.

We have in this volume another plea for the abandonment of free trade and the adoption of protection as an aid to prosperity in Great Britain. The author finds in successive chapters that agriculture has declined since the establishment of free trade in 1846; that Cobden was less far-sighted than Malthus, and that agriculture in England has lagged behind that of Germany and France. Statistics are appealed to in support of his contention that free trade lessens employment and lowers wages. There is also the familiar appeal for protection to afford food supplies in time of war. The feature for which the author claims originality is his discussion of the effect of free trade on the production, consumption, importation and prices of wheat from 1822 to 1912, which he presents both in statistical tables and in a diagram.

GOLDIN, H. E. *Mishnah—Baba Meziah Order IV.* (Treatise II.) Pp. viii, 205. Price, $1.50. New York: G. P. Putnam's Sons, 1913.

GONZALÉZ, JOAQUIN V. *El Juicio del Siglo ó Cien años de Historia Argentina.* Pp. 298. Buenos Aires: Juan Roldan, 1913.

In this volume Dr. Gonzaléz has collected a series of papers and addresses dealing with the political and social development of the Argentine Republic.

The first part is devoted to a discussion of conditions during the early and turbulent period of Argentine history, and prior to the adoption of the constitution of 1853. These essays deal not only with political events, but throw considerable light on the social conditions which contributed to the instability of the Argentine political system prior to the adoption of the present constitution.

In the second portion of the book the author deals with the origin of the written constitution of 1853, and presents an interesting analysis of the leading tendencies in the operation of the Argentine political system. His discussion of the movement toward parliamentary government is particularly illuminating.

HOLLAND, THOMAS E. *Letters to "The Times" upon War and Neutrality.* Pp. xii, 203. Price, $2.40. New York: Longmans, Green and Company, 1914.

The second edition of this collection of letters to *The Times* coming, as it does, within four years of the initial publication in 1909 is indicative of the keen interest at present accorded to subjects in the nature of war and neutrality. The many changes and additions to the neutral obligations of sovereign states dealing with the "still unsettled questions suggested by the work of the second peace conference, by the declaration of London, and by the naval prize bill of 1911" rendered a new addition imperative. Chief among the letters since 1909 are those discussing such interesting subjects as the naval prize bill, the closing of the Dardanelles, the aerial navigation act, private property at sea, German war material for Turkey, and the various problems contained in the declaration of London.

JOHNSTON, SIR HARRY. *Common Sense in Foreign Policy.* Pp. x, 119. Price, $1.25. New York: E. P. Dutton and Company, 1913.

JORDAN, DAVID STARR. *America's Conquest of Europe.* Pp. 70. Price, 60 cents. Boston: American Unitarian Association, 1913.

This booklet comprises an essay, with the above title, and an address on World Peace and the Treaty of Ghent, which was delivered in Ghent, in 1913, before an international congress of heads of secondary schools. The theme of both essay and address is practically the same, and it is developed in the distinguished author's well-known suggestive and stimulative manner.

The "conquest" referred to is, of course, not one of force, but of New World ideals over Old World ideas, and is the result of the triumph of democracy over paternalism; of opportunity over exploitation; of the man over the dollar; of the individual over the despotism of state and church; of national confidence, as illustrated by the unfortified Canadian boundary line, and as based on open diplomacy, over mutual suspicion, as based on armament increase and secret diplomacy; of national federation, resulting in "jurisdictions," over an imperialism which produces "powers;" of the freedom of the seas, and the immunity of private property from capture in naval warfare, over the principle of *mare clausum;* of law and public opinion over militarism at home, and of international justice over national force abroad.

KEELING, FREDERIC. *Child Labour in the United Kingdom.* Pp. xxxii, 326. Price, 7/6. London: P. S. King and Son, 1914.

This is an authoritative work. It would be hard to find a more carefully elaborated study of the development and administration of the law relating to child labor in any country. It has been prepared as a report to the International Association for Labor Legislation as one of a number on conditions in different countries. These reports are to be presented to a special international commission appointed to discuss the question of child labor. This report outlines the history and present position of child labor legislation in the United Kingdom, and then deals with current problems of administration, as affecting the principal varieties of child labor. Reports on local administration are particularly detailed. An excellent bibliography and carefully organized indices add to the value of the work.

KIRKBRIDE, FRANKLIN and STERRETT, J. E. *The Modern Trust Company.* (4th Ed. Rev.) Pp. xiii, 319. Price, $2.50. New York: The Macmillan Company, 1913.

Students of banking in all of its phases will welcome the fourth edition of this standard work. In its preparation all facts have been brought down to date and the valuable bibliography has been much enlarged. It is to be hoped that the authors of this volume who have shown themselves so well qualified to discuss the subject will furnish frequent revisions of their book. The recent passage of the federal reserve act may sufficiently influence trust company business to make another edition advisable within a very short time.

MACFARLAND, C. S. *Spiritual Culture and Social Service.* Pp. 222. Price, $1.00. New York: F. H. Revell Company.

MANNIX, W. F. (Ed.) *Memoirs of Li-Hung-Chang.* Pp. xxvii, 298. Price, $4.00. Boston: Houghton, Mifflin Company, 1913.

Extracts from a diary continued from youth to old age, containing much internal evidence that the writer must have been not only a man great in power over men but also (notwithstanding his evil reputation among foreigners) possessed of the wisest patriotism and real human feeling. Of especial interest are his successive utterances regarding Christians and foreigners, showing a gradual breaking down of early hostility, accounts of his intercourse with various foreigners, General Gordon, General Grant, President Cleveland, Bismarck and others, his manifestations of gratitude to the United States as "the friend of China," and a narrative of the Boxer disturbance.

MARKS, T. E. *The Land and the Commonwealth.* Pp. xxv, 314. Price, 5s. London: P. S. King and Son, 1913.

MARRIOTT, J. A. R. *The French Revolution of 1848.* (2 vols.) Pp. xcix, 679. Price, $2.00 each. Oxford: Clarendon Press, 1913.

The title of this work is quite misleading unless a rather long introduction to a new edition of the works mentioned below can be called a history of

the revolution of 1848. For we have here nothing more nor less than a republication of two remarkable works relating to the economic history of the last century, or to be more specific, to the history of social experiments in 1848. The first, the *Organisation du Travail* has been republished and translated at different times—note particularly the English edition by Dickoré—but the second, the history of the workshops by Émile Thomas who temporarily saved the *ateliers*, so-called, is much less known and accessible. That the work will be welcome in these days of social experiments and interest in economic history goes without saying. The text of the original is carefully reproduced and the historic setting is discussed with sympathetic insight and at considerable length in an introduction of ninety-nine pages. Added to this is a rather exiguous list of books (pp. xcviii–xcix) given without date of publication or reference to editions and without critical comment and evaluation.

MARTIN, ASA E. *Our Negro Population.* Pp. 189. Price, $1.25. Kansas City: Franklin Hudson Publishing Company, 1913.

One of our great needs, if we are to devise better programs, is the study of actual concrete localities, not the theoretical discussion of the so-called Negro problem. This little volume is welcome, therefore, for it is a study of the Negroes of Kansas City. The author is a teacher in the high school there. The findings are presented in interesting fashion with many tables and illustrations.

MILLER, WILLIAM. *The Ottoman Empire, 1801–1913.* Pp. xvi, 547. Price, $2.50. Cambridge: University Press, 1913.

MILNER, VISCOUNT. *The Nation and the Empire.* Pp. xlvii, 515. Price, $3.00. Boston: Houghton, Mifflin Company, 1913.

MOXEY, E. P. *Principles of Factory Cost Keeping.* Pp. 102. Price, $1.00. New York: The Ronald Press Company, 1913.

NOGARO, BERTRAND. *Éléments d'Économie politique: Répartition-Consommation Doctrines.* Pp. 291. Price, 4 fr. Paris: M. Giard and É. Brière, 1914.

This is the complementary volume to one of which a notice appeared in THE ANNALS for March, 1913 (p. 196). This second volume completes a brief treatise by a discussion and application of the doctrines of distribution and of consumption. The earlier volume dealt with production and exchange.

OLBRICH, EMIL. *The Development of Sentiment on Negro Suffrage to 1860.* Pp. 135. Price, 25 cents. Madison: University of Wisconsin.

This master's degree monograph of five chapters traces the development of ideas on Negro suffrage from colonial days to 1860 as a basis for judging the reconstruction measures of 1867.

In the colonial period, only North and South Carolina, Virginia and Georgia had any expressed exclusion of Africans from the franchise. Although slavery and prejudice were general, people occasionally acquiesced in cases of the free Negro vote. Between 1790 and 1838 definite action was taken to disfranchise Negroes whether they voted by suffrance or legal right, although "in none of the states, probably, was Negro voting uniform." The main reason for the disfranchisement efforts was the increasing number of those who voted. Between 1838 and 1846 the agitation in favor of Negro suffrage was more or less connected with the abolitionist and anti-slavery movements, or with the liberty, the free soil and Republican parties.

The struggle in the northwest, 1844 to 1857, showed strong favorable sentiment in the northern sections of the old northwest where the settlers came from New England and New York or where Quakers and abolitionists added their strength. So that Wisconsin, Michigan, and northern Ohio furnished more champions of Negro suffrage than Illinois, Indiana and southern Ohio. The Republican party crystallized this phase of "the idealistic political movement" and although in the minority, in several states the large endorsement of Negro suffrage before the heat of Civil War helps greatly in accounting for the reconstruction act of 1867 and the fifteenth amendment.

OLIN, W. H. *American Irrigation Farming.* Pp. 364. Price, $1.50. Chicago: A. C. McClurg and Company, 1913.

This is essentially a manual for farmers who irrigate their land in the arid portions of the United States, including also a sketch of the ancient history of irrigation and its present practice in foreign countries.

POLLOCK, H. and MORGAN, W. S. *Modern Cities.* Pp. x, 418. Price, $1.50. New York: Funk and Wagnalls Company, 1913.

This is a series of disconnected essays covering a number of pertinent city problems, such as city planning, the housing problem, city streets, art in cities, parks, harbors, conservation of human life, the structure of government, municipal home rule, the selection of city officers and employees, control of municipal utilities, recent developments in education, the relation of the municipality to religious life, and the social evil. The data used are not especially new, nor do the authors present anything like a descriptive point of view. While not making a "contribution," they have written a book that makes interesting and popular reading.

RIVES, G. L. *The United States and Mexico.* Pp. xiv, 1446. Price, $8.00, New York: Charles Scribner's Sons, 1913.

SEAGER, H. R. *Principles of Economics: Being a Revision of "Introduction to Economics."* Pp. xx, 650. Price, $2.25. New York: Henry Holt and Company, 1913.

STEWART, H. L. *Questions of the Day in Philosophy and Psychology.* Pp. ix, 284. Price, $3.00. New York: Longmans, Green and Company.

TUCKER, G. F. *Income Tax Law of 1913 Explained.* Pp. xi, 271. Price, $1.50. Boston: Little, Brown and Company, 1913.

Although this volume was issued so promptly after the passage of the law that it describes, it contains much of interest. The author presents the law section by section with comments and citations, basing his opinions upon previous court decisions, and departmental rulings on points at issue under other similar laws. Many of these will doubtless be helpful to the reader but he will hesitate to accept them until confirmed by rulings and decisions under the new act itself. Treasury regulations of October 31, 1913, are included. Unfortunately for the taxpayer so large a number of later rulings have already appeared that he can not view this volume as a safe guide on any points upon which he is in doubt.

WEBB, M. DEP. *Advance India.* Pp. viii, 190. Price, 5s. London: P. S. King and Son, 1913.

This volume may be accepted as the most authoritative presentation of the arguments in favor of free coinage of gold and the use of gold as a medium of circulation in India. To the activities of the author more than to any other one man, was due the appointment of the Royal Commission on Indian Finance and Currency whose report has but recently been submitted. The book is divided into four parts: the first is written for English readers, the second for Indians, the third gives the text of the royal commission with a discussion of its leading points, and the fourth is an appeal for the adoption of the author's views for the sake of both India and London.

Free coinage of gold at an open gold mint at Bombay where British sovereigns, or, as a second choice, Indian sovereigns of the same size, weight and fineness should be coined; encouragement by the government of the use of gold as currency, especially by paying all obligations possible in gold; suspension of the coinage of rupees until the country has absorbed all the gold coin it will take; profits on coinage to be held in India chiefly in a gold reserve with but a small part invested in Indian securities; and the avoidance of sterling loans, are the leading recommendations. Supplementary suggestions are that (1) council drafts be restricted to the sums required to meet the home charges and additions to the token coinage; (2) council drafts be drawn at one uniform rate, and (3) the inclusion of the treasury at Delhi and Karachi among those on which council drafts can be drawn.

The recently published *Indian Currency and Finance* by Mr. Keynes is a very forceful reply to many of Mr. Webb's contentions and on many of the points in dispute Mr. Keynes seems to have the better of the arguments. The value of *Advance India* is, however, unquestionable and is, so far as the reviewer is aware, the best available presentation of this side of the case.

WHITNEY, NATHANIEL R. *Jurisdiction in American Building-Trade Unions.* Pp. vii, 182. Price, $1.00. Baltimore: Johns Hopkins Press, 1914.

To the layman, one of the incomprehensible difficulties arising from trade union activity is the "jurisdictional strike." Dr. Whitney has analyzed the

causes of such difficulties in an important industry, critically examined prominent instances and suggested remedies. The overlapping of various trades is the chief cause; the solution lies in agreements between unions and in arbitration. The general public favors union conditions. It should not be forced to suffer because of conflicts between unions as to which shall do work. This book is an interesting study of a serious and complex problem.

WICKWARE, F. G. (Ed.) *American Year Book, 1913.* Pp. xx, 892. Price, $3.00. New York: D. Appleton and Company, 1914.

WILLIAMS, ANEURIN. *Co-Partnership and Profit-Sharing.* Pp. vii, 256. Price, 50 cents. New York: Henry Holt and Company, 1913.

This popular discussion is of particular value at this time, in view of the increasing interest in co-partnership and profit-sharing. Although intended primarily for the general reader, the expert will find much of interest and value. The point of approach is English, but a large number of the examples are American. The author feels that the plans he discusses have done much to emphasize the mutual interest of employer and employee. The potentiality and possibility for better understanding are very great. They do not imply the destruction of trade unionism, but rather assume "reasonable forms of trade unionism, collective bargaining, the meeting of capital and labour" (p. 207). "Employers, if they wish to get the benefits and to confer the benefits which attach to profit-sharing and co-partnership, can only do so if they are willing once for all to renounce any hostility to trade unionism" (p. 73). Encouraging employees to obtain a financial interest in the business in which they are engaged and allowing them to share in its profits give them increased interest in its success and develop an *esprit de corp* that makes for efficient management.

WINGFIELD-STRATFORD, ESMÉ. *The History of English Patriotism.* (2 vols.) Pp.lii, 1286. Price, $7.50. New York: John Lane Company, 1913.

REVIEWS

ABBOTT, HOWARD S. *Public Securities.* Pp. xx, 1280. Price, $7.50. Chicago: Callaghan and Company, 1913.

There is so much need for a treatise on this subject that the volume compiled by Mr. Abbott will receive a most hearty welcome. As announced by the publishers it is "thorough and exhaustive," in fact so much so that a reviewer must content himself with a survey of only a few of its many excellent points.

To the layman the volume appears admirable. In its compilation there has evidently been an effort to present not merely those facts which are necessary to a logical and well developed treatise but also to place emphasis upon those features in connection with public securities, that are today most important. Thus chapter III on the power to incur indebtedness and issue

negotiable instruments and chapter IV on limitations on the power to incur indebtedness or to issue negotiable securities are especially valuable. Even though other considerations than legality should determine the creation of indebtedness, a clear recognition of the legal limitations may prove a check on reckless borrowing.

Apparently the author has had the same point in mind in chapter XII on the validity of public securities, chapter XIV on the payment of public securities and chapter XV on actions on public securities. The tremendous increase in municipal indebtedness and the tendency in the last few years to a rapid growth in state debts indicate that sooner or later there must be a reckoning. Borrowing on long-time bonds to meet current expenses or to finance short-lived improvements will before long precipitate disaster. When the trouble comes the public corporation may find repudiation the easiest solution. Even the serious effect of such a course upon credit does not always deter and moreover other devices may be employed that are nearly as serious for the security holder.

During the last year, an important municipality found difficulty in meeting its maturing bonds on which a low rate of interest was being paid, a rate that was justified by market conditions at the time of the issue some years ago. But conditions have changed and today the city that fifteen years ago borrowed at 3 per cent must now pay 4 per cent and those that paid 3½ per cent must now pay a correspondingly higher rate. Regardless of this change in interest rates the municipality in question offered to pay the old issue by giving in exchange a new issue bearing the same rate of interest. To this the bondholders offered an indignant protest. Another evidence of growing trouble was the difficulty experienced by one of the states in meeting a maturing loan, the problem being finally solved by the issue of short-term notes at a high rate of interest.

These incidents illustrate the necessity of a close scrutiny of public securities in order to be sure of their validity. Investors will find care in this particular increasingly important.

E. M. PATTERSON.

University of Pennsylvania.

AMERY, L. S. *Union and Strength.* Pp. vi, 327. Price, $3.50. New York: Longmans, Green and Company.

This is a collection of papers on imperial questions published or delivered at various times between 1905 and 1912. The method of construction results in a large amount of repetition, but the sacrifice of unity, which might be anticipated, has been avoided by the tenacity with which the author clings to his theme. This he designates as "the urgent necessity of attaining to some real and enduring constitutional union for the British Empire, of paving the way towards that union by the development of mutual trade, and of defending the existence of that empire from destruction by external force during the period of transition" (p. 5). He writes as the frank advocate of these objects, but his partisanship takes a comparatively moderate tone and his viewpoint is highly practical.

The papers constituting the volume may be grouped under four topics. In the first three papers the case for imperial unity is presented in broad outline. Without attempt at elaborate proof Mr. Amery gives reasons in favor of federation, sketches the essential features of such an organization, and suggests several changes in the existing system as preliminary steps along the desired road. On the subject of imperial defense, which occupies over half the book, the treatment becomes more argumentative and detailed. A graphic and instructive survey of the geography of the empire from the viewpoint of the possibilities of attack and defense leads the author to conclude that existing defenses are hopelessly inadequate. As the principal means of supplying this deficiency he argues at length for a method of compulsory military service similar in principle to the German. Imperial preference is dealt with rather cursorily. Some of the anticipated advantages of this policy are indicated, but the most substantial contribution here is a discussion of the probable effects of such a relation with South Africa. The last two papers are occupied with an interesting estimate of the resources and future possibilities of British East Africa and the Hudson Bay region.

Taken as a whole the book deserves an eminently respectable place among its fellows. It represents only one side of the case, but of that side it is a well-balanced and conservative statement.

W. E. LUNT.

Cornell University.

Cambridge Medieval History. (2d Vol.) Pp. xxiv, 891. Price, $5.00. New York: The Macmillan Company, 1913.

The second volume of the *Cambridge Medieval History* covers the period from the accession of Justinian to the coronation of Charlemagne and bears the sub-title "The Rise of the Saracens and the Foundation of the Western Empire" as an indication of the two most important phases of the three hundred years in question, though all aspects of the period are treated by the twenty-one contributors to the volume. The editors have drawn upon the scholarship not only of England but also of Germany, France, Austria, Russia, Spain and America and their choice has been justified by a series of chapters fully abreast of the latest knowledge on the various subjects and, in nearly every case, presented with literary skill. It is decidedly a more interesting volume than the first one of the series.

Of the twenty-two chapters, twelve are devoted to a narrative of events and ten to the description of institutions, a most satisfactory division of emphasis for the period in question. In the narrative chapters, Prof. Diehl deals with the reign of Justinian, Dr. Pfister with the Merovingian period, Dr. Altamira with Spain under the Visigoths, Dr. Hartmann with Lombard Italy, Mr. Baynes and Mr. Brooks with the Eastern Empire from Justinian to Leo the Isaurian, Prof. Becker with the expansion of the Saracens in Asia, Africa and Europe, the Rev. Mr. Warren and Prof. Whitney with the conversion of the Kelts and Teutons, Mr. Corbett with the history of England to 800, Prof. Burr with the reign of King Pepin and Prof. Seeliger with Charlemagne. Among

these varied topics the chapter of Prof. Burr on the Carolingian revolution and the Frankish intervention in Italy stands out above all the others for clarity of treatment and charm of style and it would be difficult to find elsewhere within the same space a better example of the presentation of a critical and complicated episode of history.

The first of the descriptive chapters contains a summary of those features of the Roman law that most affected the period, by Mr. Roby, who, though deprecating a comparison of this with the famous chapter of Gibbon, has nevertheless succeeded in compressing into small space a vast amount of information regarding the principles of the Roman legal system. Further on Prof. Pfister describes the political and social institutions of the Merovingians, Dr. Hartmann those of imperial Italy and Africa, and Prof. Seeliger those of Charlemagne's empire. An excellent and judicious account of Mohammed and the rise of Islam is given by Mr. Bevan and an unexpected pleasure is afforded by a chapter on Keltic and Germanic heathenism from the experienced pens of Prof. Jullian, Prof. Anwyl and Miss Phillpotts. Finally, Prof. Vinogradoff contributes a chapter on the foundations of society with the somewhat deceptive sub-title origins of feudalism, for the chapter deals almost exclusively with Germanic social organization, little being said of the institutions of the later Roman empire. The most striking contribution in the book is on the expansion of the Slavs, by Dr. Peisker, who contributed to the first volume the chapter on the Altaic Nomads. This account of the Slavs contains much information that will be new to most western readers, but one feels that some of the writer's views are hypotheses and deductions built upon a somewhat uncertain basis of facts and that too much use has been made of theoretical reconstructions.

The volume closes with fourteen maps, most of them excellent. The bibliography follows the plan of the first volume and covers some hundred pages. It has been somewhat more carefully edited in this instance, but still shows a regrettable lack of care in the reading of the proof. It ought to be possible to adopt a uniform method of capitalization in the citation of books in the same language.

A. C. HOWLAND.

University of Pennsylvania.

CLEVELAND, F. A. *Organized Democracy.* Pp. xxxvi, 479. Price, $2.50. New York: Longmans, Green and Company, 1913.

Dr. Cleveland's book makes a most acceptable addition to the American citizen series. It is inclusive in its subject matter and suggestive in its ideas and arrangement. In the latter sense only, however, is it a "contribution." It contains a good bibliography covering practically the entire range of American institutions and the citizen's relation thereto, while each chapter is introduced with a splendid bibliography on the special subjects therein treated. The volume is divided into five parts entitled respectively—The Foundations of the American Republic, Provisions for Making Citizenship Effective, The Electorate as an Agency for Expressing Public Opinion, Utilization of the Electorate and Provisions for Making Public Officers Responsible and Responsive.

In Part I are discussed the conflict between absolutism and feudalism on the one side and self government and democracy on the other, the transplanting of fictions of absolutism in America and the distribution of powers among American officials and other absolute principles of American government. In Part II are briefly discussed the rights that citizens have as against their government, the duties and responsibility of citizens as such (and he does not include among them the moral responsibility of writing to their congressmen), and direct legislation by which citizens may directly participate in governmental acts. In Part III are discussed the evolution of qualifications for the suffrage, the exclusion of the unfit therefrom, the inclusion of women, the formulation of electoral issues, nominations of candidates, registration of voters, legal safeguards in casting and counting of ballots. Part IV describes how the electorate is utilized in passing on constitutional provisions, on laws, and the provisions for, and the judicial decisions pertaining to, direct legislation. The provisions for making public officers responsible and responsive are discussed. These include the direct choice of senators, the protection given to legislators, the recall, legislative reference bureaus, the restraint on legislators by the bill of rights, the means of fixing responsibility on executive officers through the right of inquiry, publicity, civil service and the restraint on judicial officers.

Dr. Cleveland sees the hope of the future in the awakening of the electorate as evidenced, among other things, by the demand by women for the ballot, and in the new movement to give to the government a social purpose and to dispense with the doctrine of *laissez faire*. Among the means still to be provided for making the popular will effective, he especially emphasizes proper provisions for budget making, efficiency records and reports, and other provisions for poignant publicity.

CLYDE LYNDON KING.

University of Pennsylvania.

CORWIN, EDWARD S. *National Supremacy: Treaty Power vs. State Power.* Pp. viii, 321. Price, $1.50. New York: Henry Holt and Company, 1913.

During the last few years there has been much discussion of the scope and limits of the treaty-making power of the United States. The subject is one which for many decades has occupied the attention of commentators on constitutional law, but during recent years it has become an acute international question. The helplessness of the government of the United States in giving adequate protection to foreigners resident within the states, and the humiliating position in which the President has been placed in replying to the protests of foreign governments have gradually developed a body of opinion in favor of the extension of federal authority in dealing with the treaty rights of resident aliens. The long series of outrages on foreigners beginning with the Chinese massacres in 1895 gave to the United States an unenviable reputation in international dealings. These outrages were a constant source of international irritation, and one cannot but feel that foreign governments were deserving of great credit for the patience and forbearance shown when their citizens and subjects suffered by reason of mob violence. This question of the scope of the

treaty-making power was moved further into the foreground of public attention by the California school regulations discriminating against Japanese, and later by the legislation of California, Arizona and New Mexico limiting the property rights of persons ineligible to United States citizenship. The significance of these questions, their bearing on the good name of the United States, and their direct relation to the maintenance of international peace give to the work of Mr. Corwin a position of exceptional importance not only for special students of constitutional law but for every one interested in the fostering of friendly relations with foreign countries.

In the arrangement of this work, the author first gives an excellent historical survey of the scope and limits of the treaty-making power under the Articles of Confederation, and then traces the development of this power under the Constitution, its exercise in our foreign relations as well as its interpretation by the federal courts.

In his conclusions the author is a pronounced nationalist, and his position is clearly shown when he contends that "the United States possesses adequate executive power to safeguard any large general interests entrusted to its keeping, even though Congress may have failed to provide the precise channels in which such executive power should flow." Applying this standard to the treaty-making power the author maintains:

1. "The right of the executive to interfere with such force as may be necessary, at all times and places, not simply for the enforcement of judicial decisions determinative of alien rights under treaty, for that faculty of the executive was already plain, but for the purpose of preventing an interference with such rights.

2. "The right of the federal courts to interfere by injunction, not merely upon the application of an alien whose property interests are menaced, but upon the application of the executive agents of the Government itself, to prevent injury to rights secured by treaty.

3. "Constitutes from the raw material, so to speak, of the treaty pledges of the United States, a standard of public policy of which all courts should take cognizance in evaluating contracts and other juristic acts of private parties, and of which the federal courts are obliged to take cognizance when adjudicating controversies between citizens of different States."

Dr. Corwin has performed a real service not only because of the fact that he has so clearly formulated the issue between federal and state authority, but has also presented a definite and constructive program, which will permit the federal government fully to meet its international obligations. Every one reading Dr. Corwin's book must be forced to the conclusion not only that the federal government must afford more ample judicial remedies to resident aliens whose property or persons have been injured through the violation of rights guaranteed under treaties, but that it is necessary for the government to go one step further, exercising the full authority of the executive in preventing attacks on the rights of aliens.

This book is a real contribution to the study of an intricate and delicate constitutional and international problem.

L. S. ROWE.

University of Pennsylvania.

CORY, G. E. *The Rise of South Africa.* (Vol. II.) Pp. xvi, 489. Price, $5.50. New York: Longmans, Green and Company, 1913.

The second volume of Mr. Cory's *Rise of South Africa* fully maintains the high standard set in the first. The actors in the country's history continue to tell their own story. The material is well documented and the author is successful in keeping himself in the background. Unlike the first volume dealing with the history of times previous to 1820, there is for this one a large amount of reliable published material. This is so profusely used that the author at times fails to realize that the reader has not intimate knowledge of the country's characteristics and general development. It is to be regretted that greater effort is not made to summarize the developments which the detailed description illustrates. The illustrations, which are excellent, are from contemporary cartoons, village plats, early books on South Africa and from photographs of the places where the events described occurred.

The account here given traces the life of the colony through the troublous period from 1820 to 1834. It is largely a record of heroic pioneer work, struggles with hostile natives and an inhospitable soil. There is the usual dreary tale of jealousy, inefficiency, mismanagement, corruption and petty local bickering, that abounds in pioneer ventures but the story as a whole is one which shows the indomitable determination which has made British colonization the world over a success.

Up to 1820 South Africa, in spite of the British occupation in 1806, was British only in name but in that year alone under the influence of the movement to relieve the distress at home by sending the poor to the colonies, 4000 emigrants were sent to the cape. More unfavorable circumstances could hardly be imagined than those under which the ventures started. The government of the colony was not appraised of the intended immigration, the ships were ill-provisioned, no adequate facilities for handling the people were provided against their arrival and bickerings among the authorities and the settlers were prominent from the start. Crops were blighted, the Kaffirs drove off what cattle the colonists raised. The trials attendant on the first years were only earnest of those which continued throughout the period and the difficulties inherent in the situation were much exaggerated by the political mistakes made by both the home government and its local representatives. The governors made the most of the fact that they were distant from the authorities to which they owed obedience and the authorities at London misunderstood South African conditions.

But political conditions, however unfortunate, from many viewpoints, resulting in the outbreak of war in 1834, did not prevent material advance. By the end of the period wagon roads had been extended, native trade developed, ivory, hides and gum had become important articles of export and wool production had been firmly established. Had there been better understanding of conditions and less insistence on British standards the author believes that even at that time the Cape of Good Hope might have become one of the most important of British colonies.

CHESTER LLOYD JONES.

University of Wisconsin.

DAVENPORT, H. J. *The Economics of Enterprise.* Pp. xvi, 544. Price, $2.25. New York: The Macmillan Company, 1913.

The title of this book is misleading. He who expects to find here a presentation of the practical problems of the subject will be disappointed. The book instead is a theoretical study of the various factors in distribution.

Economics is defined as "the science that treats phenomena from the standpoint of price." The problem of market price is held to be the central problem of present-day economics, the core of all economic theory. Wages, rent, interest, and all other economic incomes appeal for their explanation to an analysis of the general principles of price. The author considers fully the various shares in distribution, with the exception of the share going to laborers; singularly enough, there is no chapter devoted to wages. There is quite a lengthy treatment of money, credit, and banking, and a chapter on combination and monopoly; but even in these two chapters the treatment is mainly theoretical.

The general viewpoint of the author on these theoretical questions is indicated in the preface. In questions of economic theory, he admits himself to be in essentials rather a conservative than an innovator. He aspires, it is true, to reformulate the established principles, but to restate them in fundamentals only to affirm, and rarely or never with the purpose of putting them in issue.

With respect to the applications of economic principles to the problems of practical progress, however, the author regards himself as a radical economist, as belonging to that group of thinkers who are facing towards the new day—the disturbers at large of the peace. He insists that economics must cease to be "a system of apologetics," a "creed of the reactionary," a "defense of privilege," or a "social soothing syrup." Had it been within his power this book would have set forth a new political program. As it is, it aims to furnish to progressive social workers an ultimate and working basis of economic theory. The call is sounded, however, for someone to construct a program for social progress, based upon the theoretical foundation established in this book.

It is to be hoped that our author, having provided the foundation, will himself complete the superstructure. While the present book will appeal, in the main, to the small group of economists who are especially interested in the refinements of economic theory, the proposed applications of these theoretical principles, in the spirit of our author, would teem with interest for a large circle of readers.

ELIOT JONES.

University of Pennsylvania.

FARRAND, MAX. *The Framing of the Constitution.* Pp. ix, 281. Price, $2.00. New Haven: Yale University Press, 1913.

Professor Farrand has condensed in this volume the original material edited by himself in his three volume work on *The Records of the Federal Convention.* He does not, therefore, presume to throw any new light on the fram-

ing of the Constitution of the United States, but rather to present in one concise book the work of the convention and the details and compromises discussed and finally worked out and adopted therein.

Professor Farrand summarizes the details he has presented in his chapter on the convention and its members by stating that the fifty-five who actually attended the convention were at an average age of forty-two or forty-three, one-sixth were of foreign birth, three-fourths had served in Congress, and practically all of them had played important parts in the revolution. "In a time before manhood suffrage had been accepted, when social distinctions were taken for granted, and when privilege was the order of the day, it was but natural that men of the ruling class should be sent to this important convention."

He shows that every provision of the Constitution can be accounted for in American experience between 1776 and 1777 and that it is "neither a work of divine origin, nor 'the greatest work that was ever struck off at a given time by the brain and purpose of man,' but a practical, workable document. . . . . It was floated on a wave of commercial prosperity." He finds that the features that recommended the Constitution to the acceptance of many were its simplicity and its practical character. He illustrates the differences of opinion pertaining thereto, however, by noting that in Halifax, Virginia, a preacher had pronounced from the desk a fervent prayer for the adoption of the federal Constitution. No sooner had he ended his prayer than a clever layman ascended the pulpit, invited the people to join a second time in supplication and put forth an animated petition that the new scheme be rejected.

CLYDE LYNDON KING.

University of Pennsylvania.

GANTT, H. L. *Work, Wages and Profits.* Pp. 312. Price, $2.00. New York: Engineering Magazine Company, 1913.

Mr. Gantt begins his book by showing that both employers and employees have attempted to advance the interests of their classes by the use of force. The factory owners have combined in an effort to keep the laborers in separate wage groups, and have refused to advance the compensation of the groups except under compulsion. Individual, good workmen have been unable to obtain higher pay than the mass, hence have sought to make the group wage higher through unions. This system brings the welfare of employer and employee into antagonism, and produces strife without ultimate profit to either party to the conflict. Mr. Gantt believes that the laborer's desire for greater remuneration and the owner's wish for lower labor cost can be harmonized, through a system of better management, whereby each party gets part of the gain derived from an increased production.

In the system he advocates, it is the management's duty to analyze the processes of manufacture in order to discover the best way to do any particular operation. When the best method has been discovered it is to be made a standard to which the workman must conform. To guarantee that the job may be done in the standard way it is also the function of the management to provide proper tools, appliances and materials, and to see that these are always

ready for the workman's use. The standard method is set as the laborer's task. If the task is done in the way prescribed and in the time allotted, the worker should be rewarded by a bonus in addition to his regular wage. Every one contributing to the successful completion of the task, even foremen and superintendent, also receives a bonus above his wage if the task be properly done. After a task is once set, and the bonus agreed upon, they should not be changed even if the worker receives wages that seem to be extraordinary. An essential part of the system is the keeping of accurate records of every task and each worker.

Such a system rewards the factory owner, because it gives a larger production of better quality with the same equipment as used formerly. Hence labor cost is reduced. It benefits the worker by rewarding skill and good work in direct proportion to the effort put forth.

From the practical viewpoint the book makes a great contribution to the science of management in the scheme of bonus payment for a set task. The numerous charts, and the evidence drawn from the author's personal experience are also valuable.

As a piece of literature the book might be much improved. For instance chapter XI on prices and profits might well have been placed first, instead of next to the last. Throughout the first part of the book there are also many repetitions of the same ideas often expressed in identical words. The volume shows too plainly that it is a collection of magazine articles, and not a consecutive story, planned as one complete piece of work.

R. MALCOLM KEIR.

University of Pennsylvania.

Industrial Unrest and the Living Wage: A Series of Lectures given at the Inter-Denominational Summer School, held at Swanwick, Derbyshire, June 28–July 5, 1913. Pp. 182. Price, 2s. London: P. S. King and Son, 1913.

This little book is simply a report of the addresses delivered at the second session of the United Summer School—appearing as the second volume of a series of such, entitled *Conveying Views of Social Reform.* It is significant as expressing the reaction of the religious groups of England to the pressing questions of social advance. An interesting fact is that this important summer school took its rise from the student Christian movement. The English experience perhaps points the way to a closer coöperation of the church and university in this country through the present emphasis of the intercollegiate Christian associations upon social service.

With regard to the contents of the book, the introductory address by Mrs. Creighton, and those following by the Bishop of Lichfield and Rev. Lloyd Thomas, with the last in the volume by Canon Holland, present well the varied relations of Christianity and social service, and emphasize the responsibility of the church for leadership in the essentially Christian social movements of the day.

The remainder of the lectures are discussions, by able students, of the subject of the standard of living, and its maintenance by the enforcement of

the living wage. Of course, they do not claim to be original contributions to the field, yet they have considerable educational and propagandist value. English thought is indeed changing when the Rev. Dr. Carlyle, a pastor from the town of Oxford, can present in a few terse pages the causes of the present industrial unrest. Professor Urwick reviews the question of the efficiency standard of living; then Professor Hobhouse justifies the living wage from the economic viewpoint; Mr. Shann shows the disastrous effects of non-living wages; Dr. Slater discusses the vital relations of the living wage and trade unionism; Professor Macgregor makes a strong plea for profit sharing; and Mr. Mallon tells in an enlightening way of the working of the minimum wage regulations under the trades boards act of 1909. It is worth noting that women, Miss Rankin and Miss Smith (and remember women are more definitely affected by the new legislation) treat the matters of wage movements and legislation in Australia and the United States. On the whole the book, although not in any sense a scientific treatise or even a presentation of new facts and viewpoints, nevertheless does furnish a valuable popular review of the standard of life and living wage discussion now rife in England.

FRANCIS D. TYSON.

University of Pittsburgh.

INNES, ARTHUR D. *A History of England and the British Empire.* (4 vols.) Vols. I and II, pp. lxiv, 1092. Price, 6s. each. London: Messrs. Rivington, 1913.

Mr. Innes has attempted to place at the disposal of the general reader the more important results of the critical and monographic study of the last generation. Volume I deals with the period to 1485; II, 1485–1688; (III, 1689–1802; IV, 1802–1914). The scale of presentation is comparable in general to the *Short History of the English People* by John Richard Green, and the work of Mr. Innes is no less characteristic of the present generation than Green's work was typical of the temper of the seventies. The earlier work is dominated by its ardent enthusiasm for the struggle of democratic leaders with prerogative. The main interest lies in the establishment of the authority of Parliament, and perhaps it is for this reason that the narrative of the earlier period received so much attention from Green. Mr. Innes represents the newer school that is more dispassionately concerned with the evolution of modern society. There is less disposition to take sides, with either Crown or Parliament. The narrative thus unfolds the record of the British empire and not merely the history of the English people. The adoption of this definitely scientific point of view leads to the inclusion of constitutional and economic material that is frequently neglected entirely or subordinated to the narrative of political events. Mr. Innes has maintained a more just proportion in the treatment of these different elements. Footnotes and critical apparatus are not in evidence but the temper of the work is essentially critical and appears clearly in the text, most particularly with reference to economic and constitutional material. Mr. Innes has thus achieved the distinction of presenting to the general reader a vital and significant interpretation of English history.

The interpretation of English history must needs rest upon the view taken of the relations of the Crown and Parliament. The view taken will surely color one's judgment of all events, and, because no two historians can entirely agree upon these matters, the history that is the work of many hands necessarily suffers from confusion of judgment or from exclusion of much interpretation. The tone of Mr. Innes' History is best indicated by his attitude upon these issues, and at each juncture his opinion is distinctly modern and judicial. He holds no brief for Crown or for commons. The constitutional reforms of Henry II are carefully sketched and due credit given to the Crown. The origin of trial by jury is described, its probable Norman source mentioned, and distinctions drawn between the earlier and later uses of juries. The rise of Parliament is described in terms that denote a careful attempt to avoid anachronism by attributing to the struggles of the thirteenth century a "democratic" character in the modern sense of this term. Simon de Montfort is given due credit for his Parliament of 1265, but the significance of this step and the real accomplishment of Montfort's ideas is credited to Edward I. "The constitutionalism which created the model Parliament was not intended to limit the power of the Crown, but rather to provide a counterpoise to the greater barons" (I, p. 263). The establishment of the foundations of English liberty is thus definitely ascribed to the Crown; to monarchs that were seeking to resist the tyranny of baronial oligarchy by building up a government founded upon laws and defended by the knights and burgesses who might easily become the prey of the barons. The problems of Crown and Parliament in the Tudor and Stuart period are carefully and consistently handled. The judgment of the issues of the period is too complex for adequate statement within the compass of a review. The essence of the view taken is that the Tudors exercised in fact powers that were never actually accorded to the Crown in form. There were many possibilities of discord but they remained dormant. Innes feels that open criticism of the Crown in the latter years of Elizabeth was restrained in a large measure by respect for her achievements. James thus came to a country ripe for a revolt which was brought to an intense crisis by the efforts of the Stuarts to exercise, in a less discreet manner, powers that in their judgment were by long custom accorded to the Crown.

It may be that many will differ from Mr. Innes in his judgments of men and of events but none will hesitate to accord to him the credit of presenting an intelligent, sincere, and dispassionate interpretation of the great historical episodes. Mr. Innes writes in an unadorned and compressed style that is neither strikingly graceful nor distressingly plain. The most serious problem that will occur to the teacher will be the availability of the book for the higher classes in secondary schools. Because it is a more carefully considered kind of historical writing it would seem likely that it would be somewhat more difficult reading than Green, but whatever effort the general reader or student may feel, there can be no doubt that he will be adequately rewarded for his pains, if he reads conscientiously.

ABBOTT PAYSON USHER.

Cornell University.

KALES, ALBERT M. *Unpopular Government in the United States.* Pp. viii, 263. Price, $1.50. Chicago: University of Chicago Press, 1914.

Through the election of countless officers and multiplicity of election districts, American legal government has been completely decentralized. In control of this decentralized government is a highly centralized, though extra-legal and invisible government, composed of a professional vote-directing partisan organization. The electorate by being required to vote too much has, in effect, been deprived of its right to vote at all. Nine-tenths of the voters must vote the way they are told for four-fifths of the officers on the average ballot. Since the ballot is too cumbersome to vote without direction, a complex vote-directing professional class has been evolved. This vote-directing organization is our invisible, though actual, government.

Rewards for service are apportioned out among local leaders as special privileges or immunities, but to the lord paramount and his tenants in chief are reserved the highest privilege, and reward—that of entering into an alliance, offensive and defensive, with special business and property interests which need the aid of the local or state governmental power to exploit to the best advantage of the many or the protection from governmental interference at the demand of the many who are being exploited. "Indeed, so close may the relations become between the great captains of such special business and property interests and the extra-legal government by politocrats, that the real power of government may to some extent actually reside in the former rather than the latter. It will indeed be difficult in many instances to tell which group commands and which obeys. Where the leaders of both are equally able there will be a complete partnership." When the outlook is dark for this extra-legal government by and for the politocrats, they nominate a Hughes or a Wilson, and content themselves with the "spoils" of the smaller offices.

The king-pin of "unpopular government," that is government "of the few by the few and for the few at the expense and against the wish of the many," is that the electorate is voting for a dummy though legal government. The only avenue through which unpopular government may be converted to essentially popular government is through centralization of legislative, executive and judicial power, such as is typified in the commission plan of government and in the short ballot. Thus judges will always be nominated by somebody. They may as well be nominated by some responsible person in power.

So runs the argument in this tersely written and pertinent book by Prof. Kales, who is professor of law in Northwestern University.

CLYDE LYNDON KING.

University of Pennsylvania.

KEYNES, JOHN M. *Indian Currency and Finance.* Pp. viii, 263. Price, $1.60. New York: The Macmillan Company, 1913.

The appointment to the Royal Commission (1913) on Indian Finance and Currency of a man with the keen insight and great ability of the author of this volume is reassuring. Rumor has it that Indian affairs have too often been treated superficially and without appreciation of the seriousness and

complexity of the problems involved, but such an attitude will not be taken by the present commission if all of its members possess the same grasp of fundamentals as does Mr. Keynes.

In this volume there is given a thorough description and analysis of the Indian banking and currency system and its relations to the London market. The eight chapters cover the entire field. The two leading problems now up for settlement have to do with (1) an extension of the use of gold in India by the establishment there of a mint and by an attempt to increase the use of gold as a medium of exchange and (2) some reform in banking conditions, through the establishment of a central bank, or a broadening of the present work of the presidency banks or perhaps merely by strengthening the banking law of the country. The author opposes the general use of gold because (1) such use is expensive, (2) the plan would compel the government to dissipate over the country some part of its sterling resources now held in its reserves, thereby weakening its ability to meet a crisis and (3) gold would not supplant the rupees which are worth about half as much as gold and will still be needed for small payments but will take the place of notes for large amounts and will thus add to the heavy expense of a metallic medium. He advocates the establishment of a central bank, giving six very convincing reasons for his view, but fears that action may not be taken until a severe crisis makes it necessary.

On two points special comments seem appropriate. Mr. Keynes' very clear picture of the dangers lurking in the banking situation has already been proved correct by the events of recent months. The failure of several banks last fall made very evident the unsound conditions. The most important was the People's Bank at Lahore with 72 branches and a subscribed capital of Rs. 22 lakhs. It is to be hoped that this will be as much warning as is necessary.

On a second point the events of the past year do not so clearly prove the author correct. In chapter II he endeavors to place the whole Indian system in its proper perspective by contending that the British system is peculiar and is not suited to other conditions, that a somewhat different type of system has been developed in most other countries, and that in essentials the Indian system conforms to this other type. He finds (p. 19) the essentials of the British system to be (1) the use of checks and (2) "the use of the bank rate for regulating the balance of immediate foreign indebtedness (and hence the flow, by import and export, of gold)." In support of this he cites the increasing extent to which the continental banks of France and Germany at times partially suspend free payments in gold and accumulate foreign bills and credits upon which they may draw when necessary. His facts seem correct although the total of the Reichsbank's holdings of foreign bills and credits does not seem very impressive even at their present amounts. The interesting point, however, is the continued effort of these banks during the last twelve months to add to their holdings of gold, apparently with the intent of changing the situation pictured by Mr. Keynes. The Reichsbank has added $100,000,000 to its holdings and has intimated an intent to secure $75,000,000 more. The Bank of France has recently resumed its campaign for more gold as has also

the Imperial Bank of Russia. Apparently these institutions will not be content to drop into the gold exchange standard group in the company of India and the Philippines.

We have Mr. Keynes to thank for one of the best books on the subject that has ever appeared. It is clear throughout and bears on every page evidence of the ability, good judgment and thoroughness of its author.

E. M. PATTERSON.

University of Pennsylvania.

KLUCHEVSKY, V. O. *A History of Russia.* (Translated by C. J. Hogarth.) (3 vols.) Pp. xxv, 1079. Price, $2.50 each. New York: E. P. Dutton and Company.

One of the best historical works published in any language in recent years is this history of Russia, by the late Professor Kluchevsky of the University of Moscow. For this is not a simple narrative of political or international happenings but a remarkable study of Russian social, economic and international history based upon years of personal research in the available historical sources of the subject. This will appear even to the casual reader if he is at all acquainted with the older histories of Russia. Instead of the conventional and somewhat disconnected chronicle by Rambaud, we have here a work that not only approaches the subject from a new and original point of view but reveals in every chapter a familiarity with and an assimilation of the sources for Russian history that compels attention and interest. Nowhere for example is there to be had such a searching review of the old chronicles, church ordinances, the lives of the Russian saints, the *Russkaia Praoda* or civil code, etc. Yet with all his detailed research, Professor Kluchevsky never loses sight of the forest for the trees, his interpretations are always ready and his generalization on the tendencies in Russian history at different periods are often startling in their sweep and boldness. Thus, for example, he tells us that the processes dominant in Russian history were comparatively simple, and that the "principal fundamental factor has been migration and colonization," a process in progress today.

In the three volumes before us, the story of Russian evolution is carried through the reign of Tsar Alexis. Right at the beginning the student accustomed to the old idea of Russian history will be surprised to find Ruric and his Norsemen playing a comparatively minor rôle in the early history of the eastern Slavs. Long before the appearance of the men from the North, the eastern Slavs had already organized in a military way in the Carpathians. Thence they turned back and moving eastward occupied the lower Dnieper where they established a capital at Kiev on the great highway of commerce between the Baltic and Byzantium. But they were unable to defend this region against the Tartars and they trekked northward mingling with the Finish tribes of the middle Russia regions. From this admixture of races came the Great Russian stock which gradually organized into petty principalities, the chief one having its seat on the Muskova. Here two chiefs appeared who drove out the Tartars and brought the neighboring principalities under their control.

Unlike the Kievan state, the new state of Moscow was agricultural and not commercial. This gave rise to new problems, the greatest being the status of the agriculturist, the later serf, to whose conditions Professor Kluchevsky has given special attention. Conspicuous in the treatment of the rise of Muskovy is the remarkable study (vol. II, ch. VI), of Ivan IV, popularly known in history as Ivan the Terrible, whose extraordinary excesses and cruelties have so fascinated posterity that the real character of the brilliant and wharped barbarian is little known. With remarkable insight and power, in vital touch with the world from London to Pekin, he not only pushed the Russian territory to the Caspian and created organs of self-government, both local and central, but introduced the printing press, collected a large and valuable library and with a keen literary bent left us a wonderful revelation of himself in his own writings.

Among the topics of the third volume, which has just appeared from the press, is the period of troubles, sometimes called the Interregnum, the election and success of Michael, the change in the political institutions and the centralization of administration, peasant and agrarian conditions, the western influence and the great schism in the Russian church by which is meant "the separation of a large portion of the Russian orthodox community from the Orthodox church." On the agrarian conditions, Professor Kluchevsky writes with especial insight and conviction (chs. IX and X) for here he is on a subject on which he successfully advanced and maintained a theory all his own many years ago. Russian serfdom he claims was an evolutionary product and not all the result of this or that edict. On private lands a gradual decline of peasant or tenant debtors into a condition of servitude took place, while on the state lands the Muscovite system of collective responsibility on taxes worked toward the same end.

The fidelity or rather discrimination of the translator Mr. Hogarth in rendering the original into English has been severely criticized. By way of partial extenuation it should be said that the task of finding exact equivalents in English for the names of institutions unique to Russia is extremely difficult. Nevertheless when western parallels do not exist, it would be better to retain the Russian and explain the exact meaning in a note.

In conclusion, it should be added that a proper appreciation of this work presupposes a fair knowledge of Russian history. It is not altogether a connected story, but rather a series of essays or special studies woven into a history, being first given as lectures to his large student audiences at Moscow.

WM. E. LINGELBACH.

University of Pennsylvania.

KNAUTH, OSWALD W. *The Policy of the United States towards Industrial Monopoly.* Pp. 233. Price, $2.00. New York: Longmans, Green and Company, 1914.

This monograph is an attempt to interpret, in a purely objective manner, the policy of the federal government towards industrial monopoly. This policy is determined, of course, by three agencies: namely, Congress, the

executive, and the supreme court. The first two chapters outline the policy of Congress, chapter I containing an account of the passage of the Sherman anti-trust act of 1890, and chapter II the history of anti-trust legislation since 1890. Chapter III presents the views and policies of the executives from President Harrison to President Taft, inclusive. The supreme court, however, has done more, our author believes, than the legislative or executive branches in outlining a policy towards monopoly, and, therefore, in chapter IV all the cases bearing upon the trust problem decided by the supreme court are briefly analyzed. It is hardly to be wondered at, in view of such an elaborate program, that the real significance of some of these decisions has not been perceived. For example, in the abstract of United States *v.* Reading Company, et al., the author has missed the main point. The principal contention of the government in this case was that certain railroad and coal companies had entered into a combination general in scope, by means of which they monopolized the anthracite coal trade. The supreme court dismissed this charge, holding the case to be "barren of *documentary* evidence of solidarity." The supreme court did declare certain minor acts of the combination unlawful, but the combination itself was not dissolved, as the author's account would lead us to believe.

Chapter V well summarizes the earlier chapters. The conclusion is reached "that the government shows no evidence of ever having undertaken seriously a study of the trust problem, such as would be necessary for the formation of a definite and enlightened policy. Broadly speaking, Congress has accomplished nothing of note since the passage of the act of 1890; the executive has been largely impotent; and the supreme court, while displaying a growing, and finally well-nigh complete, grasp of the economic problems involved, has because of limitations inherent in its nature and functions, been unable to cope in a constructive way with the vast problem which confronts the country."

ELIOT JONES.

University of Pennsylvania.

KNEELAND, G. J. *Commercialized Prostitution in New York City.* Pp. xii, 334. Price, $1.30. New York: The Century Company, 1913.

FLEXNER, ABRAHAM. *Prostitution in Europe.* Pp. ix, 455. Price, $1.30. New York: The Century Company, 1914.

Some two or three years ago Mr. John D. Rockefeller, Jr., chanced to be chairman of a special grand jury investigating the white slave traffic in New York City. One result of this was the formation by Mr. Rockefeller and a few others of the bureau of social hygiene. The two volumes here referred to are the first publications of that bureau.

Mr. Kneeland approached his task in New York with the experience gained in a similar investigation made in Chicago a few years ago. In this volume we find a complete description of the existing situation in New York City and the relation it bears to the authorities. A large number of narrative accounts taken from actual life are given from the statements of victims of the evil. A

supplementary chapter of the greatest value is added on the study of prostitutes committed from New York City to the State Reformatory for Women at Bedford Hills by Miss Katherine B. Davis, then Superintendent of the reformatory, now commissioner of corrections in New York City. Altogether, the volume forms one of the most valuable studies of this disagreeable but intensely important subject produced in this country. It would be easy to bring certain criticisms to bear. It is obviously impossible for any one investigator to cover the entire field. Mr. Kneeland was therefore obliged to depend upon the reports of many subordinates, some of whom might easily have exaggerated unconsciously the things they saw. This would be particularly true with reference to the conditions existing in the large department stores. As a matter of fact, certain of these stores have rather successfully challenged some of the statements made. Such weaknesses, however, are probably of minor importance, and the information may be accepted as generally reliable.

The second volume by Dr. Flexner furnishes a complete study of European policies and results. Dr. Flexner spent about a year in Europe, another year in working up his material. He traveled from London to Budapest, and was given opportunities to see the details of governmental agencies. He found that everywhere there was admitted failure to secure the hygienic results that had been anticipated by the physical examination of prostitutes. Moreover, in most places he found the laboratory facilities antiquated, and sometimes so meagre that the examination was little more than a farce. He saw that the time given to each patient was too brief to give definite results. Moreover, in contrasting a city like London which does not believe in the continental method they found the situation quite as good and in some results better. Segregation he considers a failure. He found everywhere indications of a progressive policy looking toward the elevation of moral standards and toward the suppression rather than the regulation of prostitution. This material is presented in agreeable and convincing fashion. One is impressed by the size of the problem and the terrific misery it produces. By way of criticism, I might add that one gets the notion that Dr. Flexner had his mind made up in advance as to the things he would find. The tabular arrangement of the book is open to the objection that the material with reference to any one city is scattered throughout the various chapters.

There is today so much sentimental discussion of the evils of sexual immorality that it is very encouraging to find a bureau which is seeking to put forth plain, unvarnished facts and allow them to speak for themselves. The two volumes here considered form a very important contribution to the literature on the subject.

CARL KELSEY.

University of Pennsylvania.

LAIDLER, HARRY W. *Boycotts and the Labor Struggle.* Pp. 488. Price, $2.00. New York: John Lane Company, 1914.

In view of the fact that bills are at present before Congress expressly exempting labor bodies from the operation of anti-trust laws and placing

restrictions on the issuance of injunctions by the federal courts, this volume on boycotts is especially timely. Nothing is left to be desired in this clear, scholarly and unbiased study. Although mention is made of the practice in other countries, it is essentially a study of the boycott as utilized by labor in the United States. The first part of the book, dealing with the economic side, discusses the early boycotts and the railway cases, with special emphasis on the Pullman strike. It analyzes in detail the Bucks Stove and Range boycott and that in the Danbury Hatters' case.

The legal aspects are considered in the second part: laws and decisions are carefully summarized. The questions of malice, of the law of combination, of illegal means and of illegal ends are considered. The lack of uniformity is noted as well as the growing emphasis on the discussion of the particulars in the individual case. The boycott is but seldom a thing by itself, but is considered in relation to the end sought and the means by which it is sought.

In view of the unfairness of manufacturers and the increasing hostility between the opponents in the labor struggle, the author feels that the time has come when we must recognize this method in the industrial struggle. The fear that greater danger to the community will come if we continue to frown on the boycott, is another reason for the legalization of this method. Of the peaceful methods utilized by labor to accomplish the reasonable ends of raising the standards of wages and of working conditions, the boycott alone is illegal.

The material has been thoroughly covered. The bibliography is suggestive and the list of cases invaluable. The appendix summarizes and digests the important decisions in various jurisdictions. The introduction by Professor Seager is particularly illuminating and suggestive.

ALEXANDER FLEISHER.

Philadelphia.

LLOYD, G. I. H. *The Cutlery Trades: An Historical Essay in the Economics of Small-Scale Production.* Pp. xvi, 493. Price, $3.50. New York: Longmans, Green and Company, 1913.

Mr. Lloyd's purpose in writing this book was to trace the course of industrial evolution from handicraft to machine industry as exemplified by the cutlery trades of England, since they furnish an excellent example of the continued survival of the characteristic features of the domestic system. He points out the fact that the great alteration in industrial form which we call the industrial revolution must be considered a product of the nineteenth century and not of the eighteenth as is generally stated. It was only in the manufacture of cotton that the change took place so early, and so completely. All other industries have lagged behind, some retaining the chief features of the domestic system even down to the present day. Among these last, the English cutlery group should be ranked. Therefore the book traces the minute history of the cutlery trades. Especial attention is given to the efforts at concentrating the work, and the attempts at combination on the part both of the employees and the employers.

The author has gone so deeply into the details of the development, that the book would be more properly classified under the heading of History than of economics. Such a maze of historical facts is presented, that the reader has difficulty in getting the economic significance of those facts, and the author himself does not clearly point out their import.

For a reader interested in the struggles of early trade unions, there are three excellent chapters full of illustrative material taken from the cutlery group. A chapter comparing the evolution in edge tool manufacture with that in cottons, woolens, linens, ribbons, hosiery, and leather gives weight to the author's contention that the making of knives, saws, and scissors is not alone in long retaining parts of the domestic system, and that the industrial revolution in the great mass of industries has been attained very slowly.

R. MALCOLM KEIR.

University of Pennsylvania.

LYDE, LIONEL W. *The Continent of Europe.* Pp. xv, 446. Price, $2.00. New York: The Macmillan Company, 1913.

This, the first volume of a new geographical series on the continents of the world, is a comprehensive treatment of the geography of Europe. The author's conception of geography is decidedly one showing relationship between physical features and man, with emphasis on man's response to his environment. Hence, throughout this large volume, the social, political and economic adaptations of man to land and climate are treated in a most suggestive manner. The book may be divided into two parts: the first part, comprising about 80 pages, treats of the continent of Europe as a whole—its world relations; its relief and the control of relief on land communications and distribution of population; its climate and climatic controls of life. The remainder, and much the larger portion of the book, treats of the various political divisions of Europe.

Under the regional treatment of various countries no rigid outline is followed, but in most cases a chapter discusses such topics as geographical position and its significance; physical features and climate with their economic and social responses; agriculture, minerals, water power and industries of the country as a whole, followed by an account of the geographic factors underlying the growth and development of the most important political divisions and cities. It naturally follows from the large number of countries and topics discussed that the treatment is fragmentary in many instances; often broad generalizations are left unsupported by facts or reasons. Clearness is frequently sacrificed to the brevity demanded by the great amount of detail the text contains. Fuller discussion of fewer topics would have added greatly to the value of the book for most readers. On the whole, however, the book well interprets the general facts of Europe's commercial, economic and political conditions in terms of geographic environment.

The book contains twelve colored maps giving physical features together with the important political divisions. Scattered throughout the text are many diagrams and maps in black and white. A complete index is appended.

University of Pennsylvania. G. B. ROORBACH.

MONROE, PAUL (Ed.) *A Cyclopedia of Education.* (Vol. V.) Pp. xiii, 892. Price, $5.00. New York: The Macmillan Company, 1913.

With the present volume the *Cyclopedia of Education* is completed, and we are in a position to estimate with some precision what its prospective usefulness is. On the whole, it must be said that the work is an honor to American scholarship and enterprise, especially to the latter, as every one must realize who has ever tried to get other men to do anything important, and to do it on time.

The work has the great advantage of being an initial enterprise. Every article is, to the best of the author's ability and information, fresh and down to date, and not a rehash of former articles by men either too indolent or too old to incorporate recent discoveries or developments.

Aside from the contents, the most valuable feature about the present volume is the *analytical index* for the entire *Cyclopedia*, for not only does this give a comprehensive survey of the whole, but it enables the reader to tell at once the range of articles in each part of the field. Some of the departments most profusely supplied with articles are the following: history of education, philosophy of education, educational psychology, teaching methods, educational administration, elementary and secondary education. The teacher of any one of these departments has at hand a convenient summary and bibliography of each important topic. To illustrate how useful this material may be made, the present writer will indicate how he is using the articles on the history of education. By beginning with an outline of the present educational situation respecting classes of the population to be educated, dominant educational aims, organization of education, the curriculum, didactics, etc., and taking up the history of each in order, the *Cyclopedia* articles fit into the scheme perfectly, for they are written not from any antiquarian interest, but strictly to throw light on the present condition of the matter in hand. Consequently, whichever way one proceeds, the treatment either begins with the present and goes backward, or begininng in the past the destination is always the present. The history "functions," therefore, at every stage of the work, and no longer loses itself in mere academic consideration of the past. Continuity is preserved by constant reference to a good text-book in the history of education. Four sets of the *Cyclopedia*, scattered about the university, suffice to enable the general readers and a class of seventy-five to have convenient access to the volumes at almost any hour of the day or evening. A similar use of the *Cyclopedia* in other departments will be found equally satisfactory.

Lack of space forbids a description of the many interesting and valuable articles contained in the present volume. The writer can not close, however, without expressing his satisfaction with the interpretation that Frederick Monteser has given to the doctrines of Rousseau, for he corrects the false or misleading expositions of Davidson, and many others, who regard the two Dijon essays as the basis of Rousseau's ideals of education. Recognition should also be given to Henry Suzzallo's many and excellent contributions. Would it be too much to ask for an index of articles according to authors?

Cornell University. CHARLES DEGARMO.

REW, R. H. *An Agricultural Faggot.* Pp. x, 187. Price, 5s. London: P. S. King and Son, 1913.

This collection of essays on quite various topics in agriculture is by no means devoid of interest, notwithstanding the fact that only three out of ten papers were written within the present century. As the writer observes in his introduction, the persistence of the problems of agriculture is exemplified by the continued timeliness of certain of his papers written twenty years ago—as the one on agriculture and free trade, and another on the townward migration of laborers.

An American must be impressed by certain contrasts with American methods and points of view. Thus it is argued, in a chapter on the middlemen in agriculture, that it would be more economical for farmers always to slaughter their cattle destined for the London market, instead of sending them alive. It appears that in the nineties the practice of shipping only the carcasses was becoming more frequent. We should probably conclude that, however superior English agriculture may be in many particulars to our own, we are more fortunate in the mechanism for disposing of products—at any rate as regards live stock. Thus it appears that the English farmer (unless there has been a change) has no means of knowing the prevalent price of cattle, because there are no quotations having the approximate correctness of the reports for our central markets, and it seems quite astonishing to find a discussion of the question whether the weight of cattle should be determined by the use of scales or estimated from measurements of the animal's back-bone and girth.

In the introduction it appears that after twenty-five years of discussion the old method survives.

Mr. Rew is assistant secretary to the Board of Agriculture. In addition to subjects just mentioned he discusses farming in olden times, English markets and fairs, the nation's food supply, British and English agriculture.

A. P. WINSTON.

Pearre, Md.

RUBINOW, I. M. *Social Insurance.* Pp. vii, 525. Price, $3.00. New York: Henry Holt and Company, 1913.

Summarizing the causes of poverty as "(1) absence of a worker in the family; (2) physical inability to perform labor, because of illness, accidental injury, chronic invalidity, or the physical deterioration accompanying old age, and finally, (3) inability to find employment" (p. 8), Dr. Rubinow examines the ways by which these factors may be met by insurance. He points out that the individualism, which insists that each person arrange for the carrying of this burden, is not only unusual, but practically impossible. That there is need for a comprehensive scheme is clearly demonstrated.

This study is in five parts—introduction, insurance against industrial accidents, insurance against sickness, insurance against old age, invalidity and death, and insurance against unemployment. The introduction contains the concept of social insurance, the development of the movement in Europe, and the need of such insurance in the United States. Under the last heading

it is shown that, although the wage-earner may be able to maintain a standard of life adequate for efficiency, it is impossible for him to lay aside enough to meet emergencies.

Almost one-third of the book is devoted to the subject of industrial accidents. This is permissible, in view of the fact that nearly one-half of the states have undertaken to relieve the worker from the harmful results of such accidents. The analysis of the number and causes of industrial accidents is probably the best short statement of this problem yet made. The legislation in America, as well as in foreign countries, is summarized, carefully examined, and constructively criticized. It is shown that the problem of developing a system of sufficient and reasonable care for those injured in modern industry is being rapidly met; the questions to be solved are those of means, rather than of end.

Basing his estimates upon figures from countries that have sickness insurance, Dr. Rubinow concludes that ill health causes an economic loss of over $650,000,000 each year. This affects between 40 and 50 per cent of the wage-earners. Since it does not seem reasonable or advisable to have this loss fall on the individual worker, the author finds the solution in distributing the burden of the loss. Some scheme of insurance must be adopted, as, without it, the efficiency of the entire family is reduced. Again the European results are summarized.

The factory worker, whose working life has been shortened by the stress of modern industry, can be satisfactorily protected only by invalidity insurance. His wages do not amply meet this emergency, and it is unreasonable to insist that the old must rely upon outdoor relief. Compulsory provision for the future is the only practicable answer. Here also must be considered the provision in case of the untimely death of the wage-earner. This should take the form of life insurance, rather than that of pensions for widows and children.

In the last part of the book, the experiences of various states and countries, in their attempts to solve the problems of unemployment, are discussed. This is a comparatively virgin field, and a discussion of results is premature.

The final chapter is devoted to a summary and a refutation of the usual arguments advanced against social insurance. The author feels that there are serious problems naturally developing from modern civilization and modern industry that can be met only by the means that he suggests.

This study is a valuable contribution to the subject of social insurance. With the present growing interest in these subjects, there will be an increasing demand for this clear, systematic presentation of both problems and solutions.

ALEXANDER FLEISHER

Philadelphia.

RUSSELL, JOHN H. *The Free Negro in Virginia, 1619–1865.* Pp. viii, 194. Price $1.00. Baltimore: The Johns Hopkins Press, 1913.

This monograph is a first-hand study, largely from legal documents. In 1782, when restrictions on emancipation were removed, free Negroes numbered

about 2800, increasing rapidly until 1806 when a legislative act prescribed banishment for manumitted slaves. They continued to increase, though less rapidly, until 1860, numbering 36,875 in 1820, about one-third of the total population, 49,841 in 1840 and 58,042 in 1860, constituting in both of the latter years less than one-third of the total population. About two-thirds of the entire free Negro population was distributed in the tide-water section of the state. In a number of counties of this section from one-sixth to one-half of the colored population was free.

The free Negro class, as shown in chapter II, originated from the importation of indentured black servants before 1662, from children of free colored parents, mulattoes of free colored mothers, mulattoes of white servants and of free women, children of free Negro and Indian parentage, and from manumitted slaves. Chapter III gives a good account of manumission, which came by (1) acts of the legislature, (2) by last will and testament, and (3) by deed. Slavery in the seventeenth century was regarded only as service for life; the slave was a person, not a thing or chattel as he later became. The revolutionary doctrine of natural liberty was applied by individual masters giving freedom to their slaves. However, "rather by changes in sentiment than by changes in laws," the chances of manumission dwindled from about ten in a hundred, 1782 to 1800, to about four or five in a hundred, 1800 to 1832, and to about two in a hundred after 1832.

The legal status of the free Negro, chapter LV, shows that from the beginning he had the right to hold and alienate property and that the courts preserved this right down to 1865, except that ownership of weapons was generally forbidden. Free Negroes could own slaves; and could hold indentured white servants before 1670; many prevented deportation of relatives and friends by owning them.

A very grievous burden upon the liberty of the free Negro was the necessity of proving his freedom if anyone disputed it, contrary as this was to the legal principle which presumes a man innocent until proven guilty. The burden of proof was on the claimant in case of a white man or Indian whose freedom was questioned. After 1793, legal restrictions on freedom of movement from place to place were increasingly burdensome. The right of regular court trial was accorded during most of the period, although no Negro could bring action or bear witness against a white man.

Military service was required in all cases including confederate service in the Civil War. At times there was discrimination in poll-taxes, but other taxes, so far as the law said, were the same for Negro and white man. Prior to 1723 the Negro could vote. After that date he enjoyed less and less of the "privileges and immunities of citizens of the several states" as guaranteed by the federal constitution.

Chapter V on the social status of the free Negro records restrictions on account of color prejudice from the beginning. Before 1723, these were limited to measures against racial intermixture with the whites, as business, political and other relations were maintained. There was considerable intermingling with the Indians and with slaves. Legal forms and ceremonies were usually

observed in all marriages. In the earlier decades there was no objection to free Negroes being taught to read and write, but after the Gabriel insurrection of 1800 and that of Nat Turner in 1832 the right of educating their children and of assembling together were curtailed almost to prohibition. Yet, free Negroes not only were not behind these insurrections but were instrumental in reporting and thus frustrating many plots of slaves.

The economic opportunities through small jobs, skilled and unskilled, in the towns and cities, were good for the free Negroes, who displaced white laborerers by their acceptance of lower wages and their docility. They were the main dependence in most skilled manual labor, and the deportation acts of the legislature largely failed of execution because of the demand for their services. As to character, the antebellum free Negro was probably no more thievish than slaves; was not so criminal in capacity or tendency as he was believed to be. The charge that he incited slaves to rebellion was unfounded and his laziness and improvidence were probably less than might have been expected under his restricted circumstances. There were numerous remarkable examples of thrift, economy and integrity.

The monograph shows signs of thoroughness, contains a good bibliography of sources and shows a balance of judgment worthy of imitation in more pretentious works on the Negro.

GEORGE EDMUND HAYNES.

Fisk University.

SULLIVAN, J. W. *Markets for the People: The Consumer's Part.* Pp. viii, 316. Price, $1.25. New York: The Macmillan Company, 1913.

Mr. Sullivan's interest in markets, he tells us in the introductory chapter, dates from his services on the commission on public utilities appointed by the National Civic Federation. While traveling for a year or more in America and Great Britain, as labor investigator for the commission, he gathered such data relative to the markets as a casual observer might. Later, on two different trips through the continent, he continued his observations and studies. Then for several years, while he was assistant editor with Mr. Gompers, the rising discussion of the cost of living brought to the editorial offices in Washington a stream of printed matter on the subject, all of which Mr. Sullivan was called upon to digest. Again, in 1912, he went to Europe with the special object of studying markets in Switzerland, and he made inquiries also as to the market systems of Paris, London and Berlin.

Among the more interesting and suggestive conclusions reached by the author are the following: (1) Great public markets are uncertain investments for cities at the present time. In support of this conclusion he cites the transition in several forms of the marketing situation of the day, such as the changes brought by subway and tunnel in methods of distribution of produce by freight, the possibility of transportation companies so improving their market yards and piers as to take away trade from public wholesale markets. (2) He objects to the terminal market plan, such as has been advocated by Hon. Cyrus C. Miller and others of New York City, on the grounds that it

would be impossible to force New York's scattered business of wholesale marketing into public markets, and because the tendency in metropolitan cities is dissemination and not concentration of sales of produce in bulk. (3) He concludes that a saving of 20 per cent to the consumer of moderate means can be brought about through developing to the fullest extent the legitimate trade of the pushcart. As to the quality of the stock sold by the pushcart peddlers, he quotes from a report, published on March 26, 1913, issued by the commission appointed by Mayor Gaynor to investigate street venders. The report of the commission was corroborated by the aldermanic committee's report on the same subject published the following month. The commission says: "It has been found that the foodstuffs sold by the peddlers are nearly uniformly wholesome. These and other commodities are sold at a considerably less cost than obtained in stores." The aldermanic committee's report he quotes as follows: "The quality of food and merchandise sold from these pushcarts is in the main of as good a quality as can be bought anywhere else in the city, and much cheaper." He discusses the phenomenal success of pushcart markets in European cities, especially those in Paris, Berlin and London. (4) His fourth significant conclusion is that the open air market is worthy of greater public effort. The open air market, like street vending, has been opposed in many American cities by boards of health and others on the ground that there is not ample protection of foods from dust and unwholesomeness. Mr. Sullivan urges that these objections can be largely overcome. He points out that European cities have succeeded in giving ample protection to their open-air markets. The open-air markets in European cities have thrived whereas the closed retail markets have been less successful. Twelve of the 30 open-air markets in Paris are held three times a week while 18 are held twice a week. There are over 17,000 standing applications for places in the market. In the 30 markets there are now 6,296 stands, 2,600 of which are fruit and vegetable, 402 fish, 430 cheese and eggs, 77 bread, 540 meat, 308 delicatessen, 991 manufactured merchandise. The number of venders using these stands probably totals more than 15,000. This is in the Paris market alone. He avers that a similar development in American cities would most definitely decrease food costs to the consumer.

CLYDE LYNDON KING.

University of Pennsylvania.

USHER, ABBOTT P. *The History of the Grain Trade in France, 1400–1710.* Pp. xv, 405. Price, $2.00. Cambridge: Harvard University Press, 1913.

It is unfortunate that Mr. Usher has published his book without more fully mastering his material. One is not reassured to read in the appendix upon bibliography [the brevity of which he explains by the rather arbitrary statement that "a complete list of the sources would be too voluminous in extent and too general in character to be of any assistance"] that "the quantity of material that was available forced me to limit my work to what may be called the Parisian and Lyonese manuscripts. . . . . It was impossible to examine this material thoroughly. . . . . A few days' work was

done in the municipal archives at Dijon. . . . . In the time available it was possible to examine only such material as lay on the surface." The very title of the book is misleading, for the history of the subject before the time of Colbert is superficially treated. Moreover, not France as a whole, as implied in the title, but only certain areas of the country have been examined, i.e., the basin of the Seine and its affluents, the Lyonnais and Burgundy. Languedoc and Provence are scarcely noticed before the end of the seventeenth century. The first chapter, upon markets and market organization, is written from data pertaining to the reign of Louis XIV. Partial amend for this neglect of earlier material pertaining to market organization is made in chapter II upon the history of the Parisian market. Yet here only eight pages are given to the grain trade before 1520. Since Mr. Usher chose to begin with Philip IV, he ought to have written something more than the flabby paragraph on pp. 47–48. The important ordonnance of July 8, 1315, sec. 94, is not even mentioned. The five pages, 48–53, devoted to the grain trade of the fourteenth and fifteenth centuries are introduced by a complaint regarding "paucity of information." Yet the *Journal d'un bourgeois de Paris* is filled with information. For prices, see pp. 11, 120, 130, 136, 148, 234, 262, 288, etc.; for abundance of grain, pp. 11, 154, 175, 218, 227, 295, 300, etc.; for scarcity, pp. 120, 122, 136, 145, 148, 262, 291, etc. See also Flammermont: *Histoire de Senlis pendant la guerre de cent ans*, pp. 64, 73–74, 77–78. Mr. Usher is advised to examine the volumes of the *Ordonnances* with more care, e.g. XII, 304–5; XIV, 369; XIX, 30, 86, 88, etc. When the English wars in France ended prosperity returned. But there is no treatment of the agricultural recovery during the last half of the fifteenth century. What effect did the widened area of wheat cultivation have upon the grain trade? Mr. Usher will find food for thought in Imbart de la Tour: *Les origines de la reforme*, pp. 222–223, and the notes may suggest future sources of research. The history of the grain trade in the sixteenth century is more fully written, yet much of interest—not to say of importance—has here also escaped the author's observation. The account of the legislation of Francis I, on pp. 228–229 is confused, and misleading. The decree of February 3, 1535, was a confirmation of the ordonnace of February 20, 1534, which Mr. Usher has missed. (See Fontanon III, 92; Isambert, XII, 403.) He quotes the opening words of the ordonnance of June 20, 1539, providing for free interprovincial grain traffic and remarks: "[They] lead us to suppose that there had been previous edicts, but the reference is doubtless to the special letters patent issued to various governors." The important fact that internal free trade in grain actually was authorized by *edict* in 1534 he has failed to perceive.

The paragraph on p. 236 is much too brief. No allusion is made to the edict of 1583 authorizing the free transportation of grain between the provinces, certainly an important act even if only temporary; and surely the drastic commandeering of grain by the government to withstand the siege of Paris in the second civil war ought not to have been passed over. In a book which professes to be an historical treatment it is curious to see how large an amount of data pertaining to the subject has been ignored, as for instance, the increase or decrease in area of wheat cultivation, the bearing of good harvests and

poor crops, the fall in land values as an aristocracy of gentlemen farmers inclined to become a court nobility, and the consequent acquisition of land by the peasantry. If Mr. Usher can divorce phenomena like these from the history of the grain trade he has a narrow view of the subject. It were well for him to examine the journal of Claude Haton, the parish priest in Provins, and the Abbé Denis' studies in the history of agriculture in the department of the Seine and Marne [Meaux, 1881].

Mr. Usher quotes Article 419 of the great ordonnance of 1629 [Code Michaud] without comment and ignores entirely Articles 420–426. He cites by date ten ordonnances between 1625 and 1655 without analysis and dismisses the subject thus: "This barren review of Letters Patent and edicts can hardly have failed to weary the reader. The royal attempts have so little connection with the real problems of the sixteenth [*sic*] century trade that the study of the royal policy is without interest except for the antiquarian." It were charity to forbear criticism of this puerile statement. If historical interest in the economic legislation of the French monarchy over a generation of time be mere antiquarianism, then I, for one, would rather be a doorkeeper in the house of the antiquary than to dwell in the house of an historian who fails to see aught of interest in these edicts.

It is an unpalatable task to review a book adversely. But it is the reluctant opinion of the reviewer that only the latter part of this work can be regarded as remotely satisfactory. Even there the limitations are glaring. As a whole the work is an amorphous combination of ill-digested material. Its publication ought to have been withheld until the subject had been more thoroughly studied and better composed, for the arrangement of material seems as eccentric as the treatment of it. It is a canon of historical composition that historical data in time and place must be set forth clearly in the presentation of the subject. Arrangement is for the historian what perspective is for the artist. Finally, the author's observations sometimes baffle understanding. What, for example, does this cryptic sentence on p. 48 mean? "The marked institutional advance of the later thirteenth century was a crisis, which was followed in the grain trade, as in other matters, by a period of relative stagnation."

JAMES WESTFALL THOMPSON.

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WARREN, G. F. *Farm Management.* Pp. xviii, 590. Price, $1.75. New York: The Macmillan Company, 1913.

A student of economics is likely to treat with respect a book which frequently applies the recognized principles of economic science to the broader problems of the farmer.

We find here for example our old familiar principle, the regulation of prices by costs. "There do not appear to be any types of farming that are regularly more profitable than other types, provided each type is conducted where it belongs. . . . . If some one thing is paying abnormal profits, it will soon be at the bottom of the list because of over-production" (p. 152). The failure to understand this results in periodic over-production and under-

production. In apple-raising, prices were high forty years ago, then they dropped until about twenty years ago; now they are excessively high and the back-to-the-land enthusiast, now eager to invest in orchards, may probably be punished for neglecting the Ricardian economics by an over-production about 1920 to 1925 (p. 85).

Under that same principle we are assured that the present high price of food will tend to correct itself through stimulating production. "There may be some danger that we shall keep too many boys on the farm and again have an over-production."

The law of comparative costs, or comparative advantage, is admirably illustrated in a discussion of transportation as affecting prices and the localization of various products (p. 52 and *seq.*). "A ton of hay in Massachusetts will buy 25 bushels of corn; in Iowa it would buy only 18 bushels. . . . . It is easy to see why the New England farmer comes so near the one-crop system." "Illinois produces more corn than Iowa but has only about half as many hogs," because, while the cost of transporting either corn or pork from Iowa is greater than from Illinois, the disadvantage of the Iowa farmer is greater as to corn.

On other points, as the relative advantages of large and small scale production, the teacher of economics or the theoretician may find here valuable materials, and no other work that I have seen offers in as few pages more information that seems serviceable to a farmer.

As to minor points, "data" (p. 178) is still plural, notwithstanding constant efforts to reduce it to the singular number; the definition of "intensive" systems of farming as those "that call for very intensive working of the land" is an undesirable proposition but is not very illuminating and certainly is not a definition.

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WHELPLEY, JAMES D. *The Trade of the World.* Pp. 436. Price, $2.00. New York: The Century Company, 1913.

As is stated by Mr. Whelpley, "In this volume no pretense is made of discussing the subject fully or finally, nor is it possible to particularize concerning more than a few of the most important or typical countries whose tradings go to make up the enormous total." The countries which he selected for study and discussion are Great Britain, Germany, France, Belgium, Austria-Hungary, Italy, Northern Africa, Japan, China, Russia, Argentina, Canada and the United States. The discussion of trade conditions in these countries, the special importance of which is recognized in the world's commerce of the future, is presented in an unusually interesting style. The author had the advantage of first-hand information derived from extensive travel in the countries which he discusses.

The description of the commerce of Great Britain, Germany, Japan and China, although it makes no pretense of completeness, is especially replete with impressions gained after personal study. The chapter dealing with the trade of the United States is from the standpoint of completeness perhaps the

least satisfactory of any. It is interesting, however, in that it draws certain contrasts between American and European trade methods and governmental policies. Mr. Whelpley regrets the fact that American diplomacy has done relatively so little for American trade. "In the general scramble for selfish advantage it (American diplomacy) has taken little or no successful part. And yet American diplomacy has been called that of the 'dollar,' and has been credited in the minds of many of her own citizens, as well as by foreigners with a mercenary basis. . . . . 'Dollar diplomacy' did not originate in the United States, nor has it ever obtained such development there as it has in other countries."

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WINSTANLEY, D. A. *Lord Chatham and the Whig Opposition.* Pp. ix, 460. Price, 7/6 net. New York: G. P. Putnam's Sons.

The successful attempt of George III to establish the personal influence of the crown has been described in a copious literature. Nevertheless our knowledge of the means used by this king to attain his end has remained lamentably inadequate. Mr. Winstanley has already done much in an earlier study, *Personal and Party Government*, to supply this defect, and he now makes a second and even more substantial contribution. In the present monograph he deals with the struggle between the whig factions and the crown in the eventful years from 1766 to 1771. The interaction of conflicting principles and personalities, which kept the whig groups apart during this period, despite several nearly successful attempts to unite against the court, created a political situation of singular complexity. This is analyzed with great clearness; and a mass of detail, which might easily have been rendered tedious, is constructed into an interesting narrative.

To indicate the scope of Mr. Winstanley's contribution briefly is difficult, because it is by nature so largely supplementary. The attitude of the whig leaders towards one another, towards the king, and towards the policies of the period is illumined at innumerable points by evidence derived largely from the Newcastle and Hardwicke manuscripts and the Pitt papers. Especially noteworthy in this respect is the treatment accorded the relations between the Rockingham group and Chatham during the summer of 1766, the part played by the American question in keeping Rockingham estranged from Grenville, the negotiations between the king and Charles Yorke, and the dispute with Spain over the Falkland Islands and its effect on the party situation. Character sketches of leading statesmen are numerous and almost uniformly well and impartially drawn. Chatham is not perhaps the central figure that one might anticipate from the title, but many interesting side-lights are cast here and there on the great statesman's personality and aims. In short, the book is a mine of new material.

Whoever is interested in the personalities of the politicians or in the important political and constitutional developments of the early years of the reign of George III is likely to derive both pleasure and profit from a perusal of Mr. Winstanley's pages.

Cornell University. W. E. LUNT.

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