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**IOWA APPLIED HISTORY SERIES**  
**EDITED BY BENJAMIN F. SHAMBAUGH**





# APPLIED HISTORY

EDITED BY  
BENJAMIN F. SHAMBAUGH

VOL. I

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THE STATE HISTORICAL SOCIETY OF IOWA



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## EDITOR'S INTRODUCTION

AMONG citizens, law-makers, and public officials there is a wide-spread desire for better roads, better schools, better methods of taxation, better labor laws, better safety appliances in hazardous occupations, better insurance against work accidents, better regulation of public utilities, better banking laws, better corrupt practices legislation, better court procedure, and better methods of public administration in general.

As citizens, law-makers, and public officials we are all alike deeply concerned in these vital questions of political, industrial, and social welfare. We may confess ignorance in regard to some of these matters; and at times we may feel that, along with the rest of the world, we are hopelessly groping in the dark. But not one of us is at heart really indifferent to the problems of human betterment — although it is true that our desire for better things, both for ourselves and for others, invariably outruns our knowledge of how wisely to bring them to pass.

Real advancement is so elaborately slow that we find it difficult at times to resist the temptation to take short cuts to progress. There are so many obstacles on the road to permanent betterment, so many petty mistakes and so many temporary failures on the journey, that we sometimes lose heart and despair of ever reaching the

goal. Fortunately, however, no amount of delay and no number of mistakes can ever wholly extinguish our zeal for real progress; and healthy-minded men and women will continue to view failures as the inevitable accompaniment of forward movements. To them every step, whether on the greensward or among the thorns, is a goal attained.

As practical, common-sense people we are eager to know more about this journey toward social betterment upon which we find our generation embarked. What are the problems of the way? On what stage of the journey are we at this moment? How far have we gone? Whither are we tending? What were the experiences of those who preceded us? How fares it with others who are now traveling toward the same goal? And finally, how in the light of all these facts may we improve our means of travel, overcome obstacles, and accelerate our speed?

To speak more directly, as practical citizens, law-makers, and public officials we demand reliable and complete information concerning the public questions which now confront us and which we are called upon to solve as best we can. For example, we desire exact and full information on such questions as road administration, tax reform, the regulation of urban utilities, employers' liability and workmen's compensation, the extension of industrial education, and the prevention of corrupt practices.

Moreover, the data and other information sought with reference to these questions are, first of all, the plain facts gathered through careful investigation from the

history of our own State, from contemporary experience in other States, and from selected foreign sources; second, the expert interpretation of all the facts collected; third, the expert definition of regulation, legislation, and administration; and, finally, the application of these standards of legislation and administration to existing needs and conditions.

It is to supply citizens, law-makers, and public officials with just such data and other information that The State Historical Society of Iowa has undertaken to compile and publish a series of papers under the title of "Applied History"—which may be defined as the use of the scientific knowledge of history and experience in efforts to solve present problems of human betterment. As thus defined Applied History comprehends impartial investigation, scientific interpretation, and expert definition and application of standards: it frankly recognizes the fact that public service to be efficient must be guided by open-minded experts—by men governed by knowledge, reason, and high-mindedness.

Applied History views the past as a vast social laboratory in which experiments in politics and human welfare are daily being set and tested on a most elaborate scale. Moreover, in this human laboratory the conditions are *real* conditions, the factors are *real* men and women, and the varied relations and combinations or conditions and factors are always those of *real* life.

Now it is evident that nowhere have the conditions for social and political experimentation been more varied nor the results more accessible than in our own Amer-

ican Commonwealths. Here the records are marvelously rich in experiments in civil and criminal law, in the application of constitutional limitations, in labor legislation, in the regulation of common carriers and public utilities, in taxation, in the administration of roads, in domestic relations, in the protection of women and children, in the conservation of health, in the maintenance of order, in the exploitation of natural resources, in the promotion of industry, and in the democratization of education and politics. To wisely use the results of all these experiments in efforts to solve the problems which confront each generation is to carry out a program of Applied History.

~~it is~~ Applied History is simply the use of the creative power of scientific knowledge in politics and administration. Scientific farming has greatly increased the yield of the soil. Scientific mining has greatly increased the output of the mine. Scientific forestry has greatly conserved the woodlands. Scientific hygiene has greatly conserved the health and life of the people. Scientific engineering has overcome the most stubborn obstacles of nature. Can any one doubt that some day scientific history, scientific legislation, and scientific administration will be able to boast of a similar record of accomplishment?

The foundation upon which Applied History rests is the scientific law of the continuity of history — a law which asserts that “every human institution, every generally accepted idea, every important invention, is but the summation of long lines of progress”. Indeed, it is the

recognized validity of this law that affords substantial assurance that Applied History is not a dream but a sound and intelligent method of interrogating the past in the light of the conditions of the present and the obvious needs of the immediate future to the end that a rational program of progress may be outlined and followed in legislation and administration.

Applied History is, indeed, the natural outcome of scientific history, itself the inevitable result of the development of the newer anthropological studies — especially archaeology, ethnology, sociology, politics and administration, economics, comparative religion, and social psychology. In fact, these social sciences, which have developed so marvelously under the inspiration of the doctrine of evolution, have involved historical study in a revolutionary process which is giving birth to a "New History".

The first advances of the social sciences were opposed by the more orthodox historians: they seemed fearful lest the encroachments of anthropology, archaeology, sociology, politics, and economics should turn them out of doors. But it is now apparent that, upon second thought, they are wisely resolving not to resist but to make use of the new sciences in the development of new viewpoints in history.

It is commonplace to say that we are in the midst of new conditions: every one seems to be more or less conscious of the fact that times have changed. Moreover, with a knowledge of man and of the world immensely

greater than ever before "society is to-day engaged in a tremendous and unprecedented effort to better itself in manifold ways." Mankind has, indeed, embarked upon a career of social readjustment in the course of which history is to serve as "a guide-post to betterment" rather than a "barrier cast across the way of progress".

Henceforth the New History, leavened and enriched by the products of political and social science, promises to play a much more important rôle in the intellectual life and progress of mankind. The past will be brought into direct relations with the present; and the "fitting intervals" by which historians have separated their studies from the near-at-hand will disappear. The present, which "has hitherto been the willing victim of the past", will now "turn on the past and exploit it in the interests of advance"; and historians who have hitherto entertained "other notions of their functions" will "furnish us with what lies behind our great contemporaneous task of human betterment".\*

History, like all other studies, has constantly undergone changes — changes in subject-matter, changes in methods of investigation, changes in presentation, changes in viewpoint, and changes in interpretation. Indeed, it may be said that no phase of man's record has been fully and finally written. Even the manuscripts of the most critical are already worn with erasures or blurred with corrections. Old versions are revised, and new chapters are added; and the latest chapter in the

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\*See James Harvey Robinson's *The New History*. This is a most stimulating collection of essays illustrating the modern historical outlook.



history of historical study is what has above been defined as Applied History.

For untold ages of biologic time man's progress was recorded only in his animal body — a most fascinating source-book of origins but recently discovered. Moreover, it is a remarkable fact that the discovery of this record of man's earliest and most ancient history was made not in the library by historians, but in the laboratory by students of natural science — by Darwin and Haeckel, by Wallace and Weismann, by Spencer and Huxley: names still unknown to the literature of much orthodox history.

With the development of the art of language, history first appears as oral tradition; then as a literature of story and mythology; and finally as a more prosaic record of things that actually occurred. In recent times historical study has become more and more scientific: not content with finding out what has actually transpired, historians have seriously endeavored to explain how in fact things have come about. And now in our own day — as if in response to the spirit of an age that likes to call itself practical — history becomes up-to-date by bringing itself down to date, and ventures to suggest a program of what should come to pass on the morrow. That is to say, it is now proposed to apply the scientific knowledge of history in working out a rational program of human progress in government and administration.

Nor should the relations of education and Applied History as joint agents of social betterment be overlooked; for the battles of real progress have always been

won by the forces of education — especially higher education. In this connection it is worth remembering that the statesmanship of modern Germany has been guided by the scholarship of the German universities; and that not only the inspiration for advance but the details of the program of social betterment which is now attracting the attention of the world came from these same universities. In Germany it is not simply the privilege but indeed — as an official report puts it — the duty of the university to give opinions on all kinds of problems touching the public welfare.

In Iowa we have a State-supported University with a College of Applied Science, and a State-supported College of Agriculture and Mechanic Arts with an Experiment Station and a Highway Commission. Is there any good reason why we should not have in this State a College of Applied Political and Social Science with a department for the extension of political education? The successful operation of such a college would certainly help to make our State a better place to live in politically and socially. Moreover, such a college, with courses correlated with the applied sciences of engineering and medicine, would be in a position to furnish the trained experts whose services are so necessary to efficiency in public administration. Why should the State afford special facilities for training lawyers, doctors, engineers, agriculturists, and dairymen, and at the same time neglect the training of men and women for public service?

It is utterly futile for us to talk about high-minded citizenship and ideals in public service without seriously endeavoring to provide that special training which will

make men really capable and efficient public servants. Field work is as important and short courses as practicable in politics and administration as in agriculture and the industrial arts.

State institutions, like high-minded citizens, should be dominated by a zeal for public service: they should show a lively interest in the public welfare. And so, in bringing the history of our Commonwealth down to the present hour, in conducting scientific researches along lines of political, economic, and social developments, and in projecting a series of publications on Applied History, in which the language of the scientific investigator is translated into more popular form, The State Historical Society of Iowa aims to make a direct contribution to the public welfare by linking the public with the results of scientific research in political and social science.

To outline and conduct investigations for purposes of Applied History is a difficult and exacting task. Research is always serious business. But when the results may possibly be used as a basis of constructive legislation, the investigation must be thorough, impartial, accurate, and scientific to the last degree. There must be no superficial examination of the sources, no intellectual juggling with complex data, no smothering of undesirable facts, no partisan presentation of the truth, or shallow expediency in handling difficult and delicate problems.

At the regular session in 1911 the Thirty-fourth General Assembly, through a concurrent resolution, requested The State Historical Society of Iowa to supply each member of the Senate and House of Representatives

with a copy of the *History of Taxation in Iowa*, a work recently published by the Society in the "Iowa Economic History Series".\* Moreover, in voting additional support to the Society, it was well understood that researches along lines represented in the "Iowa Economic History Series" by the *History of Labor Legislation in Iowa* and the *History of Taxation in Iowa* would be continued so far as resources would admit.

Since the adjournment of the Thirty-fourth General Assembly the Society has published two volumes in the "Iowa Economic History Series", namely, a *History of Road Legislation in Iowa* and a *History of Work Accident Indemnity in Iowa*. But more to the point and to the purpose of the resolutions above mentioned are the papers which have been compiled for publication in the "Iowa Applied History Series". Indeed, in this new series The State Historical Society of Iowa aims to give to the public—and especially to public officials—the results of its researches in the political, economic, and social history of Iowa.

The several contributions to this volume of Applied History are products of researches carried on under the immediate direction of The State Historical Society of Iowa. Mr. Brindley's *Road Legislation* is supplementary to his *History of Road Legislation in Iowa* as published in the "Iowa Economic History Series". The *Regulation of Urban Utilities* by Mr. Downey is a preliminary study in the history of the regulation of urban utilities in Iowa. *Primary Elections* by Mr. Horack is a summary

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\* *Journal of the House of Representatives*, 1911, p. 180; *Journal of the Senate*, 1911, p. 159.

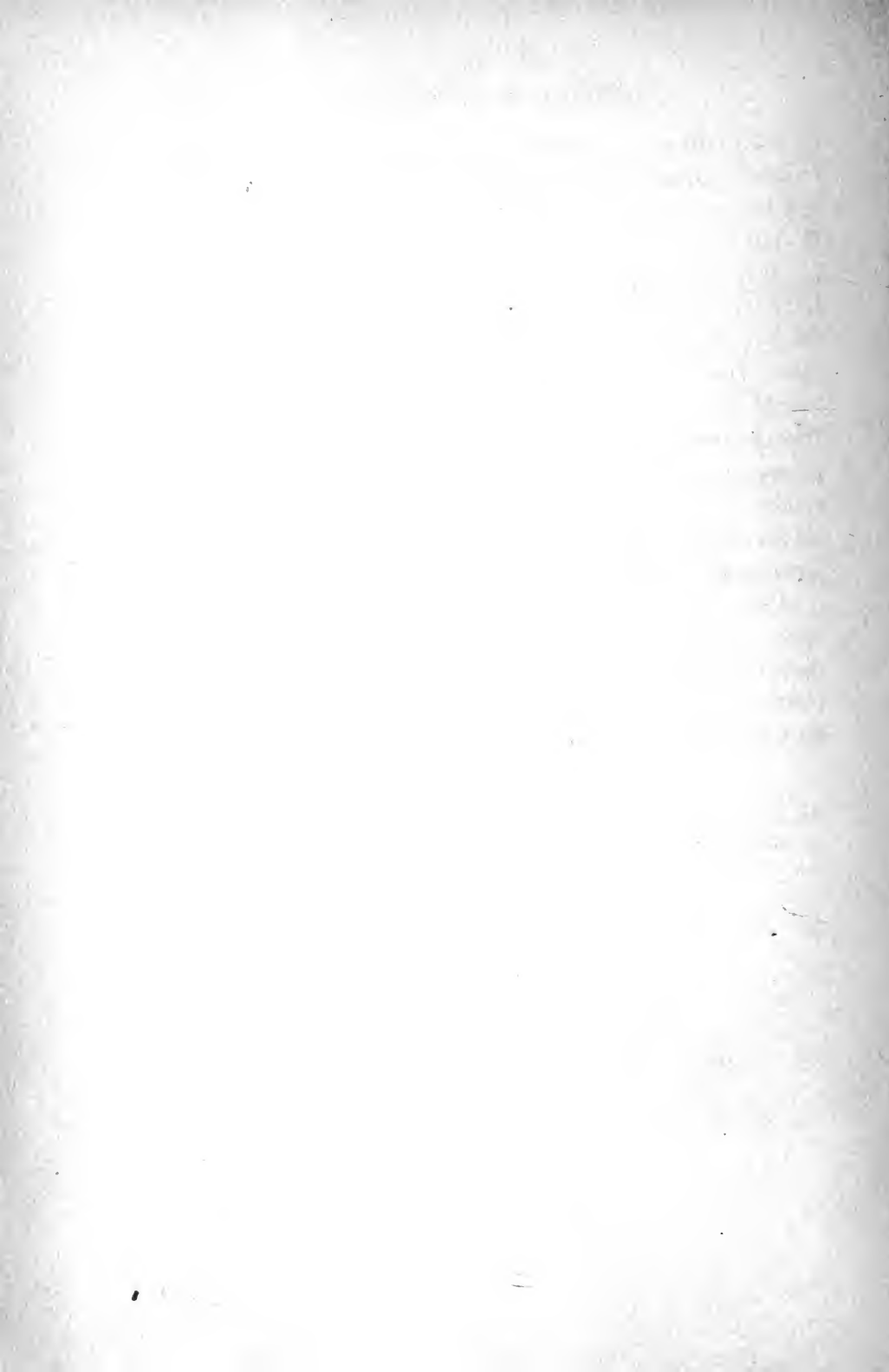
of the history of primary regulation in Iowa. *Corrupt Practices Legislation* by Mr. Peterson is the outgrowth of a study of election regulations in Iowa. Mr. Downey's *Work Accident Indemnity* appears as an abridgment of his *History of Work Accident Indemnity in Iowa* as published in the "Iowa Economic History Series". And finally, Mr. Brindley's *Tax Administration* is partly taken from and partly an outgrowth of his *History of Taxation in Iowa* as published in the "Iowa Economic History Series". For authorities used in Mr. Brindley's papers and Mr. Downey's *Work Accident Indemnity* the reader is referred to the *Notes and References* in the larger works referred to above as published in the "Iowa Economic History Series".

For early distribution a small edition of reprints of each of the papers included in this volume was issued. Besides compiling the index, Assistant Editor Dan E. Clark performed a generous share of the editorial work on the several papers.

BENJ. F. SHAMBAUGH

OFFICE OF THE SUPERINTENDENT AND EDITOR  
THE STATE HISTORICAL SOCIETY OF IOWA  
IOWA CITY 1912

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## CONTENTS

EDITOR'S INTRODUCTION . . . . .	v
---------------------------------	---

### ROAD LEGISLATION IN IOWA

BY JOHN E. BRINDLEY, IOWA STATE COLLEGE OF  
AGRICULTURE AND MECHANIC ARTS, AMES

AUTHOR'S PREFACE . . . . .	3
I. HISTORICAL ANALYSIS OF ROAD LEGISLATION . . . . .	5
II. COMPARATIVE STUDY OF ROAD LEGISLATION . . . . .	41
III. STANDARDS OF ROAD LEGISLATION . . . . .	86

---

### THE REGULATION OF URBAN UTILITIES IN IOWA

BY E. H. DOWNEY, THE UNIVERSITY OF WISCONSIN,  
MADISON, WISCONSIN

AUTHOR'S PREFACE . . . . .	95
I. THE NEED OF REGULATING URBAN UTILITIES . . . . .	97
II. THE FAILURE OF LOCAL REGULATION . . . . .	125
III. THE APPROPRIATE ORGAN OF STATE REGULATION . . . . .	138
IV. PUBLIC SERVICE COMMISSIONS IN THE UNITED STATES . . . . .	144
V. URBAN UTILITY REGULATION IN IOWA . . . . .	187
VI. SUGGESTIONS FOR EFFECTIVE UTILITY REGULATION . . . . .	208
NOTES AND REFERENCES . . . . .	233

## PRIMARY ELECTIONS IN IOWA

By FRANK E. HORACK, THE STATE UNIVERSITY  
OF IOWA, IOWA CITY

AUTHOR'S PREFACE . . . . .	261
I. EARLY PARTY MACHINERY IN THE UNITED STATES . . . . .	263
II. THE DEVELOPMENT OF THE DIRECT PRIMARY . . . . .	269
III. HISTORY OF PRIMARY REGULATION IN IOWA . . . . .	275
IV. CRITICISMS OF THE IOWA PRIMARY . . . . .	284
V. STANDARDS OF PRIMARY REGULATION . . . . .	298

CORRUPT PRACTICES LEGISLATION  
IN IOWA

By HENRY J. PETERSON, THE IOWA STATE TEACHERS'  
COLLEGE, CEDAR FALLS

AUTHOR'S PREFACE . . . . .	303
GENERAL INTRODUCTION . . . . .	305
I. HISTORY OF CORRUPT PRACTICES LEGISLATION IN IOWA . . . . .	310
II. AN ANALYSIS OF CORRUPT PRACTICES LEGISLATION IN IOWA . . . . .	344
III. A COMPARATIVE STUDY OF CORRUPT PRACTICES LEG- ISLATION . . . . .	368
IV. SUGGESTIONS FOR REFORM IN THE CORRUPT PRACTICES LEGISLATION OF IOWA . . . . .	397
NOTES AND REFERENCES . . . . .	405



CONTENTS

xix

WORK ACCIDENT INDEMNITY IN IOWA

BY E. H. DOWNEY, THE UNIVERSITY OF WISCONSIN,  
MADISON, WISCONSIN

AUTHOR'S PREFACE . . . . .	421
I. THE NEED OF WORK ACCIDENT INDEMNITY . . . . .	423
II. THE EXISTING INDEMNITY SYSTEM . . . . .	430
III. ACCIDENT INDEMNITY ABROAD . . . . .	440
IV. RECENT INDEMNITY LEGISLATION IN THE UNITED STATES . . . . .	447
V. STANDARDS OF INDEMNITY LEGISLATION . . . . .	460

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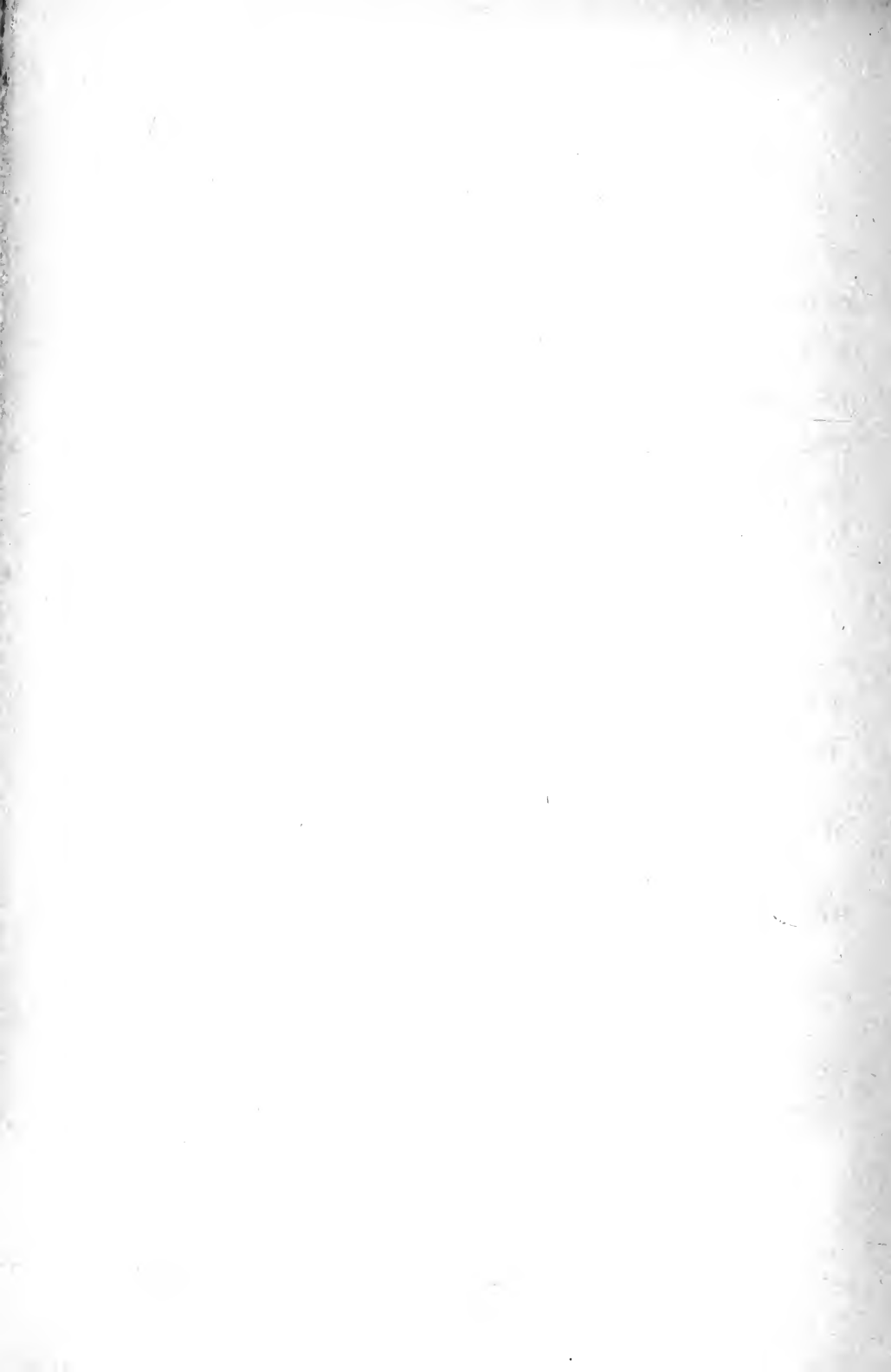
TAX ADMINISTRATION IN IOWA

BY JOHN E. BRINDLEY, IOWA STATE COLLEGE OF  
AGRICULTURE AND MECHANIC ARTS, AMES

AUTHOR'S PREFACE . . . . .	495
I. AN HISTORICAL ANALYSIS OF TAX ADMINISTRATION IN IOWA . . . . .	497
II. THE COUNTY ASSESSOR AND TAX COMMISSION MOVEMENT . . . . .	546
III. STANDARDS OF TAX ADMINISTRATION . . . . .	599

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INDEX . . . . .	609
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**ROAD LEGISLATION IN IOWA**



## AUTHOR'S PREFACE

IN the *History of Road Legislation in Iowa*, already published by The State Historical Society of Iowa in the *Iowa Economic History Series*, the writer endeavored, first, to trace in some detail the numerous changes in the form of road administration as reflected in the road laws of Iowa from 1834, when the Iowa country became a part of the Territory of Michigan, down to the present day; and second, to present briefly a comparative study of the systems of road administration found in other States of the Union. It is the purpose of the present paper to outline topically, and in more condensed form, both the historical and comparative facts in such a way as to present the leading forces and tendencies with special reference to a program of constructive road legislation and administration.

It is one thing to break up a given system of administration and examine its component parts in detail: it is another and vastly more difficult problem to interpret and re-define such a system of administration in terms of progressive social evolution. With this thought in mind the writer is inclined to believe that the lessons which the past has for the future in the constructive work of evolving a method or plan of scientific road administration may best be understood by presenting the historical and

comparative facts under the following heads: first, the distribution of power and authority among a long list of officials representing the different units of government from the State down to the smallest administrative subdivision; second, the tendencies toward centralization or decentralization in the actual work of supervision and control, with special reference to the control of road and bridge finances; and third, the economic and engineering aspects of highway administration. Furthermore, a chapter has been devoted to a comparative study of road legislation in the United States, since a knowledge of the experience of other States is essential in any movement toward reform in road administration in Iowa.

The sources and authorities upon which this paper is based may be found in the *Notes and References* given in the author's *History of Road Legislation in Iowa* referred to above.

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AMES IOWA 1912

## I

# HISTORICAL ANALYSIS OF ROAD LEGISLATION

### DISTRIBUTION OF POWER AND AUTHORITY

FROM an historical standpoint perhaps the most important subject to be considered with reference to the road and bridge question is the problem of administration or, in other words, the distribution of administrative power and authority among the various subdivisions of government, both State and local. The history of road and bridge legislation is in a very real sense an organic part of the history of the entire governmental system of Iowa, but more especially is it a phase of the history of local government. Indeed, the history of township and county government in Iowa forms a necessary working basis for the history of road and bridge legislation. The distribution of power and authority between the sub-district, the township or similar division of local government, and the county must therefore be studied before the other important aspects of the road and bridge question can be clearly understood. In fact, the machinery of administration constitutes the necessary framework of any great political, social, or economic problem which has become thoroughly interwoven with the functions of government.

An historical analysis of road and bridge legislation in Iowa, viewed from the standpoint of the distribution of administrative authority, may conveniently be presented under the following heads: first, the road legis-

lation of the Territory of Michigan, 1834-1836; second, the road legislation of the original Territory of Wisconsin, 1836-1838; third, road administration under the commissioner plan of county government, 1838-1851; fourth, the supervision of highways under the county judge system, 1851-1860; fifth, road administration by the county board of township supervisors, 1860-1870; sixth, road administration under the present county supervisor, or more properly commissioner, system of county government; and seventh, the activity of the State Highway Commission which characterizes the period since 1904.

In Michigan the township was from an early date a very important unit of local government. In fact, as Dr. C. R. Aurner has pointed out in his *History of Township Government in Iowa*, the organization of the township preceded that of the county in the Territory of Michigan. It logically followed, therefore, that the administration of roads and bridges was primarily a township function during the period when the Iowa country was a part of the Territory of Michigan.

Of the numerous local officials clothed with authority in the administration of roads and highways during this period, special mention should be made of (1) the township board composed of the supervisor, the township clerk, and the justices of the peace, or a majority of them, who acted primarily as a board of audit, (2) three township road commissioners, having the same general powers with reference to the laying out, opening, and maintenance of highways as are now vested in the so-called board of township trustees, (3) a number of road overseers, corresponding to the number of road districts,



appointed by the township road commissioners, and (4) the county board of supervisors, composed of one representative from each civil township and vested with substantial authority both from the standpoint of general supervision and the control of finances. In other words, there was a somewhat elaborate system of road administration which centered very largely about the civil township, either directly through various township officials or indirectly through representatives of the civil townships, who at the same time served as a county board of supervisors. As a matter of fact, one of the most distinctive characteristics of the Michigan road law of 1833 was the extent to which authority was carefully parcelled out among a group of local officials.

It is a well recognized principle of our constitutional and legal system that the rights of the individual may best be conserved by following to its logical conclusion the doctrine of the separation of powers. This is true not only in the case of the Federal government, but also in the field of State and local authority. In the Michigan road law under consideration there is evident a careful balancing of authority and power between the county, the township, and the road district or subdivision of the township. Furthermore, not only were the functions of road administration divided between the county board of supervisors acting as a county legislative body, the township commissioners of highways, the sub-district overseers of highways, the juries of freeholders appointed for various purposes, the township collector, and the township clerk, but an appeal was granted to the judges of the circuit court in order to guarantee still further the rights or supposed rights of the individual. In fact, the administration of roads under certain conditions was

actually placed in the hands of the circuit court. It is thus apparent that the Michigan statute affords an excellent example of how the work of administration may be broken up, decentralized, and dismembered so that practically nothing is left but a confused mass of statutory provisions. The pioneers, in their earnest desire to conserve what they believed to be the largest measure of individual rights, were making practically impossible the efficient administration of law.

During the Wisconsin period of the Territorial history of Iowa there seems to have been a tendency to make the county a relatively more important unit of local administration. To what extent this was the outcome, first, of a more or less unconscious adaptation of statutes from older jurisdictions, second, of an actual conflict between the township and county principles of local government on the basis of concrete fact and argument, and finally, of the necessity from time to time of creating political institutions to meet the demands of pioneer conditions, can not be ascertained except by a thorough comparative and historical study of the whole complex system of township and county organization. Since the pioneers were essentially practical men it is altogether probable that the drafting of Territorial statutes was to a very large extent a matter of more or less hasty adaptation of forms with which the law-makers themselves were most familiar.

At least two important road laws were enacted by the original Territory of Wisconsin. The first act, passed in 1836, provided for the annual election of three township supervisors, who were to act at the same time as a county board of supervisors. This statute was evidently a compromise measure, and it paved the way for the more

important act of 1838 which produced a complete and radical change in the general system of road administration. In the latter act the board of supervisors, which had been both a township and a county body, was superseded by a board of county commissioners elected for a term of three years. The new county board was vested with general supervision over highways, including the right to appoint road supervisors and to assign to each supervisor a definite road district. In fact, the board of county commissioners, as created in 1838, possessed powers and authority which during the Michigan period had been parcelled out among the so-called township board, the township highway commissioners, and the county board of supervisors, composed as it was of representatives from the civil townships. Moreover, the road supervisor appointed by the board of county commissioners under the Wisconsin act of 1838 was the logical successor of the road overseer appointed by the township road commissioners during the Michigan period.

After Iowa had become a separate Territory in 1838 the road laws were for several years borrowed partly from Wisconsin and Michigan and partly from the statutes of Ohio. An act to provide for the laying out and opening of Territorial roads, passed in 1838, was copied directly from the laws of the original Territory of Wisconsin; while Wisconsin in turn appears to have copied the same statute from the laws of the Territory of Michigan.

It was during the second session of the Legislative Assembly of the Territory of Iowa that the statutes of Ohio became an important factor in shaping road legislation. This may no doubt be explained in a measure by

the fact that Governor Lucas had formerly been Governor of Ohio and was thoroughly familiar with the laws of that State. The Iowa act providing for the organization of townships was modeled very largely on the Ohio plan, except that the system was optional and not mandatory. The act for defining the duties of supervisors of roads and highways and the act for opening and regulating roads and highways were both taken almost literally from the statutes of Ohio. The county-township system of local government which had prevailed in the original Territory of Wisconsin, however, had an important influence in shaping road legislation. Indeed, it may be stated that, while the form of the road laws enacted during the second session of the Legislative Assembly of the Territory of Iowa was taken largely from Ohio, the substance was partly borrowed from Wisconsin.

The Territorial legislation of 1839-1840 provided for two distinct systems of road administration: that of the county, which was basic and was adopted from the Wisconsin laws; and that of the township, which was optional and was adopted from the Ohio laws.

In Iowa, however, the township was destined to become a more and more important unit of local government from the standpoint of road supervision and control—a tendency which may be observed even in the later legislation of the Territorial period. In fact, it may be stated that between 1840 and 1846 the township principle was gradually becoming firmly established. On the other hand, the powers of the boards of county commissioners were increasing, especially with reference to the laying out and opening of roads and the jurisdiction which was conferred upon them in the case of so-called Territorial roads. To this movement the pioneers objected from

time to time, it being declared that the board of county commissioners had been vested with great and unwarranted powers which ought to be parcelled out among smaller units of government in order to bring the administration of the laws closer to the people.

The commissioner system of county government remained in force, however, until the adoption of the *Code of 1851*. In fact, the period which intervened between the admission of Iowa into the Union in 1846 and the enactment of the *Code of 1851* was not characterized by any important change in the general system of road administration. The relative powers vested in the township and county remained substantially the same as during the Territorial period. Other problems, such as the building of plank and graded toll roads and the necessity of regulating certain corporations were now engaging public attention.

The *Code of 1851*, however, brought about revolutionary changes in the whole field of local government, and consequently in the administration of roads and bridges. From July 1, 1851, when the *Code of 1851* went into effect, until February 2, 1853, when the system of district road supervisors was established, the administration of roads and bridges was under the joint supervision and control of a county road supervisor elected by the people for a term of two years and the county judge elected by the people for a term of four years. The county road supervisor had jurisdiction over all the roads of his county; but he was made responsible to the county judge, who had inherited the powers and authority previously vested in the board of county commissioners and was at the same time the auditing officer of the county. Briefly stated,

financial responsibility was vested primarily in the county judge; while the field work, including the actual supervision of the laying out, opening, and maintenance of roads, was in the hands of the county road supervisor, which official was therefore clothed with extensive power and authority.

This important legislation reduced the civil township to a minor administrative division in charge of a deputy appointed by and directly responsible to the county road supervisor, who in turn was made responsible to the county judge. As a unit of local government having substantial supervision of highways, the civil township was practically blotted out. Indeed, the *Code of 1851* represents the largest measure of administrative centralization that has ever existed in Iowa—a fact which is clearly apparent when its provisions are compared with the reforms now being urged by the advocates of the good roads movement.

For example, it is now generally admitted that township trustees should have the right to appoint the township road superintendent and exercise practically complete jurisdiction over the dragging of the public highways. At the present time no one would seriously advocate the appointment of township road superintendents by the county board of supervisors, and yet the deputy township road master was appointed by the county road supervisor in 1851. Such a large measure of administrative centralization in the supervision of highways would now justly be regarded as an unwarranted usurpation of powers and duties which may wisely be vested in the civil township. While present-day authorities on road legislation and administration agree that the supervision and control of roads and bridges should be

exercised partly by the State and partly by the county, the fact that a substantial amount of power may at the same time be wisely exercised by the duly elected representatives of the townships rests upon an equally secure foundation.

While the appointment of the township road master by the county road supervisors in 1851 represents, no doubt, greater centralized authority than would be tolerated at the present time, the same thing can not be said of the office of county road supervisor — a fact which may well be considered in connection with the present movement for the creation of the office of county road engineer. According to the proposed plan, the county road engineer is to be given jurisdiction over the highways of his county quite similar to that possessed by the county road supervisor in 1851, and is also to be made responsible to the county board of supervisors in much the same way that the county road supervisor was made responsible to the county judge under the system of highway administration which prevailed after the adoption of the *Code of 1851*.

The following differences, however, should be noted: first, the proposed county engineer would be appointed by the county board of supervisors and not elected by the people; second, he would be an expert civil engineer and a practical road builder (requirements which for obvious reasons did not appear in the *Code of 1851*); and finally, he would not be clothed with authority to appoint township road superintendents, since the granting of such power would be an invasion of the legitimate and proper sphere of township government. In short, the county road supervisor of 1851 possessed certain powers and authority which are now wisely placed under the juris-

diction of the township trustees, and which, therefore, need not and should not be vested in the proposed county engineer.

The county judge system became operative on July 1, 1851, and remained in force until July 4, 1860. It should not be assumed, however, that the county judge continued to possess the very extensive and somewhat arbitrary powers originally granted to him by the provisions of the *Code of 1851*. The student of political science is familiar with the well known maxim that forms of government frequently persist long after the substance of authority has disappeared or has been transferred to other agencies. This was in a large measure true of the office of county judge during the period from 1851 to 1860. Beginning with February 2, 1853, when the law creating district road supervisors went into effect, the county judge was rapidly shorn of much of the unusual power which had been granted to him in 1851. By 1858 the office was but a shadow of its former self, a large part of the authority which the county judge had originally possessed over roads and bridges having been gradually transferred to the township clerk, the township trustees, and the district road supervisors.

Partly as a reaction against the arbitrary authority of the county judge, but more largely as the result of the character, training, and temperament of the early settlers of Iowa, one of the most distinctive tendencies of the period from 1851 to 1860 was the rapid growth of sentiment in favor of the township-county principle of local government. The great centralization of power and authority in the hands of the county judge tended to bring about a decided reaction which worked to the advantage of the civil township. In the matter of roads and bridges



the township trustees and the township clerk were gradually clothed with authority that had been vested in the county judge or county road supervisor. In fact, by 1858 the civil township had secured a dignified and worthy position in the realm of local government, the substance of financial power being placed in the hands of the township trustees and therefore brought into closer touch with the people.

The transfer of authority from the county to the township, however, was not the only instance of administrative decentralization during the period from 1851 to 1860. While the general supervision of roads and bridges, together with the power to levy taxes for their support, became almost wholly a township rather than a county function, the actual direction of road work was placed in the hands of district road supervisors. Each township was divided into road districts by the township trustees and a road supervisor was elected by the people in each district. In other words, authority which from July 1, 1851, to February 2, 1853, had been vested in a township deputy appointed by the county road supervisor, was now placed in the hands of officials elected in road districts which represented subdivisions of the township. Briefly stated, the size of the district was reduced and the appointive principle was superseded by that of election.

The period under review was therefore one of transition and compromise in which authority was divided among the county, the township, and the so-called road district; and at the same time powers of administration were parcelled out among a long list of officials, including the county judge, the township trustees, the township clerk, the district road supervisors, and the district

court. The township clerk represented a sort of connecting link between the district road supervisors and township trustees, on the one hand, and between the county judge and the township trustees, on the other — thus being the cementing principle of the local administrative organization composed of the road district, the township, and the county. In somewhat the same manner the proposed county road engineer under present conditions would form a bond of union between the township, the county, and the State, giving vitality, elasticity, and purpose to the whole system of road administration.

The office of county judge, after being gradually reduced to a position of comparatively small power and authority by the rapid growth of the principle of township organization, was finally abolished in 1860. As one might expect, the General Assembly went to the opposite extreme in outlining a plan of county government. From 1851 to 1860, the powers of county government had been exercised largely by one official, the county judge. By the legislation of 1860 these powers were parcelled out among a group of officials elected by and representing the civil townships. The county board of township supervisors created in 1860, and modeled largely on the New York system, continued in force until 1870. This change from one-man power to authority vested in a group of officials was not so revolutionary in character, however, as might at first be assumed, for the reason that the county judge had gradually been deprived of a large part of his original power before the complete change of system was finally made. In other words, the repeal of the county judge system was gradually effected by a process of elimination during the period from 1853

to 1860, while the civil township was at the same time coming to possess a dignified position in the field of local government.

It should be observed that under the new plan of local organization township and county functions were so blended and interwoven into one complex system as to remove any clear line of demarcation between the two. The township supervisor, representing as he did the civil township, had more in common with the township trustees and the township clerk than would be possible in the case of a member of a county board elected from a larger jurisdiction. When it is remembered that the supervisor was a township as well as a county official it will readily be seen that there was no longer any reason why the county board of township supervisors should not exercise a much larger supervision over roads and highways and a greater control of finances than the people had been willing to grant to the county court. Under the reorganized system the control of finances by the county board meant its control in the last analysis by township officials directly responsible to the people and familiar with local conditions. The reasons for depriving the county judge of fiscal authority during the period from 1851 to 1860 did not apply to the county board of township supervisors in the decade from 1860 to 1870. In other words, the tendencies making for decentralization were checked or at least retarded, and the new period was one in which the powers and authority of the civil township and the county, respectively, were destined to become differentiated and more clearly defined.

Nevertheless, when it is recalled that the district road supervisor — elected by the people in a subdivision of the civil township — was retained, it is evident that the

decade from 1860 to 1870 was primarily one of administrative decentralization. With the powers and authority of the various units of local government more clearly differentiated, however, it soon proved to be both logical and desirable to create a distinct system of county government composed of representatives elected from larger jurisdictions than the civil township and who would therefore in reality represent the entire county, instead of individual townships.

The change from the supervisor to the commissioner system of county government came in 1870, when county authority was vested in a board of three supervisors — which number might be increased to five or seven by a vote of the people of the county. Manifestly, the new system of county organization represented a compromise between the county judge and the county board of township supervisors. The name "supervisor" was retained and the optional increase to five or seven members was a concession to the advocates of the township-county principle of county organization. With a county board entirely separate from the various boards of township trustees there came to be a more distinct line of demarcation between the respective spheres of township and county authority. Indeed, the period from 1870 to the present time has been characterized by the vesting of certain functions definitely in the hands of the county supervisors, while other functions have been placed just as definitely under the authority of township trustees.

The resolutions adopted by the State Road Convention, held at Iowa City in 1883, embodied the following recommendations: first, the appointment of a township road superintendent or road master for at least a part

of the year, thus substituting the civil township for the small road district as a unit of actual road administration; and second, the establishment of a county road fund, which meant that the county should be differentiated from the township and made a more important unit of local government for the supervision and control of highways. In a word, by condemning the supervision of highways by small road districts and at the same time endorsing the proposition to create a county road fund, the convention took a forward step in favor of centralizing power and authority in road and bridge matters in the civil township or similar unit of local government on the one hand and in the county on the other.

The epoch-making act to promote the improvement of highways which was passed in 1884 (partially, at least, as a result of the sentiment aroused by the State Road Convention) provided that the county board of supervisors "may" levy a tax to create a county road fund and the township trustees "may" consolidate the several road districts of their township into one highway district. The optional county road fund was made mandatory in 1894 and the optional consolidation of local road districts was made mandatory in 1902. When there is added to this legislation the act creating the State Highway Commission in 1904 the machinery of road and bridge administration which is in existence at the present time is complete.

Briefly stated, power and authority in road and bridge matters is now vested: first, in the township trustees or similar local governing board; second, in the county board of supervisors; and third, in the State Highway Commission — which at present, however, possesses no direct supervision and control, but is required to collect

statistics and may be consulted from time to time by different local authorities.

#### TENDENCIES TOWARD CENTRALIZATION AND DECENTRALIZATION

Having examined in general outline the forms of road administration or, in other words, the distribution of power and authority among the various local officials, an attempt will now be made to present in more concrete form and in somewhat greater detail the tendencies making for the centralization or decentralization of administrative authority which from time to time have characterized the road and bridge legislation enacted by the General Assembly of Iowa.

The ultimate end of all government, especially of democratic government, is to secure popular control and at the same time administrative efficiency. On the one hand, the desire to place government more directly in the hands of the people has resulted in developing the power and authority of the civil township, or even of the local sub-district, and has in fact brought about a greater and greater amount of administrative decentralization. On the other hand, the necessity of enforcing or administering law on a more efficient basis has frequently made necessary a greater centralization of administrative powers. In other words, the desire of a certain class of people for increased popular control, on the one hand, and the growing appreciation of the need of administrative efficiency, on the other, have constantly been apparent in the contending forces of centralization or decentralization in the whole sphere of government, national, State, and local.

During the Michigan period of the Territorial history of Iowa, the civil township was the dominating unit of

local government. In fact, the organization of the township, as has already been observed, preceded that of the county. The form of local government which prevailed at that time, borrowed as it was very largely from New York, represented a large measure of decentralized authority, in which the supervision of highways was vested partly in the township and partly in small road districts or administrative subdivisions of the township. Thus, the work of the supervision and control of roads and bridges was parcelled out among a large group of local officials without any scientific plan or definite purpose.

The authority vested in the civil township was exercised by a township board composed of the supervisor, the township clerk, and the justices of the peace, and by three township road commissioners acting under the supervision of the township board and having large powers with reference to the laying out, opening, and maintaining of highways. At the same time the actual direction of road work was conferred upon road overseers, appointed by the township road commissioners and representing administrative subdivisions of the township. The local road overseer, during the period under consideration, represented the extreme of administrative decentralization—a system which was soon abolished, but after being reestablished in 1853 was destined to continue in force in Iowa with only a few modifications until the epoch-making good roads legislation of 1902.

Furthermore, when it is recalled that the county board of supervisors at this time was a body of officials elected in the civil townships on a basis similar to that which again prevailed in the decade from 1860 to 1870, it

appears that almost the entire supervision and control of highways, including the control of road finances, was primarily a township or sub-district function. In the first place, practically all road taxes at that time were paid in labor and worked out under the direction of the local road overseers appointed by the township road commissioners, who in turn were subject to the supervision of the township board. This type of legislation represented the extreme of the movement to secure what was supposed to be popular control by bringing government closer to the people.

It should be noted, however, that the extraordinary expenditure required by the building or repairing of bridges made it necessary to levy a small county tax or, in other words, to create a county bridge fund. This was done in order to prevent the taxpayers of any particular township from being unreasonably overburdened by such extraordinary expenditures. The money thus collected was paid over to the commissioners of highways of the township in which it was to be expended on the order of the supervisors — the obvious purpose of this provision of the law being to bring about a more equitable distribution of road taxes as between the county and the townships. In a word, the road law under consideration, by providing a method of apportioning extraordinary fiscal burdens, first, as between the township and the road district, and second, as between the county and the township, represented a tendency to centralize financial control partly in the civil township and partly in the county, which was later developed in the legislation of 1853, 1858, and 1870, as well as in the more recent legislation of 1894 and 1902. It is, indeed, a striking fact that a county bridge fund was created during the Michigan



period of the Territorial history of Iowa; while a county road fund was not created until more than half a century later, in 1894.

It has been observed that from 1836 to 1838, when the Iowa country was a part of the original Territory of Wisconsin, there was a marked tendency to increase the authority of the county in the supervision and control of highways and bridges. This change was brought about very largely by adopting the commissioner system of county government, which took the place of the system of government by the county board of township supervisors that prevailed in the Territory of Michigan. This meant that power and authority was centralized in three county commissioners which had formerly been exercised by a number of local officials, including especially the township board and the township highway commissioners. In the place of a local road overseer, appointed by the township road commissioners, the Wisconsin act provided for a road supervisor to be appointed by the board of county commissioners. Judged from almost every standpoint, including the vital question of financial control, a much larger measure of authority was vested in the county under the legislation of the original Territory of Wisconsin than had prevailed during the earlier Michigan period.

Any review of the period under consideration with reference to the question of centralized or decentralized authority would be incomplete without calling attention to the important administrative functions in road matters which were vested in the Territory itself. Reference is here made not only to "An Act to locate and establish a Territorial road west of the Mississippi", which inaugurated the policy of laying out and opening Terri-

torial roads by special acts — a policy which continued in force until 1857 — but also to the general act of 1838 providing for laying out and opening Territorial roads. While the cost of such highways was paid by the various counties through which the road passed, it was generally recognized at the time that in order to facilitate travel and encourage settlement the Territory should be given a definite sphere of jurisdiction over the important work of laying out and opening some of the principal highways, including military roads. This important function, exercised first by the Territory and later by the State of Iowa, was destined to develop until the coming of the railroad had relegated the ordinary highway almost entirely to the supervision and control of local authorities. In fact, during the Territorial period and for a number of years after Iowa was admitted into the Union, the Territory and later the State exercised a sphere of authority in road and bridge matters which was lost after the introduction of railroads and has not been entirely regained even at the present time.

After the admission of Iowa into the Union in 1846 no important change in the machinery of local government was made until the adoption of the *Code of 1851*. In the meantime the commissioner system of county government continued in force, but more or less objection was heard from time to time regarding the arbitrary powers which some people claimed were exercised by this board. While the civil township was able to retain substantially all of the authority which it had gained during the period from 1840 to 1846, it is none the less true that, on the whole, the tendencies of the time favored the centralization of administrative authority in the county.

The important legislation of 1851, when considered

from the standpoint of administrative control, was unique in the whole realm of local government, including the administration of roads and bridges. Powers and duties which during the Michigan period were exercised by supervisors representing the civil townships, and from 1838 to 1851 by three county commissioners, were centralized in 1851 in the county judge. In other words, from 1834 to 1851 county government gradually passed from the control of a group of men to the control of a single individual. Moreover, the general supervision and actual direction of road work — which during the Michigan period was parcelled out among a list of officials, including the township board, the township road commissioners, and the sub-district road overseers, and later was exercised by road supervisors appointed by the board of county commissioners — was now centralized in one county road supervisor elected by the people and clothed with authority to appoint deputy road overseers. Not only was the small road district abolished, but the civil township itself was practically blotted out as a unit of road and bridge administration. Furthermore, financial control, which at first had been exercised largely by township boards and later by a county board of three members, was also centralized in the hands of one man.

Manifestly, this system of administrative centralization was extreme in character and could not be expected to endure. The Code Commissioners who framed it had in mind the importance of administrative efficiency rather than the desirable or at least practical necessity of popular control. When the *Code of 1851* was pending before the General Assembly the following arguments were frequently advanced against the county judge system, including the provision for a county road supervisor: first,

the contention that the whole plan was arbitrary, un-democratic, and un-American, vesting unwarranted powers in the hands of certain officers without making them directly responsible to the wishes of the people; second, it was alleged that the proposed scheme of county government was not based on the representative principle for the reason that if the county judge and the county road supervisor should come from one section of the county they might ignore the interests of other parts of the county; and third, it was declared to be highly dangerous to clothe any one official with such large financial responsibility without providing greater checks and safeguards to prevent the waste and misuse of the public funds.

In reply to these criticisms the Code Commissioners and other friends of the more centralized plan of administration contended: first, that public offices were created for the purpose of rendering public service and not for the special benefit of an army of office-seekers; second, that representative government in the last analysis does not consist in the needless multiplication of official positions, but rather in clothing the people of a given unit of government, be it township, county, or State, with the right to elect and control their representatives; third, that the simplified plan provided in the code would be more economical and efficient; and finally, that financial responsibility could be obtained quite as well through a few as through many public officials.

It is needless to say that there was a large measure of truth in both lines of argument. At the same time, the pioneers of Iowa were not prepared to endorse so large a measure of centralized authority and control.

It is not surprising to learn that the system of local

government outlined in the *Code of 1851* continued in force less than two years. One extreme is almost invariably followed by another extreme in the evolution of political, social, and economic institutions; and so, on February 2, 1853, not only was the civil township restored to its former position but the local road district, which prevailed during the Michigan period of the Territorial history of Iowa, was also reëstablished and was destined to hold its position for practically half a century, until it was abolished by the Anderson Road Law of 1902.

The county judge system, however, was not repealed by any single act, but between 1853 and 1860 the repeal was gradually brought about by a series of laws. When the entire system was changed in 1860 the county judge, as above noted, possessed only a shadow of his former authority. In the meantime the civil township had rapidly developed in power and authority, including not only the general supervision of highways, but a large measure of financial control as well. Indeed, by 1858 or at least by 1860, the township had come to possess the most dignified position in the realm of local government which it had held since the Michigan period of our Territorial history. In fact, between 1838, when the Wisconsin act was passed creating a board of three county commissioners, and 1858 the advocates of the township plan of local administration were generally in the minority, with the result that the county was for the most part the dominating unit of local government.

At the same time, the power of the civil township was rapidly increased between 1853 and 1860, the township clerk and the township trustees being gradually clothed with authority that had been vested in the county judge

or the county road supervisor. In the realm of local finance the authority of the township had likewise come to be practically supreme. Aside from a levy of not more than one mill by the county for the making and repairing of bridges after the same had been approved by a vote of the people, the township possessed the exclusive right to make the actual levy of taxes for roads, bridges, plows, and scrapers — subject, however, to the statutory limitation that the levy must not be less than one mill nor more than three mills on the dollar.

In a word, the substance of financial authority in the administration of the public highways had been transferred to the township trustees and, therefore, was brought closer to the people even before the county judge system itself was finally abolished in 1860. Furthermore, the division of each township into road districts and the election of a local road supervisor by the people in each district represented an extreme of administrative decentralization which had not existed since the Michigan period, but which, as has already been observed, was destined to continue in force until 1902.

In 1860 the decentralized system of administration, which in its main outlines had prevailed during the Michigan period, was reestablished in Iowa. The county board of township supervisors representing the civil townships tended, on the one hand, to merge county and township functions and, on the other, to enable the township principle of local government to become more definitely established. With the immediate direction of road work in the hands of local road overseers, as provided for in the act of 1853, and the financial control of roads and bridges vested in township boards and in so-called county supervisors representing the civil townships, the early

settlers of Iowa perhaps reached the high water mark of decentralized administration. The arguments for and against this system were substantially the same as those which had been presented in 1851. The friends of the township-county plan of local government maintained that their system was more representative in character and, by placing government in closer touch with the people, insured a more rigid control of the public purse. Indeed, the most forcible argument used in favor of the new system was the great danger of placing large financial powers in the hands of one man.

During the period between 1860 and 1870, which was characterized by a merging of township and county authority, it was possible for a larger measure of supervision and control to gravitate toward the county without meeting with the strenuous opposition which prevailed when county authority was exercised by a single person. In other words, the reasons for depriving the county judge of fiscal authority from 1851 to 1860 did not apply with anything like the same force to the county board of township supervisors in the decade from 1860 to 1870. In fact, the county board of township supervisors gradually came to possess much of the authority which had been exercised by the three county commissioners during the period from 1838 to 1851 and which could therefore be logically retained by the county when the commissioner system of county government was reestablished in 1870. Nevertheless, the fact that a certain proportion of the road tax not exceeding one mill on the dollar, which might be paid in money, was a township rather than a county tax shows that the substance of fiscal authority in road matters was still retained by the civil township. While a bridge tax continued to be levied by the county,

the township trustees were destined to retain exclusive control of road finances until 1894 when, as has already been stated, a law was passed creating a county road fund.

The remaining history of the forces tending toward the centralization or decentralization of administrative authority may be briefly written. The period since 1870, but more especially since 1883, has been characterized by at least three distinct movements: first, the increasing opposition to the local sub-district plan of directing road work (which opposition was ably voiced in the State Road Convention of 1883, but did not bear fruit until the repeal in 1902 of the district road supervisor law which had been on the statute books since 1853); second, the centralization of large powers and authority over road and bridge matters in the hands of the present county board of supervisors, which resulted in the creation of a county road fund in 1894 and the optional provision for a county road engineer in 1911; and third, the efforts to clothe the State itself with substantial authority in highway and bridge administration, a movement which was definitely launched by the State Road Convention of 1883 and finally bore fruit in the creation of a State Highway Commission in 1904. It will be observed that each of these tendencies represent administrative centralization, on the one hand, and an effort to differentiate as much as practicable the power and authority vested in the civil township, the county, and the State, respectively, on the other hand.

With these facts in mind, it must be apparent to the critical reader that the abolition of the local road district — which had prevailed during the Michigan period and later from 1853 to 1902 — meant at least two distinct



things: first, the centralization in the board of township trustees of power and authority which had formerly been distributed among a number of district road overseers, and which might be exercised by themselves directly or indirectly by a township road master appointed by them and subject to their supervision and control; and second, the possibility, or rather the practicability, of more clearly defining powers which had come to be vested in a single township board and might be delegated to a township road master giving a substantial amount of his time to the work. Likewise, the creation of a county road fund, which will necessarily be enlarged from time to time, and the provision for a county road engineer appointed by the county board of supervisors and subject to its supervision and control, stand for a more centralized administration, on the one hand, and for a clearer differentiation of county functions, on the other. Moreover, it should be stated that the same movement which resulted in the provision for the appointment of a township road master in 1902 and in the optional system of supervision by a county road engineer in 1911, was responsible for creating a State Highway Commission in 1904 and will inevitably lead sooner or later to the policy of State aid, which in turn will demand that larger powers and authority be vested in the commission and at the same time will also result in a clear differentiation of State functions as distinguished from township or county functions.

The progress really made during the period from 1883, the date of the first State Road Convention, to 1904 becomes evident when the act of 1884 is compared and contrasted with the legislation of 1902. The more recent measure, relating to the duties of township trustees, the

consolidation of road districts, and the appointment of township road superintendents, differed from its predecessor chiefly in the fact that its provisions were mandatory. For example, the law of 1902 plainly stipulated that the township trustees "shall consolidate said township into one road district;" that all road funds belonging to the road districts of a given township "shall" become a general township road fund; and finally, that the trustees "shall" order the township road tax to be paid in money. Thus, the optional system, first, of passing from the sub-district to the township in the matter of actual road administration, and second, of transferring a part of the fiscal authority from the township to the county, which had been authorized in 1884, became mandatory by action of the General Assembly as to the county road fund in 1894 and as to the township road district in 1902.

During the last decade the same forces have operated to shape road legislation which have existed since the beginning of the Territorial period, namely, the forces of centralization and the forces of decentralization in the administration of the affairs of government. An effort has been made since 1902 to repeal the Anderson road law, which provided for the consolidation of road districts on the basis of the civil township, the appointment of one township road superintendent, and the payment of road taxes in money. The chief result of the activities along this line was the law of 1909, which authorized the division of a township into road districts, the election of road district supervisors, and the payment of one-half of the road tax in labor. In practice this law has been almost universally ignored, and the legislation of 1911 virtually repealed it. The other force has been the pro-

gressive good roads movement, which has had for its purpose the payment of all property road taxes in money, the enlargement of the county road fund, the appointment of a trained county road engineer, a State aid policy, and finally, the strengthening of the powers of the State Highway Commission.

At the present time the jurisdiction of the three distinct units of administration in road matters — namely, the township, the county, and the State — will be more clearly understood by referring to the distribution of revenue for the maintenance of roads and bridges. In 1911 the bridge tax amounted to \$3,059,319.68, the county road tax to \$724,760.74, and the township road tax to \$2,644,168.66. When it is recalled that the bridge tax, even as far back as the Territorial period, has been largely a county tax, it appears that the control of road and bridge finances is now quite equally divided between the township and the county. The financial power of the county, however, has tended to increase gradually — a fact which is indicated by the distribution of eighty-five per cent of the automobile tax to the counties to be expended under the supervision of the county board of supervisors.

The next step in the control of road and bridge finances will probably be the creation of a State aid fund placed under the supervision of the State Highway Commission, which fund might be conveniently created by retaining all or at least a large part of the tax on motor vehicles in the State treasury. Indeed, it would seem logical that the same economic forces which made necessary the centralization of large financial power, first, in the civil township, and second, in the county, will sooner or later clothe the State with a substantial measure of

fiscal authority in the building and maintenance of roads and bridges. Such, in fact, would seem to be the next logical step in an historical development which in its main outlines dates back for at least three-quarters of a century.

#### ECONOMIC AND ENGINEERING ASPECTS OF THE PROBLEM

No historical analysis of road legislation in Iowa would be complete which did not take into account the economic and engineering aspects of highway administration. At the present time there are approximately one hundred thousand miles of wagon roads in this State, which means ten miles of wagon road to every mile of railroad. Practically all of the commodities that make up the great stream of commerce, whether raw materials or finished products, must at some time be transported over wagon roads. More than this, they must be transported on an average of from six to ten miles. When it is realized that the transportation business of the railroads amounts to hundreds of millions of dollars, the great economic importance of wagon roads, which are necessary feeders to roads of steel, can not be overestimated.

In this connection it should be stated also that the engineering and economic aspects of highway administration are inseparable parts of the road problem. With the development of more improved highway systems, including the construction of expensive and permanent bridges, the necessity of carrying on road work according to the well established principles of civil engineering has become more and more apparent. It is the business of the science of economics to measure and explain the loss in dollars and cents caused by bottomless roads and steep

grades; but it is the work of the civil engineer and practical highway builder to devise ways and means of decreasing this loss by constructing a better road surface, and to make surveys in such a manner as to insure the minimum grades. The construction of good roads and permanent bridges therefore constitutes a complex problem in economics and civil engineering, as well as in political science.

Quite naturally the pioneers of Iowa gave little thought to the building of what are now known as permanent roads. The building of highways was regarded neither as an engineering nor an economic problem. The pioneers had a wilderness to conquer, as well as possessing what appeared to them to be an inexhaustible supply of natural resources. They followed Indian trails through the forest and forded streams in their enthusiasm to build a new commonwealth. The road and bridge question, so far as it was considered at all, was naturally looked upon as a logical, and perhaps not very important, part of the field of township and county government. It was regarded merely as a problem in practical political science, and not as a problem of economics, engineering, or sociology.

During the Territorial period, and for a number of years after Iowa was admitted into the Union, there was perhaps but one exception to the general rule above outlined. The Iowa country had but few navigable rivers; and for that reason no sooner had settlement penetrated into the interior than the necessity of having a convenient outlet to market presented itself to the pioneers as a vital, economic question. Manifestly, this necessity did not involve improved local roads, but it did require a few main thoroughfares of commerce between the principal

market points. The plank and graded road movement, therefore, which was the subject of constant agitation just before the coming of railroads, was the result of economic necessity. In other words, the plank and graded toll roads of pioneer Iowa were the logical precursors of the railroad, forming a necessary connecting link between the local wagon roads and water transportation.

Not only were graded roads and one or two plank roads actually constructed, but a large number of so-called Territorial roads and State roads were laid out by special acts of the legislature of the Territory and State between 1838 and 1857. In fact, the task of providing a few main thoroughfares of commerce was looked upon in a large measure as a State rather than as a local problem. Before the building of railroads not only did the State exercise a large measure of authority in the laying out and opening of the principal highways, but the construction and maintenance of these highways was frequently regarded as an important economic and engineering problem.

In contemporary newspapers may be found statements of the difficulty encountered by the early settlers in marketing their produce. Roads were practically impassable throughout those seasons of the year when navigation was possible, and so it was very difficult for the farmer to get his produce to the market in time to secure the advantage of high prices. The pioneers early recognized that without efficient means of transportation the economic progress of the new commonwealth would be greatly retarded. From an economic standpoint it was generally thought that permanent roads would enable the farmer not only to haul much heavier loads but also to

take his produce to market at the proper time to secure the best prices. Efforts were frequently made to determine the loss to farmers which resulted from the impassable condition of highways, especially at those seasons of the year when it was necessary or at least desirable to market produce. Moreover, it was frequently pointed out that improved roads would greatly increase the value of farm lands wherever they were constructed. It is a significant fact that at the time of the plank and graded road movement, during the period from 1846 to 1851, the same general arguments, economic and otherwise, were advanced as are now being urged in favor of a State aid policy and a permanent highway system.

The coming of the railroad, however, was destined to supplant the wagon road as a main thoroughfare of trade. The early settlers promptly adopted the view that roads of steel had solved the great economic question of cheap transportation to available markets. Formerly all wagon roads, except a few of the leading thoroughfares, had been placed entirely under the supervision of local authorities and were not regarded as involving any serious economic or engineering problem. The agitation for railroads, and the building of the first line in 1855, apparently destroyed the economic justification for efficient supervision and control of roads and highways, and therefore tended to accelerate the movement toward administrative decentralization which prevailed between 1853 and 1870. In fact the whole highway question was relegated to the control of the local units of government, where it was destined to remain for more than half a century. It is perhaps not too much to say that the authority exercised by the Territory of Iowa and by the State itself prior to 1853 has not been wholly regained

even at the present time. The creation of a State Highway Commission in 1904, however, is a recognition of the necessity of conferring upon the State a definite sphere of authority in the administration of roads and bridges.

Speaking more specifically, between 1853, when the office of district road supervisor as it had existed in the Michigan period was reëstablished, and 1883, when the State Road Convention launched the present good roads movement, there was little or no inclination to regard the administration of highways as a State function, or as an economic and engineering problem. The administration of roads and bridges was regarded entirely as a township and county function, and from a financial standpoint, with the exception of a county bridge levy, the control by the civil township was practically absolute. It thus appears that since the coming of the railroad it has required more than half a century to secure any constructive legislation recognizing the economic and engineering features of the road and bridge question or the legitimate and proper sphere of the State as distinguished from local units of government.

The so-called good roads movement simply means a recognition of the necessity of regarding the work of highway and bridge administration as a problem of engineering and economics as well as of political science. Moreover, as a necessary corollary of this movement, there is an appreciation on the part of every well informed person of the necessity of centralizing certain definite functions, first, in the township board of trustees, acting, perhaps, through a township road superintendent appointed by them; second, in the county board of supervisors with the aid and assistance of a county highway



engineer; and third, in the State Highway Commission with its practical road builders and expert draughtsmen.

The good roads movement in Iowa may be said to date from the State Road Convention held at Iowa City on March 1 and 2, 1883. For the first time in the history of Iowa the subject of highways was discussed from the broad standpoint of political, economic, and engineering science. Indeed, the convention did not stop with mere discussion, but actually went on record in favor of paying property road taxes in money, appointing a township road superintendent, and establishing a county road fund. As has been suggested, these vital principles were made optional in the road legislation of 1884, but not mandatory until 1894 and 1902. In a word, the legislation of 1894 creating a county road fund, the act of 1902 providing for a township road superintendent and the payment of property road taxes in cash, the law of 1904 establishing a State Highway Commission, and finally, the act of 1911 providing for an optional system of county road engineers, were all passed primarily as a result of changed economic conditions and furnish concrete evidence of the fact that highway administration is no longer simply a function of local government, but constitutes an important and necessary problem in engineering and economic science. A new period has begun in the history of Iowa road legislation and administration wherein the increased economic value of an improved system of highways under a policy of State aid will be recognized and a plan of State supervision based on the well established principles of engineering science will be formulated.

In conclusion it should be stated that, while the movement for an improved system of building and maintaining

highways and bridges will require administrative efficiency, scientific reform does not demand the centralization of unwarranted powers in the State Highway Commission. Practically all authorities recognize the fact that extensive powers may wisely be delegated to the county board of supervisors and also to the township trustees. Indeed, the good roads movement does not mean the subtracting of authority from the civil township, but rather the addition of new powers and duties rendered necessary by changed economic conditions.

## II

### COMPARATIVE STUDY OF ROAD LEGISLATION

A COMPARATIVE study of any subject which involves an investigation of the laws and systems of administration prevailing in forty-eight States is always difficult. This is especially true when endeavoring to present in condensed form a complex subject like road legislation, which not only includes the consideration of engineering and economic problems, but also comprehends practically the entire system of government, both State and local. It has already been noted that the history of road legislation is in a very real sense a part of the history of township and county government. What is true of an historical study of road supervision in Iowa also applies to a comparative investigation of the various laws and forms of road and bridge administration prevailing in other States.

It has seemed that the complex mass of detailed facts regarding road and bridge legislation may best be presented, both from the standpoint of general supervision and of financial control, on the basis of the authority vested in each respective unit of government from the State down to the smallest administrative subdivision. Considered with reference to this plan or method of study, the sphere of jurisdiction and control vested in the State itself logically comes first and includes a consideration of the organization and powers of State highway departments and of the policy of State aid. This in-

vestigation should be followed by an outline of the jurisdiction over roads and bridges, including financial control, vested, first, in the counties, second, in the civil townships or similar units of local government, and third, in various road improvement districts. Under the term financial control there is included not only the levy of taxes, but also the issue of bonds in the different units of government. It will be understood that the county road engineer is a logical part of the machinery of county government where permanent improvements involving engineering skill and the expenditure of large amounts of money are required. Finally, certain miscellaneous problems like the poll tax, convict labor, and the economics of highway improvement will demand a separate study.

#### STATE HIGHWAY DEPARTMENTS

At the present time forty-one States have either a State highway department, a State highway commissioner, a State engineer, or some other official or board possessing similar powers and authority. Arkansas, Florida, Georgia, Indiana, Mississippi, South Carolina, and Texas are the only exceptions to this rule. With the exception of Indiana, which has made liberal provision for an extensive net-work of permanent roads by vesting large authority in the hands of boards of county commissioners, it will be observed that all of these States are in the South. In other words, it appears that every State north of the Ohio and Potomac rivers and every State west of the Mississippi River, except Indiana and Texas, has provided some definite machinery for the State supervision of roads and bridges or at least for the collection of statistical data and the preparation of plans and specifications to promote the cause of intelligent highway administration.

The various plans of organizing State highway departments present a great variety of administrative details. In fact, no two States have the same identical system of highway administration, largely for the same reason that no two States have exactly the same plan of taxation or the same public school system. A large number of States have a single highway commissioner, or a State engineer, appointed usually by the Governor with the consent of the Senate, but in some cases receiving his appointment from a board. Arizona, Connecticut, Kentucky, Maine, Ohio, and Vermont are examples of States having a highway engineer appointed by the Governor. Colorado, Illinois, and Minnesota represent another type of States having commissions of three or more members, usually appointed by the Governor with the consent of the Senate. In States like Alabama, California, Idaho, Iowa, New Jersey, New Mexico, New York, Utah, Virginia, Washington, and Wisconsin, the State highway departments are largely ex officio in character, the actual work of collecting statistical data, preparing plans and specifications, and various functions in such cases usually being vested in a State highway commissioner and his corps of assistants.

In a brief paper it is manifestly impossible to present in detail the methods of organizing highway departments in every State of the Union. Comparative data along this line may be found in the Appendix of the author's *History of Road Legislation in Iowa*, published in the *Iowa Economic History Series*. Some of the more important facts, however, relating to the organization of highway departments in various individual States should be noted. In Kansas the State engineer is appointed by the State Agricultural College, a plan which represents

a form of organization substantially the same as that prevailing in Iowa. In Louisiana the highway department is simply a division or branch of the State Board of Engineers, the Highway Engineer being appointed by the board. The State Highway Engineer of Missouri is appointed by the State Board of Agriculture; while in North Carolina the office is connected with the State Geological and Economic Survey, and in North Dakota a Good Roads Experiment Station has been established at Bismarck for the purpose of investigating the most practical and economical method for the construction and maintenance of public roads.

With reference to the powers and authority vested in State highway departments, no two States have exactly the same system. Speaking in general terms, it may be said that the jurisdiction over roads and bridges conferred upon the various State officials or boards ranges all the way from the mere collection of statistical data to almost complete supervision of a comprehensive system of permanent highways realized through a policy of State aid. Iowa is an example of a State where the highway department possesses very little power and authority.

It may also be stated that the various States, through their highway commissions or engineers, exercise a degree of supervision substantially in proportion to the amount of money raised by the State either by taxation or the issuing of bonds for the building and maintenance of a system of highways. Indeed, the reader should bear in mind in this connection the underlying principles of representative government, which demand that the amount of money raised by taxation or otherwise in the various units of government should be subject to the control of officials representing these same units of gov-

ernment. In other words, the State should have jurisdiction over highways in proportion to the amount of money it appropriates for that purpose; and the same general rule holds true of the county, the township, or the road improvement district.

Bearing in mind these considerations, it logically follows that the States which now expend the largest sums of money annually in the form of State aid have necessarily clothed their highway departments with the largest measure of power and authority. In approximately twenty States the State highway engineer, commission, or department, as the case may be, is not only required to collect information, and prepare plans and specifications, but is given a substantial amount of supervision over all permanent highway construction supported wholly or in part by a State aid policy, and in nearly all cases is clothed with authority to accept or reject bids for this important work. This list of States includes Alabama, Louisiana, and Virginia in the South; California, Colorado, and Idaho in the West; Illinois, Michigan, Ohio, and Wisconsin in the Middle West; and Connecticut, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Pennsylvania, and West Virginia in the North Atlantic and New England States. Thus, it appears that the policy of conferring extensive jurisdiction over the construction of permanent highways and bridges upon State highway engineers or commissions is not confined to the leading industrial commonwealths of the East, but has been adopted in every section of the Union, in agricultural sections as well as in the great commercial and manufacturing States.

In speaking of the power and authority conferred

upon the State highway departments of individual States it may be said that Alabama is an excellent example of a commonwealth still largely agricultural, which has recently made great progress in the good roads movement. The State Highway Engineer of Alabama is required to prepare and keep a general plan of the highways of the State, collect statistics relative to the mileage, the character, and the condition of highways and bridges, have general supervision of the construction and repair of all roads and bridges improved under the State aid law, furnish a competent engineer where needed during the progress of road construction in any county, who is required to see that all work is done according to plans and specifications, and finally, the State Highway Engineer is required to make a map of the main highways in the State which should be improved and maintained at the cost of the State in coöperation with the counties. All work may be let by contract to the lowest bidder, subject to the approval of the State Highway Commission. In other words, the commission is vested with large powers, both as to the improvement and the maintenance of all public highways which receive the benefit of State aid.

In California the State Department of Engineering has full control of all so-called State highways and of all moneys expended by the State for the improvement of roads. The recent issue in that State of \$18,000,000 of State road bonds has rendered necessary the conferring of greater authority upon the highway department. In Colorado the State Highway Commission passes upon plans, specifications, and estimates made by the county commissioners for State roads, and may approve, change, or disapprove of such plans. The commission must also



pass upon contracts for State roads; and in fact all construction and maintenance of State roads by county commissioners is subject to the supervision and approval of the State Highway Commission.

In all of the States above mentioned the State highway departments have been vested with substantially the same jurisdiction and, as has already been suggested, these various commissions, boards, or State officials have supervision over highways in proportion to the amount of money appropriated by the State. In Connecticut and other New England States the centralization of power in the State highway department is very marked. Should the selectmen refuse to carry out the vote of their town for a State aid road, the highway commissioner may enter the town and perform this duty, a power which represents the somewhat unusual measure of centralized control that is frequently necessary in States that have not developed the county form of local administration. Indeed, a State like Connecticut is obliged to confer upon its State highway department certain powers and authority which in a State like Iowa might wisely be vested in the county board of supervisors, advised and assisted by a county road engineer.

For a more detailed study by individual States of the sphere of jurisdiction conferred upon the various highway departments the attention of the reader is called to the Appendix of the author's *History of Road Legislation in Iowa*. As a general statement it may be said that this jurisdiction embraces one or more of the following powers: first, the collection of statistical data, including possibly the carrying on of certain experiments, and the dissemination of any and all useful information relating to the administration of the public highways; second, the

preparation of plans and specifications for permanent highway improvements, including the construction of bridges, which may be used in connection with a regular system of State aid roads or, as in Iowa, may be supplied to local authorities upon request; third, the construction, and in a few cases the maintenance also, of certain trunk line roads entirely out of State funds and by a corps of regular State engineers; fourth, a substantial amount of supervision and control of State or county roads, or, as in the case of a commonwealth like New York, of even township roads which were constructed partly out of funds appropriated by the State; and fifth, the authority to accept, modify, or reject all bids for work done partly or wholly through a policy of State aid.

#### STATE AID IN ROAD BUILDING

In this connection a few words should be said more specifically concerning the nature, purpose, and scope of the policy of State aid. No comparative study of road legislation and administration would be complete without special reference to this important subject. While in reality this is a logical division of the general question of finance, it has assumed such large proportions in recent years as to merit separate treatment. Prior to the coming of the railroad to Iowa, the Territory and later the State took a very active interest in the laying out, the opening, and the maintenance of public highways. What was true of Iowa in pioneer days has also been quite generally true of all of the western States before the era of railroad building. This was a logical and necessary development, because at that time highways were looked upon not merely as a local convenience, but as a means of transportation for long distances in large sections of

the country where water transportation was impossible or at least impracticable.

As has been suggested, the first result of railway transportation was to relegate the whole question of roads to the local units of government from the standpoint of finance and administration. In recent years, however, it has become obvious that the railroad at best can only supplement and not take the place of wagon roads. When it is recalled that there are now approximately ten miles of wagon road to every mile of railroad and that practically all produce must be hauled over wagon roads before being transported by rail, it is very evident that this whole system of transportation, considered as a unit, is efficient in proportion to the improvement of the public highways. If it is vital to the economic interests of the country to have one-tenth of the transportation system constructed of steel and be put in the best condition that money and science can afford, it is even more important to have the remaining nine-tenths of the system improved and maintained on a reasonably efficient basis. The recognition of this important principle is the foundation of the good roads movement of the present day and of the accompanying policy of State aid.

It is now more than twenty years since the plan of giving State aid was first adopted by New Jersey. At that time (1891) practically all road work throughout the entire Union was in the hands of local officials who did not possess expert knowledge, and as a result the whole system was wasteful and inefficient. Between 1891 and December 31, 1910, the various State aid appropriations in New Jersey amounted to \$3,059,882.70, with the result that 1562 miles, or more than ten per cent of the roads of that State were permanently improved.

Other States rapidly followed the example of New Jersey, until at the present time out of the forty-eight commonwealths thirty-seven have adopted State aid in one form or another. In fact, during the year 1911, Alabama, Oklahoma, South Dakota, and Wyoming enacted State aid laws; and Mr. Logan Waller Page is authority for the statement that at the present time nine out of the eleven remaining States are seriously considering this same question.

It should be noted, however, that State aid does not always consist in money. Some States appropriate money for that purpose; others supply expert engineering assistance; others provide convict labor in some form; and still other States provide a combination of money aid, expert assistance, and convict labor. Georgia furnishes, perhaps, the leading example of State aid in the form of convict labor. At the present time nearly five thousand convicts are at work on its roads. Illinois operates a rock crushing plant with convict labor, furnishing crushed stone to the various counties throughout the State. A similar plan is followed in California. Arizona, California, Colorado, Louisiana, Maryland, Michigan, Missouri, New Mexico, and Virginia provide both convict labor and money aid; while Wyoming, Oklahoma, and Illinois furnish convict labor and engineering assistance. The remaining States which have adopted the policy of State aid, namely, Alabama, Connecticut, Delaware, Iowa, Maine, Massachusetts, Minnesota, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Utah, Vermont, Washington, and Wisconsin, give money aid together with advice and engineering assistance.

Money aid is generally the direct result of some form

of State taxation. The policy of issuing bonds for this purpose, however, has already been adopted in a group of States. There is a bond issue of \$18,000,000 in California, \$4,500,000 in Connecticut, \$6,000,000 in Maryland, \$2,500,000 in Massachusetts, \$1,000,000 in New Hampshire, \$50,000,000 in New York, making a total of \$82,000,000. It may be stated that this plan of raising funds for the building of roads has become well established. Indeed, at the present time Rhode Island, Colorado, Alabama, and Pennsylvania are agitating the question of providing bond issues, which if adopted will amount to the enormous sum of \$110,600,000.

Speaking more in detail concerning the important subject of State aid, it appears that the following commonwealths each appropriated more than \$100,000 in 1911 for highway purposes: Alabama, California, Colorado, Connecticut, Louisiana, Maine, Maryland, Massachusetts, Michigan, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Utah, Vermont, Virginia, and Wisconsin. Minnesota made an appropriation of \$150,000 for the fiscal year which ended July 31, 1912, and annually thereafter for the purpose of State aid and meeting the expenses of the State Highway Commission. Pennsylvania appropriated \$4,000,000, Ohio \$600,365, Massachusetts \$500,000, Vermont \$450,000, New Jersey \$405,904, Wisconsin \$390,000, Utah \$355,750, Missouri and Virginia each \$300,000, and Maine and Michigan each \$250,000. These large appropriations, considered in relation to much larger outlays made by various local units of government, show the enormous sums that are now being used for road and bridge purposes and reveal the extent to which the administration of this work is being placed on an efficient business basis.

In fact the whole subject of State aid is a part of the larger problem of expert administration. The road and bridge question, judged from the standpoint of political science, is one of efficient, centralized administration, and from the standpoint of engineering science requires expert knowledge of the methods of dealing with the various materials of construction to the best advantage. The good roads movement has now reached a stage where as a problem of both economics and political science, and of the fundamental principles of engineering, it demands the service of the best trained minds.

In concluding this brief study of the subject of State aid mention should be made of some of the different methods of distributing State aid funds. It is, perhaps, needless to say that these various methods must necessarily depend very largely upon economic conditions prevailing in a given commonwealth and also upon the character of its local government. In the mountainous States, especially, the building of permanent trunk line wagon roads frequently involves expenditure of money on a scale so vast as to make large appropriations by the State an imperative necessity. On the other hand, in States of fairly uniform economic and geographic conditions where the township, county, or some compromise principle of local government exists, the method of distributing State funds is likely to be worked out, at least in some measure, along the line of the particular method of local organization which happens to prevail. In a word, the method of distribution varies from the expenditure of the entire State fund under the exclusive supervision of State officials to the distribution of all State aid revenues among the localities.

In Alabama the State aid is apportioned by the State

Highway Commission in such a way as to give each county an equal share of this fund, it being further provided, however, that the county must appropriate and render available a sum of money equal in amount, which means that half of the fund to build permanent roads is supplied by the counties and the other half by the State.

California, on the other hand, has a very different plan of distribution. A State bond issue of \$18,000,000 was authorized for the construction of a continuous and connected system of State highways—it being further provided, however, that each county must pay into the State treasury annually a sum equal to the interest at four per cent upon all the money expended within such county for the construction of said system of permanent highways, less such portion of the amount thus expended as the matured bonds shall bear to the total amount of bonds sold and outstanding. Moreover, it should be stated that California has made special appropriations for the construction and maintenance of eleven different State roads, all of which are located in a mountainous country where the counties as such would not be financially able to pay for their building and maintenance.

In Delaware, Louisiana, Maryland, and Virginia one-half of the permanent road fund is provided by the State and the other half by the counties. In Colorado and Minnesota one-third is paid by the State and two-thirds by the counties. Other commonwealths present a complex and instructive variety of plans of State aid distribution. In this brief essay, however, only a mere outline statement can be made.

In Connecticut the State pays from three-fourths to seven-eighths of the cost of permanent roads, depending upon the grand list or taxable value of the respective

towns. The State of Illinois furnishes free stone, machinery, and engineering inspection; and the township or county, depending upon the character of local government which prevails, pays the remainder. The method of distribution in Maine requires the State to pay from two-thirds to three-sevenths, and the township from one-third to four-sevenths, of the cost of permanent roads. New Jersey presents a very complicated plan of distribution, the State paying thirty-three and one-third per cent, the county fifty-six and two-thirds per cent, and the township ten per cent of the cost. In Missouri the State pays one-half and the county, the township, or the abutting property owners pay the other half. New York has a very complicated system. The cost of building so-called State roads is borne entirely by the State; while fifteen per cent of the cost of building county roads is paid by the town, thirty-five per cent by the county, and the remaining fifty per cent by the State. Moreover, the State aid granted to the different townships in New York varies from fifty to one hundred per cent of the amount of taxes raised in said township, depending upon the assessed valuation of the same. Ohio also has an instructive system of distribution, one-half the cost of permanent highway improvement being paid by the State, twenty-five per cent by the county, fifteen per cent by the township, and ten per cent by the abutting property owners. In a word, almost every conceivable plan of distribution prevails in some one of the large group of commonwealths providing for a definite system of State aid.

The subjects of convict labor and the distribution of motor vehicle taxes, although closely related to the whole sphere of State administration of public highways, are



sufficiently important and distinct in character to require a separate treatment.

#### LOCAL SUPERVISION OF ROADS

Complex as is a comparative study of the various systems of State highway administration, it will be generally admitted that such an investigation is simple and elementary when compared with the vastly more intricate and involved problem of county supervision and control. While the methods of establishing the different State highway departments, the powers and duties conferred upon these commissions by law, the numerous plans of raising and distributing revenue by the State, the general relation of the State to the different local units of government, and a large group of closely allied questions naturally present a complex mass of detail, yet the State is, after all, only a quasi-sovereign unit of government with a certain definite sphere of authority, the nature and scope of which can be classified and quite easily understood. Indeed, the various State constitutions giving the form or general outline of government, while possessing numerous differences of detail, rest on substantially the same broad, fundamental principles.

The county is a mere creature of the State, occupying as it does a position midway between the State and the smaller administrative subdivisions, and having its duties and functions closely woven into the whole fabric of government. While there has, no doubt, been a tendency in other States, the same as in Iowa, to differentiate county functions from those of the State and of the civil township, town or city, there is after all no very clear line of demarcation, especially between the respective spheres of township and county authority. In fact,

a study of county organization, including the county supervision and control of the public highways, can not be made separate and distinct from an investigation of the duties which have been conferred by the State on the smaller subdivisions of local government.

Such being the case, it is very difficult, if not impossible to present in brief essay form anything more than the main outline or fundamental principles of county organization as related to the supervision and control of roads and bridges. The differences of detail are so many and great that any effort to go beyond the essentials would necessarily lead to a study by individual States of county supervision of the public highways such as may be found in the Appendix of the author's *History of Road Legislation in Iowa*. Certain important facts and tendencies, however, may readily be discovered from a comparative analysis of road legislation and administration and may therefore be presented at this time.

First of all, comes the question of the organization or form of county government. More than three-fourths of the States have some plan of county organization. Even in New England, the birthplace of the township plan of local government, there is something in the way of county organization, including some measure of supervision and control of the public highways. On the one hand, the county may be subordinate to or coördinate with the civil township or it may be practically the only unit of local government; while on the other hand, county authority may be vested in a board of supervisors representing the civil townships, in a board of county commissioners, or in the county court. In other words, financial control and the general work of administration may be highly decentralized or it may be vested in com-

paratively few officials. With reference to this consideration, it is an instructive historical fact that the different forms of county administration which have prevailed in Iowa range all the way from the county board of township supervisors, which existed during the Michigan period (1834-1836) and again during the decade from 1860 to 1870, to the county judge system (1851-1860), by which an unusual amount of power was placed in the hands of one man. Thus in the history of local government in Iowa may be found striking illustrations of the extreme forms of centralized and decentralized county organization which now prevail in the different States of the Union.

Some States present a dual plan of local government, and others have township organization in some counties and county organization elsewhere. Missouri, for example, has two distinct systems of local government and, therefore, two separate plans of local road administration. In ninety-two counties the county court, consisting of a chairman, elected for a term of four years, and two associates, appoints a county engineer and at the same time divides the county into districts, appointing district road overseers who are required to make reports to the county engineer. In the remaining twenty-two counties the roads of each township are placed under the control of a township board of three members, elected by the people, who divide the township into road districts and appoint overseers who are also required to report to the county engineer.

In Illinois substantially the same conditions prevail. Counties having township organization elect three township highway commissioners, who have jurisdiction over the public highways and may employ road overseers or a

general superintendent. In counties that have not adopted township organization, county boards of commissioners are elected by the people and required to divide the county into road districts. In each road district operating under this system three highway commissioners and one clerk are elected, who in turn may appoint road overseers or a general superintendent.

The more general compromise plan, however, is to place certain powers in the hands of the proper county authorities and certain other powers under the jurisdiction of the civil township or similar subdivision of local government. This rule is followed in the large group of States having the so-called township-county system of county organization. Iowa is one of the best examples of this class, conferring upon both the county board of supervisors and the township trustees certain definite financial powers and, what logically follows, a substantial measure of supervision and control. Other States which have adopted some variation of this general plan of local government are the following: Indiana, Kansas, Michigan, Minnesota, Nebraska, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Washington, and Wisconsin.

When, however, one has studied the respective spheres of township and county authority as related to the supervision of the public highways, and has catalogued the numerous powers and duties conferred upon various county and township officials, he has just made a beginning in his efforts to analyze the complex subject of road and bridge administration. The fact is that in States operating primarily under the county plan of local government the general rule in the past has been to create small road districts and thus decentralize the actual work

of supervision and control of the public highways. In a word, the tendency has been to establish small artificial administrative subdivisions with the hope of bringing government, which usually means the control of finances, closer to the people, with the result that the actual administration of roads and bridges has frequently become to a large extent a sub-district function quite separate and distinct from the powers and authority of the county or of the civil township.

While it is true that the recent movement to create the offices of county road engineer and township road superintendent means a gradual return to the township and county as appropriate units of administration, the fact remains that the decentralized and inefficient sub-district plan of supervision, which has been the rule in the past and is quite general even at the present time, must be investigated apart from or at least in addition to any study which may be made of township and county organization. It is hardly necessary to observe that this decentralized plan of administration is not the same in any two States. At best, it is a cumbersome and useless structure. Perhaps the most definite statement which can be made, however, is in reference to the fact that the system itself has always proved inefficient and is gradually being abandoned in favor of a more businesslike plan of supervision, represented, as will be noted later, by a township road superintendent or a county road engineer.

Before making any further analysis of the general subject under consideration, it is well to bear in mind the different classes of functions of road administration which are being exercised directly or indirectly through the machinery of county organization. Briefly stated, these classes of powers are the following: first, the laying

out and opening of public highways, which is almost universally a county function in States where the county form of local government prevails; second, the authority to levy taxes or issue bonds for the construction and maintenance of roads, which may be largely a county or almost exclusively a township function; and third, the actual work of construction and maintenance of highways and bridges, which may be done by State, county, or township officials, but which in the past has very commonly been delegated to sub-district road overseers.

Thus, it appears that the real work of supervision and control in practically all of the States, including Iowa, has become the most decentralized of any part of the general field of highway administration. By real work is meant the control of public expenditures for road and bridge purposes. In States having the county form of local organization, actual highway administration has often been broken up and dismembered quite as much as in other States which have the township form of local government. This extreme form of decentralized county supervision is accomplished by having two grades of road officials below the board of county commissioners, the county court, or the county board of supervisors, as the case may be. A few concrete examples will show exactly how the people, in their desire to secure popular control, have made a complete sacrifice of administrative efficiency.

In Alabama the court of county commissioners, which is composed of the judge of the probate court and four other commissioners, has charge of the public highways. This means that the commissioners are clothed with authority to lay out and open public roads, and levy taxes or issue bonds for the support and maintenance of the

same. When it comes to the actual field work, however, the law provides that the county commissioners may divide the county into road precincts and appoint apportioners, who in turn appoint an overseer for each precinct. In other words, the overseer is separated from the county board by an intermediate official known as the apportioner, which fact makes any efficient and business-like administration impossible or at least impracticable. That this system has broken down is evidenced by the fact that the county commissioners have recently been authorized by law to appoint a county road supervisor, who shall be a competent civil engineer. Thus, in Alabama may be found the old decentralized and inefficient plan of road administration, and along with it the optional system of supervision by a county road engineer, which will no doubt serve as an entering wedge for the evolution of a more satisfactory method of supervision and control in the future.

In Arkansas the county court is required to divide the county into road districts and appoint an overseer for each district. This system was modified, however, in 1897 by a law which clothed the county court with authority at its option to declare each township a road district, the qualified voters to elect a road overseer in the same way that other township officers are elected. The system of road administration which prevails in Florida is much the same as that of Alabama. The two grades of officials below the regular county board are: first, three township road commissioners; and second, a road overseer appointed by said road commissioners for each subdivision of the road district. In other words, the local officials having actual direction of road work are far removed from the board of county commissioners,

who are supposed to have and exercise jurisdiction over the public highways. In Georgia, Mississippi, Tennessee, and in fact generally throughout the South, some modification of this decentralized plan of road administration is still in existence.

A larger group of States having county organization, however, provide but one set of officials below the regular county board. In this list may be mentioned States like California, Colorado, Delaware, Idaho, Indiana, Maryland, New Jersey, New Mexico, Oregon, Utah, Washington, West Virginia, and Wyoming. No arbitrary lines can be drawn, of course, in making such a classification. The States mentioned in this list differ widely in the general plan of county road supervision, but in these commonwealths, and perhaps in others that might be named, there is a very obvious tendency to simplify, and therefore render more efficient, the machinery of actual road administration, which may be accomplished in one of two ways: first, by having the officials directly in charge of this work only one step removed from the regular county board; or second, by providing a county road engineer to advise and assist the county board, and thereby centralize the entire work of county road and bridge administration.

This being true, in States having the township-county, or especially the county, plan of local organization, the county road engineer is the logical result of the movement away from the old decentralized and more or less ex officio systems of road administration created during the pioneer days when the labor tax was the rule and the property tax the exception. In States where the township is an important unit of local government the tendency to abolish the sub-district system by creating



the office of township road superintendent may be explained by the same economic causes, and it produces substantially the same general results.

Thus, it appears that the county road superintendent or engineer is the logical result of present-day agitation, which demands a careful consideration of the principles of civil engineering and of economic science. Where the county form of local organization prevails, so rapid has been the movement to place the supervision and control of the public highways on a businesslike basis that at the present time more than half of the commonwealths have provided in some manner for the office of county road superintendent, supervisor, commissioner, or engineer. In some States the creation of the office has been made optional; and in still others, county superintendents are appointed to direct the construction of certain permanent roads or bridges requiring a large expenditure of funds and therefore a more or less definite knowledge of engineering science. The movement which aims at a more responsible and efficient method of highway administration, however, is vastly more significant in itself than any consideration of mere details. This is particularly true when it is borne in mind that States having laws of this character are not confined to any particular section, but are well distributed throughout the Union.

The list of States where this important reaction against the pioneer system of road supervision and control is taking place includes Alabama, Arizona, Arkansas, Kentucky, Mississippi, South Carolina, Texas, and Virginia in the South; Maryland, New Jersey, New York, Rhode Island, and Vermont in the East; Iowa, Kansas, Missouri, Nebraska, North Dakota, and South Dakota in the Central West; and California and Washington on the

Pacific Coast. Colorado, Oklahoma, and West Virginia also belong in this class.

In Rhode Island and Vermont the county road supervisor is appointed by the Governor—a fact which illustrates the principle that in States not having a definite system of county organization a larger measure of centralized authority vested in the State government is frequently an imperative necessity. In Washington the county engineer is an elective official, but in the vast majority of cases he is appointed by the county board of supervisors, board of county commissioners, or similar county authority. It is hardly necessary to point out that the appointive system is superior to that of election for any administrative office of this character. But whether appointive or elective, the powers and authority conferred upon the county road engineer must be defined in such a manner as to be in harmony with the type of local government which happens to prevail in a given commonwealth—a fact which is revealed by a detailed study of the system by individual States.

The laws of Arizona require the board of supervisors to appoint a county superintendent of roads who is given charge of all public highways in the county, subject to the orders of the board of supervisors. This simple and effective system has much in common with the county road supervisor as provided for by the laws of Iowa in 1851. In Colorado the board of county commissioners may divide the county into road districts and appoint a general road overseer for the county who shall have general supervision of all road work with authority to appoint deputy road overseers when authorized to do so by the county board—a system which even more closely resembles the county road supervisor plan of Iowa as

outlined in the *Code of 1851*. In fact, the only difference is that the county road supervisor of Colorado is an appointive official, while the county road supervisor of Iowa in 1851 was an elective official. It should also be noted that in Colorado the county commissioners may employ a competent civil engineer to supervise the construction of permanent road work let by contract by the county commissioners after being approved by the State Highway Commission.

The plans prevailing in some of the other States should be briefly reviewed. Iowa, in common with a large group of States, such as Kansas, Mississippi, Nebraska, Oklahoma, Texas, Virginia, and Wyoming, has an optional system of supervision by a county road engineer. The laws of Indiana authorize the board of county commissioners to appoint competent surveyors when gravel or other permanent roads are to be constructed. The county court of each county in Kentucky has three important powers in connection with the administration of roads and bridges: first, the appointment of a county road supervisor, who shall have general supervision of all highway work; second, to divide the county into road precincts or districts; and third, to appoint a road overseer for each district. This unique compromise system might be made very effective by clothing the county road supervisor with adequate powers and giving him the authority to appoint the road overseers for the various sub-districts, a plan which is desirable for the obvious reason that to secure the best results a deputy should be made directly responsible to his principal, and not indirectly responsible through some other official or board.

The system of road administration in Maryland is

much more centralized and efficient than in the majority of commonwealths. The board of county commissioners is given complete authority to appoint road supervisors and, when deemed expedient, may place the construction and repair of roads and bridges directly in charge of competent engineers. The county court of Missouri annually appoints a county highway engineer, who has no important authority, however, over township boards or district overseers, or over road expenditures in general, except in cases where the county court itself has jurisdiction. New Jersey has made great progress in the construction of permanent roads and for the purpose of carrying on this work more effectively the board of chosen freeholders in that State appoints a county supervisor of roads and also a county road engineer.

In concluding the discussion of the important subject of county road administration, a word should be said concerning the systems of county highway supervision prevailing in New York, South Carolina, and Texas. The board of supervisors of any county in New York may appoint a county superintendent of roads whose term of office is four years, unless he is sooner removed by the board. The law requires, however, that in case the board of supervisors does not appoint a county superintendent the appointment shall be made by the State Highway Commission. Moreover, in cases where the appointment is made by the State commission two or more counties may be united into one road district. It further appears that all town superintendents of roads are under the supervision of the county or district superintendent, who in turn is under the supervision of the State Highway Commission and, in fact, may be removed from office by the commission after being presented with written

charges and granted a lawful hearing. Indeed, New York appears to have a highly centralized and efficient plan of road administration which provides that the town roads in certain cases shall be constructed under contract to be awarded by the town superintendent on the basis of estimates, plans, and specifications furnished by the district or county highway superintendent or by the State Highway Commission.

South Carolina has a unique and somewhat complicated plan of highway supervision. In eight counties the township system of road supervision prevails, but in all the remaining counties jurisdiction over the public roads is vested in the board of county commissioners and the county supervisor. In 1909, however, certain counties were authorized by law to adopt the contract system and to employ superintendents and engineers and lay out a plan of road construction. Finally, in Texas the commissioners' court of any county may appoint one road superintendent having general supervision of the entire county or one superintendent for each commissioner precinct. In other words, it is optional with the commissioners' court whether one county road superintendent shall be appointed or various precinct superintendents.

Thus, a comparative analysis of road legislation reveals the fact that the county road supervisor, superintendent, commissioner, or engineer is the one county official around whom is crystalizing the progressive tendency away from pioneer road philosophy, a movement which is based on the fundamental principles of engineering and economic science, and which is therefore adapted to the new industrial conditions and will result in a more efficient and business-like administration of the public highways. In a word, the experience of other

States shows that the Iowa law of 1911, creating an optional system of supervision by a county road engineer is in harmony with the spirit of the good roads movement and should be so amended as to provide definitely for a permanent county official, giving his whole time to the intelligent supervision of the construction and maintenance of roads and bridges.

#### ROAD AND BRIDGE FUNDS

From the standpoint of the control of road and bridge finances the county is an important unit of local government in the great majority of the American commonwealths. This is especially true of bridge taxes and of levies made for the construction of permanent roads involving large expenditures of public money. It has already been noted that even in the Territorial period of Iowa history the county was looked upon as the proper unit of local government for the levy of bridge taxes. The fact is that the township or sub-district has too small a taxable area for this purpose, a fact which has become quite generally recognized in States where the county or the township-county principle of local organization has been adopted.

County revenue, whether for the construction and maintenance of roads or of bridges, may be obtained either through taxes or through the issue of bonds — which in the end means additional taxes, as all bonded debt must be liquidated at the end of a certain period. County levies for road and bridge purposes may be regular or special. In other words, the board of county commissioners or similar county authority may be authorized to levy a certain maximum tax on their own initiative; but in addition to this they may make certain

special levies for certain purposes, usually after such levies have been approved by the qualified electors at a special or general election. The regular county levy ranges all the way from one mill in South Carolina to ten mills in Colorado and Oregon and even twelve mills in Wyoming. From three to five mills appears to be the average regular rate.

The extent, however, to which special levies are authorized can not be ascertained except through a detailed study by individual States of the various systems of highway administration, such as may be found in the Appendix of the author's *History of Road Legislation in Iowa*. Two or three concrete examples will serve to illustrate the principle under consideration. In Nevada the regular levy for the county road fund is two and five-tenths mills; but when a majority of the property holders of any district shall so petition the county road commissioners they may levy a tax not exceeding three per cent, provided that the same may be paid in whole or in part by labor on the roads of the district at the rate of three dollars for each full day's work. It thus appears that the two and five-tenths mills is a regular county levy, and the three per cent is in reality a district levy which is made, however, by the county board.

In North Carolina the county commissioners have authority to levy a tax of not more than double the amount of the State tax. In Ohio the revenue system, judged from the standpoint of road administration, is very complicated. Money is derived for roads and bridges from the following sources: first, a tax varying from one-half to five and one-half mills, depending upon the assessed valuation, levied by the board of county commissioners; second, an additional tax of not more

than five-tenths of a mill for the creation of a State and county improvement fund, also levied by the board of county commissioners; third, county bonds which may run not more than three years; and finally, certain township and district sources of revenue, including the poll tax. Numerous other examples might be given of States which provide for a maximum regular levy, and in addition have certain special levies.

The statistics collected by the Office of Public Roads at Washington, D. C., are partially estimates, and fail to differentiate between county and township revenues. In fact, it is difficult, if not almost impossible, to make this differentiation in view of the present chaotic methods of public accounting. On the basis of data available, however, it appears that in 1904 the expenditures in the United States by counties, townships, and districts from property and poll taxes payable in cash amounted to \$53,815,387.98, and from labor taxes \$19,818,236.30. At the same time the expenditure as reported from local bond issues was \$3,530,470.93, and from State aid \$2,607,322.66 — making a grand total of \$79,771,417.87. These various amounts had increased so rapidly that by 1911 the approximate road expenditure as computed by the Office of Public Roads was as follows: State aid \$21,037,769, local bond issues \$18,503,356, local revenues (estimated) \$101,750,000 — making a total of \$141,291,125. It would be instructive to know how much of the local revenue as estimated was obtained from regular county levies as distinguished from township or district levies, but for reasons already suggested this information can not be secured at the present time with anything approaching scientific accuracy.

Reference has already been made to the large amount



of revenue obtained for the construction and maintenance of permanent roads by the issue of bonds, either by the State, the county, the township, or the special road improvement district. In connection with the subject of State aid, the issue of State bonds for this purpose was briefly discussed. The same rapid increase which has taken place in the amount of State bonds issued for the construction of permanent highways has also manifested itself in the case of the local units of government in every section of the Union.

In studying local bond issues, however, it is difficult, if not impossible, for reasons above noted, to differentiate between the respective spheres of township, county, and sub-district authority. For example, a bond issue may in reality be authorized by the taxpayers of a certain improvement district or even of a township, and yet the issue be nominally made by the county board of supervisors or board of county commissioners. Thus it is evident that to distinguish with even approximate accuracy between strictly county bonds, township bonds, and road improvement district bonds, would require an almost endless amount of labor and careful research not only of the laws themselves, but more especially of the manner of their administration in subdivisions of local government in every one of the forty-eight commonwealths. Even then it is doubtful whether it would be possible with present systems of public accounting to secure satisfactory results.

The following table, taken from the *Good Roads Yearbook* for 1912 (page 257) gives the amount of bonds reported as voted by counties and townships for the year 1911. The figures given may be incomplete, but they are nevertheless instructive.

TABLE I

BONDS REPORTED AS VOTED BY COUNTIES AND TOWNSHIPS 1911	
Alabama .....	\$1,135,000.00
Arkansas .....	130,000.00
California .....	2,295,000.00
Delaware .....	200,000.00
Florida .....	310,000.00
Georgia .....	230,000.00
Idaho .....	38,795.50
Illinois .....	45,000.00
Indiana .....	513,754.00
Iowa .....	431,600.00
Kansas .....	697,234.80
Kentucky .....	21,500.00
Louisiana .....	60,000.00
Maryland .....	1,559,000.00
Michigan .....	3,657,000.00
Minnesota .....	60,000.00
Mississippi .....	660,000.00
Missouri .....	804,000.00
Montana .....	312,500.00
Nebraska .....	101,000.00
Nevada .....	10,000.00
New Jersey .....	1,173,100.00
New York .....	1,953,125.00
North Carolina .....	737,000.00
North Dakota .....	11,400.00
Ohio .....	3,098,133.00
Oklahoma .....	474,500.00
Pennsylvania .....	1,964,000.00
South Carolina .....	124,000.00
Tennessee .....	3,079,433.00
Texas .....	8,915,500.00
Utah .....	200,000.00
Virginia .....	2,650,000.00

Washington .....	325,000.00
West Virginia .....	710,000.00
	<hr/>
Total .....	\$38,686,575.30

The reports are no doubt very incomplete, and so the results are only relatively accurate. It appears that large local bond issues were authorized in the following States: Texas, \$8,915,500; Michigan, \$3,657,000; Ohio, \$3,098,133; Tennessee, \$3,079,433; Virginia, \$2,650,000; California, \$2,295,000; Pennsylvania, \$1,964,000; New York, \$1,953,125; and Maryland, \$1,559,000. Alabama and New Jersey each authorized more than a million dollars in the form of county or township bonds. It is a significant fact that even the inadequate data given in the *Good Roads Yearbook* shows that thirty-five States voted township and county bonds for the construction and maintenance of permanent roads to the large amount of \$38,686,575.30. The subject of local bond issues alone is sufficiently important for consideration in a separate monograph, and should be carefully investigated: first, with reference to the types of local organization prevailing in the different States; and second, from the standpoint of the good roads movement in general.

An additional word only need be said with reference to the financial authority vested in the civil township by a large group of commonwealths. Something has already been stated regarding this point in the discussion of the jurisdiction over the public highways vested in the county. The reader is familiar with the fact that some States have the township system of local government and other States the so-called township-county plan of local organization. It logically follows that the amount of

fiscal authority vested in the town or civil township will depend primarily upon the general character of local institutions.

Approximately one-half of the different States have placed the control of road finance partly, and in some cases almost entirely, in the town or civil township. This is particularly true in New England and in States to the west, where the New England town exerted much influence in shaping the character of local government. The rule in New England is to have the selectmen or similar authority of the town levy taxes for road purposes. When it comes to the distribution of State aid, the money is usually paid to the town on condition that a certain amount be raised locally. One or two concrete illustrations will suffice to show the general system of road administration, judged from the standpoint of financial control, now prevailing in the New England States.

In Maine funds for the building and repair of roads and bridges are raised annually at the town meeting. Moreover, a very comprehensive system of State aid has been worked out in Maine, the money being distributed to the towns and other local subdivisions on condition that a certain part of the local road fund be set aside for the permanent improvement of highways under the supervision of the State Highway Commissioner. The amount thus required depends upon the taxable valuation of the town. In Massachusetts local funds for road purposes are also appropriated at the annual town meeting, but the counties are required to assess on the towns the amount necessary to meet the State appropriation. While the town is, therefore, the most important unit of local government for fiscal purposes, the county also

possesses some real authority. Indeed, the still rather small amount of financial control which has come to be vested in the county in some sections of New England furnishes important evidence of the desirability of having a relatively larger taxable area when it is necessary to raise the amount of money required to carry on extensive works of internal improvement.

New York, Pennsylvania, Ohio, Indiana, Illinois, Michigan, Iowa, Wisconsin, North Dakota, South Dakota, and Nebraska are all excellent examples of the dual system of local organization, which vests part of the financial authority over roads and bridges in the county and part in the civil township. Iowa itself is a typical State of this class, the county being authorized, as already observed, to make certain definite levies for both road and bridge purposes; while authority is at the same time vested in the civil township to levy a regular road tax and a special road drag tax of one mill. The tendency, however, in other States of this group, as in Iowa, has been to clothe the county with relatively larger financial authority,—a fact which may be easily explained by the necessity of raising vast sums of money for the construction and maintenance of roads and bridges.

Illinois and Missouri, as already observed, are the best examples of States where some of the counties are under township organization and therefore clothe the township boards with a relatively larger amount of financial power in the administration of the public highways. In Illinois in counties under township organization the township commissioners of highways are given the power to levy a road tax of not more than three and six-tenths mills, and, with the consent of a majority of the

board of town auditors, an additional tax of not to exceed two and five-tenths mills on the taxable valuation. This is not the case in other sections of Illinois where the county form of local organization prevails. That which is true of some portions of Illinois is also true of a few counties in Missouri, and of certain counties in some of the other States.

With reference to special highway or road improvement districts, so called, it may be said that the general rule is to adopt the following plan in one form or another where a policy of establishing permanent roads has been well established. It has already been observed that in a number of commonwealths permanent roads are constructed in part out of State funds, in part from county funds, the balance being obtained by issuing bonds or levying taxes in special road improvement districts. In some cases the law specifies that a portion of the cost shall be paid by the abutting property owners, who form in reality a sort of special road district. The obvious theory of the law in such cases is that a permanent improvement of this character is of special benefit to the immediate vicinity, of more than ordinary value to the county, and of general advantage to the State at large. On the whole, it would seem logical and proper to apportion at least a small part of the cost of constructing permanent roads to the abutting owners of real estate or to the property holders of the immediate vicinity.

In Idaho special good road districts may be formed after a favorable vote of two-thirds of the electors, and bonds may be issued to an amount not exceeding twenty-five per cent of the assessed value of the property within such district. The county court in the State of California, upon petition of a majority of the property own-

ers, is required to establish a road improvement district and appoint three persons to compose a board of directors. The board of directors thus appointed is given authority to construct, maintain, and repair roads within their districts, and, in fact, to outline a complete plan of permanent road improvement. A number of other States have laws of substantially the same character, differing, however, in many points of detail. It thus appears that the formation of special highway districts for the construction and maintenance of highways independently, as well as in coöperation with county and State authorities, is quite common throughout the Union. The subject of special road improvement districts, when considered in detail is, however, closely woven into the whole fabric of township and county administration, and involves, therefore, a consideration of numerous complex questions which can be adequately investigated only on the basis of individual States.

Having made a brief comparative analysis of the respective spheres of State, county, township, and road improvement district authority, both with reference to general supervision, on the one hand, and financial control, on the other, there remain only a few special problems which should be considered in this essay. Among others may be mentioned the motor vehicle tax, the poll tax, convict labor, and the general economic and engineering aspects of the so-called good roads movement.

#### THE MOTOR VEHICLE TAX

A brief discussion of the motor vehicle tax is of practical value to Iowa at this time in view of the proposal to amend the present law and place all, or, substantially all of the revenue from this source in the State treasury to

be used as a State road fund, in connection with a comprehensive policy of State aid for the construction of permanent highways. It will be recalled that at present only fifteen per cent of the tax, which for the fiscal year ending June 30, 1912, amounted to more than half a million dollars, is retained in the State treasury to pay the cost of administration, the remaining eighty-five per cent being distributed among the counties and expended in the same wasteful manner that regular county road funds are too frequently expended.

A comparative investigation of automobile tax legislation shows that approximately half of the States now possess some special form of license tax for motor vehicles. In some cases the proceeds of this tax are distributed among the counties or other local units of government, but in many States revenue from this source is retained in the State treasury as a part of the regular State fund used for the construction and maintenance of permanent highways. The significant fact, however, is that whether this tax is retained by the State or distributed among the localities, it is almost universally used for the construction or maintenance of permanent highways and not for the maintenance or repair of ordinary wagon roads. Thus, it appears that Iowa belongs almost in a class by itself, because in this State the motor vehicle tax is not only distributed among the counties, but the law fails to require that the revenue from this source shall be used for permanent rather than mere temporary improvements. In this connection the experience of some other States should be of practical service to the General Assembly of Iowa in considering road legislation.

Revenue from the automobile tax in Maryland is paid



into the State treasury, one-fifth of the same being transferred to the city of Baltimore for use on its roads and streets, and the remaining four-fifths being used for the oiling, maintenance, and repair of the modern roads now being built by the State and counties. Massachusetts makes use of this same fund to promote the good roads movement. In fact, the entire net amount of automobile fees and fines, after paying the costs of administration, is expended for the construction and maintenance of State highways and the improvement of town roads. Of the net amount available twenty per cent may be spent by the commissions upon petition of the selectmen for the construction or repair of main roads connecting one town with another. The other eighty per cent is used on regular State highways. Ohio, New Hampshire, Utah, and Vermont are other examples of States which place the motor vehicle tax in the State highway fund. Nebraska, on the other hand, distributes this same tax among the counties, but with the proviso that it be used for the building of permanent roads.

#### PERSONAL ROAD TAXES

The personal or poll tax is still a part of the general system of highway administration in a majority of commonwealths. Indeed, about three-fourths of the States have some form of personal road tax. Arizona, California, Missouri, Nebraska, Nevada, Oregon, Utah, Washington, West Virginia, and Wyoming require the payment of this tax in money, the amount ranging from one dollar in Wyoming to three dollars in California and Oregon. It is a significant fact that West Virginia is the only State east of the Mississippi River that has provided a cash system, while all the States on the Pacific

Coast have adopted that system. The same general rule, however, applies to the working out of property road taxes, the statute labor system having quite generally been abolished in the western States.

Turning to a consideration of the compromise system of cash or labor payment, it appears that the labor tax is not only more general in the South, but that heavier burdens of this character are required in that section of the Union. In Alabama the personal road tax is ten days, which may be commuted by the payment of ten dollars. Other southern States have the following provisions of law: Arkansas, four days or four dollars in cash; Florida, five days or five dollars; Georgia, ten to fifteen days, which may be commuted at the rate of fifty cents per day; and Louisiana, twelve days or twelve dollars in cash. In North Carolina, South Carolina, Tennessee, and Texas heavy personal road taxes are still required. Virginia, however, is an example of a southern State which has abolished this system. In States farther to the North, where the poll tax has not been abolished, or reduced to a cash basis, the average amount is three dollars, which is regarded as the equivalent of two days' labor on the public highways.

While the cash system is quite common in the far West and a heavy labor tax is the rule in the South, it is instructive to note that all of the New England States and several commonwealths north of the Ohio and the Potomac and east of the Mississippi River have abolished the system of raising road funds by personal taxation. It is therefore apparent that a comparative analysis of personal road tax legislation reveals a marked tendency: first, to reduce the amount of labor required; second, to provide a cash system; and third, to

abolish the poll tax as a means of obtaining revenue for highway purposes.

#### PROPERTY ROAD TAXES

In conclusion, it may be stated that the movement to place the road tax on a cash basis has been vastly more successful in the case of property taxes. While a few of the more progressive States, like Minnesota, still retain the wasteful labor system for property road taxes, the majority have abolished this plan. It should be noted, however, that a number of commonwealths have an optional system whereby a township or county, by a vote of the people, may authorize the working out of road taxes — a compromise plan which may justly be regarded as a logical and perhaps necessary step toward the realization of the desired end, namely, the payment of all highway taxes in money.

#### CONVICT LABOR ON ROADS

Only a word can be said regarding the important subject of convict labor as related to the administration of the public highways. A majority of States have some definite system of convict labor, either on township, county, or State roads. In fact, it has already been noted that one form of State aid consists in the employment of convicts for crushing stone or the manufacture of some other form of road material for use in the construction of permanent highways.

What is called the "chain gang" system of employing convict labor on the roads prevails in some sections of the South. Prisoners are required to do road work in some States under the supervision of county authorities; and in still others, townships employ this class of labor.

Moreover, the plan of leasing out convicts to a private individual or corporation under the contract system meets with favor in few commonwealths. The most significant fact, however, about the whole system of convict labor is not to be found in the details of any particular plan, but rather in the general recognition of the principle that prisoners should be engaged in some healthful and productive occupation and that the construction of permanent roads or the manufacture of road material for this purpose is a form of employment which answers the legitimate requirements, both of economic science and of penology.

In concluding this comparative study of road legislation and administration special attention should be called to some of the concrete reasons why the good roads movement is necessarily based on the fundamental principles of economics and engineering science, a fact to which frequent reference has already been made. As has already been observed, a synthesis of leading facts and arguments is an important and frequently a necessary supplement to a critical analysis of details.

#### TENDENCIES IN ROAD LEGISLATION

An historical and comparative study of road legislation discloses certain obvious and irresistible forces which indicate the economic and engineering side of the good roads movement. In this connection, the following tendencies are significant: first, the change which is everywhere taking place from the labor to the cash system, not only in the property road taxes but frequently in the personal or poll taxes as well; second, the increase in the size of the taxable area, which means that the county and the State have gradually come to be more

important units of government from the standpoint of road and bridge administration; third, the raising of a larger and larger amount of revenue, especially for the construction of permanent roads by the issue of State, county, township, city, or road improvement district bonds; fourth, the general policy of State aid which has already been adopted in some form by thirty-seven commonwealths, and is rendering an invaluable service in promoting the cause of better highways; fifth, the centralization of administrative authority all along the line, including the State Highway Commission, a county road engineer, and township road commissioners or, better still, one township road superintendent; and sixth, the important work of experimentation along the line of traction resistance, better materials of construction for use in the building and maintenance of permanent roads, and numerous other closely allied problems.

The payment of road taxes in cash and the tendency to increase the fiscal authority of the county and State are rendered necessary by present economic conditions which demand the expenditure of vastly larger sums of money for the building of permanent roads and the construction of reinforced concrete or steel bridges. Work of this class is impossible, or at least impracticable, under the labor tax system; and yet the density and character of present-day traffic requires this class of improvement. Moreover, permanent roads and expensive bridges must be constructed with reference to the principles of civil engineering and not according to the methods of "practical expediency" of pioneer days.

For the same general reasons it has also appeared desirable to raise much larger sums of money by the issue of bonds than would be possible to obtain through

the immediate levy of direct taxes. The issue of road bonds to the extent of \$50,000,000 in New York for the purpose of building a continuous and permanent system of highways capable of supplying the traffic demands of present-day industrial society may be mentioned. It is, perhaps, needless to say that both the preparation of plans and specifications and the actual supervision of work, which involves such a large expenditure of public money, should be placed in the hands of the best trained and most practical engineers and can not be safely distributed among a long list of inexperienced local officials. The general policy of State aid, on the one hand, and the centralization of administrative authority, on the other, prove that political science, economics, and civil engineering have a logical place in the good roads movement. The necessity of discovering the most durable and satisfactory materials of construction and the testing of traction resistance under different conditions, both as to grades and quality of road-bed, shows the practical value of the research laboratory in promoting the cause of highway improvement.

In conclusion, however, at least two important facts should be stated regarding the tendency to centralize administrative authority: first, this movement does not necessarily imply a subtraction of powers from the civil township or similar unit of local government, but rather an addition of powers to the county and State as a logical result of changed economic conditions which demand the expenditure of vastly larger sums of money and the application of the principles of engineering science; and second, administrative centralization logically follows the increase in the size of the taxable area, for the obvious reason that the underlying principles of repre-

sentative democratic government require the expenditure of public revenue by the proper authorities of the same political unit that collects such revenue. In other words, road taxes, levied by a civil township, should be expended under the supervision and control of the proper officials of that township; and for the same reason, the revenue for road and bridge purposes raised by a county or by the State at large should be expended by the proper county and State authorities. Moreover, the intelligent expenditure of this money, under modern conditions, either by the township, the county, or the State, is coming to require expert assistance and advice — hence, the logical basis for appointing township road superintendents, a county road engineer, and a State highway commission.

### III

#### STANDARDS OF ROAD LEGISLATION

A THOROUGH historical study of the road laws of Iowa from 1834 to the present time and a comparative investigation of road legislation and administration lead, it is believed, to the conclusion that a road and bridge law drafted on the basis of the most successful experience, both in this and other States, should embrace the following fundamental principles:—

*First.* The civil township should continue to be the unit of local government for the maintenance of the secondary or township roads, including the supervision of dragging. With the exception of the short period from July 1, 1851, to February 2, 1853, when a county road supervisor appointed deputy road masters, the township has been primarily responsible for the actual supervision of road work, either directly or indirectly through the sub-district system of local road overseers. When it is considered that by far the greater per cent of all roads will continue to be secondary roads, their supervision and control represent a substantial amount of authority vested in the hands of township trustees. Any scientific road law should recognize the important sphere of jurisdiction over roads which throughout practically the entire period of Iowa history has been exercised by the civil township.

It has already been noted that in a considerable number of States the so-called township-county plan of local



government prevails, and with it the right of the civil township to levy taxes for road purposes and exercise jurisdiction substantially in proportion to the amount of expenditures authorized. In Iowa, as in many other States, the people have become accustomed to the township plan of local organization, and so for that reason, if for no other, proposed road legislation should be drafted with this fact definitely in mind.

*Second.* With a large amount of money raised annually by the township for the maintenance of secondary roads, including the dragging of the same, it is evident that an efficient plan of administration should be devised for the intelligent expenditure of this fund. For this purpose a township road superintendent could be appointed by the township trustees, with the approval of the county engineer. He should devote at least a large part of his time to the work, and be held directly responsible by the trustees for the condition of the township roads. He should make reports to the county engineer and be subject to his supervision in the general features of road work.

*Third.* The county is a unit of local government which supplies an important and necessary connecting link between the civil township, on the one hand, and the State, on the other. It is a taxable area which is sufficiently large to secure the necessary funds for building and maintaining the primary or main-traveled roads, the purchase of suitable road machinery, and the construction of culverts and bridges. The history of Iowa road legislation has tended to emphasize these considerations. This being true, the contention frequently made that the road funds under the jurisdiction of the county board of supervisors should be relatively increased rests upon the

solid foundation both of economic and engineering science.

In approximately three-fourths of the commonwealths the county possesses a large measure of fiscal authority in road and bridge matters, and the tendency is to increase this authority. Indeed, the necessity of raising larger and larger funds for the building of permanent roads and the construction of expensive bridges requires a more extensive taxable area and, therefore, supplies an important economic basis for the growth in the financial powers and authority vested both in the county and in the State.

*Four.* With the constantly increasing amount of taxes levied in the counties for road and bridge purposes the necessity of having a trained county engineer, who should be an experienced road and bridge builder, becomes more and more apparent. This engineer should be appointed by and made directly responsible to the county board of supervisors, in much the same manner as the township superintendent of roads is appointed by and made responsible to the township trustees. He should have some authority over the township superintendents, and should be required to make reports to the State Highway Commission and confer with it in the adoption of general standards for road work.

*Five.* The present State Highway Commission should be granted larger powers and authority, and the appropriations for its support should be substantially increased. In this connection a policy of State aid for the building and maintenance of permanent roads should be instituted and placed under the jurisdiction of the Commission. The preparation of standard plans and specifications for permanent roads, bridges, and culverts, the

collection and tabulation of data relating to the public highways, the approval of all contracts involving the expenditure of State money, and the work of research and experimentation, together with the publication of reports from time to time, constitute a large and necessary field of labor for any permanent State commission. Indeed, it may be said that the State Highway Commission is the leader of the good roads movement in Iowa, as well as in a majority of the States of the Union.

*Six.* Recent disclosures of loose and careless handling of bridge matters, both in the letting of contracts and in construction work, have proven the necessity for adequate bridge laws. Such laws should empower the State Highway Commission to establish standards of construction as a matter of public safety and should require all construction work to be done under the supervision of the county engineer. Indeed, the experience of a majority of the commonwealths reveals the wisdom of such a requirement. With the construction of permanent roads and high-priced bridges, a county road engineer is coming more and more to be looked upon as a necessity.

*Seven.* Since any permanent road that may be established is of special value to the immediate community and of general interest, first to the county, and second to the State, it is believed that road improvement districts should be created for this purpose, and the cost of permanent roads apportioned equally, one-third to the road improvement district, one-third to the county, and the remaining one-third to the State. The exact method of apportioning the cost of permanent improvements differs somewhat in various States, but the fundamental principle that the State at large should bear a part of this expense under the policy of State aid, and that the county

or township and the road improvement district should likewise bear a part has become well established.

*Eight.* It is further suggested that all or at least a very large part of the present tax on automobiles should be retained in the State treasury and used as a State aid fund for the building and maintenance of permanent highways. Such a policy has already been adopted in a number of States and, it would seem, is justified for at least two good reasons: first, the automobile has practically eliminated county lines for the main-traveled county roads; and second, the rapid destruction of the road surface by heavy machines running at high speed has made the building and maintenance of permanent roads at large and increasing expense an imperative necessity.

All property road taxes should be paid in cash; and, in the opinion of many good authorities, the payment of personal or poll road taxes in money would produce more satisfactory results. Indeed, the tendency along this line has become very marked in every section of the United States.

*Nine.* The dragging of dirt roads, the building of permanent highways, and the construction of culverts and bridges should all be placed on an efficient business basis, which can be done only by employing competent men and requiring that they give all of their time to the work. In a word, the township superintendent of roads, the county road engineer, and the State Highway Commission constitute the logical and necessary administrative machinery of the good roads movement. The administration of roads by ex officio boards has never yet produced and, from the very nature of things, can never produce satisfactory results.

In this connection the author is of the opinion that, if a policy of State aid is adopted, the governing board should include at least two or three members of recognized business or professional standing in the State at large, the work of actual supervision, however, to remain affiliated with the College. Such a relationship is highly desirable on account of the engineering advice, assistance, and equipment available through the facilities furnished by the College for carrying on the work at a minimum cost and far removed from those political influences that are always wasteful and frequently dangerous.

*Ten.* Finally, it is suggested that the supervision and control of public highways should be a township, county, or State function in proportion to the relative amount of tax levied for that purpose by those respective jurisdictions. This conclusion is based on the time-honored principle that taxation without representation is contrary to the spirit of all democratic institutions. In the last analysis there are only two classes of public highways: local township roads, under the control of the township trustees and administered by a township road superintendent; and county roads under the jurisdiction of the county board of supervisors. The so-called State aid roads are simply those county roads which receive State aid, and should therefore be subject to the joint supervision of county and State authorities.



**URBAN UTILITIES IN IOWA**





## AUTHOR'S PREFACE

As the title clearly indicates, this paper on *Regulation of Urban Utilities in Iowa* professes to be no more than a preliminary study of a very large subject. Neither the time nor the means were available for an exhaustive investigation of the history of urban utilities in Iowa or for personal visits to all of the States operating under public utility commissions. A statement of the studies actually made by the writer will perhaps sufficiently indicate the scope and the limitations of this investigation.

In the first place, the public utility statutes of seventeen States were carefully analyzed and compared. Secondly, the actual working of this legislation was studied from the reports and decisions of the commissions of Massachusetts, New York, and Wisconsin, and from numerous articles in "The Quarterly Journal of Economics", "The Political Science Quarterly", "The American Political Science Review", "The Annals of the American Academy of Political and Social Science", "Municipal Affairs", "The American Municipal Review", "The Proceedings of the Conference for Good City Government", and various technical periodicals. Thirdly, the statutes, legislative documents, and court reports of Iowa were searched for public utility acts, bills, and decisions. Fourthly, questionnaires were sent

to the municipal officers of every Iowa city of five thousand or more inhabitants, and to the managers of twenty-five local utilities. Fifthly, correspondence and personal interviews were had with leading exponents of various shades of opinion. Sixthly, the writer visited the newly-created Public Utilities Commission of Ohio in the spring of 1912 and later spent a week in the offices of the Railroad Commission of Wisconsin.

Conclusions based upon studies such as the foregoing are necessarily tentative. Fortunately, however, there is a mass of recorded experience in urban utility control and a well-established body of expert opinion on the subject which are readily available and which are believed to justify all the conclusions reached in this paper.

The writer's thanks are due first of all to Professor Benj. F. Shambaugh, Superintendent of The State Historical Society of Iowa, who has given close and constant supervision to this study, and to whose counsel it owes much of whatever merit it may possess. Commissioners Erickson and Roemer, Dr. Margaret Schaffner, and Professor William Pence of the Railroad Commission of Wisconsin gave generously of their time in explaining the work of the Commission. Mayor Hanna of Des Moines kindly detailed the interesting history of the public utility litigation of that city. Information was received from many other persons, but the list is too long to enumerate in this connection.

E. H. DOWNEY

## I

### THE NEED OF REGULATING URBAN UTILITIES

AMONG the problems presented by the urbanization of modern life few are more urgent, or more difficult, than the social control of public service industries. Water supply, local transportation, telephones, gas, and electricity have become necessities of life wherever civilized men congregate in considerable numbers. These particular services, moreover, possess two special characteristics which set them apart from others that are no less indispensable. The public service industries, commonly so-called, partake largely of a commercial character and they inevitably tend to monopoly. By reason of the first-mentioned feature these industries do not readily lend themselves to public undertaking; and because of the second they can not safely be left to unregulated private enterprise.

The services usually classed as public utilities are commercial in that their supply to private citizens answers an individual rather than a collective need.<sup>1</sup> In this respect the quasi-public services are clearly distinguishable from those protective and developmental functions which every civilized government performs as a matter of course. Police protection, military defense, and the administration of justice are provided by the state because they are essential to the existence of organized society. Education is made free and compulsory because

the community can not safely allow its children to grow up in ignorance. But there are no such cogent reasons for the gratuitous supply or compulsory use of street railways or electric lights. Current opinion holds that these and like conveniences can not justly be provided from the public revenue, but that they ought rather to be paid for by the users thereof. Being of this commercial character such services may be furnished by the community in its corporate capacity or they may be committed to private enterprise as may be most convenient in any given case.

The plan of the present paper does not require a consideration of municipal *versus* private ownership and operation of public service industries. Nor is any presumption implied for or against either of these policies.<sup>2</sup> It is, however, pertinent to note the special difficulties which beset municipal undertakings in this field.

In a city of any magnitude the public service industries are large commercial enterprises, involving heavy initial investment, large outlays for upkeep and operation, huge purchases of labor and supplies, and much acumen in acquiring business. For, though monopolies, their market is not automatic. The telephone habit requires cultivation. The public must be taught to use gas for heat and electricity for cooking. Amusement parks and residence suburbs must be developed as feeders for the traction system. Business firms must be induced to buy light, water, and power which they might produce for themselves. Unless wide consumption is in this way secured, the economies of large-scale operation can not be realized. Thus, as concerns production and sale, the problems of public utility management are not different in kind, though they may differ in degree, from

those which confront the manufacturer of, say, a patented article.

To the business problems of local utility operation remain to be added those of a technical character. With the exception of sewer and water systems, all the industries in question are of recent origin and, consequently, subject to rapid change. Within a generation horses have given way to cables, and these in turn to electricity, as the motive power of street railways. Within a decade "central energy" has displaced the dry-battery telephone; the "flash-light" has supplanted the "drop" switch board; and now the "automatic" threatens to supersede the costly central exchange. In electric generation and transmission the rate of obsolescence is so rapid that the inventor's triumphs of ten years ago are now museum exhibits. No businesses, probably, are more immediately or more profoundly affected by the progress of invention. None call for greater alertness or greater courage in discarding antiquated equipment.

It must be conceded, therefore, that the management of local utilities calls for business and technical abilities of a high order. Unless the city can secure intelligence and continuity in supervision, expert service in the engineering, accounting, and sales departments, and administration throughout with an eye single to economy and efficiency, its success in this line is not likely to be notable.<sup>3</sup> Few American communities are able to meet these requirements. The manager of a public plant is seldom selected for fitness solely; and still more rarely is he given a free hand. Political appointments, padded pay rolls, purchases from aldermanic favorites, and speculation in many forms have all too frequently marked the municipal conduct of commercial enterprises.<sup>4</sup> Mis-

management, if not actual corruption, has brought to grief most large undertakings of this character in the United States.<sup>5</sup>

The disheartening failure of some important experiments has united with the inherent difficulties of such undertakings to hinder the municipalization of industrial utilities in this country. In 1899 no American city owned a telephone system, and but one operated a street railway. Only 193 cities of 3000 or more inhabitants possessed municipal electric plants, whereas 1190 were served by private concerns. Public undertakings supplied gas to 20 such cities, private enterprise served 956. Moreover, such municipal operation as existed in these industries was confined almost entirely to the smaller places. But four electric and three gas systems were conducted by cities of more than 30,000 population.<sup>6</sup>

The exceptions to the rule of private operation are water and sewer systems. These undertakings demand less of technical expertness and business judgment than most public utilities, and the physical operations concerned are relatively simple. The plant is comparatively very durable, and the rate of obsolescence exceptionally low. At the same time these services have long been recognized as appropriate governmental functions. An abundant supply of pure water very vitally concerns the public health. Sewage removal must be compulsory; and for that very reason it ought to be free, in the interest of public sanitation. There is, accordingly, a strong tendency toward the taking over of these utilities by city governments. Out of 1087 sewer systems reported by American cities in 1899 but 42 were in private hands, and of 1427 urban water works 766 were municipal enterprises.<sup>7</sup>

It is probable that municipalization of quasi-public utilities has made some progress in the United States since the last year for which reliable data is available. Nevertheless, the more costly and complex utilities almost universally remain private enterprises. Moreover, this condition bids fair to continue for years to come. Neither in the present nor in the immediate future is social control of these industries likely to be secured through public ownership and operation.

On the other hand, competition can not be relied on as a regulator of urban utilities. The physical limitations under which these businesses are carried on, the exceptional economies of unified operation, and the peculiarly disastrous effects of competition therein are such as to make monopoly well-nigh unavoidable. That quasi-public services are thus "naturally" monopolistic is something of an economic commonplace.<sup>8</sup> Inasmuch, however, as this fact has hitherto not been squarely faced by the people of Iowa, it seems worth while to make a more detailed examination than would otherwise be justifiable of the conditions which make for monopoly in this field.

In the first place, the necessity of permanent structures in, or under, the public highways imposes an insuperable obstacle to "free competition" in urban utilities. Obviously it is out of the question to operate rival surface railways upon the same street. Nor can the city permit an indefinite number of private corporations to tear up pavements at their own convenience for the installation and repair of pipes and conduits. Parallel lines on separate streets are, to be sure, physically possible — but division of territory is not competition.

Such partial overlapping of each other's area is the utmost that can ordinarily be expected from competing public service companies.

In the second place, were unlimited replication of plant practicable the sheer economic wastefulness of such a proceeding is prohibitive. Dual telephone service requires twice the number of instruments, wires, poles, and central stations that would be needed for the same number of connections on a single system. Two gas companies in the same territory mean two sets of mains and service pipes where one would answer every useful purpose. Doubtless waste of a similar kind occurs in all competitive businesses. But in public service industries the evil is immensely aggravated by two circumstances not encountered in ordinary businesses: first, *each* competitor is obliged to provide a distributing system sufficient for the *entire* demand of the territory served; and second, the cost of such a system is enormous.

Even where the rival concerns serve different patrons in distinct areas, thus avoiding physical duplication (and, incidentally, competition as well) there remain large sources of waste in the mere division of operations. Assuming the same aggregate of business, the expenses of management, engineering, experimentation, and advertising are far greater for several companies than for one. The purely industrial costs, per unit of product or service, are likewise greater for a small than for a large producer. Indeed, the unification even of complementary utilities is usually advantageous. The consolidation of a street railway and an electric light and power company, for example, not only affects a saving in overhead charges, but makes possible a better utilization of equipment. For, if the concerns are separately operated,



each must stand ready to supply the maximum demand of its patrons. Since, however, the two "peaks" do not coincide, a smaller aggregate plant, operated as a unit, will meet the composite demand.

Throughout the field of public utilities, therefore, combination is economical, and competition wasteful. If any community insists upon multiple service, either investors must forego the accustomed return on capital, or consumers must pay for needless plant and equipment, needless managers and experts, and needlessly uneconomic operation.

Finally, competition, when it does occur between public service companies, is apt to be of the cut-throat variety. The advantages of unification being so overwhelming, each competitor strives to drive out or absorb the others so as to have the whole field to itself. Moreover, as already explained, each company must have a capacity, at least as regards its distributing system, substantially equal to the aggregate demand upon all the companies. Since interest charges upon this excess plant must be met in any case, additional business adds less than proportionately to operating expenses. Hence the scramble for sales and the acceptance of new business at low rates. The temptation to price reduction arising from these two causes is fairly irresistible.

The consumers' paradise thus inaugurated seldom lasts long. A period of price cutting and plant duplication is wont to be followed by consolidation, liberal stock watering, and rates so high as not only to recoup the losses of former years but to pay dividends on a mass of hydraulic capitalization.<sup>9</sup> Not infrequently, indeed, the aftermath of irrigated securities and excessive charges is inflicted on the public without the antecedent era of

low prices. For competition is not always undertaken in good faith. Many a franchise is secured solely with a view to "sandbagging" some prosperous corporation, and for this purpose the mere power to compete often suffices.<sup>10</sup> Whether bogus or *bona fide*, however, the final result of competition in public utilities is always the same: the last state of the community which so seeks to cast out monopoly is worse than its first.<sup>11</sup>

The point may perhaps be made clearer by concrete illustration. La Crosse, Wisconsin, had a single gas lighting system from 1856 to 1881, when a Brush electric plant was erected. Six years later an Edison company was chartered. The three concerns were operated independently for a time, but were united by a "community of interests" after 1897, and at length, in 1901, were merged in the La Crosse Gas and Electric Company. Alarmed by the threatened cessation of competition, a group of local business men forthwith organized a third company and inaugurated a campaign of price cutting. The losses of the first year brought the citizens' enterprise to grief, and its plant was leased to its stronger rival. Still undismayed, public spirited residents incorporated the Wisconsin Light and Power Company, sank \$350,000 in another superfluous plant and ended by selling out to the La Crosse Gas and Electric Company. The net results of this super-abundant competition are: (1) a complete lighting monopoly; (2) four disjointed generating plants, so badly located and ill-equipped that substantially all of the current used is bought from an outside company; (3) an incumbrance of \$1,732,000 upon property that could be duplicated for \$700,000 and is worth still less as a going concern; and (4) poor service at high rates which yield inadequate returns to the investors.<sup>12</sup>

To cite an instance on a much larger scale, the good people of Boston, some thirty years ago, resolved to secure cheaper gas by means of competitive bidding. In furtherance of this laudable design, they welcomed to their midst one J. Edward Addicks, him who afterward so persistently aspired to a seat in the United States Senate. Mr. Addicks incorporated himself as the Bay State Gas Company (of Delaware) and also as the Beacon Construction Company (of Pennsylvania), had the gas company pay the construction company, in cash and notes, \$5,000,000 for a plant worth \$700,000, sold enough construction company stock to replace his actual outlay without endangering his control of the properties, and then proceeded — not, as the confiding public had expected, to supply the city with water gas — but to absorb the existing coal gas companies on terms highly advantageous to himself.<sup>13</sup> A subsequent attempt at competition, backed by the eminent financiers of the Standard Oil Company, ended in a similar fiasco — the acquisition of operating companies by a holding corporation and a plentiful issue of baseless securities.<sup>14</sup>

These experiences are typical. Nearly every large city in the country has, at one time or another, made costly experiments with competition in the supply of public services.<sup>15</sup> No such attempt has succeeded hitherto nor is there much prospect of future success in this line of endeavor.

But if competition is impracticable, unregulated monopoly is not to be thought of. As waste is the outstanding characteristic of competition in the public utility field, so extortionate prices, excessive capitalization, inadequate service, and discrimination as between con-

sumers are the fruits of unrestrained monopoly. These evils are too well known to require detailed exposition. Yet, since it is just these abuses that have made governmental regulation of municipal monopolies necessary, and since it is by its success or failure in coping therewith that any regulative system is primarily to be judged, a brief inquiry into the nature and causes of these malpractices will here be undertaken.

#### EXCESSIVE CHARGES

Little need be said of the danger of extortionate charges. Public utility corporations control necessities for which there are no convenient substitutes and the price of which is limited only by what the public will pay rather than go without. To be sure, the monopolist's power of extortion is not without limit, even in the absence of public regulation. Customary price, as in the case of street car fares, the fear of attracting competitors or exciting popular wrath, and especially the increased consumption that follows every reduction of price, all serve to keep rates below a certain level of unreasonableness.<sup>16</sup> None the less, municipal monopolies commonly do exact a far higher return for the outlays incurred by them than can ordinarily be secured in competitive businesses.<sup>17</sup> It is this ability to levy toll upon the public, over and above the cost of service performed, that alone creates "franchise value". How much this tax annually amounts to can not be definitely stated for the whole United States. Some idea may, however, be gathered from the fact that in 1905 the public franchises of New York City alone were capitalized at \$450,000,000<sup>18</sup>—a sum equivalent to a yearly tax of five dollars on each person in the metropolitan district. On the same basis

the franchise values of Greater New York should now total \$600,000,000. For, in the absence of effective legal restraint, monopoly privileges grow in value with the city's growth in wealth and population. Every additional inhabitant becomes a prospective patron, and a potential victim, of the public service corporations.

If the piling up of fortunes at the community's expense were the only ill effect of the private exploitation of public utilities, the matter would be serious enough. But that is not the sole, nor the principal, consequence of exorbitant rates for public services. Such services enter largely and increasingly into the expenditures of every urban household. In 1910 the people of Greater New York paid \$28.35 per capita, or about \$140 per family, for light and local transportation alone.<sup>19</sup> Taking all utilities together, and having regard to the higher price of gas and electricity, it is probable that the people of Des Moines pay even more to their public service companies. Obviously, therefore, the price of public utilities is an important factor in the cost of living and thereby also in the standard of comfort among the masses. Excessive charges for water, gas, and transportation not only cause curtailment of expenditures in other directions, but lead to want of cleanliness, injurious economy in lighting and cookery, and congestion of population near places of employment.<sup>20</sup> Against such results the self-interest of a private monopoly affords no sufficient safeguard. Not infrequently, indeed, a public service corporation has exacted rates so high as to curtail its own profits by preventing a normal development of its business.<sup>21</sup> So unenlightened a policy is no doubt exceptional, but it remains true that the prices charged by a private monopolist, if left to his own devices, are almost invariably higher than is compatible with the public welfare.

## OVERCAPITALIZATION

Overcapitalization<sup>22</sup> is at once an effect and a contributing cause of excessive rates. On the one hand, stock watering serves to conceal unusual profits both from the public and from possible competitors; on the other hand, it may have the effect of entrenching extortion behind a barrier of vested interests. It has been plausibly argued, indeed, that capitalization can have no such influence on rates as is here contended.<sup>23</sup> For, it is said, the completest monopoly can charge no more than "the traffic will bear" and the volume of securities issued can affect neither the ability nor the desire to exact the uttermost farthing. In this view, the effective capitalization of a corporation depends upon earnings, not *vice versa*, and the nominal (par) value of the stocks and bonds outstanding is of no public concern. But this argument overlooks certain important factors that go to determine how much the traffic will bear. A company which pays five per cent on \$5,000,000 of bonds and twenty per cent on \$3,000,000 of stocks, advertises its prosperity to the world and invites attack from the city government, whereas the same earnings judiciously distributed over twice the aggregate of securities may plausibly be represented as no more than "a reasonable return on capital invested". Further, capitalized extortion; in the way of "franchise value" and the like, once in the hands of "innocent purchasers", may become property on which the holders are entitled to a reasonable return within the protection of the State and Federal Constitutions.<sup>24</sup> "Confiscatory rates" in court decisions have often meant rates insufficient to pay dividends on stocks that represent no tangible investment.<sup>25</sup>

That the above reasoning is not simply academic is sufficiently witnessed by experience. The people of Detroit were compelled to allow \$8,500,000 franchise value to a street railway whose tangible assets were but \$8,000,000.<sup>26</sup> Greater New York is paying dividends on \$125,000,000 of water in surface traction lines alone.<sup>27</sup> The right of the New York Consolidated Gas Company to a return upon the capitalized value of its franchise was sustained by the Supreme Court of the United States.<sup>28</sup> The Chicago traction settlement provided for interest on \$40,000,000 of bonds representing equipment that had gone to the junk heap.<sup>29</sup>

Not only as consumers, but also as investors, the public are injuriously affected by stock watering. Municipal utility securities are largely held by persons of moderate means and ought to be free from speculative elements. The industrial risks of a municipal monopoly in a city of any size are almost *nil*. The market is secure and fairly efficient management in the interests of the corporate owners can hardly fail of financial success. If, notwithstanding these advantages, public service stocks, and even bonds, are frequently unsound, the fault lies mainly with overcapitalization.

Urban utilities have been a favorite field of the professional promoter, and capital inflation has been the chief means employed by him to gather in his harvest. In some industries, no doubt, the promoter does valuable work in the organization and financing of new companies. But his usefulness in the field of urban utilities is very limited. Speculative enterprises are not wanted here, and sound projects are financed with relative ease. Typically and in the main the urban utility promoter has little part in the actual development or operation of the

industries he organizes: his first and last concern is the manufacture and sale of securities.<sup>30</sup> To provide his profits there must be a somewhat wide discrepancy between the market value of the securities sold and the cost of the property on which they are based. In a "going concern" this excess may represent the surplus earnings of monopoly. But time is required to develop the business and realize the earnings, whereas the promoter desires before all things a quick return. His work is done at the inception, re-organization, or consolidation of enterprises. The margin between tangible assets and the par value of the stocks and bonds marketed by him represents, not demonstrated earning capacity, but the roseate hopes of speculators and the golden promises of prospectuses.<sup>31</sup> The promoter unloads his securities upon the unwary and leaves his victims to recoup themselves as best they may at the expense of customers. If they fail of their expectations — why, "there's many a slip 'twixt the cup and the lip."

The extent to which American municipal utilities are overcapitalized is indicated by the following table:

TABLE I

CAPITALIZATION PER MILE OF TRACK IN 1899<sup>32</sup>

London street railways .....	\$ 79,632
New York street railways .....	201,381
Berlin street railways .....	74,708
Chicago street railways .....	118,334
Liverpool street railways .....	94,494
Philadelphia street railways .....	265,510
Glasgow street railways .....	54,866
St. Louis street railways .....	306,644
Massachusetts street railways (1898) .....	46,600
New York State street railways (1898) .....	177,800



Pennsylvania street railways (1898) .....	128,200
Great Britain street railways (1898) .....	47,000
United States street railways (1898) .....	94,100

A glance at the above table shows that capitalization bears no relation to physical property. The street railways of Massachusetts are superior to those of the United States at large in point of construction and equipment,<sup>33</sup> while the Philadelphia<sup>34</sup> and St. Louis systems are notoriously among the worst in the country. Nor can it be supposed that the surface lines of New York and Chicago, at a time when their respective plants urgently needed rehabilitation,<sup>35</sup> were more than twice as valuable as the tramways of London and Berlin.

The systematic discrepancy between capital and investment appears all the more clearly from a study of particular cases. Perhaps as good an instance as any is afforded by the successive reorganizations of the surface lines of New York City. Between 1886 and 1896 not more than \$5,000,000 was spent on construction and betterments, while the indebtedness grew from \$35,486,923 to \$76,266,810. During the next decade about \$35,000,000 was put into improvements, and the liabilities rose to \$234,342,823. In other words, rather more than \$150,000,000 of water had been added by the Ryan-Whitney-Widener interests to rather less than \$75,000,000 of assets.<sup>36</sup> Messrs. Yerkes, Widener, and Elkins similarly irrigated the Chicago street railways to the extent of \$75,000,000.<sup>37</sup> Lest it be thought that traction companies enjoy a monopoly of stock watering, the exploits of Addicks, Whitney, and others in the field of artificial gas may be called to mind. Philadelphia, New York, and Chicago, as well as many smaller cities (including Des

Moines, Iowa) have profited by the financial pioneering of these gentlemen, but their achievements in staid old Boston may be taken as typical of the rest. Thanks to a succession of holding companies, leasings, and inter-contracts, the gas companies of the Hub were, in 1899, capitalized at \$160,000,000 — being seventeen times the value of the property used and useful for the public service.<sup>38</sup> Coming nearer home, the Cedar Rapids Gas Light Company built its plant from the proceeds of bonds and issued \$150,000 of stock against a twenty-year franchise.<sup>39</sup>

Instances might easily be multiplied,<sup>40</sup> but the foregoing will suffice. Stock watering, in the sense of an excess of capital over tangible property, is fairly characteristic of public service companies. In an up-to-date corporation, the tangible assets are covered by mortgage bonds, the margin over this amount which the fairly expectable earnings will justify is represented by preferred stock while the common stock, at the inception of the enterprise, stands only for the future growth of the company's business.<sup>41</sup>

#### INADEQUATE SERVICE

Inadequate service is, to some extent, the deliberate business policy of municipal monopolies. This thought is excellently expressed by the famous saying attributed to Mr. Charles F. Yerkes: "The dividends are in the straps". A crowded car costs little more to operate than an empty one. Hence the more passengers per trip the greater the profits per car mile. Since the public has no choice but to use the accommodations provided, the street-car company has no incentive to run more cars than the traffic absolutely requires. Not "A seat for

every passenger" but "A jam on every car" is the stockholder's ideal of efficient management. This principle holds of all private monopolies. In the absence of outside pressure no privately owned municipal utility can be expected to furnish service that is adequate from the standpoint of public convenience.

Practically, indeed, local public service not infrequently falls below the standard set by the permanent interests of the monopolist. This anomaly is made possible by the almost complete separation which the modern form of corporate organization effects between ownership and business control.<sup>42</sup> In what may be termed the typical case of finished financing the whole original investment is made by bondholders who, notwithstanding, have no voice in the management of the corporation. The directors and managers, being elected by and responsible to the stockholders, naturally devote more attention to paying dividends than to maintaining the value of the property. If the company is heavily waterlogged, the dividend requirements, added to fixed charges and operating expenses, may easily absorb the entire revenue, leaving no surplus for extensions and improvements. Even upkeep may be slighted and operating outlay reduced to the minimum. Consequently, when plant and equipment are worn out they can only be replaced by the sale of fresh securities. If the city has grown rapidly in wealth and population, and if no public authority compels a rate reduction, the new bonds may be marketed without discharging the prior incumbrance against the property, but only at the cost of increasing the annual fixed charges. Even so, the day of reckoning is but postponed. Soon or late, the bondholders foreclose and the inevitable re-organization begins. Meanwhile, needed

additions have been deferred, antiquated equipment has been retained, and profitable patronage turned away for sheer want of facilities.

Such was the history of the Philadelphia Rapid Transit Company whose balance sheet for 1906 showed a net income of \$303,996 out of which to pay dividends on \$30,000,000 of stock and provide for additions and betterments.<sup>43</sup> Such, too, was the history of the traction system of New York City where the operating companies, in spite of enormous earnings, were bankrupted by high finance and where horse cars are still in use on a line bonded for \$2,553,097 per mile!<sup>44</sup> Mr. Yerkes bequeathed to the Chicago street railways a debt of \$50,000,000 and a plant which required immediate rehabilitation as to tracks, poles, wires, power houses, and rolling stock.<sup>45</sup> Overcapitalization, in short, not only burdens consumers and fleeces stockholders, but cripples the service of the corporations affected.

#### DISCRIMINATION BY PUBLIC UTILITIES

Discrimination may be taken to mean the unlike treatment of consumers under like conditions. Not every inequality of rates, however, is to be accounted a case of discrimination. Differences of price may be justified by a variety of circumstances. Four cases may be mentioned for the sake of illustration.

A. It costs less to supply a given volume of product or service to one large than to several small consumers. Much less distributing plant is required and the expenses of collection and management are likewise smaller. Within certain limits, therefore, there is as much justification for reduced rates on large quantities in a public utility as in a private business.

B. Service costs less per unit for long-hour than for short-hour users. A public utility must be prepared to supply, not the *average* but the *maximum* demand — and to this demand the store which uses electric current, at most, one or two hours per day for a few months in the year adds as much, lamp for lamp, as an all-night restaurant. Much more equipment is needed to supply a given number of kilowatts to the one class of consumers than to the other. Continuous users are, on this account, clearly entitled to lower rates, though the reduction is perhaps most equitably made by means of a combined current (meter) and installation charge (minimum bill).<sup>46</sup> What has been said of electricity holds, in a less degree, of course, of water, gas, and telephone service.

C. For reasons analogous to those just stated, service costs less “off” than “on the peak”. Public utilities require very extensive and costly plants — insomuch that the permanent investment usually is several times the annual revenue. Interest charges upon this investment continue whether the plant runs or not. Much of the equipment (such as poles, pipes, conduits and buildings) deteriorates nearly as fast when idle as when in use. Obsolescence, or supersession by inventions and discoveries, goes on independently of the operation of the plant. Hence “fixed” or “constant” costs — costs, that is, which do not vary with output — form the greater part of the total expenses of operation.

On the other hand, the demand for service varies rather extremely, not only from one season to another but during the course of each day as well. Production, moreover, must usually be contemporaneous with enjoyment. This is obviously and unqualifiedly true of transportation and of message transmission. Electricity, too,

can not be cheaply stored nor can gas for winter consumption be manufactured during the preceding summer. Water, indeed, may be accumulated in reservoirs, but the distributing system, at least, must be adequate to the maximum instantaneous demand. Much of the equipment of every public utility, therefore, is needed only for a few "rush hours", standing idle the rest of the day. Hence service "off the peak", or point of maximum demand, costs scarcely more than the "variable" or "particular" expenses of production. Sales "off the peak" at prices which will a little more than pay for the extra labor, materials and fuel used, and for the extra wear and tear entailed, contribute just so much to the fixed costs, and so make possible lower rates to consumers "on the peak".<sup>47</sup>

The reduced rates commonly granted by gas and electric companies for day-light consumption, by telephone companies on night messages, and by street railways at certain hours of the day, sufficiently illustrate the principle set forth in the foregoing paragraph. In every such case, rates may be made which would be ruinous if applied to the entire business of the public utility, simply because fixed charges may be ignored in computing the cost of "slack-hour" operation. At the same time, specially low prices may be needed to induce manufacturers to buy electric power, housewives to cook with gas, or street car patrons to ride during periods of light traffic. So long as such reduced rates are more than sufficient to meet the particular costs of the service, and so long as business is secured thereby which could not have been had at the ordinary prices, rush-hour consumers are not injured, and may be benefited, by the reductions.

D. It may sometimes be justifiable to secure additional business, even "on the peak", by means of rate reductions. This is true, for instance, where a utility, because of a decline in population or the failure of the city to grow as rapidly as was expected, has a capacity in excess of the maximum demand upon it. It may likewise be true where the addition of a few large consumers would permit operation on a greater scale and, consequently, a lower unit-cost of production. In both these cases the additional business adds less than proportionately to the total costs of operation so that, even at reduced rates, it will yield a net revenue which may be applied toward fixed expenses that would otherwise have to be met by the regular-rate customers. It may even be better, both for the utility and for its other patrons as well, that such added business should be secured at prices which yield somewhat less than the ordinary profit on outlay than that it should not be secured at all.<sup>48</sup> And large consumers may well be in a position to exact such terms, since they may be able to supply themselves at a cost not greatly exceeding that of the public service company.

The foregoing may suffice to illustrate what may be termed "legitimate discrimination" in local utility rate-making. The exceptions noted are all based, to some extent, on the cost of the service. At the same time, the value-of-the-service, or what-the-traffic-will-bear, principle is recognized so far as its application is necessary to a full development of the business. Equity as between consumers does not require that rates shall be absolutely uniform nor that the same percentage of profit upon outlay shall be derived from every class of service.<sup>49</sup> Normal profits upon the entire business may, without

injustice, be made up of high and low return classes so long as each class contributes something to fixed expenses, and so long as low rates to one class do not result in high rates to another.

Objectionable discrimination, in contradistinction from legitimate classification, occurs whenever any service is supplied at no more than prime cost to the plant, or "on the peak" service at a price which does not provide *pro rata* for the fixed expenses of the business, or whenever one person is compelled to pay more than another for a like and contemporaneous service. Discriminations of this sort may be made as between classes of service, as between large and small consumers of the same class, or as between users of like quantities under similar conditions.

Class discrimination sometimes results from unintelligent schedule making. Thus a flat meter charge favors short-hour users as a flat installation charge (so much per lamp per month, for example) favors long-hour users. For the cost of service is made up of at least two elements: a "demand cost", answering to fixed operating expenses and proportionate to maximum instantaneous demand (active installation); and an "output cost" answering to the variable expenses of production and proportionate to quantity consumed.<sup>50</sup> Inasmuch as these two cost factors vary independently, neither type of flat rate can be just to both long and short-hour consumers.<sup>51</sup> Manufacturers' rates, insofar as they disregard time of use, may be open to a similar objection.<sup>52</sup> To judge from rate investigations in Wisconsin such crudities are by no means unusual.<sup>53</sup> Again, manufacturers and merchants may be favored because members of these classes are pecuniarily interested in the local utility. Most frequent-



ly, however, class discrimination appears in the form of reduced rates for large quantities — large consumers being confined to certain classes of service.

Reference has already been made to the fact that large quantities of most products or services can be furnished at lower rates than small amounts. But the reductions to large consumers frequently are out of all proportion to cost of service. Thus, in 1910, telephone rates in Boston ranged from eight cents per message for residence phones to two cents per message for unlimited business service.<sup>54</sup> The Beloit (Wisconsin) Water Company, in 1909, furnished 265,000,000 gallons of water to one manufacturer and two railway companies for \$4,594, whereas business houses and domestic consumers, during the same year, paid \$24,000 for 377,000,000 gallons. Stated in other terms, the three favored consumers provided eleven per cent of the company's revenue and took thirty-nine per cent of its total water supply. Operating costs amounted to 5.76 cents per thousand gallons: private consumers paid 6.36 cents; while the large users paid 1.73 cents, or scarcely more than the bare cost of pumpage.<sup>55</sup> Certain stores at Marinette, Wisconsin formerly paid four cents per thousand watts for electric current, of which the output costs alone, with no allowance for interest on investment, upkeep, or overhead charges were four and one-half cents.<sup>56</sup>

Cases so extreme as the foregoing may be exceptional, but they are by no means rare. Public utility managers apparently feel that the large consumer's business must be had at whatever price he can be induced to pay; and the large consumer takes full advantage of this attitude to obtain service at prices much below its value to him. Service at less than cost, however, requires further ex-

planation. It may be due to bad book-keeping or it may be attributable to partial ownership of the utility by the favored customers. In any case, the practical effect of below-cost rates is to exploit a multitude of small consumers for the benefit of a few large users.

Whatever plausible grounds may be urged for discriminatory rates ostensibly based on class or quantity of service, discrimination between persons can have no shadow of justification. That one man should pay more than another for the same kind and quantity of service under the same conditions strikes lay and learned alike as indefensible.

Perhaps as good an illustration as can be found of personal discrimination is afforded by the accompanying table of electric light rates in Marinette, Wisconsin. These figures, taken from the records of the Railroad Commission of Wisconsin, show that saloon-keepers in that city paid all the way from eleven and one-half cents to one dollar per lamp per month. Here was no question of long and short-hour users, of different installations, or of large and small consumers: the differences were purely personal.

TABLE II

RATES FOR ELECTRIC LIGHTING OF SALOONS IN MARINETTE,  
WISCONSIN, 1909<sup>57</sup>

NUMBER OF LIGHTS	FLAT RATE PER MONTH	FLAT RATE PER LIGHT
6	\$ 4.50	\$ .75
8	3.50	.44
8	3.75	.47
8	4.00	.50
4	2.50	.62
7	2.00	.29

NUMBER OF LIGHTS	FLAT RATE PER MONTH	FLAT RATE PER LIGHT
27	12.50	.46
18	10.00	.55
14	7.00	.50
15	6.45	.43
15	5.00	.33
12	6.50	.54
13	4.00	.30
12	9.00	.75
79	9.00	.11½
11	6.50	.59
15	5.00	.33
14	7.00	.50
21	8.50	.40
6	4.50	.75
9	4.50	.50
3	1.50	.50
3	3.00	1.00

The example afforded by the above table, though extreme, does not stand alone. The Public Service Commission for the Second District of New York State found that no fewer than 31,000 out of 337,000 telephone subscribers were on special contract rates and that the reductions to these favored consumers totalled \$284,000 annually.<sup>58</sup> Many similar instances have been uncovered by the Massachusetts Board of Gas and Electric Light Commissioners<sup>59</sup> and by the Public Service Commission of Ohio.<sup>60</sup> Such personal discrimination is disguised in many ways. Sometimes discounts are so arranged that the net charge is less for a larger than for a smaller quantity;<sup>61</sup> sometimes a rebate is given for the ownership of such facilities as a telephone instrument<sup>62</sup> or a water meter,<sup>63</sup> usually provided by the public utility; sometimes the consumer, by private arrangement, re-

ceives more service than he pays for, as when a four-party subscriber is given a single-party phone.<sup>64</sup> Whatever the form, the substance of personal discrimination appears to be universally practiced by unregulated monopolies.

Special favors to particular persons may be granted for various reasons. Sometimes it is a matter of political pull, as probably in the case of certain Marinette saloon keepers.<sup>65</sup> Again, concessions may be obtained through personal or business connections with the utility owners or managers. Most usually, however, special rates are the result of higgling, concessions being granted to such prospective customers as will not take the service under the regular schedule. In this way exceptions to the published tariff may become so numerous that the latter serves only as a point of departure.

Thus far it has appeared: first, that large urban utilities in the United States, at present and as a rule, can not be efficiently operated by municipalities; second, that such utilities in private hands inevitably become monopolies; and third, that the actual and potential evils of unregulated monopoly are intolerable. These conclusions are neither new nor startling. It has long been recognized by economists that there is a field of natural monopoly within which competition is neither practicable nor expedient; and English law from of old has subjected monopoly to a degree of regulation not deemed necessary in competitive businesses.

From very early times every business which involved virtual monopoly of a common necessity has been treated as a public calling, charged with extraordinary duties, and hedged about with exceptional restrictions.<sup>66</sup> In the

Middle Ages, when travel was difficult and travellers were few, there was commonly but one place of public entertainment in a village, but one horseshoer in a countryside, and but one ferry upon many miles of an unfordable stream. Under these circumstances customary law required the inn-keeper,<sup>67</sup> the smith,<sup>68</sup> and the ferryman<sup>69</sup> to render good and sufficient service, to serve all comers without distinction of persons, and to charge no more than a reasonable price. Similar duties rested upon the surgeon<sup>70</sup> when medical knowledge was closely monopolized, upon the victualer<sup>71</sup> before the days of competition in the retail grocery business, and upon the common carrier<sup>72</sup> from the beginnings of regular trade to the present day.

The list of public employments has been altered from time to time to meet changing economic and social conditions, but the underlying principles of the law have remained the same throughout. As was said by Lord Justice Hale some three hundred years ago, businesses that take on the character of monopoly "are affected with a publick interest, and they cease to be *juris privati* only."<sup>73</sup> This principle, never wholly lost sight of,<sup>74</sup> was authoritatively reaffirmed two centuries later by the Supreme Court of the United States in the notable case of *Munn vs. Illinois*,<sup>75</sup> and has since been applied in many decisions to an ever-expanding realm of economic life.<sup>76</sup>

Urban utilities clearly "are affected with a public interest". They occupy the city's streets by virtue of a public grant; they exercise the right of eminent domain by authority derived from the State; and they possess the power of monopoly over common necessities. Hence they are rightly termed quasi-public businesses and subjected to an exceptional degree of governmental control.

Fortunately there is no longer any dispute as to the need of regulating public service companies. The necessity of social control in the public's interest is admitted even by the spokesmen of the companies affected.<sup>77</sup> The only questions are, in what way and by what arm of government shall such control be exercised? Shall the task of regulation be entrusted to the city or the State, to the legislature, the executive, or the courts of law? Shall the restrictions imposed be rigid or elastic, in the nature of commands or of prohibitions? What limits shall be assigned to the regulative authority and how much of initiative and discretion shall be left to those who adventure their private means in public service industries? To throw some light upon the answer to these and like questions, by showing how they have been answered elsewhere and with what results, is the purpose of the present study.

## II

### THE FAILURE OF LOCAL REGULATION

THE organ of urban utility control that lies nearest at hand and has been most extensively tried is the city government. The municipality possesses certain very obvious advantages for dealing with its own public service problems, and these the advocates of "home rule" have not failed to emphasize.<sup>78</sup> The city's officials are familiar with local conditions and are immediately responsible to the community affected by their acts. None the less, American cities have generally, and somewhat conspicuously, failed in their attempts to regulate privately operated utilities. Of the reasons for this comprehensive failure, some are eradicable and, so to speak, accidental; others are permanent and inhere in the nature of the problems to be solved.

Of the obstacles which may be termed accidental, two only need here be mentioned — the prevalent misgovernment of American cities and the inadequate powers hitherto vested in municipalities.

Municipal misrule, boodle councils, autocratic bosses, and civic indifference too frequently have incapacitated our cities for the performance of the most ordinary functions of local government. Much more has the ineptitude of city administration prevented intelligent handling of the complex problems of public service regulation. Fortunately, however, there are now abundant signs of the coming of a better order in things municipal.

Commission government, the short ballot, popular initiative and referendum, the enlistment of experts in local administration, and above all the quickened interest of the ordinary citizen, give credible promise of effective city management. The outlook is particularly hopeful in Iowa, where great progress has been made within a half-dozen years.<sup>79</sup> Misgovernment, accordingly, is to be accounted a temporary and extraneous obstacle to municipal control of local utilities.

Much the same may be said of the insufficient powers hitherto given to city governments. Partly on account of the prevalent corruption of city politics, partly because governors and legislators desired to share in municipal patronage and municipal graft, most cities of the United States have been kept in leading strings. The State has imposed an arbitrary limit upon debts and taxes, prescribed the form of internal organization, withheld the most necessary powers, and interfered at will in matters of purely local concern.<sup>80</sup> The cities have thus been heavily handicapped in their dealings with public service companies. They have lacked the power to acquire utility properties and the funds to pay for them. They have been denied the authority to examine accounts, supervise construction, control capitalization, and compel adequate service. But these defects of power are not incurable, nor do they prove the inherent incapacity of cities to regulate their own public service industries.

There are, however, substantial and irremediable difficulties in the way of municipal control of local utilities. Since there still are advocates of unqualified home rule in utility matters, it may be worth while to examine certain of these inherent impediments, even at some risk of tediousness.



In the first place it should be noted that some subjects which it is highly important to regulate are beyond the competence of a city government, however well-conducted and however ample its powers for local needs. The organization and powers of corporations and the issue and transference of corporate securities must be governed by general laws, uniform throughout the State. Hence, the vital matters of capitalization and consolidation or merger, can be controlled only by a central authority.

Again, urban utilities to an increasing extent transcend the limits of a single municipality. In the telephone business out-of-town calls are so important that no company which does not provide long-distance connections can hope to gain or hold subscribers. The suburban trolley lines radiating from a city like Des Moines are physically, if not corporately, stems of the street railway system; while, *per contra*, interurban companies often control the street railways of smaller places. Gas, electric, and even water companies sometimes serve more than one community. For example, water, gas, and electricity are supplied to Valley Junction by Des Moines companies; Cedar Falls receives its gas, electricity, and telephone service from Waterloo; and Marion is similarly an appanage of Cedar Rapids in respect to its public utilities. There is, then, a considerable and growing mass of inter-city utility relations which must be controlled by some authority superior to the municipalities concerned.

Furthermore, the regulation of public service corporations is too complex and costly an undertaking for any but the largest cities to attempt. Rate-making, valuation, the supervision of service, and the prevention of

discrimination call for a high degree of technical knowledge and administrative capacity. No municipality in this State does, or could afford to, maintain a staff of engineers, accountants, and other experts sufficient to ascertain, from time to time, the value of utility properties, keep track of new construction, replacements, and depreciation, compute unit costs of production, interpret current accounts of maintenance and operation, and test the adequacy of the service received by the public. That is to say, no Iowa city does, or can, provide itself with the information needed for intelligent utility regulation. Nor can any community of moderate size secure a competent administrative body. The mayor and the city council can not, in addition to their other duties, be deeply versed in utility questions. The cost of a high grade commission which should devote its entire time to local utilities would be prohibitive, and an unpaid body — such as some cities possess<sup>81</sup> — could not be expected to accomplish much. Even were it feasible for the cities singly to provide effective supervision, a central commission for the whole State would obviously be far more economical.

Finally, a municipal government can hardly be expected to prove a satisfactory arbiter between a local utility and its patrons. The city officers are rather the advocates of the constituents upon whose votes they depend than impartial judges of the matters in controversy. It must be remembered that justice to public service companies is as important to the public as to investors. If utility companies are needlessly harassed, if unreasonably low rates are imposed or unreasonable service exacted, capital will flow to more attractive fields and the city will suffer from inadequate facilities. Even-handed

justice, however, is not often to be looked for from an interested party. Add to this inevitable bias the too frequent popular exasperation over real or supposed wrongs and the further fact that a rate ordinance commonly is the culmination of an anti-corporation campaign, and it will be seen that the chances are against fair dealing on either side. On this ground alone, a tribunal removed from local interests and animosities is highly desirable.

These *a priori* arguments are abundantly supported by actual experience. Municipal control of public service corporations has been a prolific source of corruption, has fostered ill-will between companies and consumers, and has failed to correct the abuses at which it was aimed.

For want of suitable administrative machinery regulation has been attempted by means of stipulations inserted in franchise grants. The applicant for a franchise is a seeker of favors and is usually willing to make concessions. This mode of regulation has, however, important disadvantages.

Franchise makers can not foresee the city's growth nor the technical changes which may revolutionize the industry during the life of the contract. In the course of the "eighties", the water process reduced the cost of illuminating gas by one-half; within the first decade of the present century, the incandescent mantle has made fuel gas available for lighting purposes and rendered obsolete the candle-power test of efficiency. A street railway franchise granted twenty-five years ago would have witnessed the supersession of horses by cables and of cables by trolleys. There is no reason to suppose that the transformations of the future will be less rapid or

complete. This, then, is the first drawback to regulation by franchise: the terms are no sooner agreed upon than they begin to be obsolete. To grant a long-term, rigidly drawn franchise, is to tie the hands of the city with a contract the conditions of which become more inapplicable with every passing year.

On the other hand, a short-term grant, such as the law of Iowa now requires, is just neither to the public nor to investors. If treated in good faith, as a terminable grant, the investment must be "amortized". That is to say, over and above operating expenses, upkeep, interest, and ordinary dividends, a sinking fund must be accumulated for the retirement of bonds and the redemption of stock at the expiration of the franchise. This would necessitate very high charges and would lead also to indifferent maintenance in the later years of operation. In practice, the renewal of a short-term grant commonly is counted upon by both the city and the grantee. The termination of such a franchise finds both parties at a disadvantage. The city can not do without service pending a new agreement, nor can it force the existing utility to sell its plant to the municipality or to another corporation. The company can neither remove its permanent structures nor dispose of its property at anything like its real value. Under these circumstances each party attempts to "bluff" the other into an unfair bargain. The city authorities talk loudly of competition, or — as once happened in Des Moines<sup>82</sup>— prepare to oust the old company from the streets. The company retaliates — as also occurred in Des Moines<sup>83</sup>— by setting up the claim of a perpetual right, or, as in Columbus, Ohio, by threatening to "turn off the gas".

Even a provision for municipal purchase is but a

partial protection against the ills of a short-time grant. Moreover, no practicable franchise can be short enough to avoid the objections of too great rigidity. Private persons will not invest large amounts of capital in a quasi-public enterprise unless there is reasonable certainty that their principal, at least, will be returned before the expiration of their rights. Twenty-five years appears to be near the minimum duration necessary to attract capital on favorable terms, and this period, as has been seen, is long enough to permit of two revolutions in a public service industry. The only thorough-going remedy is a revocable franchise, with a public purchase clause and provisions for the periodic revision of rates and the continual supervision of service — which raises again the administrative difficulties already spoken of.

Franchise granting notoriously occasions a large share of the corruption and misrule that so commonly prevail in the government of American cities.<sup>84</sup> The exclusive privilege of supplying gas for public consumption may be worth millions in a metropolis, thousands in a country town. It is often cheaper, and sometimes easier, to obtain the privilege by bribing the council than by compensating the city or by making concessions to consumers. Even when the city fathers are personally incorruptible, they may be indirectly bribed by an offer to light the streets at less than cost, or furnish free telephones in the city hall — and make it up at the expense of private consumers.<sup>85</sup> Most municipalities are chronically out of funds, and it seems simpler to replenish the public treasury in some such covert way than to raise the assessed valuation of taxable property. Trickery, also, is resorted to and well-intentioned officials are over-reached by sharp practices.<sup>86</sup>

The well of corruption is not stopped when the franchise is secured. The utility company is always in need of renewals, extensions, permissions to operate in streets not heretofore occupied, and other favors. The city government, for its part, has a continuing power of annoyance and many a "strike ordinance", professing to require a minimum temperature of sixty degrees in street cars, a uniform pressure in gas pipes, or the removal of unsightly poles from the thoroughfares of Redbrush, is destined to no other end than to shake the plums from the corporation tree. Hence the utility companies go into local politics for reasons offensive and defensive. They are behind every local machine, and they back every city boss from the Grand Sachem of Tammany to the petty dictator of an Iowa town.<sup>87</sup> Nor is it only the betrayal of public trust that springs from this state of affairs. Public utility relations, which ought to be settled in a spirit of judicial fairness, after full inquiry, are threshed out in the midst of a hot political campaign. Often, indeed, such questions dwarf every other issue in a local election and divert public attention for years from the ordinary functions of municipal government. The gas troubles of Boston<sup>88</sup> in the "eighties", the street railway dispute in Detroit<sup>89</sup> under Mayor Pingree, and the prolonged traction controversies of Chicago<sup>90</sup> and Cleveland<sup>91</sup> in more recent years, are instances in point.

If bargaining is thus seen to be ineffective as a mode of regulating local utilities, regulation by city ordinance is not much more satisfactory. Rate ordinances seldom are based upon extended inquiry or exact knowledge. The celebrated ninety-cent gas ordinance of Des Moines, for example, was hurried through the City Council when no representative of the gas company was present.<sup>92</sup>

Even in those rare cases where investigation precedes legislation the investigator's findings are as likely as not to be ignored by the lawmakers. Chicago, for instance, paid \$10,000<sup>93</sup> for a report by Mr. William J. Hagenah recommending that the price of gas be fixed at seventy-seven cents, and then proceeded, after an exciting campaign waged largely on the gas issue, to enact a seventy cent ordinance.<sup>94</sup> The particular cases just mentioned are neither unusual nor extreme. As already explained, decisive action is apt to be taken in a time of high-wrought feeling and to represent popular prejudice and resentment, rather than intelligent judgment. Often, indeed, as in the Chicago gas case, the ordinance fulfils a campaign pledge. Whether or not injustice is done, the utility affected is pretty sure to appeal to the courts and delay the enforcement of the reduced rates for some years, even if it does not finally establish their invalidity.

The attempt to control rates and service by ordinance amounts, in fact, to regulation by lawsuit. The information upon which the city's statute should have been based is obtained after its enactment, by a master in chancery, and the legislation is made to stand or fall by the facts so established. In all such litigation the city is at grave disadvantage.

In the first place the public service company is certain to have the longer purse and the abler advocates. Few local utilities of any consequence are controlled by local capital. Ten out of fifty Iowa companies investigated by the writer are foreign corporations and twenty-two others are controlled by holding companies. The traction system of Des Moines is owned by the McKinley syndicate; the gas works by the United Gas Improvement Company of Philadelphia. The American Telegraph and

Telephone Company controls nearly all the important exchanges in the State. In fact, the financial strength of the local utility is to be measured, not by its local income, but by the resources of the great combination of which it is a part.

In the second place, the facts upon which the court's decision will depend are in the keeping of the company, not the city. Books and accounts may be produced in court — but damaging records are likely to be "lost" or inadvertently destroyed. The city's investigators, not infrequently are hindered as much as possible, and their estimates of investment, income, and costs of production are often little better than guesses.<sup>95</sup> Add to these obstacles the fact that experts whose future livelihood depends upon employment by private corporations are loth to testify for the city and the difficulty of obtaining evidence on behalf of the public will be apparent. Hence, cities often lose utility cases which, on the merits of the controversy, they ought to win.

If cities have, on the whole, failed effectually to regulate rates and service, they have scarcely attempted to prevent stock watering, corporation wrecking, deterioration of service, and discrimination between patrons. The glaring instances recited in an earlier section of this paper all occurred under municipal supervision. Nor was the failure to correct these abuses wholly due to corruption or want of power. The control of capitalization can not well be vested in municipalities, and overcapitalization opens the door to plant skinning, excessive charges, and poor service. Discrimination, too, is beyond the reach of any administrative machinery that moderate sized cities possess or can afford. City ordinances usually prescribe only maximum rates, because councils



do not have, and can not obtain, information on which to base a classified schedule. Nor is the means at hand to prevent departures from the published rates by way of rebates, private agreements or otherwise.

Even municipally conducted utilities are not superior to the need of outside supervision. However honest and well meaning, local authorities rarely are equal to the task of keeping accounts in intelligible form. It is an exceptional city whose responsible officials can tell whether the municipal light or water plant is making or losing money, and on what kinds of service such gain or loss is incurred. Receipts and disbursements usually are classified by irrelevant funds and so fail to show the "fixed", "output", and "consumer" costs, or the net income from each class of consumers. In providing for functional "general", "contingent", "bond", and "tax" funds, the necessity for a depreciation fund is apt to be overlooked. In many cases a fictitious profit is shown by ignoring interest, depreciation, and expenses of management, or an apparent deficit produced by failure to credit the plant for service rendered to the city.

Benighted bookkeeping of the sort above set forth is so common that particular instances may seem invidious. Yet, because general statements are at once easy and unconvincing, a few illustrations will be ventured with the *caveat* that these cities have not sinned above others that are in Iowa. The records of the Madison (Wisconsin) water works were kept in such shape that the Railroad Commission was obliged to make up a new set of accounts from the original vouchers in order to ascertain the condition of the business and the reasonableness of the rates charged.<sup>96</sup> The Jefferson (Wisconsin) Water and Light Commissioners failed to separate the operating accounts

of their water and light plants, with the result that the former was losing money without the commissioners being aware of the fact.<sup>97</sup> Similar conditions existed with respect to the Cumberland (Wisconsin) electric light and water plant.<sup>98</sup> In none of these cases was a proper depreciation account kept, or a proper subdivision made of construction and operating costs.

To cite an Iowa instance, the published reports of the Dubuque City Water Works do not reveal the amount of water furnished to the city, the school district, business establishments, or private residences, the rates paid by, or the costs chargeable to, any class of consumers, nor the cost or value of the plant. A net profit is indicated on the face of the returns; but since no allowance is made for interest, depreciation, or taxes, and no credit given for water consumed by the city, it is impossible to tell whether there was not in fact a deficit.<sup>99</sup> Yet the Dubuque report is a rather favorable specimen of Iowa municipal accountancy.

It may be thought that faulty accounting is, at worst, a venial offense. But bad bookkeeping, like charity, covers a multitude of sins. Economical management is unlikely when neither the people nor their elected representatives are in a position to detect extravagance or peculation. Discrimination is almost certain when no one knows how much any class of consumers ought in fairness to pay. Under such circumstances the commercial users, with their superior organization and political influence, are wont to be favored as against householders.<sup>100</sup> Free service to the city or other public bodies similarly relieves taxpayers at the expense of consumers<sup>101</sup> while the opposite effect is produced by a deficit made up out of the general revenues. Disregard

of depreciation, lastly, leads to periodic and permanent increase of the public debt and of the burden upon taxpayers.<sup>102</sup>

Both theory and experience, therefore, would seem to require some form of State control over urban utilities. Not that the municipalities should be stripped of all authority in the premises. On the contrary, a considerable measure of home rule in public service matters should be retained. Local powers might even be increased in some particulars. But the State should take over those phases of utility regulation which municipal governments are not well fitted to control and should supervise the administration of other matters that are entrusted primarily to the local authorities.

### III

#### THE APPROPRIATE ORGAN OF STATE REGULATION

If the State is to exercise control over urban utilities, it must provide an organ appropriate to that function. The work can not be effectively performed by the legislature, the courts, or the ordinary executive. So much is clear from the briefest consideration of the problems involved in utility regulation.

A high degree of flexibility is indispensable to the successful control of local utilities. Conditions vary so much from place to place that uniform rates for service or uniform rules and regulations are wholly impracticable. The city's population, its density and its rate of increase, the wealth of the community and the distribution thereof, the presence or absence of water power, the proximity of a coal supply, the topography of the city, the facilities for railway transportation, and many other circumstances, affect the volume of sales, the unit costs of production, and the reasonableness of particular rates. Within the same community the advance of the industrial arts, the growth of population, the encroachment of manufactures upon residence districts, and the building up of new suburbs operate, among other causes, to alter the conditions under which public service businesses are carried on.

Obviously no legislative body could undertake the detailed supervision of such businesses throughout a

populous State. Time would not suffice for the hearings and debates upon the numberless private and local acts that would be required. Nor can a legislature, by any stretch of the imagination, be supposed to possess the special knowledge necessary for intelligent rate making. As was well said by the Supreme Court of Wisconsin, "Because of the multitude of detail, the intricacy of the subject, the expert knowledge required, the numerous separate investigations of inter-related questions of fact which are necessary, and the necessity for frequent changes and adjustments in rates or service, a legislative body, the members of which are chosen for short terms from the body of the people, would find it an actual rather than a legal impossibility to fix just and reasonable rates".<sup>103</sup> In Iowa this whole field is foreclosed to the General Assembly by the constitutional inhibitions against special legislation.<sup>104</sup>

The courts, also, are peculiarly unfitted to deal with questions of utility rates and service. In the first place, litigation between parties is the only method of judicial inquiry known to the jurisprudence of English-speaking countries. This means: (1) that no investigation can be made and no action had unless some one is sufficiently aggrieved to shoulder the immense pecuniary burden of prosecuting a case through successive State and Federal tribunals; (2) that, since no court can undertake an independent investigation, the ultimate findings must rest upon "that most unsatisfactory evidence, the testimony of experts employed by the parties";<sup>105</sup> and (3) that the law's proverbial delays — and expenses — intervene between a wrongful charge or practice and its remedy.

In the second place, the facts found require to be interpreted and applied by men, who indeed are learned in

the law, but who have no special knowledge of business in general or of local utilities in particular. Their very expertness in an alien field is an obstacle here, since legal reasoning is metaphysical and deductive whereas accountancy and engineering deal only with matters of fact. Lastly, courts have no administrative machinery adequate to the supervision of public utility corporations.

The courts themselves have been not unmindful of their own limitations. When the issue was first raised in the "Granger Cases" thirty-six years ago the Supreme Court of the United States held that rate-making is a legislative function, with which courts can have nothing to do.<sup>106</sup> This view was shortly abandoned,<sup>107</sup> but judicial review of rates fixed by legislative authority has always been confined to the determination of the single question, whether the rates thus prescribed were so unreasonably low as to effect a practical confiscation of property.<sup>108</sup> In other words—and this is a principal drawback to regulation by lawsuit—a court can only uphold or overthrow the particular rate complained of in the case before it. It has no power to substitute a new rate for one declared unlawful,<sup>109</sup> much less to construct a complete tariff of charges.

Finally, the ordinary executive officers of the State have neither the time nor the special fitness to supervise a multitude of local utilities. To pass intelligently upon an application for an increase of capitalization requires an investigation into the value of the property, the rates and earnings of the corporation, the amount of bonds and stocks outstanding, and the public necessity for enlarged facilities. To make a schedule of rates that shall be just to consumers and investors alike it is needful to know the value of the property devoted to the public use, the

unit cost of production for each class of service and the returns reasonably to be expected from the rates proposed to be put into effect.<sup>110</sup> To insure adequate service there must be frequent tests by competent inspectors. To make publicity of accounts effective the companies must be required to report on uniform, scientifically prepared blanks; and the data thus secured must be compiled and interpreted by a trained statistician. All this demands administrators who are familiar with matters of finance, accountancy, and engineering and who are not burdened with a multitude of disconnected duties.

The control of public service industries, in fact, belongs to no one of the traditional departments of government. Rate-making and the regulation of service are legislative functions in so far as they consist in the formulation of rules for future observance.<sup>111</sup> The reasonableness of particular rates or practices and the adequacy of service are judicial questions in that they require the ascertainment of facts and the application thereto of existing rules of law.<sup>112</sup> The work of making inspections, tabulating reports, and supervising accounts may be termed executive. But these distinctions are rather more nominal than real.<sup>113</sup> Regulations, to be valid, must be reasonable, so that the determination of facts must precede the promulgation of rules. So, likewise, the granting of a permit to issue additional bonds or to engage in competition with an existing utility company, while necessarily a matter of executive discretion, turns upon the conclusion drawn from a complex group of facts. In a word, legislative, executive, and judicial powers and duties commingle at every turn in the regulation of public utilities.

If any one designation is to be selected for the fusion

of functions above described, undoubtedly the term administrative best fits the case.<sup>114</sup> The legislature can not enact minute rules for each public service corporation in the State, but it can provide in general terms that rates shall be reasonable, service adequate, and capitalization represent no more than actual investment, leaving it to the administrative authority to determine in detail when these conditions have been fulfilled. Such determination is not legislation;<sup>115</sup> nor is it interpretation of the law in the judicial sense,<sup>116</sup> but rather an unavoidable incident to the enforcement of the legislative will. And it is just this detailed regulation, and the close and constant supervision necessary to give it effect, that is of vital consequence for the control of public utilities.

The foregoing considerations clearly point to the need of an administrative board unhampered by the traditional and now largely discredited<sup>117</sup> division of powers. Such a board, being a permanent body always in session, can exercise a constant, scrutinizing supervision which neither courts nor legislature are able to supply. It can bring to the difficult and delicate problems before it a degree of expertness that is continually added to by experience. An administrative board is not bound by the technicalities of judicial procedure, nor by the necessity for uniformity that is imposed upon a legislative body; it can adapt its rulings to the particular circumstances of the case before it and thereby insure that flexibility which is so desirable in public utility regulation. It can be provided with machinery for investigation such as no legislative assembly and no judicial tribunal does, or can, possess. And, not least of its advantages, the board can use this same machinery to give effect to its decisions.

That a State may constitutionally create such a board



as is here contemplated, and may clothe it with powers which, while primarily administrative, partake also of the legislative and judicial character, there can be no doubt.<sup>118</sup> The expediency of so doing is attested by the success of the United States Interstate Commerce Commission and of many State railroad commissions. More specific testimony to the same effect is afforded by the public service commissions which now exist in seventeen States. An examination of the statutes creating these last mentioned commissions, and of the experience thereunder, should be of value to those whose task it is to solve the problem of urban utility regulation in Iowa.

## IV

### PUBLIC SERVICE COMMISSIONS IN THE UNITED STATES

STATE administrative control of urban utilities began in 1885 with the creation of the Massachusetts Board of Gas Commissioners,<sup>119</sup> changed two years later to the Board of Gas and Electric Light Commissioners.<sup>120</sup> This experiment was not the result of widespread popular demand: the act establishing the commission was lobbied through the General Court by the Boston Gas Company as a strategic move in its memorable struggle with J. Edward Addicks.<sup>121</sup> Notwithstanding this somewhat unsavory origin the Board has had an honorable career of public usefulness and has exercised an important influence, by way of example, upon the development of urban utility control in other States.<sup>122</sup>

In addition to its Light Commissioners, Massachusetts has a Railroad Commission with some jurisdiction over street railways and a Highway Commission which in 1906<sup>123</sup> was given a limited control over telephone companies. But the earliest commissions with wide powers embracing all urban utilities were established almost simultaneously by New York and Wisconsin in 1907.

In New York State a Board of Railroad Commissioners, a Commission of Gas and Electricity, an Inspector of Gas Meters, and a Rapid Transit Board had all and severally failed to prevent overcapitalization or effectively control the rates or service of municipal mo-

nopolies.<sup>124</sup> The several boards, in fact, had proven quite innocuous — partly by legislative intent, partly because of weak personnel. Their jurisdictions, moreover, were over-lapping and to some extent conflicting, their powers feeble and feebly exercised, and their machinery at once cumbersome and inadequate.<sup>125</sup> Meanwhile Messrs. Whitney, Ryan, Belmont, and other exponents of high finance were making plain to the meanest intelligence the evils of uncontrolled monopoly. At length, under the leadership of Governor Hughes, the futile regulative bodies were swept away and in their stead were installed two public service commissions — one for Greater New York, and one for the rest of the State.<sup>126</sup>

In Wisconsin, also, the legislative conscience was quickened by flagrant abuses — especially in the principal city of the State.<sup>127</sup> Effective control of public service corporations was, moreover, a prominent feature in the comprehensive program of social reconstruction for which La Follette and the State University were joint sponsors. A Railroad Commission, clothed with plenary powers, was created in 1905<sup>128</sup> over bitter opposition;<sup>129</sup> and two years later its jurisdiction was extended to urban monopolies of every description. The Public Utilities Act of 1907<sup>130</sup> was drafted by Professor John R. Commons of the State University of Wisconsin in consultation with Mr. Halford Erickson and Professor B. H. Meyer of the Railroad Commission.<sup>131</sup> The Wisconsin statute concededly is one of the best-drawn, as well as one of the most effective laws of its kind, and has served as a model for similar legislation in a number of States.

Following the example of New York and Wisconsin, public service commissions were established by Georgia<sup>132</sup> in 1907, by Vermont<sup>133</sup> in 1908, by Maryland<sup>134</sup>

and New Jersey<sup>135</sup> in 1910, by California,<sup>136</sup> Connecticut,<sup>137</sup> Kansas,<sup>138</sup> Nevada,<sup>139</sup> New Hampshire,<sup>140</sup> Ohio,<sup>141</sup> and Washington<sup>142</sup> in 1911, and by Rhode Island<sup>143</sup> in 1912. In addition to these Oklahoma, by the State Constitution of 1907, provides for a Corporation Commission with some jurisdiction over public utilities,<sup>144</sup> and Oregon, in 1911, enacted a Public Utilities Law, subject to referendum at the November, 1912, election.<sup>145</sup> Thus legislation looking to central administrative control of urban utilities has been enacted by seventeen States, including five New England, three Middle Atlantic, one South Atlantic, three North Central, one South Central, one Rocky Mountain, and three Pacific Commonwealths. A legislative movement so widespread and of such recent and rapid growth challenges the most serious consideration.

The most important features of the recent public utilities legislation are exhibited in convenient form by the accompanying tables. A somewhat more extended comparison is, however, necessary to an intelligent comprehension of the several statutes.

#### THE COMMISSIONS<sup>146</sup>

The commissions, except in Georgia, Oklahoma, and Oregon, are appointive, generally by the Governor and Senate; and in most cases the Governor has also the power of removal for cause. The number of commissioners is five in California, Georgia, and New York, and three in the other States. Terms vary from three to six years — the longer period predominating. Salaries range from \$1,700 in Vermont to \$15,000 in New York — \$4,000 to \$6,000 being the prevailing amount. In Georgia

**TABLE III**  
**THE PUBLIC UTILITY COMMISSIONS**

STATE AND YEAR ESTABLISHED	TITLE	NUMBER MEMBERS	ELECTED BY	REMOVED BY	TERM	ANNUAL SALARY	ANNUAL EXPENDITURES
California 1912	Railroad Commission	5	Governor	2-3 of all members of both houses of Legislature	6 years	\$6,000	\$175,000
Connecticut 1911	Public Utilities Commission	3	Governor and Legislature	Superior Court	6 years	\$5,000 and expenses	\$100,000
Georgia 1907	Railroad Commission	5	People		6 years	Chairman \$4,000	\$20,000 (Limited)
Kansas 1911	Public Utilities Commission	3	Governor and Senate		3 years	\$4,000	\$55,000 (Appropriated)
Maryland 1910	Public Service Commission	3	Governor	Governor	6 years	Chairman \$6,000 Others \$5,000	\$75,000 (Limited)
Massachusetts 1885	Gas and Electric Light Commission	3	Governor and Council	Governor and Council	3 years	Chairman \$4,000 Others \$3,500	\$55,600 (Appropriated)
Massachusetts 1906	Highway Commission	3	Governor	Governor and Council	3 years	\$1,500	\$10,500 (Limited)
Nevada 1911	Public Service Commission	3	Railroad Board	Railroad Board	3 years	Chairman \$5,000 Others \$4,000, \$2,500	\$25,000
New Hampshire 1911	Public Service Commission	3	Governor and Council	Governor and Council	6 years	Chairman \$3,500 Clerk, \$3,200 Others \$3,000	\$21,200 (Appropriated)
New Jersey 1910	Board of Public Utility Commissioners	3	Governor and Senate	Governor	6 years	\$7,500	\$100,000 (Limited)
New York 1907	Public Service Commission	5 in each district	Governor and Senate	Governor Statement filed with Secretary of State	5 years	\$15,000	2nd District \$350,000 (No limit)
Ohio 1911	Public Service Commission	3	Governor		6 years	\$6,000	\$150,000 (Appropriated)
Oklahoma 1907	Corporation Commission	3	People		6 years	\$4,000	\$115,000 (Appropriated)
Oregon* 1912	Railroad Commission	3	People	Governor, Secretary of State and Treasurer	4 years	\$4,000	
Rhode Island 1912	Public Utilities Commission	3	Governor and Senate	Governor and Senate	6 years	Chairman \$4,000 Others \$3,500	\$22,000 (Limited)
Vermont 1908	Public Service Commission	3	Governor and Senate		6 years	Chairman \$2,200 Others \$1,700	\$10,000 (Appropriated)
Washington 1911	Public Service Commission	3	Governor and Senate	Governor	6 years	\$5,000	\$120,000 (Limited)
Wisconsin 1907	Railroad Commission	3	Governor and Senate	Governor	6 years	\$5,000	\$150,000 (No limit)

\*This act will be submitted to popular referendum at the November election, 1912.

**TABLE IV**  
**JURISDICTION OF THE COMMISSIONS**

STATE AND YEAR ESTABLISHED	URBAN UTILITIES REGULATED	ISSUE OF SECURITIES	VALUATION	ACCOUNTING UNIFORM	RATES
California 1912	Gas, electricity, water, warehouses, street railways, telephones	Controlled by Commission Purposes specified	Commission may value all utilities	Commission may require	Public and uniform. Commission may fix rates
Connecticut 1911	Street railways, telephones, gas, electricity, water				Commission may fix maximum rates upon complaint
Georgia 1907	Street railways, docks, wharves, terminals, telephones, gas, electricity	Controlled by Commission	Commission may value all utilities	Commission may require	Commission may fix rates
Kansas 1911	Street railways, trolley lines, heat, light, power, water, telephones	Controlled by Commission Purposes specified	Commission values specific utilities for rate making	Commission must require	Commission may fix rates Rates public and uniform
Maryland 1910	Street railways, telephones, water, gas, electricity, dams, heat, refrigerating	Controlled by Commission Purposes specified	Commission may value all utilities	Commission may require	Commission may fix maximum rates Rates public and uniform
Massachusetts 1885	Gas and electricity	Controlled by Commission	Commission values specific utilities for rate making	Commission must require	Commission may fix maximum rates upon complaint
Massachusetts 1906	Telephones	Subject to approval by the Commissioner of Corporations	Commission values specific utilities for rate making	Commission must require	Commission may recommend rates
Nevada 1911	Heat, light, water, power, sewerage, telephones		Commission may value all utilities	Commission must require	Commission may fix rates upon complaint Public and uniform.
New Hampshire 1911	Telephones, electricity, gas, heat, water, street railways, ferries, toll bridges	Controlled by Commission Purposes specified		Commission may require	Commission may fix maximum rates Public and uniform.
New Jersey 1910	Street railways, subways, electricity, heat, power, telephones, water	Controlled by Commission	Commission may value all utilities	Commission may require	Commission may fix rates Public and uniform.
New York 1907	Street railways, light, heat, power, telephones	Controlled by Commission Purposes specified	Commission values specific utilities for rate making	Commission may require	Commission may fix maximum rates Public and uniform.
Ohio 1911	Street railways, telephones, electricity, gas, water, messenger companies	Controlled by Commission Purposes specified	Commission may value all utilities	Commission may require	Commission may fix rates Public and uniform.
Oklahoma 1907	Street railways, telephones		Commission must value all utilities	Commission has required	Commission may fix rates
Oregon* 1912	Street railways, telephones, light, heat, water, power		Commission must value all utilities	Commission must require	Uniform and public Commission may fix rates
Rhode Island 1912	Street railways, gas, electricity, telephones, water, light, heat, power				Public and uniform. Commission may fix rates in specific cases
Vermont 1908	Street railways, gas, electricity, telephones	Controlled by Commission			Public and uniform. Commission may fix rates
Washington 1911	Gas, electricity, water, telephones, street railways, wharves		Commission must value all utilities	Commission may require	Public and uniform. Commission may fix rates
Wisconsin 1907	Street railways, heat, light, water, power, telephones	Controlled by Commission Purposes specified	Commission must value all utilities	Commission must require	Commission may fix rates Public and uniform

\*This act will be submitted to popular referendum at the November election, 1912.

TABLE IV — CONTINUED  
 JURISDICTION OF THE COMMISSIONS

STATE AND YEAR ESTABLISHED	SERVICE	FRANCHISE	COMPETITION	MUNICIPALLY OWNED UTILITIES
California 1912	Commission may fix standards, make tests, order adequate service and betterments	New franchise requires commission's approval	Commission's consent required	Not in jurisdiction of commission
Connecticut 1911	Commission may fix standards, make tests, order adequate service and betterments			Not in jurisdiction of commission
Georgia 1907	Commission may order reasonable service	Not valid unless approved by commission		
Kansas 1911	Commission may fix standards and order reasonable service	Merger or franchise requires commission's approval	New company cannot begin business without certificate from commission	Not in jurisdiction of commission
Maryland 1910	Commission may fix standards, order reasonable service and improvements	Merger or franchise requires commission's approval	Commission's certificate of public convenience and necessity required	Not in jurisdiction of commission
Massachusetts 1885	Commission may fix standards, make tests, order adequate service	Merger or franchise requires commission's approval Franchises revocable	Only with consent of Board, mayor, and council	Within jurisdiction of commission
Massachusetts 1906	Commission may recommend changes			Not within jurisdiction of commission
Nevada 1911	Commission may fix standards, make tests, order changes			
New Hampshire 1911	Commission may make tests, order improvements	Merger or franchise requires commission's approval	New company cannot begin business without certificate from the commission	Not included
New Jersey 1910	Commission may fix standards, make tests, and order betterments	Merger or franchise requires commission's approval	Only with approval of commission	Uniform accounts required
New York 1907	Commission may fix standards, make tests, order improvements	Merger or franchise requires commission's approval	Only with approval of commission	Commission may require reports, files of schedules, inspect utilities
Ohio 1911	Commission may make tests and regulate service upon complaint, may fix standards	Merger requires commission's approval	No telephone franchise where a company is giving adequate service unless commission consents	Not within jurisdiction of commission
Oklahoma 1907	Commission may order improvements and require reasonable service			Not within jurisdiction of commission
Oregon* 1912	Commission may fix standards, make tests, require reasonable service and improvements	Franchises granted by cities with appeal to commission		Not within jurisdiction of commission
Rhode Island 1912	Commission may fix standards, make tests, order reasonable service upon complaint	New franchise granted by cities subject to appeal to commission		Not within jurisdiction of commission
Vermont 1908	Commission may fix standards, make tests, order reasonable service		Commission cannot prevent or restrict competition	Within jurisdiction of commission
Washington 1911	Commission may fix standards, order adequate service and improvements			Within jurisdiction of commission, except as to rates
Wisconsin 1907	Commission may fix standards, make tests, order reasonable improvements	All franchises indeterminate	Only with approval of commission	Within jurisdiction of commission

\*This act will be submitted to popular referendum at the November election, 1912.

**TABLE V**  
**PROCEDURE AND JUDICIAL REVIEW**

STATE AND YEAR ESTABLISHED	INITIATION OF PROCEEDINGS	ENFORCEMENT OF COMMISSION'S ORDERS	COURT OF FIRST INSTANCE	REVIEWABLE QUESTIONS	EFFECT OF COMMISSION'S FINDINGS	STAY OF COMMISSION'S ORDERS
California 1912	On complaint or commission's motion	By court proceedings	Supreme Court	Legality and regularity of orders	Final as to facts	Only by giving bond to refund overcharge if commission's rate is sustained
Connecticut 1911	On complaint	By court proceedings	Superior Court	Legality and propriety of orders	Same as findings of inferior court	By appeal to court
Georgia 1907	On complaint or commission's motion	By court proceedings	Superior Court of Fulton County	Law and facts		By appeal to court
Kansas 1911	On complaint or commission's motion	By court proceedings	District Court	Legality and reasonableness of orders	Prima facie valid	By injunction
Maryland 1910	On complaint or commission's motion	By court proceedings	Circuit Court	Legality and reasonableness of orders	Prima facie valid	By injunction after notice and hearing
Massachusetts 1885	On complaint or commission's motion	By court proceedings	Superior Court	Law and fact	Same as findings of inferior court	By appeal to court
Massachusetts 1906	On complaint	Commission can not make orders				
Nevada 1911	On complaint	By court proceedings	District Court	Legality and reasonableness of orders	Prima facie valid	By injunction. Commission's rates cannot be suspended
New Hampshire 1911	On complaint or commission's motion	By court proceedings	Superior Court	Legality and reasonableness of orders	Prima facie valid	Only by giving bond to refund overcharge if commission's rate is sustained
New Jersey 1910	On complaint or commission's motion	By court proceedings	Supreme Court	Lack of evidence. Without jurisdiction of Board		By order of court
New York 1907	On complaint or commission's motion	By court proceedings	Supreme or other court of competent jurisdiction			If order is not obeyed, commission brings action to enforce same
Ohio 1911	On complaint or commission's motion	By court proceedings	Court of common pleas	Legality and reasonableness of orders		Only by giving bond to refund overcharge if commission's rate is sustained
Oklahoma 1907	On complaint or commission's motion	Commission enforces its own orders	Supreme Court	Legality and reasonableness of orders	Prima facie valid	Only by giving bond to refund overcharge if commission's rate is sustained
Oregon* 1912	On complaint or commission's motion	By court proceedings	Circuit Court	Legality of order	Prima facie valid	By court with bond to refund overcharge if commission's rate is sustained
Rhode Island 1912	On complaint or commission's motion	By court proceedings	Supreme Court	Legality and reasonableness of orders Errors of law.	Same as findings of inferior court	By appeal to court
Vermont 1908	On complaint or commission's motion	Supreme Court	By court proceedings	Judgment and decrees on facts found by commission	Final as to facts	By appeal to court
Washington 1911	On complaint or commission's motion	By court proceedings	Superior Court	Legality of orders	Prima facie valid	Only by giving bond to refund overcharge if commission's rate is sustained
Wisconsin 1907	On complaint or commission's motion	By court proceedings	Circuit Court of Dane County	Legality and reasonableness of orders	Prima facie valid	By injunction after notice and hearing

\*This act will be submitted to popular referendum at the November election, 1912.



only the chairman is paid, and in six other States the chairman receives a higher salary than his colleagues. In most cases commissioners are required to devote their entire time to the work and are forbidden to own any interest, direct or indirect, in public service businesses or to engage in any pursuit incompatible with their office.

Wide differences appear in the financial support accorded to public service supervision in the several States. The commissions of Georgia, Nevada, New Hampshire, Rhode Island, and Vermont are so hampered by niggardly appropriations as to be necessarily ineffective. On the other hand, the two New York commissions are generously treated by the legislature: not only are there ten commissioners at an aggregate salary of \$150,000 but there is abundant provision for expert service and for research and library facilities. The Wisconsin, Washington, and Ohio commissions are likewise liberally, though not lavishly, supported.

#### UTILITIES INCLUDED

Telephone companies are subjected to commission control in each of the seventeen States, street railways save only in Nevada (where none exist), gas and electric companies in all but Oklahoma, and water companies except in Georgia, Massachusetts, New York, Oklahoma, and Vermont. Heating companies are specifically mentioned in eight of the acts, wharves and warehouses in two, refrigerating and sewerage companies in one each. In most cases, railways, and generally other carriers as well, are under the jurisdiction of the same commission as urban utilities. In California, Georgia, Oregon, and Wisconsin the new duties were added to those of existing railroad commissions; in Kansas and Nevada the old

commissions were given new names as well as broader jurisdiction; in Connecticut, New Hampshire, New Jersey, New York, Ohio, Rhode Island, Vermont, and Washington, the old boards were abolished and their powers transferred to public service commissions; lastly, in Maryland and Oklahoma the public utilities commissions were created outright. Only in Massachusetts is the supervision of public service corporations divided.

#### POWERS AND DUTIES OF THE COMMISSIONS

The keynote of the acts under review is *administrative* as distinguished from legislative or judicial control. Accordingly, it has been sought to create independent tribunals of great power and dignity, clothed with ample discretion in the discharge of the important duties entrusted to them, and freed so far as possible from judicial or political control. The several commissions differ much in the thoroughness with which these principles have been carried out, and their effectiveness will be found to vary pretty directly with the degree of approximation to the ideal above suggested.

#### INQUISITORIAL POWERS

Regulation by commission has been happily styled "the method of intelligence".<sup>147</sup> Public service companies have no legitimate business secrets, since they have no competitors to fear and nothing to conceal unless it be some practice contrary to the public interest. Extortionate profits, stock watering, rebates, discrimination, and political "deals" flourish in secret but can not stand the light of public knowledge. Hence regulative bodies, from the creation of the Massachusetts Gas Commission to the present day, have found publicity a most potent

means of control. Accordingly, all public service commissions nowadays are given authority to summon witnesses, compel testimony, and enforce the production of books and papers. In a word, they are granted power to make searching inquiry into any transaction affecting the public interest. Annual reports in great detail also are usually required from public service corporations. What is even more important, most of the commissions are empowered to supervise accounts and to make valuations of utility properties through their own staffs.

#### PROVISIONS RELATIVE TO ACCOUNTS

In Wisconsin, Oregon, Nevada, Massachusetts, and Kansas the commissions must prescribe the mode of keeping accounts which must be uniform for utilities of the same class, and must secure annual reports of the operation and condition of all public service enterprises.<sup>148</sup> Similar powers are vested in the discretion of the commissions of California, Georgia, Maryland, New Hampshire, New Jersey, New York, Ohio, Oklahoma, and Washington.<sup>149</sup> Wisconsin, Oregon, Ohio, New Jersey, and California specifically provide for separate depreciation accounts and the compulsory maintenance of depreciation funds,<sup>150</sup> and similar requirements are no doubt within the power of any commission which is authorized to prescribe uniform accounts. A number of States provide that the system of accounts adopted shall conform so far as practicable to that prescribed by the Interstate Commerce Commission. Usually the keeping of any accounts, records, or memoranda other than those prescribed by the commission is prohibited; and Kansas<sup>151</sup> makes it a felony to falsify or destroy utility accounts. Only Wisconsin, Oregon, and Kansas explicitly provide

for the auditing of accounts<sup>152</sup>—without which “publicity” may be more nominal than real. In no State, probably, does the “auditing” amount to more than a checking up of the reports submitted by the utilities, and that much is attempted by commissions which have no express power to audit. Lastly, three States — Connecticut, Rhode Island, and Vermont — make no provision for publicity or uniformity of accounts.

#### VALUATION OF PUBLIC SERVICE PROPERTIES

The commissions of Wisconsin, Washington, Oregon, and Oklahoma must,<sup>153</sup> and those of California, Georgia, Maryland, Nevada, New Jersey, and Ohio may ascertain the value of all public service properties in their respective States.<sup>154</sup> Four other commissions are empowered to make valuations in specific cases for rate determination. Wisconsin was the pioneer in the matter of valuation, and the Wisconsin act remains the model of advanced legislation in this particular,

#### REGULATION OF CAPITALIZATION

Massachusetts led the way in regulating the capitalization of public service corporations, stock watering having been forbidden in that State as long ago as 1868.<sup>155</sup> The Board of Gas and Electric Light Commissioners has from the first had the power of approval and disapproval over the securities issued by the corporations under its jurisdiction. The New York act of 1907 goes further, providing that no securities to run more than twelve months shall issue except for certain specified purposes, and then only with the approval of the Public Service Commission, which also is charged with the duty of seeing that the proceeds are applied in accordance with the

law.<sup>156</sup> California, Georgia, Maryland, and New Hampshire follow New York in this respect.<sup>157</sup> The Wisconsin stock and bond law of 1911 is still more thoroughgoing.<sup>158</sup> Like Massachusetts, Wisconsin prohibits stock or scrip dividends, shareholders' privileged subscriptions, or the issue of stock for less than its face value actually paid in. Like New York, though in greater detail, the Wisconsin act defines the purposes for which stocks or bonds may be issued and makes the Railroad Commission's approval necessary to their validation. Wisconsin further empowers the Railroad Commission to fix the terms in accordance with which stocks or bonds shall be issued, distinguishes between securities sold for money and those exchanged for property or services, makes the Commission's valuation conclusive with respect to the latter, and requires the amortization (or retirement at maturity, by means of a sinking fund) of indebtedness not properly chargeable to capital account. Kansas<sup>159</sup> and Ohio<sup>160</sup> have almost equally rigorous restrictions. The acts of New Jersey and Vermont are less explicit, merely requiring the commission's approval for the issuance of securities running more than one year.<sup>161</sup> The commissions of Connecticut, Nevada, Oklahoma, Oregon, Rhode Island, and Washington have no jurisdiction over capitalization.

#### MERGER OF PUBLIC SERVICE COMPANIES

Ten States seek to control the merger or consolidation of public service companies. Massachusetts permits lighting companies in the same or contiguous municipalities to combine upon terms approved, after a public hearing, by the Board of Gas and Electric Light Commissioners.<sup>162</sup> Ohio allows competing utility corpora-

tions, with the consent of the Public Service Commission, to enter into operating agreements.<sup>163</sup> In California no sale, lease, or assignment of the plant, property or franchise, and in Ohio no sale or lease of the plant of one public service company to another can be made without the consent of the commission.<sup>164</sup> The commission's authorization is required for the sale, lease, assignment or transfer to any person or corporation of a public utility franchise in New York and Kansas, and of either plant or franchise in Maryland, New Hampshire, and New Jersey.<sup>165</sup> California, Kansas, Maryland, New Hampshire, New Jersey, New York, and Ohio forbid any utility company to acquire or hold stock in another without the commission's consent.<sup>166</sup> Wisconsin provides that no utility shall purchase the property of another at a higher valuation than that fixed by the Railroad Commission.<sup>167</sup> Seven States — California, Maryland, Massachusetts, New Jersey, New York, Ohio, and Wisconsin — prohibit the capitalization of any consolidation or any contract of merger.<sup>168</sup> Oklahoma permits competing utilities to combine only with the consent of the legislature upon the recommendation of the Corporation Commission, and forbids even the legislature to allow the consolidation of any public service company with any similar corporation organized under the laws of another State or of the United States.<sup>169</sup> California, Ohio, and Wisconsin also provide that no public utility franchise shall hereafter be granted or transferred "except to a corporation duly organized under the laws of this State."<sup>170</sup>

Many of the foregoing prohibitions are likely to prove ineffective, because not specifically applicable to holding companies, which is the modern and most common form

of consolidation. In Massachusetts, for instance, it is easy by means of "voluntary associations" or other transparent subterfuges to merge lighting companies that serve non-contiguous territories in violation of the apparent intent of the law and without applying to the Board of Gas and Electric Light Commissioners. A case in point is the control of gas and electric companies in Leominster, Clinton, Ayer, Spencer, Arlington, Milford, Northampton, North Adams, Adams, and Williamstown by the Massachusetts Lighting Companies.<sup>171</sup> Of the ten States above mentioned, California, Kansas, New Hampshire, Ohio, and Wisconsin, as well as Massachusetts, make no provision against such a contingency. New York and Maryland forbid the acquisition of more than ten per cent, and New Jersey of a majority, of the capital stock of a public service company by any corporation other than a public utility company.<sup>172</sup> Even this prohibition may probably be evaded by calling the holding company a "voluntary association" or a "board of trustees".

#### REGULATION OF RATES

Two objects are sought in rate regulation, namely, that all rates shall be reasonable and that there shall be no discrimination. The principal devices to secure these ends are (1) the definition of the duties of public utilities, (2) the rate-fixing power of commissions, (3) publicity of rates, and (4) the requirement that published schedules shall be strictly adhered to.

Sections declaratory of the common law duties to serve all applicants without discrimination, to provide reasonably adequate facilities, and to charge only reasonable rates, rentals, fares, tolls, or prices are found in

most public utility acts. Many of the laws define "unjust discrimination" in some detail. Seven States provide that no utility shall "charge, demand, collect or receive from any person, firm, or corporation a greater or less compensation for any service rendered or to be rendered by it . . . than it charges, demands, collects or receives from any other person, firm or corporation for a like and contemporaneous service".<sup>173</sup> Rebates in any form whatever are explicitly forbidden by all of the acts under review.

The commissions of Wisconsin, Washington, Vermont, Rhode Island, Oregon, Oklahoma, Ohio, New Jersey, Nevada, Kansas, Georgia, and California are empowered to fix *exact*,<sup>174</sup> the commissions of New York, New Hampshire, Maryland, and Connecticut, and the Massachusetts Board of Gas and Electric Light Commissioners, *maximum* rates.<sup>175</sup> The Massachusetts Highway Commission has only recommendatory powers over telephone rates.<sup>176</sup> The power to fix rates carries with it the authority to make classifications and to permit differential charges corresponding to substantial differences of conditions.

To guard against discrimination, California, Kansas, Nevada, New Hampshire, New Jersey, New York, Ohio, Oregon, Rhode Island, Vermont, Washington, and Wisconsin require every public service company, and Maryland requires every common carrier, to file with the commission and to keep open to inspection at its own offices schedules showing every rate or charge for any product or service furnished by it.<sup>177</sup> To prevent "mid-night rates", put into effect for the benefit of favored customers and withdrawn before they become generally known, the States just mentioned, except New Jersey,



require from ten to thirty days' notice to the commission for any change in an existing schedule. California, Kansas, New Jersey, and Wisconsin provide that no *increase* shall be made without a specific order of the commission.<sup>178</sup> The commission has besides, in each of the foregoing thirteen States, the power to disallow a proposed schedule, or any particular rate therein. And, lest an increase be inadvertently permitted, all of these States require that every change from an existing schedule shall be plainly indicated, while Washington further provides that the commission's attention shall be especially called to any increased charge.<sup>179</sup>

Lastly, to forestall rebating, ten States prohibit under heavy penalty any departure from the published schedule. The language of the New York act is: "No corporation or municipality shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such services as specified in its schedule filed and in effect at the time".<sup>180</sup> Provisions to the same effect and in nearly the same words are found in the laws of California, Kansas, Maryland, Nevada, Ohio, Oregon, Rhode Island, Washington, and Wisconsin.<sup>181</sup>

#### REGULATION OF SERVICE

The most important provisions respecting service are those empowering the commissions to (1) prescribe standards of products or services, (2) make tests and inspections, (3) order additions to, or betterments of, plant and equipment, and (4) compel joint service by two or more companies.

Fourteen public service commissions — all save those

of Georgia, New Hampshire, and Oklahoma, and the Massachusetts Highway Commission — are authorized to fix standards of quantity and quality for some or all public utilities.<sup>182</sup> The purity, pressure, illuminating power, and heat value of commercial gas; the initial voltage of electricity and the initial efficiency of electric lamps; the purity and pressure of water; and the “head-way” and seating capacity of street cars are among the things to be thus standardized.

Authority to investigate any particular utility upon complaint is possessed by all public service commissions. Continuous inspection of plant, service, and equipment is partially provided for only by Wisconsin, Washington, Oregon, New York, New Hampshire, and Massachusetts.<sup>183</sup> Provision for the public inspection of consumers’ meters is more general. In Massachusetts, Maryland, New York, and Washington no gas meter can be set until tested, approved, and sealed under the commission’s authority.<sup>184</sup> In Washington the same requirement applies to water meters.<sup>185</sup> In New York and Washington no electric meter can be installed unless of a type approved by the commission.<sup>186</sup> In Oregon the commission may forbid the installation of any meter until tested and approved.<sup>187</sup> The commissions of Wisconsin, Oregon, and Rhode Island are commanded, and those of Ohio, New Jersey, and California are authorized, to “provide for the examination and testing of any and all appliances used for the measuring of any product or service of a public utility.”<sup>188</sup> In Kansas the commission must “prescribe reasonable regulations for examinations and testing of such products or service and for the measurement thereof.”<sup>189</sup> Lastly, in twelve States any consumer of gas or electricity may have his meter tested

upon payment of a fee which must be refunded by the public service company if the meter is found to be incorrect.<sup>190</sup>

The power to order that any public utility shall make such repairs, improvements, alterations, or additions in or to its plant, equipment, or facilities as after hearing are found to be reasonably necessary to the public convenience is, by inference at least, conferred upon all the public service commissions hereinbefore enumerated, except the Massachusetts Highway Commission which can only make recommendations.

Joint use of facilities, maintenance of through routes over the lines of separate companies, or other forms of joint service are specifically provided for by nine States. In California, Connecticut, Maryland, Ohio, and Oregon the commissions may require physical connection of street and interurban railways.<sup>191</sup> In Connecticut the Public Utilities Commission may establish through service over two or more lines of railway or street railway.<sup>192</sup> In California, Ohio, Oklahoma, Washington, and Wisconsin physical connection between the lines of separate telephone companies may be required.<sup>193</sup>

#### SAFETY REGULATIONS

Public utility acts usually contain clauses declaratory of the common law duty to maintain "safe" conditions. Probably most, if not all, of the States have statutes specifically defining this duty with respect to railways, street railways, manufacturing establishments, and handlers of electricity. In addition, ten States give their public service commissions power to remedy conditions found, upon hearing, to be dangerous and to make orders in specific cases calculated to promote the health and

safety of employees or of the public. The Washington statute is the most explicit, empowering the commission to prescribe standard safety appliances, to inspect the track and equipment of street railways, and to order repairs or improvements in gas, electric, and water works.<sup>194</sup>

Twelve States require public utility companies to report accidents to their public service commissions. Such report must be made by telegraph in Kansas,<sup>195</sup> by telephone in Connecticut,<sup>196</sup> "immediately" in Nevada, New York, Oregon, Rhode Island, Vermont, and Wisconsin,<sup>197</sup> within twenty-four hours in Massachusetts,<sup>198</sup> within thirty days in Maryland,<sup>199</sup> and as the commission may require in California.<sup>200</sup>

#### REGULATION OF COMPETITION

Massachusetts was the first State to adopt the policy of regulated monopoly in public service businesses. So long ago as 1885 it was enacted that any gas company already in operation in that State might appeal to the Board of Gas Commissioners against the granting of a franchise to a competitor.<sup>201</sup> The same right was extended to electric companies in 1887.<sup>202</sup> The Board, for its part, has throughout declined to sanction competition in any case where the existing companies were furnishing, or could be induced to furnish, adequate service.<sup>203</sup> Eight other States now apply the same policy to some or all of their public utilities.

In California no street railway, gas, electric, telephone, or water company can begin construction or operation in any municipality not already served by it without first obtaining from the Railroad Commission a certificate that public convenience and necessity will be

served thereby.<sup>204</sup> No one can enter into competition with any existing urban utility in Wisconsin<sup>205</sup> or with any telephone exchange in Ohio<sup>206</sup> without a similar certificate. Kansas, Maryland, New Hampshire, New Jersey, and New York require every new public service company to obtain from the State commission a certificate of public convenience and necessity before beginning business.<sup>207</sup> Other States give their commissions no power in the premises, and Vermont<sup>208</sup> expressly provides that the Public Service Commission shall not prevent or restrict competition.

#### REVOCABLE FRANCHISES

The power to prevent competition is important for the avoidance of needless waste; while the right to permit competition is chiefly valuable as a club to compel adequate service by existing companies. To make such a right effective there must exist somewhere the authority to cancel existing franchises which purport to grant exclusive privileges for specified times. Wisconsin secures this end by its indeterminate permit law of 1911 which declares that every franchise is terminable and that any municipality may, upon convincing the Railroad Commission that public convenience and necessity require it, license a new utility corporation to serve its inhabitants, any and all prior grants to the contrary notwithstanding.<sup>209</sup> Massachusetts authorizes the revocation of "locations", or the removal of pipes, poles, etc., for the violation by the grantee of the terms of the grant, or of the laws of the State, or of a valid municipal ordinance.<sup>210</sup> Connecticut amends all charters or franchises whenever granted, so as to make them conform to the public service act of 1911.<sup>211</sup> Rhode Island explicitly declares,

what would be implied in any case, that all future franchises shall be made subject to the provision of the public utilities law.<sup>212</sup>

#### MUNICIPAL PLANTS

Four States restrain municipalities from entering into competition with existing utilities. In New York<sup>213</sup> no municipality, and in Maryland<sup>214</sup> no city or town but Baltimore, may construct or acquire a gas or electric light plant, except for municipal uses exclusively, without first obtaining the consent of the Public Service Commission. Wisconsin requires a municipality which votes to engage in a public utility business to purchase any existing utility plant of the same kind at a price and upon terms to be fixed, in default of agreement, by the Railroad Commission.<sup>215</sup> The same requirement applies in Massachusetts to gas or electric works, except that the appraisal is made by court commissioners.<sup>216</sup> In Massachusetts, however, public purchase is contingent upon the consent of the owners; whereas in Wisconsin the owners may be forced to sell.

Municipal plants, once acquired, are placed under the jurisdiction of the public service commissions: as to accounts, in New Jersey;<sup>217</sup> except as to rates, in Washington;<sup>218</sup> and to substantially the same extent as privately owned works, in Vermont, Wisconsin, New York, and Massachusetts.<sup>219</sup>

#### POWERS RESERVED TO MUNICIPALITIES

In none of the States under review are the local authorities deprived of their right to grant franchises to, or make contracts with, public service corporations. In no case, probably, with the possible exception of tele-

phone companies in certain States, may any such corporation occupy the public streets without the city's consent. But in Massachusetts and Wisconsin no competing franchise, and in California, Kansas, Maryland, New Hampshire, New Jersey, and New York, no grant of any sort is valid without the approval of the State commission.<sup>220</sup> The commissions of California, Kansas, New Hampshire, and New Jersey may, before giving their approval, make such modifications in a municipal grant as the public interests seem to require.<sup>221</sup> In Georgia all contracts between municipalities and utility companies are made subject to the assent of the Railroad Commission.<sup>222</sup>

Kansas, Oregon, and Wisconsin expressly reserve to the municipal government the power "To determine by contract, ordinance or otherwise the quality and character of each kind of product or service to be furnished or rendered by any public utility furnishing any product or service within said municipality and all other terms and conditions not inconsistent with this act upon which such public utility may be permitted to occupy the streets", and to require additions and extensions to be made when reasonably necessary.<sup>223</sup> Ohio empowers cities to regulate rates, require extensions, and make contracts with public utilities.<sup>224</sup> Massachusetts and Vermont give the selectmen of a town and the mayor and aldermen of a city fairly wide powers over the location and construction of tracks, wires, poles, pipes, and other structures in or under the streets.<sup>225</sup> But in Kansas, Massachusetts, Ohio, Oregon, Rhode Island, Vermont, and Wisconsin an appeal lies from every order of the local authorities to the State commission.<sup>226</sup> And in the other States the authority of the commission as to mat-

ters within its jurisdiction is paramount to that of any municipality. California, however, permits any city to decide by referendum vote whether it will retain the powers possessed by it prior to the enactment of the public utilities law.<sup>227</sup>

#### INITIATION OF PROCEEDINGS

Proceedings may be begun by the commission itself, save in Connecticut and Nevada; by the utility company affected in California, Connecticut, Kansas, Maryland, Massachusetts, New Hampshire, New York, Oregon, and Wisconsin;<sup>228</sup> and in all the States by municipal authorities, boards of trade, or a specified number of consumers or taxpayers. Summary proceedings and hearings before a single commissioner, as well as formal hearings by the full board, are usually provided for and none of the commissions is bound by technical rules.

#### ENFORCEMENT OF COMMISSION'S ORDERS

Violation of the public utilities statutes or of the lawful orders of a public service commission is in every State, visited with criminal and civil penalties to be enforced through the ordinary courts. In addition, sixteen States provide that the commission may apply to the courts for injunction, mandamus, or other process to compel compliance with its orders, or that the Attorney General shall make such application upon the commission's request. Oklahoma endows the Corporation Commission with the powers of a court to enforce its orders by its own processes.<sup>229</sup> The Massachusetts Highway Commission can only report to the General Court that telephone companies have, or have not, complied with its recommendations.<sup>230</sup>



## COURT REVIEW

A principal object of the public utility acts is to do away with the endless delays, enormous expense, and great uncertainty of litigation. This end is sought to be secured (1) by providing an expert and impartial tribunal to which utility companies and their patrons alike may confidently look for cheap, speedy, and exact justice, and (2) by making the decisions of this tribunal, so far as possible, final.

All of the acts under review provide that parties in interest shall have notice and full opportunity to be heard before an order is made in any matter of consequence. This requirement, together with the freedom of a State commission from merely local influence, affords a sufficient safeguard against the haste and passion of city councils. The further fact that commissions are continuous bodies, devote their entire time to a single class of economico-legal inquiries, have ample powers of inquiry, are (or may be) equipped with staffs of experts, and are unhindered by cramping technicalities, makes the public service commissions better tribunals for the determination of the questions that come before them than any courts can be.

Appeals from a public service commission may be discouraged and the final determination of causes hastened (a) by restricting the mode of appeal and the time within which appeals must be commenced, (b) by confining the power of review to certain courts, (c) by limiting the questions reviewable, (d) by forbidding the introduction in judicial proceedings of evidence not presented to the commission, (e) by giving peculiar weight to the commission's findings, (f) by giving cases of this

class precedence over others on the court calendar, and (g) by making delay in itself of no advantage to the appellant.

In California, New Jersey, and Washington the commissions' decisions can be reviewed only by *certiorari*;<sup>231</sup> in Connecticut, Oklahoma, Rhode Island, and Vermont, only by appeal.<sup>232</sup> Either mode at once precludes a trial *de novo*. In Kansas, Maryland, Nevada, New Hampshire, Ohio, Oregon, and Wisconsin the procedure is an action by the party aggrieved to set aside an order of the commission.<sup>233</sup> In Georgia, Massachusetts, and New York, the courts obtain jurisdiction by means of suits to enforce the commission's orders or to recover penalties for the violation thereof.<sup>234</sup> The disadvantage of the last mentioned mode of review is that thereunder an order, if questioned, does not become effective until sustained.

The time within which an appeal or other court proceeding must be begun ranges from seven days in Rhode Island to ninety days in Nevada, Oregon, and Wisconsin. Most of the statutes also limit the time for filing answers and taking appeals to the highest State court. Georgia, Massachusetts, New Jersey, and New York impose no time limits.

Since the decision of an inferior court is not likely to be final in any important case, much time and expense would obviously be saved by confining the power of review to the court of last resort. Unfortunately, however, the constitutions of many States make such a limitation impossible. In fact, only four of the public utility statutes — those of California, Oklahoma, Rhode Island, and Vermont — provide for review in the first instance by the highest court of the State.<sup>235</sup> Georgia and Wisconsin,

however, require that suits to vacate an order of the commission shall be prosecuted only in the county wherein the State capital is situated.<sup>236</sup>

Most of the statutes empower the courts to pass upon the legality and reasonableness of the commissions' orders. Connecticut<sup>237</sup> adds "propriety and expediency" to the matters to be determined. Oregon<sup>238</sup> permits an action to vacate an order of the commission only on the ground that the same is unlawful. These various expressions come to substantially the same thing since what is unreasonable is unlawful and propriety is a question of reasonableness. Only New Jersey and California effectually limit the power of review in this respect. New Jersey gives the Supreme Court jurisdiction to set aside an order of the Board of Public Utility Commissioners only "when it clearly appears that there was no evidence before the board to support reasonably such order, or that the same was without the jurisdiction of the board."<sup>239</sup> California enacts that the review "shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination of whether the order or decision under review violates any right of the petitioner under the constitution of the United States or of the State of California."<sup>240</sup>

In times past corporations have often failed to present important evidence to a regulative body, hoping thereby to secure a reversal upon appeal. California, New Jersey, Oklahoma, Vermont, and Washington forestall such an expedient by requiring the court of review to determine the case upon the evidence certified by the commission.<sup>241</sup> Wisconsin, Rhode Island, Oregon, New Hampshire, Nevada, and Maryland provide that when any new

evidence is presented to a court the case shall automatically revert to the commission for further hearing.<sup>242</sup> Either requirement should secure a full presentation before the commission and should greatly lessen the cost of litigation by doing away with the taking of testimony by a master in chancery or otherwise.

California and Vermont make the findings of their commissions final as to facts, and the California act comprises under this term "ultimate facts and the findings and conclusions of the commission on reasonableness and discrimination."<sup>243</sup> A valuation made by the Public Service Commission of Washington, when once accepted by the corporation concerned or, if appealed from, when affirmed or corrected by the courts, is thereafter conclusive of the value of the property affected at the time of the valuation.<sup>244</sup> In nine States it is expressly declared, though it would be true without such declaration, that the findings of the commission are *prima facie* valid. Maryland, Nevada, New Hampshire, Oregon, and Wisconsin place upon the party seeking to vacate an order of the commission the burden of showing by "clear and satisfactory evidence" that the order complained of is unlawful or unreasonable.<sup>245</sup> This phrase has been judicially declared to require more than a fair preponderance of evidence.<sup>246</sup>

To hasten the final determination of public utility cases as much as possible ten States give to such cases preference over ordinary civil cases.

It is notorious that litigation often is resorted to solely for the sake of delay. To postpone a rate reduction is the next best thing to defeating it altogether. If instances are wanted it may be called to mind that the Cedar Rapids ninety cent gas ordinance was held up for

six years by means of successive appeals.<sup>247</sup> The ordinance of Knoxville, Tennessee, regulating water rates, though enacted in 1901, only became effective in 1909.<sup>248</sup> The public utility litigation of Des Moines, later referred to, likewise affords striking illustrations of delay in the putting into effect of rate ordinances.

The incentive to such procrastination is removed by the Constitution of Oklahoma.<sup>249</sup> No rate order of the Corporation Commission of that State can be stayed or suspended unless the appellant first gives bond to refund any excess collected during such suspension over the rates finally sustained by the courts. To make this requirement effective, the appealing company is compelled to keep a separate account with each consumer, showing the amount of overcharge collected and the name and address of the person to whom the same may become refundable — an amount of bookkeeping not to be undertaken with a light heart. California<sup>250</sup> and New Hampshire<sup>251</sup> follow Oklahoma in both requirements. Ohio, Oregon, and Washington exact the supersedeas bond to refund overcharges, but do not expressly require the keeping of separate accounts.<sup>252</sup> Nevada goes even further, enacting that “all rates fixed by the commission shall be deemed reasonable and just, and shall remain in full force and effect until final determination by the courts having jurisdiction.”<sup>253</sup> This requirement probably means that rate cases in Nevada will be taken directly to the Federal courts. The statutes of Wisconsin<sup>254</sup> and Maryland,<sup>255</sup> as well as of most of the States just enumerated, contain the rather futile provision that no injunction suspending an order of the commission shall issue except after notice to the commission, and hearing. Washington and California require, in addition, “a spe-

cific finding based upon evidence submitted to the court making the order and identified by reference thereto, that great or irreparable damage would otherwise result to the petitioner, and specifying the nature of the damage".<sup>256</sup> In the other commission States an appeal to the courts operates of itself to stay the order appealed from.

#### COMPARATIVE ESTIMATE

As might have been expected, the later public utility statutes are largely based upon the earlier. The Maryland act, except as to court review, is taken almost bodily from that of New York; and the Oregon law, with some important omissions, was copied from that of Wisconsin. Ohio and Kansas used both the Wisconsin and New York statutes as models for imitation. Washington copied from Oklahoma the provision as to the evidence admissible upon review and the iron-clad rule as to suspending an order of the commission. The California act was drawn in 1911, after a careful study of existing legislation,<sup>257</sup> and is the most catholicly eclectic of all. By way of contrast it appears that the Connecticut legislature, though acting in 1911 and after the report of a special committee,<sup>258</sup> profited but little by the experience of other States.

With respect to form, the public utilities acts of California, Washington, and New Jersey are the clearest and best arranged, and those of Ohio and Kansas the worst planned and most confused, of the statutes enacted, so to speak, in one piece. Especially admirable in this particular is the California act. Beginning with an analytical table of contents and closing with a full index, the statute comprises (1) general provisions with respect to the Railroad Commission, (2) definitions of the duties of

public utilities, (3) an enumeration of the powers and duties of the Railroad Commission, (4) regulations of procedure before the commission and the courts, and (5) saving clause, appropriation, and repealer. The public utility laws of Massachusetts and Vermont, having been enacted, repealed, and amended for many years past, and never having been codified, are naturally anything but models of logical and lucid arrangement. The same remark holds, though to a less degree, of the thirty or more utility and railroad acts of Wisconsin.

In point of content no one act comprises all of the most effective features. The Wisconsin law is superior to all others in its provisions for indeterminate permits and for the regulation of municipal enterprises and is the equal of any in the control of capitalization. New York and the States which follow it in this particular provide the most effective control of mergers and consolidations. The Oklahoma plan for preventing dilatory appeals is the best yet devised. Moreover, Oklahoma was the first State to limit the evidence upon appeal to the record certified by the commission. Vermont was an innovator in making the commission's findings of fact conclusive upon courts of review. The California law contains many, but not all, of the strongest provisions of the other statutes, and in its restrictions upon judicial review is the most stringent yet enacted. It is evident, therefore, that the "model statute" must be a composite one, though it could probably be made up from the acts of Wisconsin, California, New York, and Washington.

#### OPERATION OF THE PUBLIC UTILITY ACTS

Most of the public service commissions have been in existence too short a time to admit of any conclusive

judgment as to their practical efficacy. The exceptions are the Massachusetts Board of Gas and Electric Light Commissioners, which was created in 1885; the Wisconsin Railroad Commission, which received jurisdiction over urban utilities by an act of the legislature in 1907; and the Public Service Commissions of New York, which also date from 1907.

The Massachusetts board<sup>259</sup> has proven especially efficient in the control of capitalization. This board has all along insisted that capital must represent investment as measured by the structural value of the property, that a surplus can not be capitalized, that revenues in excess of reasonable operating expenses and fair interest and dividend requirements call for rate reductions, that depreciation must be met out of earnings, and that neither error of judgment nor downright dishonesty can be made the basis of corporate issues. Much of the board's time is taken up with petitions for the approval of proposed issues of stocks and bonds. In 1910 twenty-nine applications were made for the issue of \$3,803,400 of securities, par value, whereof the board approved \$2,969,600. It is especially significant that the stocks were placed on the market at an average premium of more than twenty-five per cent, and that none was offered at less than par.<sup>260</sup> In at least one case, where several companies were being consolidated, the consolidation was required to make good the difference between the structural value of the properties merged and the liabilities thereagainst outstanding.<sup>261</sup> In another case a company desired to issue \$600,000 of stock and \$400,000 of bonds for projected construction. It was permitted to issue \$176,000 of stock and \$124,000 of bonds for work already under way.<sup>262</sup> Such administrative watchfulness, coupled with rigorous



legislation, has prevented stock watering by the lighting companies of Massachusetts, except in the few notorious instances where great magnates were able to find or force breaches in the laws.

The Massachusetts commissioners have by no means confined themselves to matters of capitalization. They have exercised an important influence on rates, both directly by ordering reductions in particular cases, and indirectly through their powers of inquisition and the wholesome fear inspired in corporate managers by the presence of a regulative body. They have checked unwise attempts at competition, almost uniformly denying petitions for the erection of another plant where one already exists. The power to permit competition has, none the less, been effectively used to secure adequate service from existing companies. The commissioners did pioneer work in the matter of uniform accounts for gas and electrical companies and their annual reports are models of concise, significant, and intelligible information. The board has long been recognized as the expert adviser of the legislature upon all matters within its cognizance, and has often furnished valuable information, based on comparative statistics, to managers of municipal plants and even to private companies.

The Massachusetts commissioners have a highly creditable record for continuous service. Though appointed for only three years there have been but twelve commissioners in the history of the board, and but five since 1894. Chairman Barker has served continuously since the middle "eighties" and Commissioner Schaff for eighteen years. The appointees, almost without exception, have been men of high standing, chosen for non-political reasons.

The Massachusetts board makes no attempt to fix precise rates beyond prescribing the maximum, and hence is less effective than it might be in preventing discriminations. It does not undertake original valuations except as the need arises in particular rate or capitalization cases. It has no permanent engineering staff, though one of its members is an engineer. The board does, however, employ eight inspectors of gas, electricity, and gas and electrical meters.

The Railroad Commission<sup>263</sup> of Wisconsin has likewise been peculiarly fortunate in its personnel. Mr. Balthasar H. Meyer, formerly professor in the University of Wisconsin and now a member of the Interstate Commerce Commission, was its first chairman. Mr. Halford Erickson, formerly a railroad auditor, has been, perhaps, the dominating member of the commission throughout its history. Mr. Roehmer, an attorney and Professor Meyer's successor in the chairmanship, is also a man of ability and force. Mr. Harlowe, the most recent appointee, was formerly traffic manager of a large commercial firm. The commission has been singularly free from politics. Its appointments are for merit only. Its chief engineer, head accountant, and head statistician are university professors, and their principal subordinates are university graduates. The commission has also an economic expert with university trained assistants. Cooperation with the State University, indeed, is a main reason for the remarkable success of the Wisconsin commission. The commission's high reputation has been made in the work of valuation, rate-making, service-inspection, accounting, and the handling of complaints.

The Wisconsin commission regards physical value as a most important element in rate-making. Accordingly,

in every rate case it seeks to ascertain the first cost of the property used and useful for the convenience of the public, the cost of reproduction new, and the structural value or cost of reproduction less depreciation. The commission, largely in the person of Mr. Erickson, has carefully worked out the method and principles of utility valuation. Original cost is computed, wherever possible, from construction accounts. Variations in price are offset by taking the average for a term of years. Depreciation is reckoned from experience tables showing the expectable duration of the several items of plant and equipment. "Going value" is allowed for on an investment basis — the losses incurred and profits foregone at the inception of the enterprise, the cost of getting business and of putting the utility upon a paying basis. In the work of valuation the commission relies mainly upon its own engineering staff, the testimony of expert witnesses employed by litigants being given little weight. Valuations are made by the Tax Commission as well as by the Railroad Commission, and the two boards maintain a joint engineering organization. On the staff are men especially qualified to deal with each class of utilities.

The "cost" theory of utility rates has been especially emphasized by the Wisconsin commission, though not to the exclusion of other bases of rate-making. It is particularly insisted that no service shall be furnished at a price which does not yield something over and above prime costs toward the general expenses of the business. To this end a system of "unit costs" has been carefully elaborated whereby it is possible to ascertain, for example, the "output cost" of electricity per kilowatt, the "distribution costs", the "consumer costs" of reading meters, keeping accounts, rendering bills and the like,

and the "readiness to serve cost" entailed by a given number of lamps which may or may not be used simultaneously. The commission does not content itself with declaring the maximum reasonable charge, but makes schedules of exact rates based upon, or at least not violative of, the principle of unit costs. It is thus gradually bringing something like uniformity out of the bewildering confusion of schedules that has hitherto prevailed in Wisconsin as in other States, is effectively preventing discrimination, and is aiding the utilities themselves to place rate-making upon a scientific basis.

Careful classifications of accounts have been made, distinguishing not only between the several kinds of utilities but also between large and small enterprises of the same class. By means of the reports required under such classifications it is possible (a) to keep valuations, once made, up-to-date, (b) to secure sufficient and trustworthy data for intelligent rate-making, and (c) to compare the financial and physical results of one utility with another. The commission's supervision of accounts is of great value to the utilities themselves. Its suggestions are welcomed by the managers of municipal plants and even by the smaller private companies which can not employ expert accountants. Its published reports afford a mass of information as to the relative efficiency of different types and sizes of plants and equipment and different methods of production. Finally, what is even more important, these reports enable the people of each city, as well as its responsible officials, to criticize the management of their own utilities by comparison with others.

Besides preparing the classification of accounts, the statistical department of the Wisconsin commission checks up and compiles the reports of utilities, has charge

of all schedules filed, examines all revisions of the same for possible covert increases of rates, and prepares data for the use of the commission in pending cases.

For the purposes of gas and electrical inspection the State of Wisconsin is divided into districts with one or more traveling inspectors placed in each. Besides this official inspection, the utilities are required to maintain proving and testing apparatus, to prove meters, to test pressure, purity, voltage, and other service *indicia*, and to keep full station records which are checked up by the State inspectors. By these means, without any formal proceedings, many plants have been induced to install additional or more modern equipment, to adopt more careful stoking methods or a better grade of fuel, to maintain more uniform pressures, to give prompter attention to consumers' complaints, and generally to improve the service rendered. The changes thus brought about frequently are of as much advantage to the utility itself as to its patrons. The men ultimately responsible for the policy of a public service enterprise, whether they are members of a city council or of a board of directors, rarely are in close touch with actual operating conditions, and are commonly ignorant of the industrial side of the business. A small utility can not employ a staff of engineers and accountants: even the manager immediately in charge is not likely to be a man of thorough training or wide experience. Hence the commission's field agents, trained in criticism and familiar with conditions at many plants, can render some such aid as national bank examiners often supply to the institutions under their surveillance.

In furtherance of its inspectional work the commission has adopted thoroughly modern standards of quality

and measurement. As a single instance, the quality of gas is determined by its heat value instead of by the long obsolete candle-power standard still used in Massachusetts and other States.

The gas and electrical inspectors incidentally scrutinize telephone<sup>264</sup> as well as lighting service. The usual method is to make a certain number of calls, noting the time required to secure the operator's attention and to obtain connection, disconnection, and reconnection, and the operator's care in following up the call. When the first six or eight calls indicate poor service, a considerable number of tests is made, the deficiencies found are brought to the attention of the management, and a subsequent inspection had to see whether the defects have been remedied. Good work has likewise been done in the inspection and improvement of street railway service in Milwaukee and certain other cities.

The commission undertakes no regular inspection of water service, but it does nevertheless make tests of fire streams upon complaint and maintains a traveling laboratory for that purpose. For tests of the purity of water it employs the facilities and staff of the State Hygienic Laboratory.

Much of the valuation, accounting, and inspectional work of the Wisconsin commission is subsidiary and nearly all of it is useful to the determination of pending cases. Rates are never prescribed, nor extensive alterations of plant commanded, except after notice and a hearing, usually had upon complaint. The commission's handling of complaints and its conduct of hearings, accordingly, afford the most convincing test of its efficiency.

During the three years, 1907-1910, the Railroad Commission held 207 formal and 886 informal hearings upon

complaints affecting urban utilities. The number of important cases requiring formal hearings was abnormally large at first, when almost every city was seeking a redress of grievances against some public service company. Considerable delay and some criticism resulted from this unavoidable congestion. The commission has now, however, caught up with its work and finds not only that fewer complaints are made but that it is able to answer many of the questions presented almost automatically from its own past decisions.

The orders and decisions in formal cases are published in the *Wisconsin Railroad Commission Reports*, of which eight volumes have already appeared. The opinions are very full, containing most of the evidence presented and the significant findings of fact as well as the decision itself and the reasoning upon which it is based. In this respect the *Wisconsin Reports* differ markedly from those of most similar commissions which contain only a bare summary of the orders made.

The adjudications of the Wisconsin Railroad Commission are characterized by full and often prolonged inquiry, careful consideration, and great impartiality. In a rate inquiry, for example, the commission makes an original valuation of the property affected, analyzes the operating accounts for some years past (even to the extent of compiling the requisite data from original memoranda when necessary), ascertains the unit cost of each class of service and estimates the probable effects upon earnings and expenses of proposed changes in the rate schedule. Before authorizing an increase of capitalization the commission not only verifies the corporation's statements, but inquires into its financial history and the circumstances requiring a fresh issue of securities. With

all this thoroughness of inquiry, and the further guidance of well-thought-out principles, the Wisconsin commission is able to make its decisions consistent one with another and to command the confidence of those who come before it. Eloquent testimony to the commission's fairness is afforded by the fact that of some hundreds of utility cases decided by it but five have been appealed to the courts and in but two has the decision of the commission been reversed. By way of contrast, it may be mentioned that thirty-seven out of the first one hundred cases decided by the Corporation Commission of Oklahoma were appealed.

The Public Service Commissions of New York are the highest paid and best supported State administrative bodies in this country.<sup>265</sup> With abundant means at their disposal, the commissions maintain elaborate organizations, the divisions of the Second District, or up-State, commission being (a) administrative, (b) light, heat, and power, (c) statistics, (d) tariffs, (e) engineering and inspection, (f) telegraphs and telephones, and (g) traffic inspection. There is a large staff of engineers, accountants, statisticians, rating experts, bureau chiefs, inspectors, clerks, and stenographers — in all some one hundred and twenty-five employees besides the five commissioners. The commission of the First District has also a bureau of franchises, a librarian in charge of the most complete public service library in the United States, and a publicity agent. Both commissions employ high grade men. Mr. Wishart, statistician of the First District, was formerly with the Interstate Commerce Commission; Mr. Griggs, the tariff expert of the up-State commission, is an authority on rates; Delos F. Wilcox, chief of the down-State Franchise Bureau, is the author of *Municipal*



*Franchises* and other recognized works on municipal government; the Secretary of the First District commission, Mr. Travis H. Whitney, is a Harvard law graduate; and the librarian of the same commission is Dr. Robert H. Whitten, formerly of the Indiana State Library.

The up-State commission has not given much attention to physical valuation nor has it done much in the way of rate-making beyond compiling schedules and correcting personal discriminations. The commission for Greater New York City (*i. e.* First District) has made a number of property appraisals both in rate cases and in connection with applications for stock and bond issues. It has also reduced rates and increased transfer privileges on certain street car lines, and has ordered some reductions in electric rates, especially for break-down service. More attention has been given to service conditions. The commission of the First District made 1,378,627 tests of gas meters and 2,217 inspections of electric meters during the first four years of its existence.<sup>266</sup> This commission also exercises close surveillance over the surface, elevated, and subway lines of Greater New York and has enforced many improvements in service and facilities. The car-seat-mile, as a unit of transit service, appears to be original with the metropolitan commission. The up-State commission has had frequent occasion to refuse certificates of public convenience and necessity to would-be competing companies. Uniform accounts and the maintenance of depreciation funds is required in both districts, though the supervision in this respect is less thorough-going than in Wisconsin.

Both of the New York commissions attach great importance to the control of capitalization. In the First District, out of \$307,824,940 of securities proposed by the

companies only \$89,153,219 was approved by the commission.<sup>267</sup> The commission of the First District has done good work in accident prevention. Transportation companies are required to report every accident immediately by telephone and also to make a written report within twenty-four hours. The commission conducts inquiries and makes orders in all cases which appear to require such action. It ordered the installation of fenders, wheel guards, and other safety appliances (approved after elaborate experimental tests) upon all street cars. The results are seen in the falling off of fatal accidents on the transportation lines of Greater New York City from 600 in 1907 to 152 in 1910 and 169 in 1911.<sup>268</sup> Besides its other work, the commission of the First District is charged with the superintendence of subway construction — a unique function for a State public service commission.

Perhaps the most promising achievement of the New York commissions is the one which makes the smallest immediate impression upon the public — the increase and diffusion of knowledge. The commission at Albany has made original and valuable studies of public utility standards and accounts. The commission of the First District has compiled an exhaustive record of the franchise grants in Greater New York City, which should be of the greatest value in future litigation and in passing upon applications for the approval of securities. Both commissions have collected and tabulated thousands of rate schedules and have published reports showing the physical and financial condition of hundreds of corporations. It is just this unpicturesque and — immediately — unprofitable work which may count for most in preparing the way for effective regulation.

State control of urban utilities has had to win its way against powerful and persistent opposition. In the early history of the Massachusetts board public service companies were wont to resent the board's inquisitions as impertinent interference with private affairs. A curiously similar note was sounded by spokesmen of the Empire State Gas Association so late as the year of grace, 1907.<sup>269</sup> Professional promoters have urged with much feeling that only the prospect of unusual returns can induce them to risk other people's capital in the development of new enterprises.<sup>270</sup> Nor is it only corporation magnates who have lifted up their voices in anger and alarm. Advocates of municipal ownership have made strenuous objection to the compulsory purchase of private plants.<sup>271</sup> Persons who regard monopoly as the root of all evil have looked askance at any restraint upon competition. Home rulers have seen in the appellate and supervisory powers of State commissions a menace to local self-government.<sup>272</sup> Local politicians, who have found their importance diminished, their campaign stock in trade destroyed, and a never-failing source of personal and party revenue stopped, have not been slow to protest.<sup>273</sup>

Despite all this criticism from so many different sources the State commissions in Massachusetts, New York, and Wisconsin alike have gradually gained the confidence of the public and of the corporations subject to their supervision.<sup>274</sup> Experience has quieted honest fears and convinced interested alarmists of the futility of factional opposition. Public service companies have learned to make a virtue of submission, and investors have found, at least, that regulation is a blessing in disguise. Protected from cut-throat competition, from the attacks of petty politicians, from wasteful litigation,

from managerial infidelity, and above all from the piracy of speculative promotion and the robbery of high finance, urban utility properties for the first time have acquired a stable value. The proverbial widows and orphans, over whom so many tears have been shed by the vendors of worthless stocks, find that the securities of Massachusetts lighting companies represent something more substantial than attractive bits of blue sky. Nor have the other prophecies of evil been fulfilled: none of the disasters so freely predicted have come to pass. The growth of the lighting industry in Massachusetts has not been checked, nor has railway building ceased in Wisconsin or New York. Local self-government has not been extinguished, and the sacred constitutions are yet intact. The industrious inquirer nowadays learns from one set of opponents that the Railroad Commission of Wisconsin has favored "the interests" at the expense of the people,<sup>275</sup> and from another that it is driving the public service industries from that misguided State.<sup>276</sup> The two criticisms meet each other and afford perhaps the best testimony that could be adduced to the fairmindedness of the commission.

## V

### URBAN UTILITY REGULATION IN IOWA

URBAN utilities in Iowa have never been subjected to central administrative control. There is, to be sure, a harmless anti-stock-watering law, which forbids the issue of corporate stock at less than par, requires the approval of the Executive Council of the State for any issue of stock in exchange for property, commands the Executive Council to ascertain the value of the property so to be acquired, and makes its valuation conclusive as to the amount of stock which may be exchanged therefor.<sup>277</sup> But the Executive Council has neither engineers nor accountants for the work of valuation; nor has it the funds to undertake actual appraisals. In practice the Executive Council depends on the "sworn statements" of corporation officials and of two "disinterested persons"<sup>278</sup> — which may encourage perjury, but does not prevent stock watering.

So far, then, as urban utilities are regulated in this State, the regulation is by municipal franchise or ordinance. Cities have, in this respect, only the powers expressly conferred by the General Assembly;<sup>279</sup> and so an examination of the statutes will sufficiently disclose the extent of municipal regulation.

#### URBAN UTILITY FRANCHISES

Since the law governing franchise grants is not uniform for all the classes of urban utilities, it will be

conducive to clearness of exposition to follow the statutory classification in this regard.

A city council may authorize an individual or corporation to "erect, maintain, and operate" "heating plants, waterworks, gas works or electric light or electric power plants". But such grants are subject to three limitations: (1) no authorization can run for more than twenty-five years, at the end of which period the grant may be extended, renewed or amended; (2) no exclusive franchise can be "thus granted, amended, extended or renewed"; and (3) no franchise is valid until its precise terms have been submitted to, and ratified by, the qualified voters of the city at a general or special election.<sup>280</sup>

Cities and towns may authorize or forbid the construction of street railways within their limits, may define the motive power by which cars shall be propelled thereon, and may permit or forbid the laying down of tracks on particular streets, alleys, and public places.<sup>281</sup> There appears to be no time limit upon such grants, nor any requirement that they be submitted to a referendum vote. But the right to erect poles and string wires in the streets — without which, under existing conditions, street railway tracks are of little value — can only be granted by referendum.<sup>282</sup> To conclude this tale of inconsistencies, no grant can be made to an interurban railway for a longer period than twenty-five years.<sup>283</sup>

No franchise permitting the use of the streets or other public places of a city for "telegraph . . . . telephone, street railway, and other electric wires" can be granted except by affirmative vote of the qualified electors.<sup>284</sup> To a layman the implication is plain. Nevertheless, under an act authorizing the construction of telegraph or telephone lines "along the public roads of

the state",<sup>285</sup> the Supreme Court apparently has held that a city's consent is not necessary to such occupation of its streets.<sup>286</sup>

To say that the foregoing provisions for the different classes of utility franchises express no consistent policy is to put the matter very mildly. No reason can be assigned for the subtle distinctions made except that the several acts were passed at widely different times and without reference to each other.

#### POLICE ORDINANCES

The power to regulate public service companies by municipal ordinance likewise varies according to the class of such company in question.

With respect to gas, electric, and water companies a city or town may (1) require service to any applicant along the lines of the mains, wires, or conduits, (2) compel the furnishing to the city of water, gas, heat, light, or power for public purposes, and (3) regulate or fix the rates for service and the rents or charges for meters — and "these powers shall not be abridged by ordinance, resolution or contract."<sup>287</sup>

The ordinance power over street railways extends only to (1) the location and character of its tracks, poles, and wires, (2) the kind of motive power used, and (3) the amount of pavement which each such railway shall be required to construct and maintain.<sup>288</sup> Rates and service can, apparently, be regulated only by franchise or contract.

Cities and towns have the power "to authorize and regulate . . . telephone . . . and other electric wires, and the poles and other supports thereof, by general and uniform regulation, and to provide the manner

in which, and places where, the same shall be placed upon, along or under the streets, roads, avenues, alleys and public places".<sup>289</sup> Seemingly, they have no power, either by franchise or ordinance, to regulate telephone rates or service.

#### MUNICIPAL OPERATION

The statutory provisions for municipal operation of public service industries in Iowa may conveniently be grouped under (1) power to operate, (2) financial restrictions, (3) accounts, and (4) administration.

Every city or town has power to purchase, erect, maintain, and operate, within or without the corporate limits, gas, electric, or water works; but such power can only be exercised after an affirmative vote of the qualified electors voting thereon.<sup>290</sup> When the franchise of a gas, electric, or water company has expired or been surrendered, if the city and company can not agree upon the terms of a new contract or grant, the plant may be condemned and purchased by the city at a valuation fixed by three district judges designated by the Supreme Court.<sup>291</sup> The right to acquire and operate street railways, not being expressly conferred, is, of course, withheld from Iowa municipalities.

Cities may issue bonds to buy or build municipal plants and may levy taxes to pay for the construction, repair, and operation of the same.<sup>292</sup> But such bonds can not be issued to an amount which, together with other bonds outstanding, will make an aggregate greater than five per cent of the taxable value of property in the city limits;<sup>293</sup> nor can the tax in support of any one utility exceed five mills on the dollar of such property.<sup>294</sup> Cities of the first class may, however, levy an additional two mill tax to create a sinking fund for water works bonds.<sup>295</sup>



Every municipality owning and operating any public utility must keep separate accounts showing "the true and entire cost of the said utility and operation thereof, the amount collected annually by general or special taxation for the services rendered to the public, and the amount and character of the service rendered therefor, and the amount collected annually from private users";<sup>296</sup> and it must make an annual public report stating in detail "the cost and operation and all income of each public utility operated or owned by the municipality."<sup>297</sup> The form of accounts, which is the same for all cities, is prescribed by the Auditor of State, and the books of cities of five thousand or more inhabitants are audited at least biennially by State Examiners.<sup>298</sup>

Water works operated by a city of the first class must be managed by a board of three water works trustees appointed by the Mayor for a term of six years.<sup>299</sup> No special form of administration is prescribed for other municipal utilities.

#### CRITICISM OF THE PRESENT SYSTEM

The statutes just reviewed can hardly be said to form an organic or consistent whole. There is no valid reason for denying to cities the same powers over telephones and street railways that they possess over lighting and water companies; nor is there any obvious need for imposing greater restrictions upon one class of utility franchises than another. Nevertheless, certain policies with respect to the regulation of urban utilities are fairly deducible from the Iowa statutes. These policies comprise: (1) a considerable measure of local autonomy; (2) strict legislative and judicial, with but slight administrative,

control; (3) reliance upon competition; (4) short-term franchises; and (5) permission of municipal ownership, though only within somewhat narrow limits. As regards present policies of Iowa in respect to the regulation of urban utilities it is very apparent from the considerations offered in the preceding sections of this paper that, with the exception of those numbered (1) and (5), these policies are not in accord either with expert opinion or with practical experience in other jurisdictions. Similar policies have been found wanting in other States and such preliminary investigation as the writer has been able to make strongly indicates that they have not been more successful in Iowa.

#### FAILURE TO REGULATE

In the first place municipal regulation does not regulate. Of seventeen cities concerning which the facts could be ascertained, two regulate telephone rates, none attempt to control street railway fares otherwise than by contract, nine have fixed the price of gas, and six the price of electricity by ordinance or franchise. In no case is there any effective regulation of service. Compensation to the grantor city was paid for only three out of fifty-four franchises. In seventeen cases the city receives a certain amount of free or reduced rate service — as a few free telephones or fire hydrants — which increases the burden upon consumers for the relief of taxpayers.

#### TABLE VI

##### PUBLIC UTILITIES OF SEVENTEEN IOWA CITIES<sup>300</sup>

Utilities .....	78
Privately owned utilities .....	66
Utility franchises .....	54

Franchises for which city received compensation .....	3
Cases in which city receives some free or reduced rate service..	17
Cases in which city regulates service and fares .....	18
Public service corporations .....	50
Foreign corporations .....	10
Utilities controlled by holding companies .....	22
Corporations controlling two or more utilities in same city....	12
Competing utilities .....	11

#### FAULTY RATE SCHEDULES

An examination of the published rates of about a dozen utility companies reveals many cases of discrimination due to badly designed schedules. The electric lighting tariff of a gas and electric company which is typical of a number of similar utilities in Iowa is as follows:

Basing rate, 12 cents per 1000 watts

Bills from \$ 1.70 to \$ 3.20 per month	10 per cent discount
Bills from 3.20 to 6.00 per month	15 per cent discount
Bills from 6.40 to 10.00 per month	20 per cent discount
Bills from 10.70 to 14.50 per month	25 per cent discount
Bills from 16.20 to 20.00 per month	30 per cent discount
Bills from 22.00 to 28.00 per month	38 per cent discount
Bills from 31.00 to 60.00 per month	40 per cent discount

Bills over \$60.00 per month 5 cents per 1000 watts

This schedule is open to three objections. First, the discounts are so arranged that it is possible at several points to secure more current for less money. Thus fourteen kilowatts would cost \$1.68, whereas fifteen could be had for \$1.62; the net price for five hundred kilowatts would be \$36, for six hundred kilowatts, \$30. Second, the discounts are based solely on quantity consumed, without regard to maximum demand or hours of use. A factory which runs sixty lamps one hour daily uses the same cur-

rent, and under the above tariff would get the same rates, as an all night restaurant which runs six lamps ten hours a day. But the factory's instantaneous demand upon the generating plant is ten times that of the restaurant and its rate ought therefore to be higher. The practice of the Wisconsin Commission in such cases is to base discounts upon the monthly hours' use of the "active connected load", and this appears to be the only fair method. Third, large users appear to be unduly favored by the scale of discounts. Consumers of fourteen kilowatts per month pay twelve cents per kilowatt, consumers of more than five hundred kilowatts, five cents. The difference in cost of service is much less than the great difference in the rates charged to consumers.

The above electric schedule is in nowise unique in Iowa. Of eight tariffs for electric light or power, four offer discounts which admit of similar discriminations and only two distinguish between long and short-hour users of the same amount of current. Most of the gas schedules examined are upon a flat meter basis, which discriminates in favor of short-hour users. In several cases very low rates are made to large consumers and in at least one instance a charge of 90 cents is made in the main city and of \$1.10 in a suburb served by the same company.

It must be remembered that the discriminations herein cited are simply those apparent upon the face of the printed tariffs. What departures from these open rates are made, in the way of special contracts or secret rebates, could only be ascertained by an examination of the companies' books. If Wisconsin's experience may be taken as a criterion, such personal discriminations must be numerous and important.

## RATES OF URBAN UTILITIES

So far as appears from the meager data in hand the rates of urban utilities in Iowa are not, upon the whole, excessive. The table below shows the price of gas in certain Iowa, Massachusetts, and Wisconsin cities of similar population. No comparison of electric rates is attempted because of irreconcilable differences in the form of schedules.

TABLE VII

## NET PRICE OF GAS PER 1000 CUBIC FEET

IOWA CITIES	RATES	MASSACHUSETTS		WISCONSIN	
		CITIES	RATES	CITIES	RATES
Des Moines..	\$.90	Lynn .....	\$.80	Superior ...	\$1.00
Sioux City..	1.00	Haverhill ..	1.00	Racine .....	1.00
Dubuque ...	1.00	Malden ....	1.00	Oshkosh ....	1.00
Cedar Rapids	.90	Taunton ...	1.00	Sheyboygan .	1.35
Waterloo ...	1.00	Chicopee ...	1.26	Green Bay..	1.40
Burlington ..	1.00	Gloucester ..	1.10	Madison ...	1.15
Ottumwa ...	1.20	North Adams	1.05	Appleton ...	1.35
Muscatine ..	1.25	Attleboro ...	1.20	Beloit .....	1.25
Fort Dodge .	1.15	Woburn ....	1.40	Marinette ..	1.50
Keokuk ....	1.50	Marlboro ...	1.50	Ashland ....	1.50
Boone .....	1.25	Greenfield ..	1.90	Manitowoc ..	1.00
Iowa City...	1.15	Webster ...	1.35		
Average of		Average of		Average of	
twelve cities	1.11	twelve cities	1.21	eleven cities	1.23

## LITIGATION OVER RATES

The attempt at city control has led in Iowa, as elsewhere, to much litigation with its attendant expense, delay, and ill-will. No better illustration need be asked than is afforded by the legal battles now waging between Des Moines and four of its public service companies.<sup>301</sup>

The several cases are so instructive that it will be worth while to set them out *seriatim*.

First, a franchise, exclusive for thirty years, was granted in 1866 to a horse car company, was repeatedly assigned, and is now claimed by the Des Moines Street Railway Company to be perpetual on the ground, among others, that it was exercised without objection after the expiration of the original grant. Ouster proceedings were begun some half-dozen years ago, were carried to the United States Supreme Court and there dismissed for want of jurisdiction,<sup>302</sup> and are now pending before the Supreme Court of Iowa. The case has already cost the city of Des Moines \$20,000 and the end is not yet. Meanwhile the city is estopped from regulating either fares or service.

Second, agitation against dollar gas was begun some years ago. At length, on February 27, 1910, the city council, when no representative of the gas company was present, passed a ninety cent ordinance.<sup>303</sup> Enforcement of the ordinance was forthwith enjoined by United States District Judge McPherson, and a decision of the lowest Federal court upholding the ninety-cent rate was only obtained on August 21, 1912.<sup>304</sup> The city has already spent \$25,000 and the company \$150,000 on the case, with a costly appeal to the United States Supreme Court remaining to be prosecuted. The dollar price for gas still remains in force in Des Moines after nearly three years' litigation.

Third, the people of Des Moines have for years paid thirty cents per thousand gallons for water, a very high rate for a city of ninety thousand inhabitants. The city council, in 1908, ordered the price reduced to twenty cents; but the ordinance was held invalid more than three years

later by the United States Circuit Court,<sup>305</sup> and has never been in force. Having sunk some \$14,000 in the vain attempt to secure lower rates by ordinance, the city next sought to purchase the water works. The company asked \$2,700,000 for a plant which had been valued by a master in chancery, upon the company's evidence, at \$1,840,000.<sup>306</sup> No agreement being reached, an appraisal was sought by the cumbersome method of a "condemnation court", herein before described. If no appeal is taken from the decision of the three district judges, this proceeding will cost the city about \$15,000. Consumers still pay thirty cents per thousand gallons of water in the city of Des Moines.

Fourth, an ouster proceeding against the Iowa (Bell) Telephone Company was decided adversely to the city in 1903.<sup>307</sup> Another suit has recently been begun to test the company's right to operate without a franchise from the city.

The net results of five years' litigation and the expenditure of \$75,000 of taxpayers' money are: (1) that the rates complained of remain in force; (2) that no improvement of service has been effected; (3) that the conflicting claims of the city and its public service corporations are still undecided; and (4) that chronic hostility has been engendered between the companies and the public, each regarding the other as a natural enemy to be oppressed and exploited as much as possible.<sup>308</sup> Well might Judge McPherson, before whom three of these cases have been tried, exclaim: "In the face of these long delays and the tremendous expense attending the hearings, it is apparent that some other method must be devised to determine the matters as to some of these public utilities."<sup>309</sup>

## MUNICIPAL ACCOUNTS

The shortcomings of municipal utility accounting have already been adverted to, but the point may be made clearer by contrasting the waterworks reports of a Wisconsin city of 4000 and an Iowa city of 40,000 inhabitants.<sup>310</sup> The former contains the following significant information not to be found in the latter: (1) the amount of water furnished to, and the receipts from, residences, business establishments, city buildings, schools, public parks, fountains, fire hydrants, and street sprinklers; (2) the cost (including interest, maintenance, depreciation, and taxes) of pumpage; (3) the distribution costs; (4) maintenance and depreciation in detail; (5) the cost of reading and testing meters and making collections; (6) the number of each class of employees and their wages; (7) a detailed inventory of property; and (8), most important of all, the net financial results of the year's operations for the plant as a whole and for each class of service. The Iowa report shows such results only for the industry as a whole and with no allowance for interest, depreciation, taxes, or the water supplied to the city or the school district. In a word, the people of the Wisconsin city can, and the inhabitants of the Iowa city can not, discover whether their plant is being operated economically, whether the charges are too low or too high, and whether one class of consumers are paying for service to another.

The present State control of municipal accounts is of little benefit. The character of the supervision by the Auditor of State may be judged from the last annual report of the Department of Finance and Municipal Accounts. Municipal industries are treated under the



heads:<sup>311</sup> (1) "Payments for Municipal Industry Expense", divided into (a) "Salaries and Wages" and (b) "All others"; (2) "Payments for Outlays" (intended to represent equipment and construction); (3) "Receipts from Municipal Industries"; (4) "Value at Close of Year of Municipal Possessions"; (5) "Water Works, General Information and Cost of Service", showing number of miles of mains, number of fire hydrants, maximum and minimum water rate, number of connections, and number of meters; and (6) similar data for electric plants.

Three criticisms of this report may be offered. (1) It is impossible to ascertain therefrom the original cost, depreciation, structural value, outstanding debt, operating expenses, pumpage, commercial sales, or public consumption of any plant; and hence it is, of course, out of the question to compare the efficiency of different plants in any respect whatever. (2) The returns, even under the meager heads noted, are very incomplete. The number of municipal water works is given as 69 in Table III and 75 in Table IV of the last published report, though the former table includes 6 plants omitted in the latter. The item, "cost of fire hydrants", in Table XVI, appears for but 41 cities out of 71 for which other data is given. (3) Even the items set down are not always to be trusted. It is probable that the table of "Payments for Municipal Industry Expense" is intended to indicate operating expenses. If so, \$14,395 seems an excessive expenditure for the Hawarden water works as compared with \$1,166 for the Charles City plant, and \$533 for the Sac City water system. Similarly, the pay roll of \$466 at the Mt. Pleasant water plant appears very small by comparison with "wages and salaries" of \$4,822 for the Clarinda works. The explanation is, of course, that the several

items in the same column do not represent corresponding facts. Doubtless some municipal accountants place construction and renewals under "Payments for Municipal Industry Expense", while others record even operating expenses as "Payments for Outlays". Whatever the explanation, the numerous and glaring discrepancies vitiate the value of the summaries in Tables III and IV.

The poor results attained by the Auditor of State are due in part to the lack of adequate provisions for securing prompt and full returns from the municipalities. But the difficulty does not end here. The Auditor and his sub-

TABLE VIII  
MUNICIPAL UTILITIES IN 101 IOWA CITIES<sup>312</sup>

	CITIES OF MORE THAN 20,000 IN- HABITANTS	CITIES OF 5,000 TO 20,000 IN- HABITANTS	CITIES OF 3,000 TO 5,000 IN- HABITANTS	CITIES OF LESS THAN 3,000 IN- HABITANTS	ALL CITIES
Number of cities ...	10	19	28	44	101
Number of municipal water plants ...	5	13	25	37	80
Number of municipal electric plants..	0	3	13	9	25
Number of water and light utilities ..	5	16	38	46	105
Value of city water works .....	\$3,041,198	\$2,616,200	\$1,376,952	\$1,069,938	\$8,104,288
Value of city light plants .....		77,000	661,065	186,500	924,565
Value of both utilities	3,041,198	2,693,200	2,038,017	1,256,438	9,028,853
Annual operating ex- penses of water works .....	123,412	140,109	121,327	85,193	470,041
Annual operating ex- penses of light works .....		30,000	167,571	69,072	266,643
Annual operating ex- penses of both utilities .....	123,412	170,109	288,898	154,265	736,684

ordinates are not chosen for their technical knowledge of statistics and accounts. The very committee which drafted the present system of municipal accounts was composed, in the major part, of untrained city officials.<sup>313</sup>

Municipal operation of public service industries has attained a considerable magnitude in Iowa, as is shown by the tables on the opposite page. The number of plants, the sums of money invested therein, the annual expenditures therefor, the importance of economy and efficiency in the management of these industries, the great value of intelligent and correct accounting as a means thereto, and the deplorable deficiencies of existing accounting methods, all call for effective State supervision.

#### ATTEMPTS TO CREATE A PUBLIC SERVICE COMMISSION

Bills to create a public service commission for Iowa were introduced in both the Thirty-third<sup>314</sup> and the Thirty-fourth<sup>315</sup> General Assemblies, and such a measure was passed by the House in 1911 but failed in the Senate.<sup>316</sup>

Of the several measures proposed, the White-Grier-Larrabee and Sammis bills of 1909 were identical, as were also the Crist and Sammis bills of 1911, the latter differing from their predecessors chiefly in reserving larger powers to municipalities. A sketch of the Sammis bill of 1911 will, therefore, sufficiently indicate the character of the defeated legislation.

The Sammis bill provided for a public service commission of five members, appointed by the Governor and confirmed by a two-thirds vote of the Senate, and removable by the Governor for cause, to hold office for six years at a salary of \$5,000 each. The commission was given jurisdiction over all common carriers and over

street railroads, telegraph and telephone companies, and gas, electric, and water plants, whether private or municipal. There were the usual provisions for investigation upon complaint or upon the commission's own motion, for reports from the utilities to the commission for filing schedules, and for fixing rates and ordering improvements. The commission was given power to require uniform accounts and to appoint meter inspectors. The bill included a "stock and bond" clause, forbidding the issue by any utility, private or municipal, of capital stock or of debentures to run more than one year without the commission's approval. There was also a "convenience and necessity" clause, making the commission's assent necessary to the commencement of any utility enterprise in competition with one already in existence and a validating clause [Section 25] which would have permitted existing utilities "to exercise the franchises and privileges which they now have, or which may hereafter be granted to them, so long as they comply with the provisions of this act and the [valid] orders of the commission", subject, however, to the power of municipalities to amend or alter any franchise at its expiration. Municipalities retained the power, subject to review by the commission upon complaint by the utility affected, (1) to determine the quality and kind of service to be rendered and the other terms and conditions upon which any utility should be permitted to occupy the streets, and (2) to require additions to or extensions of the physical plant.

Some of the above provisions, notably the stock and bonds clause, are less explicit than could be wished. The effect of the validating clause is doubtful, since it does not expressly provide for the forfeiture of franchises for any violation of law, or of a lawful order of the commis-

sion. As a whole, however, the bill is more objectionable for what it omits than for what it contains. The most important omissions are: (1) explicit definition of unlawful discrimination, (2) valuation of utility properties by the commission, (3) audit of utility accounts, (4) definition by the commission of standards of product and service, (5) inspection of service and equipment by the commission's staff, (6) control of mergers, (7) approval of franchises by the commission, (8) an indeterminate permit clause, and (9) restrictions upon judicial review of the commission's decisions. Taken together these omissions, but especially the failure to limit court review, would have materially weakened the proposed commission.

The defeat of the public service commission proposals in Iowa is largely attributable to the opposition of city governments. The City Council of Des Moines petitioned, in 1909, "against the enactment of a public utilities measure that will take from the cities and towns and electors thereof the power to grant rights to the use of the streets" or "the control and regulation of public service companies operating within their borders."<sup>317</sup> More than twenty petitions to the same effect, emanating from eighteen cities and towns, were presented to the Thirty-third and Thirty-fourth General Assemblies.<sup>318</sup>

The main ground of this opposition, as gathered from interviews with leading spokesmen of the cities, may be reduced to the following: (1) dissatisfaction with certain features of the particular measures under consideration; (2) suspicion of the sponsorship of the proposed legislation; (3) fear that an unfit commission would be appointed; and (4) preference for "municipal home rule" as against any form of State supervision. It was alleged in

addition that a public service commission, however desirable in more urban States, is a needless luxury in agricultural Iowa, and that the cost of an effective commission would be prohibitive for this poverty-stricken State. A brief examination of these several objections will close the present section of this paper.

The defects of the bills introduced and voted on were mentioned above. Friends of effective State supervision could not have been satisfied with any of the measures presented in their original form. But their specific objections could easily have been overcome by amendment.

Representatives of certain public service corporations were alleged to have been very active in support of the pending bills, leading to the suspicion that the measures were intended not so much to "curb monopoly" as to "bridle the municipalities". Whether such suspicions were well or ill-founded, they seem to have been instrumental in bringing about the defeat of the public utilities bills.<sup>319</sup>

The bills proposed to continue the present Railroad Commissioners, until the expiration of the terms for which they were respectively elected, as members of the proposed public service commission. Two of these Commissioners, it was alleged, were openly supported for election by certain railroad corporations<sup>320</sup> and were unduly favorable to "the interests". It was thought, besides, that the agricultural element of the population might be given undue representation in appointments by the Governor, and that cities might have to submit to regulation by a board "not one of whose members resides in a city or is familiar with city problems".

That city officials should oppose State supervision of urban utilities is easy to understand. The dignity and

power of municipal office would thereby be somewhat diminished. Moreover, an oft-tried and ever reliable campaign issue would lose most of its value: once establish an effective State commission and no Carter Harrison or Tom Johnson or Mayor Pingree is needed to deliver the cities from their bondage to public service corporations. Opportunities for "easy money" would likewise be curtailed — a consideration which would have weight with dishonest officials, if any such there be in Iowa.

It is as unnecessary as it would be utterly unjust to ascribe unworthy motives to all of the opponents of State supervision. Many high-minded men honestly believe that the "cities and electors thereof", if only given sufficient powers, can regulate the public utilities within their borders to better effect than can a distant commission which represents a predominantly rural constituency and which is necessarily unfamiliar with local conditions.<sup>321</sup> This conviction agrees well with the American faith in local self-government, which appears to be especially strong in Iowa. In the words of a former city solicitor of Des Moines, "Home rule in the cities is", with many, "the sheet anchor to which we would cling".<sup>322</sup>

The arguments of the home rulers have already been considered at some length in an earlier section of this paper, where it was pointed out that reason and experience are against unchecked local control of urban utilities. The costly failures, and the no less costly partial victories, of Des Moines, Cedar Rapids, Sioux City, and other Iowa communities in their contests with public service companies sufficiently emphasize the point.

The argument of non-necessity does not convince. It

is, of course, true that Iowa has no metropolis, but there are ten cities of more than twenty thousand, and twenty-six of more than five thousand inhabitants. There are nearly one hundred places served by two or more private companies each, and more than one hundred municipal plants valued at some ten million dollars. It must be remembered that while the aggregate cost of water, light, and local transportation at Cedar Rapids appears small by comparison with Chicago, yet the *per capita* cost may be equally great, and good service at a reasonable price is no less important to the consumers of the one place than of the other. The large city, moreover, is better able than the smaller to cope with its public service corporations. Chicago can maintain a board of supervising engineers for the traction system, employ experts to value the gas properties, and engage eminent counsel to fight the companies in the courts. But Iowa City can do none of these things. The local lighting plant is controlled by an eastern syndicate, the local telephone exchange is a unit of the Bell system, and the municipality is hopelessly outclassed in a contest with either. Only the State can do for the cities what holding companies have done for the utility corporations — pool their resources for effective effort.

Nor should the legislator's vision be limited to immediate necessities. It is peculiarly the province of the State to exercise that larger foresight which is beyond the ken or the interest of the individual citizen. Most of the older and more populous States delayed the regulation of public utilities until the abuses had become acute and the evils were in part beyond repair. The rigorous stock and bond laws of New York, New Jersey, Maryland, and Ohio are in the nature of locking the stable



after the horse is stolen. Iowa may well profit by these examples. Iowa's cities are growing rapidly. The urban population of the State — counting as urban those who live in places of five thousand inhabitants and upwards — rose from sixteen per cent in 1890 to twenty-five per cent in 1910. One-sixth of Iowa's people now live in places of more than twenty thousand inhabitants. Furthermore, the importance of urban utilities increases even faster than urban population. Every year the telephone, the electric light, and the gas range reach poorer families than before. Street railways now pay in cities of a size that twenty years ago could not support a horse car line. Left to themselves, therefore, the evils of the present situation will multiply in geometrical progression.

The argument of excessive cost is likewise not well taken. Indeed, the advantage of economy lies altogether with a State commission as against regulation by the cities separately. Des Moines alone has spent \$75,000 within five years in its struggle with three public service corporations. If other cities have spent proportionately less, it is because they have not attempted to exercise effective control over local utilities. Doubtless the large expenditure of Des Moines is a wise investment, as the city administration contends. The point is that the State could accomplish better results for all the cities at a cost relatively much less.

## VI

### SUGGESTIONS FOR EFFECTIVE UTILITY REGULATION

THE foregoing survey of the regulation of urban utilities suggests certain conclusions as to what should be sought and what avoided in public utility legislation. To a statement and discussion of these conclusions the present chapter will be devoted.

#### THE PUBLIC SERVICE COMMISSION

The first essential of effective control of public service corporations is an efficient administrative body. Experience indicates that a board or commission best meets the requirements of the problem. The requisite powers are too great to be entrusted to a single person, and a large body is too cumbersome for efficiency. A commission of three members is probably preferable to a larger board, even if of equal individual ability. Moreover, a given sum laid out in salaries is more likely to secure competent men if divided among three than if distributed to five. Inasmuch, however, as it is not desirable to legislate the present Railroad Commissioners out of office it might be well to have the public service commission consist at first of five members, to be reduced to three as the terms of the present Railroad Commissioners expire. As to the method of selection, appointment seems to secure better results than popular election. The provision of the Sammis bill for appointment by the Governor and confirmation by a two-thirds vote of the

Senate is probably as good a method as can be devised. The term of office should not be less than six years, one commissioner being appointed every second year. Commissioners should devote their entire time to the duties of the office and should have no connection, by stock ownership or otherwise, with any public utility.

With respect to personnel, one commissioner should be an attorney skilled in railroad law and should act as the commission's counsel, *ex officio*, thus saving the salary of the present Railroad Counsel. Another commissioner should be a public utility expert, familiar with methods of valuation and accounting. It might be necessary to go outside the State for such an expert, and so appointments ought not to be confined to citizens of Iowa. Finally, one member of the board should be a resident of some Iowa city of not less than twenty thousand inhabitants. All appointments by or under the commission should be by competitive examination.

#### UTILITIES INCLUDED

The act should embrace the following utilities: (a) railroads, interurban railroads, express companies, sleeping car, dining car, refrigerator car, tank car and other car lines, pipe lines, steamboats, and all other carriers between cities; (b) telegraph, telephone, and other transmission companies, lines or systems; and (c) street railways, telephone exchanges, gas, electric and water works, heating and refrigerating plants, terminals, ferries, toll bridges, warehouses, elevators, cold storage houses, and any creamery, slaughter-house, meat packing establishment, and any milk, coal or ice dealer found upon complaint and investigation to possess substantial monopoly power.

The term "public utility" should be so defined as to embrace municipalities and every individual, partnership, firm, corporation, association, trustee or receiver owning or operating any of the foregoing plants, businesses, or industries, and also any corporation or association formed for the purpose of acquiring, or authorized to acquire, or which has acquired any utility franchise. This last provision, modeled upon the New York law, is intended to reach inchoate or inactive companies which acquire franchises and hold them until such time as they become valuable. Some of the businesses above enumerated are not usually classed as public utilities, but it is well known that in many places they are, and tend more and more to become, virtual monopolies. The law should be broad enough to cover all monopolies and explicit enough to preclude evasion by a mere change of form.

The more certainly to guard against evasion, it ought to be enacted that no public utility as above defined shall hereafter be operated except by a corporation duly incorporated under the laws of Iowa, and that no public utility franchise shall hereafter be granted or transferred except to a corporation so incorporated. These prohibitions would at once preclude the operation of utilities by irresponsible individuals, or associations — devices repeatedly employed in Massachusetts to escape public regulation. At the same time, no existing property rights would be impaired nor would the acquisition of utility properties by holding companies be prevented. The proposed inhibitions would simply compel operating companies to incorporate themselves in Iowa and thus submit fully to the laws of the State. There appears to be little doubt that such a requirement may constitutionally be made. The State may fix the terms and conditions

upon which persons may engage in public callings<sup>323</sup> and therefore may, if it should appear that by such means its police regulations would be made more effective, foreclose all such callings to individuals or foreign corporations.

#### INQUISITORIAL POWERS

It goes without saying that the commission should have ample inquisitorial powers. Annual reports, in such detail as the commission may think fit, should be required of all utilities and the commission should be empowered to exact reports at more frequent intervals when deemed necessary.

#### VALUATION OF UTILITY PROPERTIES

The commission should be required to ascertain, as speedily as practicable, the fair value of all utility properties actually devoted to the public service and thereafter to keep itself informed of all new construction and of the value thereof. No particular theory of valuation should be prescribed in the statute, since none now commands universal assent, but no allowance should be permitted, in any valuation for rate-making or for municipal purchase, for any franchise, except the compensation actually paid to the public grantor. The valuations so found should be conclusive, as of the date when made, for the purpose of municipal purchase and also in any subsequent proceeding in any court of the State. This last provision would save the vast expense of taking expert testimony in litigation, and it would also serve the ends of justice much more nearly than does the ordinary court appraisal.

## UNIFORM ACCOUNTS

Uniform accounts, to be prescribed by the commission for each class of utilities, should be compulsory. Express provision should be made for depreciation accounts and for the maintenance by each utility of such depreciation fund as the commission shall deem adequate to replace the plant and equipment as the same may wear out or become obsolete. The purpose of the depreciation fund is to prevent impairment of capital, to which, as explained in an earlier section of this paper, there is special temptation in public utility businesses. Not only ordinary repairs, but renewals as well, are properly operating expenses which ought to be met out of earnings before dividends are declared or profits computed. Only thus can investors be protected without saddling the public with interest charges upon vanished capital. Further, by means of the depreciation accounts, together with the construction accounts above spoken of, continuing valuations will be automatically secured and a sound basis established for rate-making.

To make the accounting requirements effective, the commission should be empowered to audit the accounts of any utility and should be required to examine and audit the books of municipal plants. Municipally operated utilities would greatly profit by such supervision as would compel them to keep intelligible records. When electors are provided authentic and comparative information as to the operation of municipal plants effective control will become possible and municipal industries may be expected to succeed in Iowa as they have succeeded in Great Britain.<sup>324</sup> Private investors, also, would be benefited by trustworthy comparative reports of public utilities.

## RATES FOR SERVICES

The commission should have full power, after hearing, to fix the exact rates for each class of service. It is not sufficient to prescribe simply maximum rates. In most cases when any change of rates is necessary justice as between consumers requires revision of the entire schedule. To simplify the commission's work and to secure uniformity each utility should be required to publish and file schedules showing all rates in force. No change in the schedule should be permitted without thirty days' notice to the commission, nor any increase over the rates effective at a given date without the commission's assent. Unlawful discrimination should be defined with some particularity, and any departure from the published schedules or any greater, less, or different charge to one person than to another for a like and contemporaneous service should be expressly prohibited. As a further precaution the commission should be authorized to cancel discriminatory contracts, even those which antedate the passage of the act. Such a power may appear anomalous; but there is no good reason for the continuance of an admitted wrong, and what is more, discriminatory agreements are unlawful and hence *ab initio* void at common law.

## STANDARDS OF SERVICE

The commission should have power to prescribe standards of products and services, standard units of measurement, standard measuring appliances, standard safety equipment, and rules for the protection of the health and safety of employees and of the public. It should be authorized, after hearing, to require improved service or facilities, additions to plant or equipment, and exten-

sions to new territory when reasonably necessary to the public service. To make these provisions effective, the commission should be required, through competent agents and with reasonable frequency, to inspect railway tracks, bridges, and equipment, and other utility properties, to test the purity, pressure, heat value and illuminating power of gas, the voltage of electric currents, the initial efficiency of electric lamps, the purity of water, the strength of fire streams, and the adequacy of telephone, street railway, and other utility service, and to compel, upon the reports of its inspectors, and without formal hearings, full compliance with standards fixed by law or by the lawful orders of the commission. Utilities should be required to provide standard proving apparatus, to prove meters, test service, and keep station records according to the rules prescribed by the commission. No utility should be allowed to install any gas or water meter until tested, approved, and sealed by an official inspector, nor any electric meter of a type not approved by the commission.

#### STOCKS AND BONDS

No provisions of a public utilities act are more important or require closer attention than those respecting capitalization. Wording as well as substance needs to be watched with jealous care to guard against evasion. Effective control of capitalization must embrace, at least, the following features:—

First. The issue of stocks, bonds, or any form of note or debenture running more than twelve months, should be permitted only for the acquisition of property, new construction, or other purpose properly chargeable to capital account— and then only with the authorization



of the commission and only to the amount and for the purposes and upon the terms authorized by the commission, which should be further charged with the duty of seeing that such terms and conditions are fulfilled. The commission should be commanded, before granting a certificate of authorization, to ascertain the value of the utility's physical property, the amount of its outstanding securities, and such other facts as it may deem pertinent to the subject; and it should be expressly empowered to withhold its assent to the whole or any part of the issue applied for, and to require, as a condition of its consent, that the petitioning company increase its service, reduce its dividends, or retire part of its outstanding obligations. Securities issued otherwise than in pursuance of the commission's certificate of authorization, duly recorded upon the company's books, should be void.

Second. No utility should be permitted to issue capital stock at less than par, fully paid in cash, or in property at a valuation fixed by the commission. The securities of a new or reorganized company should be limited to an amount not exceeding in the aggregate the structural value of its plant and equipment, the reasonable expenses of organization, and the cash actually in hand — all to be ascertained and certified by the commission.

Third. Payment for labor or services in stock or other securities and the capitalization of any franchise at more than the compensation actually paid to the public grantor thereof, or of "good will" at any amount, should be expressly prohibited. To permit the promoter or underwriter to receive a block of stock is to encourage speculative enterprises and open the door to overcapitalization. Legitimate services of organization should be

compensated in the same way as the work of an engineer or building contractor. "Good will" obviously has no application to a monopoly, and a public grant should not be made the means of extraordinary profits.

Four. Stock or scrip dividends, shareholders' privileged subscriptions to stock or bonds, and every other form of "melon cutting", should be expressly forbidden. As a preventive, all stock and other securities should be offered at public sale. It should, however, be provided that a minimum or refusal price may be fixed by the issuing corporation, and that the securities may be offered in successive blocks or, with the commission's approval, be marketed through underwriters. Without such safeguards public sale might depress the price of securities below their real value.

Promoters, magnates, and security vendors at large may be expected to protest against such rigorous restrictions as are here proposed. But thorough trial in Massachusetts, and a briefer experience in other States, have demonstrated that stock watering is not necessary to the legitimate promotion of public utility enterprises. Reasonable returns with good security suffice to attract all the capital required for the public convenience. Beyond this point the protection of investors is more important than the encouragement of speculation.

#### MERGERS OF PUBLIC UTILITIES

Mergers, under proper safeguards, ought to be encouraged. The amalgamation of competing utilities avoids much senseless waste. There are marked economies also in the joint operation of a telegraph and a telephone system, of a street railway and a commercial power plant, or of a gas and an electric lighting estab-

ishment. It may even be advantageous to combine all the utilities of the same community. Such a consolidation would effect important savings in superintendence and office expenses, in the cost of reading meters and making collections, in the purchase of fuel and materials, and in the engineering and construction departments. Under such restrictions as will secure to the public a fair share in these economies, the consolidation of utilities in the same territory is an advantage to consumers as well as owners.

Even the acquisition of non-contiguous properties by a holding company may be a public gain. Much, if not most, of the capital invested in Iowa utilities is owned in New England, New York, Pennsylvania, and other eastern States. Such capital can be had on better terms and at lower rates by such well-known corporations as the United Gas Improvement Company, the McKinley Syndicate, or even the newly formed Iowa Railway and Light Company, than by an obscure utility in a country town the very name of which is unfamiliar to eastern capitalists.

But, while freely admitting and seeking to secure the advantages of combination, it is needful to guard against its dangers. Not only is the power of a monopoly over its patrons strengthened by its union with others, but a merger is commonly made an occasion of stock watering. Whatever the capitalization of the companies consolidated, the aggregate of securities is pretty sure to be increased by the amalgamation.

To protect the public, while permitting legitimate consolidations, three restrictions appear to be necessary.

First. No utility shall sell, assign, convey, lease, mortgage, create any lien against, or transfer in any

manner whatsoever, its franchise, works, plant, or property of any description (except materials and supplies disposed of in the ordinary course of business), without first obtaining from the commission a certificate of approval, to be granted or refused within the discretion of the commission; and then only upon terms and conditions approved by the commission.

Second. No corporation, company, partnership, firm or association shall acquire more than ten per cent of the stock, bonds, or other securities of any utility, except with the commission's approval as above set forth.

Third. The securities issued in exchange for any utility plant or property, or for the stock or bonds thereof, shall not exceed the structural value of the property devoted to the public service, the "going value" of the business (in which term shall be included only the reasonable expenses of organization and the reasonable costs of building up the business) and the compensation actually paid to the public grantor for its franchise — all to be ascertained and certified by the commission.

#### REGULATION OF COMPETITION

"There are few things which the industrial history of advanced nations proves more conclusively than that competition in the field of public utilities has failed to insure reasonably adequate service at reasonable rates".<sup>325</sup> It is not necessary to go far afield in search of illustration. Sioux City, Clinton, Dubuque, Iowa City, Webster City, Centerville, and other places in this State have enjoyed the benefits of competing telephone service. Des Moines and Sioux City have indulged the craving for competition in electric lighting. Burlington boasts of two gas companies. The experience of these Iowa com-

munities has not been more fortunate than that of larger cities in other States. One after another local telephone systems have been absorbed by the Bell interests. Gas and electric companies have consolidated with each other or been acquired by holding corporations. The process of consolidation has already proceeded far: of fifty companies examined by the writer, twelve supply two or more kinds of service. The policy of competition has broken down in Iowa, as indeed it has everywhere else.

In view of the uniform failure of attempts at competition, of the enormous losses which have been incurred in such attempts, and of the increases of capitalization and deterioration of service that usually have followed upon the abandonment of these experiments, it can hardly be doubted that regulated monopoly is the wiser policy. None the less, the power to permit competition may well be retained as a threat or club to hold monopolists to the faithful performance of their public duties. These two objects are probably best secured by prohibiting the establishment of any utility in competition with one already in existence unless the commission, after notice to all parties concerned and a hearing, shall find and certify that public convenience and necessity require such additional utility.

#### PUBLIC UTILITY FRANCHISES

With respect to the granting of franchises, two restrictions appear necessary for the protection of investors as well as of the public.

First. No franchise granted by any municipality or other political sub-division of the State should be valid or operative until and unless the commission, after hearing, shall find that such franchise is necessary and proper

for the public convenience and properly conserves the public interests; and the commission should be expressly empowered to impose such conditions as to construction, equipment, maintenance, service, or operation as the public interests may require. Such a provision, coupled with the referendum requirement already in force in this State, would go far to do away with corruption in the granting of franchises. What is equally important, "jokers" would have little chance of surviving the triple ordeal of the city council, the electorate, and the commission.

Second. The indeterminate permit law of Wisconsin has given general satisfaction both to the public<sup>326</sup> and to the utilities affected.<sup>327</sup> Under it the companies are assured of their rights in the streets and of protection against competition so long as they render reasonably satisfactory service at reasonable rates. They have no need to dicker with the local authorities for renewals of expiring grants. They are relieved from all fear of being forced to sacrifice their property at the expiration of any franchise and from all necessity of amortizing their investment. The municipalities, for their part, are no longer bound by rigid contracts running for definite terms of years. If any utility fails to furnish adequate service another company may be chartered by the city, with the commission's consent, without regard to existing franchises. If any city wishes to operate its own utilities it need not wait, as now, for the termination of a grant.

There is little doubt that the Wisconsin plan is far superior to the policy of short-term franchises now pursued in Iowa. If an indeterminate permit clause is to be effective, however, it must be amendatory of existing franchises. The Wisconsin act was at first elective; and

under it, within four years' time, but 62 companies out of 445 surrendered their franchises in exchange for indeterminate permits.<sup>328</sup> Fortunately, there is no question that the General Assembly of Iowa may, if it see fit, revoke, amend, or impose conditions upon, existing public utility franchises, the power to do so having been expressly reserved by statute ever since 1873.<sup>329</sup>

It should, therefore, be enacted that every license, permit, or franchise granted to any public utility by the State or any political sub-division thereof, subsequent to September 1, 1873, or which may hereafter be granted, shall have the effect of an indeterminate permit; that nothing contained in any such franchise, permit, or agreement shall prevent the construction or operation of a similar utility in the same municipality whenever the commission, upon petition of the municipality and after hearing, shall determine that such second utility is reasonably necessary for the public convenience; and that, notwithstanding the terms of any such franchise, permit or agreement, any municipality may, at any time, purchase any utility by compulsory process as hereinafter set forth. Any company whose franchise antedates September 1, 1873, should be permitted to surrender whatever rights it may possess under such franchise in exchange for an indeterminate permit as hereinbefore described.

#### MUNICIPAL PLANTS

Municipalities should have power to construct, acquire and operate street railways, gas, electric, and water works, ferries, bridges, markets, elevators, warehouses, cold storage houses, commercial heating and refrigerating plants, and possibly other urban utilities. This

list is much longer than the present laws of this State allow; but all the enterprises mentioned have been successfully managed by European cities, and experiments in municipal operation, under proper safeguards, ought to be encouraged.<sup>330</sup> To this end the constitutional debt limit should be so amended as not to apply to any obligation secured only by lien against revenue-producing municipal property. Debts of this character impose no additional burden upon taxpayers and create no charge upon the ordinary revenues of the city, so that the reasons which support a statutory debt limit are inapplicable thereto. The present sinking fund requirements, also, appear to be unwise. If upkeep and depreciation are properly provided for a public utility is a permanent investment. To require that the capital so invested shall be amortized within twenty or twenty-five years is to burden one generation of consumers for the benefit of the next. It seems more just to fix rates at a point no higher than will suffice, after paying operating expenses, interest upon the investment, and taxes foregone because of public ownership, to keep the original capital unimpaired.

The present provisions for the condemnation, by a municipality, of a privately owned utility are defective in two respects. First, the right of condemnation can be exercised only when a franchise has expired or been surrendered. Secondly, the court of condemnation possesses no special fitness for the making of appraisals and is hampered by the technical procedure of an ordinary court of law. Condemnation proceedings are, in fact, of the nature of litigation and subject to the same delay, expense, and uncertainty. It will cost Des Moines not less than \$15,000 to present its case for the acquisition of the local water works — and this, too, after the value of the



plant had already been ascertained by a master in chancery at a cost to the city of \$14,000. This instance is an excellent argument for making the commission's valuation's conclusive, as hereinbefore proposed.

Instead of this clumsy and inadequate method, the "indeterminate permit" clause, above set forth, requires a utility to sell, whenever the municipality wishes to buy, its property used and useful for the public service, the price being determined in the event of disagreement by the commission's appraisal. No municipality may enter into competition with an existing utility unless the commission shall find that such competition is reasonably necessary to the public convenience; but no city is required to purchase any property not actually useful for the public service. The principles of valuation for municipal purchase are, of course, the same as for rate-making; no allowance should be permitted for "good will", for capitalized monopoly earnings, or for any franchise, except the compensation actually paid therefor to the municipality.

Bonds issued for the acquisition, construction, or equipment of municipal utilities should require the commission's approval, and the commission should have power to disallow, or to reduce the amount, or modify the terms of such bonds; but the present rigid limits upon interest rate and period to run should be repealed. Interest rates vary from time to time as well as from place to place, and it usually is cheaper to pay a somewhat higher rate than to sell bonds at a heavy discount. The restriction of bonds to a twenty-year period<sup>331</sup> is of a piece with the sinking fund policy. Long-term bonds invariably command a higher price, or, what comes to the same thing, a lower interest rate in the market. Short-

term debentures should be resorted to, by a public body, only in periods of abnormally high interest.

Municipal plants should be subject to the commission's jurisdiction with respect to accounts, rates, and service to the same extent as privately owned utilities. A public undertaking, to be sure, has not the same motive as a private monopoly to exploit its patrons. But there is considerable danger that private consumers may be compelled to pay for service furnished gratis to the city or, on the contrary, that rates may be made so low as to not provide for interest, upkeep, and depreciation. Wisconsin's experience shows that municipal utilities are likely to discriminate as between different classes of private consumers; and even personal discrimination may be brought about by political influence or otherwise. Service, also, is sure to be improved by State inspection and the requirement of station records. The need of State supervision over municipal accounts has been sufficiently emphasized in another connection.

#### POWERS OF MUNICIPALITIES

Every municipality should have power (1) to determine by franchise, contract, ordinance, or otherwise the terms and conditions upon which any utility may occupy its streets, alleys, and other public places; (2) to exercise continuing police control over poles, wires, conduits, tracks, and other structures in, under, over, or along such highways or public places, and over all cars or other vehicles operated thereon; and (3) to require additions to plant or equipment or extensions into new territory. To prevent injustice an appeal should lie to the commission which should be empowered to set aside any ordinance, contract, or franchise which it might find to be

unreasonable, unlawful, or prejudicial to the public interest; but no utility should be permitted to occupy the highways of, or operate within, any municipality without first obtaining the consent of the city council and of a majority of the qualified electors voting thereon.

#### COURT REVIEW

It is desirable to confine appeals from the commission to the courts within somewhat narrow limits, not alone to save litigation but to make the intended regulation effective. As was pointed out in the third section of this paper, an administrative board constituted like the Railroad Commission of Wisconsin is far better fitted than any court in the land to pass upon the reasonableness of rates, the adequacy of service, or the necessity of additional stocks or bonds. The commission is more expert in such matters than any court can ever become; it has much ampler and more trustworthy sources of information; it is equally judicious; and it is unhampered by that technicality which has ever been the mother of the law's delays.<sup>332</sup> There is no merit in the suggestion that the final determination of such questions by an administrative board would be an arbitrary exercise of power. Final decision must be vested somewhere, and may very properly be entrusted to the tribunal which is best fitted to exercise it.

Ideally, then, the commission's findings should be final as to facts, including even ultimate conclusions of fact, and should be reviewable only on the grounds that the commission has exceeded its authority, or that it has not proceeded in accordance with law. Reason and analogy support such a limitation of judicial review. The findings of State civil service commissions<sup>333</sup> and of the

Federal Land Office<sup>334</sup> have been given all the finality that is here suggested. The Immigration Commissioner, under the alien exclusion acts, is authorized to determine claims of citizenship, and his determination is not subject to court review.<sup>335</sup> The finding of a medical inspector that an alien immigrant is afflicted with a loathsome or contagious disease is conclusive of the fact, and administrative officers may thereupon proceed to deport such alien and to collect a money penalty from the ship which brought him, without invoking judicial process.<sup>336</sup> The decision of the Superintendent of Public Instruction is, in Iowa, final as to questions of fact properly before him.<sup>337</sup>

There is nothing in principle to distinguish the quasi-judicial functions exercised by administrative officers in these cases from the function of rate-making. The questions to be passed upon are substantially similar. The reasonableness of a given rate, or schedule of rates, is necessarily a conclusion of fact drawn from a mass of inter-related facts. Whether a certain individual was entitled to a given mark in an examination, whether a certain immigrant was at a given date suffering from a particular disease, whether public convenience requires a school house to be re-located are likewise conclusions drawn from more or less intricate facts. If some of these questions are administrative in character, so are the others.<sup>338</sup> If rights of travel and residence may safely be determined by administrative tribunals, so may the rates and service of public utilities.

The courts in the United States are committed, however, to the doctrine of judicial control over rate-making. It is not possible, therefore, to make the decisions of an administrative body conclusive as to the reasonableness

of rates or of orders affecting property rights.<sup>339</sup> The utmost that can be done is to hedge about judicial review upon these matters with such safeguards as will serve to make the public service commission something more than an advisory body. There is no doubt that a State may to the extent permitted by its Constitution limit the jurisdiction of its own courts; and it appears to be settled that when a limited judicial review is permitted by the laws of the State parties will be required to exhaust their remedies there before applying to the Federal courts.<sup>340</sup>

Some of the most effective restraints imposed upon judicial review in other States are impracticable in Iowa. Judicial functions can not here be vested in an administrative body, as has been done in Oklahoma and California, since rigid separation of powers is enforced by the State Constitution.<sup>341</sup> Hence review can not be had by appeal, certiorari, or writ of error. Nor can cases be carried directly from the commission to the Supreme Court, though that would be a great gain in time and expense, since that court has appellate jurisdiction only.<sup>342</sup>

Perhaps it would be most expedient to enact that any party aggrieved by an order of the commission may, within thirty days after the rendition thereof, commence a suit in equity, in the District Court of Polk County, against the commission as defendant, to set aside such order on the ground that the same is unlawful, or unreasonable, or was obtained by fraud, or was without the jurisdiction of the commission; and that, except as above provided, no order or decision of the commission shall be questioned in any court of this State. The record certified by the commission should be the sole evidence admissible (except as to the allegation of fraud) in any such action to vacate an order of the commission, but any

party having new evidence to present should be granted a rehearing as of right by the commission.

The commission's findings as to the value of property devoted to the public service should be final; and no court of the State should have jurisdiction, by mandamus or otherwise, to compel the commission to grant any certificate that public convenience and necessity require a second utility in competition with one already in existence, or to approve any proposed issue of stocks or bonds by a public service company, or any transference of the franchise or other property of any utility, or to consent to the terms of any franchise granted by any municipality.

Appeal would, of course, lie from the District to the Supreme Court as in other civil cases. To avoid delay, actions brought against the commission should be given precedence over all other civil cases without regard to position on the calendar.

To prevent dilatory appeals it should be provided that no order of the commission shall be suspended, by injunction or otherwise, except after notice to the commission, hearing, and a specific finding by the court that great and irreparable damage would ensue from the enforcement of the order. No order continuing rates already in force should be suspended at all nor any order reducing rates without a supersedeas bond to refund the difference between the charges collected pending final determination and the rates ordered by the commission, if the same shall be finally sustained; and the appellant company should be required to keep accounts showing the amount of such excess charges and the names and addresses of the persons to whom the same may become refundable.

## SUPPORT OF THE COMMISSION

The enactment of rigorous restrictions upon public service companies and the vesting of broad powers in a public service commission will avail little unless ample provision is made for carrying this legislation into effect. Penny-wise economy has been the bane of governmental regulation in this country—and particularly in this State. The factory laws of Iowa never have been properly enforced for want of an adequate inspectional staff. The stock and bond act of 1907 has remained nugatory for lack of administrative machinery. The State supervision of municipal accounts is farcical for the same reason. The Board of Railroad Commissioners has been less effective than could be wished because it has been accorded only a beggarly \$25,000 a year. There is grave danger that the same mistake will be made, as it has been made by a number of States, in setting up a public service commission.

Public utility regulation is a scientific matter, calling for a higher degree and a greater mass of expert knowledge than the people of Iowa hitherto have recognized.<sup>343</sup> Three commissioners without special training and with the assistance only of a few ordinary clerks and stenographers can not cope intelligently with the complex problems of valuation, accounting, rate-making, and service standards. If the regulation is to be effective, the commission must be composed of high grade men, able to command \$5,000 a year in private callings; and it must be provided with a staff of rate experts, accountants, statisticians, and engineers at least equal to the staff of any public service company in the State. An annual appropriation of \$100,000 is the minimum that should be made for its support.

To some this may seem a large amount of money to place in the hands of an administrative body. Yet it is a less amount than the Des Moines Gas Company spent on a single lawsuit, and it is small in comparison with the yearly sums devoted by the public service companies of Iowa to their governmental relationships. It must be remembered that the State has a larger stake in public utilities than has any private corporation. The cost of effective supervision will be at most but a very small percentage of what the people pay for utility services. Even the very expensive Public Service Commission for the First District of New York could be supported by a tax of twenty-eight cents on the hundred dollars of lighting and local transportation receipts.<sup>344</sup> Such an expenditure should be saved many times over by the regulation of public utilities in the interest of the whole people. A reduction of ten per cent in the price of gas would save \$50,000 annually to the residents of Des Moines alone. Standardization of artificial gas throughout the State would probably result in a saving to the consumers of gas throughout Iowa that would more than offset the entire cost of the commission.

Funds for the commission's maintenance can readily be secured, and that without burdening any existing source of revenue. It is only necessary to impose a fee, as in Wisconsin,<sup>345</sup> of one dollar for each thousand dollars, par value, of stocks and bonds approved by the commission. Such a tax would work no hardship, since the commission's approval would add more than the amount of the fee to the market value of the securities so approved. Of course, all fees should be paid directly into the State treasury and the commission's support be made wholly independent of the amount of fees collected.



The bogey of paternalism has often sufficed to frighten legislatures from measures that were socially wise and necessary. This ancient scarecrow, on more than one occasion, has done yeoman service in Iowa. But, happily, its usefulness is well-nigh at an end. Thoughtful men nowadays concern themselves but little with abstract doctrines of government. Their queries are what is the work to be done, and what instrument is best fitted to do it? Whether that instrument be private enterprise or public authority, the local, State, or Federal government, matters not at all provided the end in view is attained. It so happens that circumstances just now call for an increase of governmental activity, and this line of growth promises to continue for a generation to come. The great era of competition is past. More and more monopoly dominates the field of capitalistic industry. Unless the economies of monopoly are to be foregone or its advantages are to inure solely to the monopolists, public supervision must be extended to many businesses hitherto deemed private. Those States which lead the way in regulating industries already recognized as quasi-public in character are creating the machinery and accumulating the knowledge that will be required to cope effectually with the larger problems of tomorrow. Contrary-wise, those Commonwealths which cling to the out-worn policy of *laissez faire* will presently find themselves at grave disadvantage when called upon to control monopoly in an aggravated form.

Iowa's legislators should be able to pass a better public utilities law than any hitherto enacted. They have before them the experience and experimentation of nearly a score of States. They are less hampered by vested abuses and less beset by corporate influence than were the

legislatures of the older and richer Commonwealths. It is especially to be hoped, therefore, that they will avoid the mistakes and weaknesses of existing statutes and will lay broad and deep the foundations of public utility regulation.

## NOTES AND REFERENCES

<sup>1</sup> On the subject matter of this paragraph, see Adams's *Science of Finance*, Ch. III.

<sup>2</sup> Compare *Report of the National Civic Federation on Municipal and Private Operation of Public Utilities*, 1907, Part I, Vol. I, pp. 23-25.

<sup>3</sup> Compare Cleveland's *Municipal Ownership as a Form of Governmental Control* in *The Annals of the American Academy of Political and Social Science*, Vol. XXVIII, pp. 359-370.

<sup>4</sup> See, for example, Lewis's *The Lease of the Philadelphia Gas Works* in *The Quarterly Journal of Economics*, Vol. XII, pp. 209-224.

<sup>5</sup> See Robbins's *Public Ownership Versus Public Control* in *The American Journal of Sociology*, Vol. X, pp. 787-813.

<sup>6</sup> *Fourteenth Annual Report of the United States Commissioner of Labor*, 1899.

<sup>7</sup> *Fourteenth Annual Report of the United States Commissioner of Labor*, 1899.

<sup>8</sup> Compare Ely's *Trusts and Monopolies*, Ch. IV; Bemis's *Municipal Monopolies*, Preface; Bullock's *Trust Literature* in *The Quarterly Journal of Economics*, Vol. XV, pp. 167-217.

<sup>9</sup> Professor John H. Gray, summarizing the experience of Boston, says: "The direct fruit [of competition] was always the same,— over-investment and a rate war, followed by consolidation and unregulated monopoly, with rates usually sufficient to pay a dividend not only on the unnecessarily large investment, but also on the watered stock occasioned by the consolidation. The indirect outcome of such contests was generally a bitter hostility between the corporations and those whom they served."— *The Gas Commission of Massachusetts* in *The Quarterly Journal of Economics*, Vol. XIV, pp. 509, 510.

<sup>10</sup> See, for example, the history of "Gas" Addicks's invasion of Boston in *The Quarterly Journal of Economics*, Vol. XII, pp. 419-446; Vol. XIII, pp. 15-44, 292-313; and the romantic story of the New England Gas and Coke Company in *The Quarterly Journal of Economics*, Vol. XIV, pp. 87-120.

<sup>11</sup> For illustrations see Gray's *The Gas Supply of Boston* in *The Quarterly Journal of Economics*, Vol. XII, pp. 419-446; Vol. XIII, pp. 15-44, 292-313; Vol. XIV, pp. 87-120; Wright's *Development of Transit Control in New York City* in *The Annals of the American Academy of Political and Social Science*, Vol. XXXI, pp. 552-575; Myers's *History of Public Franchises in New York City* in *Municipal Affairs*, Vol. IV, pp. 71-206; Wilcox's *Municipal Franchises*.

<sup>12</sup> *In re La Crosse Gas and Electric Company*, 8 Wisconsin Railroad Commission Reports 138-241; compare *City of Beloit vs. Beloit Water, Gas, and Electric Company*, 7 Wisconsin Railroad Commission Reports 187, 300.

<sup>13</sup> For details see Gray's *The Gas Supply of Boston* in *The Quarterly Journal of Economics*, Vol. XII, pp. 419-446.

<sup>14</sup> See Gray's *The Gas Supply of Boston* in *The Quarterly Journal of Economics*, Vol. XIV, pp. 87-120.

<sup>15</sup> See, for example, Bemis's *Municipal Monopolies*, *passim*, especially Ch. VII; Wilcox's *The Control of Public Service Corporations in Detroit* in *The Annals of the American Academy of Political and Social Science*, Vol. XXXI, pp. 576-592; Wolff's *Public Service Corporations in New Orleans* in *The Annals of the American Academy of Political and Social Science*, Vol. XXXI, pp. 630-638; Hotchkiss's *Some Phases of Chicago's Transportation Problem* in *The Annals of the American Academy of Political and Social Science*, Vol. XXXI, pp. 619-629; Lewis's *Philadelphia's Relation to Rapid Transit Company* in *The Annals of the American Academy of Political and Social Science*, Vol. XXXI, pp. 600-611; *Neenah vs. Wisconsin Traction, Light, Heat and Power Company*, 6 Wisconsin Railroad Commission Reports 398-402; and 7 Wisconsin Railroad Commission Reports 251-421; *Windsor vs. City of Des Moines*, 110 Iowa 175, 177, (1900); *Butler's Street Railway Problem in Milwaukee* in *Municipal Affairs*, Vol. IV, pp. 212-218.

<sup>16</sup> On the principles of monopoly price, see Ely's *Monopolies and Trusts*, pp. 96-140; Marshall's *Principles of Economics* (Fifth Edition), Book V, Chapter XIV; Cournot's *Recherches sur les Principes Mathematiques de la Theorie des Richesses*, Chapter V; Brown's *Competitive and Monopolistic Price Making* in *The Quarterly Journal of Economics*, Vol. XXII, pp. 626-639.

<sup>17</sup> See Bemis's *Municipal Monopolies*, pp. 512-516.

<sup>18</sup> Howe's *The City: The Hope of Democracy*, p. 65.

<sup>19</sup> Walker's *State Regulation of Public Service Corporations in the City of New York*, a pamphlet issued by the Public Service Commission for the First District of New York State, p. 13.

<sup>20</sup> Bemis's *Municipal Monopolies*, Ch. VII; Rowe's *The Possibilities and Limitations of Municipal Control in Corporations and Public Welfare*, May, 1900.

<sup>21</sup> For example see Jackson's *Report to the Massachusetts Highway Commission on Telephone Rates for the Boston and Suburban District*, a pamphlet issued by the Massachusetts Highway Commission, 1910; *City of Beloit vs. Beloit Water, Gas and Electric Company*, 7 Wisconsin Railroad Commission Reports 187-387, at 347, 379, (1911).

<sup>22</sup> See Erickson's *Regulation of Public Utilities*, Part III — *Government Regulation of Security Issues of Public Utility Corporations*, a pamphlet issued by the Railroad Commission of Wisconsin, 1911.

<sup>23</sup> Meade's *Trust Finance*, pp. 295, ff.

<sup>24</sup> *Wilcox vs. Consolidated Gas Company*, 212 United States 19, 44, (1909); *Monongahela Navigation Company vs. United States*, 148 United States 312, (1893); *Montgomery County vs. Schuylkill Bridge Company*, 110 Pennsylvania State 54, (1885); *Town of Bristol vs. Bristol and Warren Waterworks*, 23 Rhode Island 274, (1901); *In re Monongahela Water Company*, 223 Pennsylvania State 323, (1909).

<sup>25</sup> *Wilcox vs. Consolidated Gas Company*, 212 United States 19, (1909); *Reagan vs. Farmers' Loan and Trust Company*, 154 United States 362, 410, (1894); *Des Moines Water Company vs. City of Des Moines*, 192 Federal Reporter 193, 197, (1911).

<sup>26</sup> Ford's *Valuation of Intangible Street Railway Property* in *The Annals of the American Academy of Political and Social Science*, Vol. XXXVII, pp. 119, 127.

<sup>27</sup> Wright's *Development of Traction Control in New York City* in *The Annals of the American Academy of Political and Social Science*, Vol. XXXI, pp. 552, 565.

<sup>28</sup> *Wilcox vs. Consolidated Gas Company*, 212 United States 19, 44, 47, (1909).

<sup>29</sup> See *Investors' Manual of The Chicago Economist*, July 15, 1912.

<sup>30</sup> For a somewhat different view of the promoter's work see Meade's *Corporation Finance*, Ch. I. The statement in the text is not intended to belittle the business, as distinguished from the industrial, functions of the promoter. No doubt there are legitimate, in the sense of socially necessary, costs of promotion, which ought to be allowed for as "going value". But it is easy to exaggerate the (social) value of the promoter's services in the public utility field.

- <sup>31</sup> Compare Veblen's *The Theory of Business Enterprise*, Ch. VI.
- <sup>32</sup> Ripley's *The Capitalization of Public Service Corporations* in *The Quarterly Journal of Economics*, Vol. XV, pp. 106, 113.
- <sup>33</sup> Robbins's *Public Ownership Versus Public Control* in *The American Journal of Sociology*, Vol. X, pp. 787, 794.
- <sup>34</sup> Lewis's *Philadelphia's Relation to Rapid Transit Company* in *The Annals of the American Academy of Political and Social Science*, Vol. XXXI, pp. 600-611.
- <sup>35</sup> Wright's *Development of Transit Control in New York City* in *The Annals of the American Academy of Political and Social Science*, Vol. XXXI, pp. 552, 566, 567; Hotchkiss's *Recent Phases of Chicago's Transportation Problem* in *The Annals of the American Academy of Political and Social Science*, Vol. XXXI, pp. 619, 620.
- <sup>36</sup> See Wright's *Development of Transit Control in New York City* in *The Annals of the American Academy of Political and Social Science*, Vol. XXXI, pp. 552, 563-565. The New York Reform Club Committee estimated the "water" in the Metropolitan Third Avenue System alone at \$160,000,000.—See *Municipal Affairs*, Vol. VI, pp. 68-86.
- <sup>37</sup> Hotchkiss's *Chicago Traction: A Study in Political Evolution* in *The Annals of the American Academy of Political and Social Science*, Vol. XXVIII, pp. 385-404, at 391.
- <sup>38</sup> Gray's *The Gas Supply of Boston* in *The Quarterly Journal of Economics*, Vol. XIV, pp. 87-120, at 115-117.
- <sup>39</sup> Cedar Rapids Gas Light Company vs. City of Cedar Rapids, 144 Iowa 426, 429, (1909).
- <sup>40</sup> *The Iowa City Republican*, Vol. 72, No. 267, August 30, 1912.
- <sup>41</sup> Compare Veblen's *The Theory of Business Enterprise*, pp. 143-145.
- <sup>42</sup> Veblen's *The Theory of Business Enterprise*, Ch. VI, especially, p. 146. For a concrete case see Gray's *The Gas Supply of Boston* in *The Quarterly Journal of Economics*, Vol. XIV, pp. 87, 116.
- <sup>43</sup> Lewis's *Philadelphia's Relation to Rapid Transit Company* in *The Annals of the American Academy of Political and Social Science*, Vol. XXXI, pp. 600, 601, 602.
- <sup>44</sup> Wright's *Development of Transit Control in New York City* in *The Annals of the American Academy of Political and Social Science*, Vol. XXXI, pp. 552, 565.

<sup>45</sup> Hotchkiss's *Recent Phases of Chicago's Transportation Problem* in *The Annals of the American Academy of Political and Social Science*, Vol. XXXI, pp. 619-629.

<sup>46</sup> For a very clear analysis, see Erickson's *Regulation of Public Utilities*, Part I — *Rates for Electric Current*, a pamphlet issued by the Railroad Commission of Wisconsin in 1911. Compare *In re Menominee and Marinette Light and Traction Company*, 3 Wisconsin Railroad Commission Reports 778-905, at 826-830, (1909).

<sup>47</sup> For discussion of "off the peak" rates, see Gardiner's *Making of Rates and the Additional Business System of Costs*; Oxtoby's *Legal Phases of Central Station Rate Making*.

<sup>48</sup> See Gardiner's *Making of Rates and the Additional Business System of Costs*; also the very able discussion in *In re Manitowoc Gas Company*, 3 Wisconsin Railroad Commission Reports 163-181, at 174-176, (1908).

<sup>49</sup> "The same rate for all is a term that is often much more beautiful in the abstract than when concretely applied. When it stands for the same rate for all, regardless of both the cost and its effect upon the growth of the business, it may be in violation of sound economic and business theories as well as of public policy. While there may be places where the conditions are such that uniform rates will fairly meet the situations, such places are not frequently met with."—*In re Manitowoc Gas Company*, 3 Wisconsin Railroad Commission Reports 163-181, at 175, 176, (1908).

<sup>50</sup> Compare Erickson's *Regulation of Public Utilities*, Part I — *Rates for Electric Current*; *City of Ripon vs. Ripon Light and Water Company*, 5 Wisconsin Railroad Commission Reports 1-94, at 30-34, (1910).

<sup>51</sup> Compare *In re Menominee and Marinette Light and Traction Company*, 3 Wisconsin Railroad Commission Reports 778-905, at 826-830, (1909).

<sup>52</sup> "A schedule of electric power rates which allows reduced rates for quantities consumed, without reference to the size of installation, the demand, or to the hours of use, is not likely to be in keeping with the costs of service or conducive to the successful extension of business".—*In re Menominee and Marinette Light and Traction Company*, 3 Wisconsin Railroad Commission Reports 778-905, at 877; and *Digest*, p. 976, (1909). Quoted from *Digest*.

<sup>53</sup> *City of Beloit vs. Beloit Water, Gas and Electric Company*, 7 Wisconsin Railroad Commission Reports 187-387, at 379, (1911); *In re La Crosse Gas and Electric Company*, 8 Wisconsin Railroad Commission Reports 138-241, at 238-240, (1911); *State Journal Printing Company vs. Madison Gas and Electric Company*, 4 Wisconsin Railroad Commission Reports 501-

750, at 705-709, 738, 739, 745-750, (1910); *In re Menominee and Marinette Light and Traction Company*, 3 Wisconsin Railroad Commission Reports 778-905, at 826-830, 877, 898, 904, 905, (1909); *Manitowoc vs. Manitowoc Electric Light Company*, 5 Wisconsin Railroad Commission Reports 360-396, at 390, 392, 395-396, (1910); *Cunningham vs. Chippewa Falls Water Works and Lighting Company*, 5 Wisconsin Railroad Commission Reports 302-359, at 330, 336-338, (1910); *In re Jefferson Municipal Electric Light and Water Plant*, 5 Wisconsin Railroad Commission Reports 555-591, at 585-587, (1910); *City of Ripon vs. Ripon Light and Water Company*, 5 Wisconsin Railroad Commission Reports 1-94, at 28, 45, 47, 90, 91, (1910).

See also *Fourth Annual Report of the New York Public Service Commission, Second District* (1910), Vol. I, pp. 108-114, for discussion of discriminations by gas and electric companies.

<sup>54</sup> Jackson's *Report to the Massachusetts Highway Commission on Telephone Rates for the Boston and Suburban District*, pp. 11-17 and Chart 9.

<sup>55</sup> *City of Beloit vs. Beloit Water, Gas, and Electric Company*, 7 Wisconsin Railroad Commission Reports 187-387, at 337-341, (1911).

<sup>56</sup> *In re Menominee and Marinette Light and Traction Company*, 3 Wisconsin Railroad Commission Reports 778-905, at 896, (1909).

Compare *In re Jefferson Electric Light and Water Plant*, 5 Wisconsin Railroad Commission Reports 555, 581, 582, 585, (1910).

<sup>57</sup> From unpublished records kindly furnished to the writer by Mr. Halford Erickson of the Railroad Commission of Wisconsin. Names are suppressed for obvious reasons.

<sup>58</sup> *Fourth Annual Report of the New York Public Service Commission, Second District*, Vol. I, p. 94.

<sup>59</sup> For examples see *Annual Reports of the Massachusetts Board of Gas and Electric Light Commissioners*, 1910, Newburyport Petition, pp. 27, 29-31; 1890, p. 32; 1897, Milbury Petition, pp. 13, 15; 1909, Leominster Petition, pp. 13, 17, 18, 20; 1908, Chicopee Petition, pp. 60, 61, 62.

<sup>60</sup> Statement made to writer by Commissioner O. H. Hughes, June, 1912.

<sup>61</sup> *City of Ripon vs. Ripon Light and Water Company*, 5 Wisconsin Railroad Commission Reports 1-94, at 28, 56, 84, (1910); *Ross vs. Burkhardt Milling and Electric Power Company*, 5 Wisconsin Railroad Commission Reports 138-170, at 162, 163, (1910); *Annual Reports of the Massachusetts Board of Gas and Electric Light Commissioners*, 1910, Leominster Petition, pp. 13, 17, 18, 20.

<sup>62</sup> *In re Badger Telephone Company*, 3 Wisconsin Railroad Commission Reports 98-113, at 112, (1908).



<sup>63</sup> *In re* Investigation of the Hudson Water Works, 3 Wisconsin Railroad Commission Reports 138-147, at 141, (1908).

<sup>64</sup> Columbus Advancement Association *vs.* Wisconsin Telephone Company, 4 Wisconsin Railroad Commission Reports 414-425, at 415, 425, (1910).

<sup>65</sup> Statement to the writer by Mr. Halford Erickson of the Railroad Commission of Wisconsin.

<sup>66</sup> See Wyman's *Public Service Corporations*, Ch. I, and the brief but luminous discussion by Mr. A. S. Hills, on *The Origin, Growth and Work of Public Utilities Commissions*, a pamphlet issued by the American Telegraph and Telephone Company in 1911.

<sup>67</sup> Year Book, 39 Henry VI, 18, placita 24, (1460); Year Book, 14 Henry VII, 22, placita 4, (1489); Year Book, 22 Edward IV, 49, placita 15.

<sup>68</sup> Keilway, 50, placita 4, (1503).—"It was agreed by all the court that where a smith declines to shoe my horse, or an innkeeper refuses to give me entertainment at his inn, I shall have an action on the case, notwithstanding no act is done; for it does not depend upon agreement." [Translated from Norman French.] See also Year Book, 46 Edward III, 19, placita 19, (1373).

<sup>69</sup> Year Book, 22 Liber Assisarum 94, placita 41, (1348).

"Every [common] ferry ought to be under a public regulation; viz. that it give attendance at due times, keep a boat in due order, and take but reasonable toll; for if he fail in these, he is fineable."—Hale's *De Jure Maris*, 1 Hargrave, *Law Tracts*, 6.

<sup>70</sup> Year Book, 19 Henry VI, 49, placita 5, (1441).

<sup>71</sup> Year Book, 39 Henry VI, 18, placita 24, (1460).

<sup>72</sup> *Jackson vs. Rogers*, 2 Shower's Reports 327, (1683).

<sup>73</sup> Hale's *De Portibus Maris*, 1 Hargrave, *Law Tracts*, 77, 78. "If the king or subject have a publick wharf, unto which all persons that come to that port must come and unlade or lade their goods as for the purpose, because they are the wharfs only licensed by the queen, according to the statute of I. El. cap. II. or because there is no other wharf in that port, as it may fall out where a port is newly erected; in that case there cannot be taken arbitrary and excessive duties for cranage, wharfage, pesage, etc. neither can they be inhanced to an immoderate rate, but the duties must be reasonable and moderate, though settled by the king's license or charter. For now the wharf and crane and other conveniences are affected with a publick interest, and they cease to be *juris privati* only."

<sup>74</sup> *Bolt vs. Stennett*, 8 Term Reports 606 (England, 1800), opinion by

Lord Kenyon; Aldnut vs. Inglis, 12 East 527, 537-542 (England, 1810), opinion by Lord Ellenborough; Olcott vs. Supervisors, 16 Wallace 678, 695 (United States, 1872).

<sup>75</sup> Munn vs. Illinois, 94 United States 113, 126, (1876).

<sup>76</sup> Wyman's *Public Service Corporations*, Preface and Ch. I, Topic D; Ivins and Mason's *The Control of Public Utilities*, Preface.

<sup>77</sup> *Annual Report of the President to the Stockholders of the American Telephone and Telegraph Company*, 1910; Burdett's *Public Control from the Corporate Standpoint*, published by the Empire State Gas Association, 1907.

<sup>78</sup> Goodnow's *Municipal Home Rule*; Deming's *Government of American Cities*, Ch. IX and pp. 219-222, 234-237; Brennan's *Regulation and Control of Local Public Service Corporations by State Boards in The City Hall*, September, 1909; Bemis's *Municipal Monopolies*, Ch. IX; *Municipal Program of the National Municipal League*.

<sup>79</sup> Shambaugh's *Commission Government in Iowa: The Des Moines Plan*.

<sup>80</sup> Goodnow's *City Government in the United States*, Chs. IV and V; Deming's *Government of American Cities*, Chs. IX and X; Howe's *The City: The Hope of Democracy*, Chs. X and XI.

<sup>81</sup> Public utility commissions have been established in the following cities: Chillicothe, Joplin, Kansas City, St. Joseph, and St. Louis, Missouri; Houston, Texas; Los Angeles, California; Seattle, Washington; and Wilmington, Delaware.

<sup>82</sup> Des Moines Street Railroad Company vs. Des Moines Broad-Gauge Street Railway Company, 73 Iowa 513, (1888); also pending case.

<sup>83</sup> City of Des Moines vs. Des Moines Street Railway Company, 214 United States 179, (1909).

<sup>84</sup> Howe's *The City: The Hope of Democracy*, Ch. VI; Lapp's *Public Utilities Control in The American Political Science Review*, Vol. I, pp. 626, 627. "The regulation of the more strictly municipal utilities has been left to the local units. This has resulted in a chaos of regulation and in conditions which have made the municipality a by-word for corruption, both at home and abroad."

<sup>85</sup> Compare City of Ripon vs. Ripon Light and Water Company, 5 Wisconsin Railroad Commission Reports 1-94, at 68, 77, (1910); City of Ashland vs. Ashland Water Company, 4 Wisconsin Railroad Commission Reports 273-310, at 295, 309, 310, (1909).

<sup>86</sup> Hall vs. City of Cedar Rapids, 115 Iowa 199, (1901).

<sup>87</sup> Ostrogorsky's *Democracy and the Party System in the United States*, Ch. XII; Howe's *The City: The Hope of Democracy*, Chs. VI, VII; Bryce's *The American Commonwealth* (Edition of 1910), Vol. II, pp. 406-426, "The Philadelphia Gas Ring"; Steffens's *The Shame of the Cities*.

<sup>88</sup> Gray's *The Gas Supply of Boston* in *The Quarterly Journal of Economics*, Vol. XII, pp. 419-446; Vol. XIII, pp. 292-313; Vol. XIV, pp. 87-120.

<sup>89</sup> Wilcox's *The Control of Public Service Corporations in Detroit* in *The Annals of the American Academy of Political and Social Science*, Vol. XXXI, pp. 576-592.

<sup>90</sup> Hotchkiss's *Chicago Traction: A Study in Political Evolution* in *The Annals of the American Academy of Political and Social Science*, Vol. XXVIII, pp. 385-404; Vol. XXXI, pp. 619-629.

<sup>91</sup> Bemis's *The Street Railway Settlement in Cleveland* in *The Quarterly Journal of Economics*, Vol. XXII, pp. 543-575.

<sup>92</sup> *The Register and Leader* (Des Moines), February 28, 1910; August 22, 1912.

<sup>93</sup> Statement by Alderman William J. Pringle, Chairman of the Council Sub-committee on Gas, Oil, and Electric Light.

<sup>94</sup> See Chicago papers, April to August, 1911.

<sup>95</sup> Bemis's *Report on the Price of Gas in Chicago*, p. 5.

<sup>96</sup> Dick vs. Madison Water Commissioners, 5 Wisconsin Railroad Commission Reports 731-791, at 743, 789, 791, (1910).

<sup>97</sup> *In re* Jefferson Municipal Electric Light and Water Plant, 5 Wisconsin Railroad Commission Reports 555-591, at 557, 585, (1910).

<sup>98</sup> *In re* Cumberland Municipal Electric Light Plant, 4 Wisconsin Railroad Commission Reports 214-232, at 215, (1909).

<sup>99</sup> *Report of Dubuque City Water Works for the Year ending May 31, 1911*.

<sup>100</sup> See, for example, *In re* Jefferson Municipal Electric Light and Water Plant, 5 Wisconsin Railroad Commission Reports 555-591, at 585, (1910) — secret below-cost rates to certain large consumers.

<sup>101</sup> Dick vs. Madison Water Commissioners, 5 Wisconsin Railroad Commission Reports 731-791, at 790, 791, (1910) — free water to city, schools, and churches.

<sup>102</sup> *In re* Cumberland Municipal Electric Light Plant, 4 Wisconsin Railroad Commission Reports 214-232, at 217, 218, (1909).

<sup>103</sup> Minneapolis, St. Paul and Sault Ste. Marie Railway Company *vs.* Railroad Commission of Wisconsin, 136 Wisconsin 146, 159, (1908).

<sup>104</sup> *Constitution of Iowa*, 1857, Art. III, Sec. 30; Art. VIII, Sec. 1.

<sup>105</sup> The language of Mr. Justice Moody in *City of Knoxville vs. Knoxville Water Company*, 212 United States 1, 18, (1909).

<sup>106</sup> *Munn vs. Illinois*, 94 United States 113, 133, 134, (1876); *Chicago, Burlington and Quincy Railway vs. Iowa*, 94 United States 155, (1876); *Peik vs. Chicago and Northwestern Railway Company*, 94 United States 164, (1876); *Chicago, Milwaukee and St. Paul Railroad Company vs. Ackley*, 94 United States 179, (1876); *Winona and St. Peter Railroad Company vs. Blake*, 94 United States 180, (1876); *Stone vs. Wisconsin*, 94 United States 181, (1876).

<sup>107</sup> Railroad Commission Cases, 116 United States 307, (1886) — remarks of Mr. Chief Justice Waite at page 331: "From what has thus been said, it is not to be inferred that this power of limitation or regulation is itself without limit. This power to regulate is not a power to destroy, and limitation is not the equivalent of confiscation. Under pretence of regulating fares and freights, the State can not require a railroad corporation to carry persons or property without reward; neither can it do that which in law amounts to a taking of private property for public use without just compensation, or without due process of law".

See also *Chicago, Milwaukee and St. Paul Railroad Company vs. Minnesota*, 134 United States 418, (1890) — remarks of Mr. Justice Blatchford at page 458: "The question of the reasonableness of a rate of charge for transportation by a railroad company, involving as it does the element of reasonableness both as regards the company and as regards the public, is eminently a question for judicial investigation, requiring due process of law for its determination".

Finally, see *Reagan vs. Farmers' Loan and Trust Company*, 154 United States 362, (1894) — remarks of Mr. Justice Brewer at page 399: "These cases all support the proposition that while it is not the province of the courts to enter upon the merely administrative duty of framing a tariff of rates for carriage, it is within the scope of judicial power and a part of judicial duty to restrain anything which, in the form of a regulation of rates, operates to deny to the owners of property invested in the business of transportation that equal protection which is the constitutional right of all owners of other property."

Compare Wyman's *Public Service Corporations*, Secs. 1427-1429.

<sup>108</sup> *Wilcox vs. Consolidated Gas Company*, 212 United States 19, 41, (1909); *San Diego Land and Town Company vs. National City*, 174 United

States 739, 754, (1899); San Diego Land and Town Company *vs.* Jasper, 189 United States 439, 442, (1903); City of Knoxville *vs.* Knoxville Water Company, 212 United States 1, 8, (1909); Cedar Rapids Gas Light Company *vs.* City of Cedar Rapids, 144 Iowa 426, 447, (1909).

<sup>109</sup> Minneapolis, St. Paul and Sault Ste. Marie Railway Company *vs.* Railroad Commission of Wisconsin, 136 Wisconsin 146, 164, (1908).

<sup>110</sup> Smyth *vs.* Ames, 169 United States 466, 546, 547, (1898); Hill *vs.* Antigo Water Company, 3 Wisconsin Railroad Commission Reports 623-777, at 631, (1909); Cunningham *vs.* Chippewa Falls Water Works and Lighting Company, 5 Wisconsin Railroad Commission Reports 302-359, at 308, 309, (1910); Buell *vs.* Chicago, Milwaukee and St. Paul Railway Company, 1 Wisconsin Railroad Commission Reports 324-507, at 333, (1907).

<sup>111</sup> Prentiss *vs.* Atlantic Coast Line Company, 211 United States 210, 226, (1908) and the cases cited in note 107 above.

<sup>112</sup> Prentiss *vs.* Atlantic Coast Line Company, 211 United States 210, 226, (1908). "A judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. Legislation on the other hand looks to the future and changes existing conditions by making a new rule to be applied thereafter to all or some part of those subject to its power."

See also the cases cited in note 108 above.

<sup>113</sup> Chicago and Northwestern Railway Company *vs.* Dey, 35 Federal Reporter 866, 874, (1888).

<sup>114</sup> See Goodnow's *Principles of Administrative Law in the United States*, Ch. I; Wyman's *Public Service Corporations*, Section 1404.

<sup>115</sup> Wayman *vs.* Southard, 10 Wheaton 1 (United States, 1825); Railroad Commission Cases, 116 United States 307, (1886); Texas and Pacific Railway Company *vs.* Abilene Cotton Oil Company, 204 United States 426, (1907); Buttfield *vs.* Stranahan, 192 United States 470, (1904); Village of Saratoga Springs *vs.* Saratoga Gas, Electric Light and Power Company, 191 New York 123, (1908); Chicago, Burlington and Quincy Railroad Company *vs.* Jones, 149 Illinois 361, (1894); Minneapolis, St. Paul and Sault Ste. Marie Railway Company *vs.* Railroad Commission of Wisconsin, 136 Wisconsin 146, 159, 161, (1908).

<sup>116</sup> Reagan *vs.* Farmers' Loan and Trust Company, 154 United States 362, (1894); Interstate Commerce Commission *vs.* Cincinnati, New Orleans and Texas and Pacific Railway Company, 167 United States 479, (1897); State *vs.* New Haven and Northampton Company, 43 Connecticut 351, (1876); State *vs.* Atlantic Coast Line Railroad Company, 51 Florida 543,

578, (1906); Minneapolis, St. Paul and Sault Ste. Marie Railway Company vs. Railroad Commission of Wisconsin, 136 Wisconsin 146, 157, (1908).

<sup>117</sup> Goodnow's *Principles of Administrative Law in the United States*, Chs. I, III, and IV; Powell's *Separation of Powers in the Political Science Quarterly*, June, 1912; Goodnow's *Social Reform and the Constitution*, Ch. V.

<sup>118</sup> See Friedman's *A Word About Commissions* in the *Harvard Law Review*, Vol. XXV, pp. 704-716; and especially the cases collected in Ivins and Mason's *The Control of Public Utilities*, pp. 51-65, 479, 480.

<sup>119</sup> *Acts and Resolves of Massachusetts*, 1885, Ch. 314.

<sup>120</sup> *Acts and Resolves of Massachusetts*, 1887, Ch. 385.

<sup>121</sup> Gray's *The Gas Commission of Massachusetts* in *The Quarterly Journal of Economics*, Vol. XIV, pp. 509, 517, 518.

<sup>122</sup> Allen's *State Supervision in Massachusetts* in *Municipal Affairs*, Vol. IV, p. 526; Gray's *Competition and Capitalization as Controlled by the Massachusetts Gas Commission* in *The Quarterly Journal of Economics*, Vol. XV, pp. 254-276; Bullock's *Control of the Capitalization of Public Service Corporations in Massachusetts* in *The Publications of the American Economic Association*, Series 3, Vol. X, pp. 384-414, 1909; Ripley's *The Capitalization of Public Service Corporations* in *The Quarterly Journal of Economics*, Vol. XV, pp. 106-137. For a less favorable view see Adams's *Municipal Gas and Electric Plants in Massachusetts* in the *Political Science Quarterly*, Vol. XVII, pp. 247-255.

<sup>123</sup> *Acts and Resolves of Massachusetts*, 1906, Ch. 433.

<sup>124</sup> Wright's *Development of Transit Control in New York City* in *The Annals of the American Academy of Political and Social Science*, Vol. XXXI, pp. 552-575.

<sup>125</sup> *Annual Message of Governor Hughes*, 1907, *New York Senate Documents*, 30th Session, Vol. I, pp. 15-18.

<sup>126</sup> *Laws of New York*, 1907, Ch. 480.

See Osborne's *The Public Service Commissions Law of New York* in *The City Club Bulletin*, April 18, 1908, and in *The Proceedings of the American Political Science Association*, 1907, pp. 287-304; Bruère's *Public Utilities Regulations in New York* in *The Annals of the American Academy of Political and Social Science*, Vol. XXXI, pp. 535-551.

<sup>127</sup> Gannaway's *The Public Service Corporation Question* in *The Municipality*, Vol. VII, pp. 64-72.

- <sup>128</sup> *Laws of Wisconsin*, 1905, Ch. 362.
- <sup>129</sup> *La Follette's Autobiography in The American Magazine* for May, 1912.
- <sup>130</sup> *Laws of Wisconsin*, 1907, Ch. 499.
- <sup>131</sup> Statement to writer by Mr. Halford Erickson of the Railroad Commission of Wisconsin.
- <sup>132</sup> *An Act approved August 22, 1907, Enlarging the Powers of the Railroad Commission of Georgia* (pamphlet).
- <sup>133</sup> *Acts of Vermont*, 1908, No. 116.
- <sup>134</sup> *Public Laws of Maryland*, 1910, Ch. 180.
- <sup>135</sup> *Laws of New Jersey*, 1910, Ch. 195.
- <sup>136</sup> *Laws of California*, 1911, Ch. 14.
- <sup>137</sup> *Public Acts of Connecticut*, 1911, Ch. 128.
- <sup>138</sup> *Laws of Kansas*, 1911, Ch. 238.
- <sup>139</sup> *Laws of Nevada*, 1911, Ch. 162.
- <sup>140</sup> *Laws of New Hampshire*, 1911, Ch. 164.
- <sup>141</sup> *Laws of Ohio*, 1911, Ch. 549.
- <sup>142</sup> *Laws of Washington*, 1911, Ch. 117.
- <sup>143</sup> *Laws of Rhode Island*, 1911, Ch. 795.
- <sup>144</sup> *Constitution of Oklahoma*, Article IX.
- <sup>145</sup> *Laws of Oregon*, 1911, Ch. 279.
- <sup>146</sup> The California Railroad Commission was established in 1891, but received jurisdiction over urban utilities in 1912; the Georgia Railroad Commission dates from 1879, but its jurisdiction over urban utilities dates from 1907; the Massachusetts Highway Commission was created in 1893, but received jurisdiction over telegraph and telephone companies in 1906; the Wisconsin Railroad Commission was established in 1905, but its jurisdiction was extended to urban utilities in 1907.
- <sup>147</sup> Bruère's *Public Utilities Regulation in New York* in *The Annals of the American Academy of Political and Social Science*, Vol. XXI, pp. 535, 551.
- <sup>148</sup> *Revised Statutes of Wisconsin*, Sec. 1797 m-8, 9, 11, 12, 13, 14, 16, 18; *Laws of Oregon*, 1911, Ch. 279, Secs. 11, 12, 13; *Gas and Electricity Laws of Massachusetts* (pamphlet, 1910), p. 29; *Laws of Nevada*, 1911, Ch. 162, Sec. 7; *Laws of Kansas*, 1911, Ch. 238, Secs. 23, 29.

<sup>149</sup> *Public Utilities Act of California*, 1911, Sec. 48; *Public Utilities Act of Georgia*, 1907, Sec. 6; *Public Service Commission Law of Maryland*, a pamphlet published by the Public Service Commission in 1912, Secs. 24, 31¾; *Public Service Commission Act of New Hampshire* (pamphlet, 1911), Sec. 6; *Public Utilities Act of New Jersey* (pamphlet, 1911), Sec. 17d; *Public Service Commissions Law of New York*, a pamphlet issued by the Public Service Commission of the First District in 1911, Secs. 52, 66-4; *Laws of Ohio*, 1911, Ch. 549, Sec. 12; *Constitution of Oklahoma*, Art. IX, Sec. 29; *Public Service Commission Act of Washington* (pamphlet, 1912), Sec. 78.

<sup>150</sup> *Revised Statutes of Wisconsin*, Sec. 1797 m-15; *Public Utilities Laws of Oregon* (pamphlet published by the Railroad Commission of Oregon, 1911), Sec. 496; *Laws of Ohio*, 1911, Ch. 549, Secs. 51, 52; *Public Utilities Act of New Jersey*, Sec. 17 (f); *Public Utilities Act of California*, Sec. 49.

<sup>151</sup> *Laws of Kansas*, 1911, Ch. 238, Sec. 37.

<sup>152</sup> *Revised Statutes of Wisconsin*, Sec. 1797 m-38; *Public Utilities Laws of Oregon*, 1911, Sec. 495; *Laws of Kansas*, 1911, Ch. 238, Sec. 29.

<sup>153</sup> *Public Utilities Laws of Wisconsin*, 1911, Sec. 1797 m-5; *Public Service Commission Law of Washington*, 1912, Sec. 92; *Constitution of Oklahoma*, Art. IX, Sec. 29; *Public Utilities Laws of Oregon*, 1911, Sec. 488.

<sup>154</sup> *Public Utilities Act of California*, 1911, Sec. 47; *Public Utilities Act of Georgia*, 1907, Sec. 7; *Public Service Commission Law of Maryland*, 1912, Sec. 30, 31¾; *Laws of Nevada*, 1911, Ch. 162, Sec. 6; *Public Utilities Act of New Jersey*, 1911, Sec. 16, (b); *Laws of Ohio*, 1911, Ch. 549, Sec. 26.

<sup>155</sup> *Acts and Resolves of Massachusetts*, 1868, Ch. 310.

<sup>156</sup> *The Public Service Commissions Law of New York*, 1911, Secs. 55, 69.

<sup>157</sup> *Public Utilities Act of California*, 1911, Sec. 52; *Public Utilities Act of Georgia*, 1907, Sec. 8; *Public Service Commission Law of Maryland*, 1912, Secs. 27, 34; *Public Service Commission Act of New Hampshire*, 1911, Sec. 14.

<sup>158</sup> *Laws of Wisconsin*, 1911, Ch. 593.

<sup>159</sup> *Laws of Kansas*, 1911, Ch. 238, Secs. 25, 26, 34, 35.

<sup>160</sup> *Laws of Ohio*, 1911, Ch. 549, Secs. 56, 57, 58, 61, 62.

<sup>161</sup> *Public Utilities Act of New Jersey*, 1911, Sec. 18 (e); *Acts of Vermont*, 1908, No. 116, Sec. 16; *Public Service Laws of Vermont*, 1911, pp. 113, 114.

<sup>162</sup> *Acts and Resolves of Massachusetts*, 1908, Ch. 529; 1909, Ch. 316; *Gas and Electricity Laws of Massachusetts*, 1910, pp. 26, 27.



<sup>163</sup> *Laws of Ohio*, 1911, Ch. 549, Secs. 63, 64, 65.

<sup>164</sup> *Public Utilities Act of California*, 1911, Sec. 51 (a); *Laws of Ohio*, 1911, Ch. 549, Sec. 63.

<sup>165</sup> *Public Service Commissions Law of New York*, 1911, Secs. 54, 70; *Laws of Kansas*, 1911, Ch. 238, Sec. 36; *Public Service Commission Law of Maryland*, 1912, Secs. 26, 35; *Public Service Commission Act of New Hampshire*, 1911, Sec. 13, (b); *Public Utilities Act of New Jersey*, 1911, Sec. 18 (h).

<sup>166</sup> *Public Utilities Act of California*, 1911, Sec. 51 (b); *Laws of Kansas*, 1911, Ch. 238, Sec. 27; *Public Service Commission Law of Maryland*, 1912, Secs. 26, 35; *Public Service Commission Act of New Hampshire*, 1911, Sec. 13 (c); *Public Utilities Act of New Jersey*, 1911, Sec. 19; *Public Service Commissions Law of New York*, 1911, Secs. 54 (2), 70; *Laws of Ohio*, 1911, Ch. 549, Sec. 63 (d).

<sup>167</sup> *Laws of Wisconsin*, 1911, Ch. 593; *Public Utilities Laws of Wisconsin*, 1911, Sec. 1753-11, 2.

<sup>168</sup> *Public Utilities Act of California*, 1911, Sec. 52 (b); *Public Service Commission Law of Maryland*, 1912, Secs. 27, 34; *Acts and Resolves of Massachusetts*, 1906, Ch. 392; 1908, Ch. 529; 1909, Ch. 316; *Public Utilities Act of New Jersey*, 1911, Sec. 18 (f); *Public Service Commissions Law of New York*, 1911, Secs. 55, 69; *Laws of Ohio*, 1911, Ch. 549, Sec. 62; *Revised Statutes of Wisconsin*, Sec. 1753-11, 2.

<sup>169</sup> *Constitution of Oklahoma*, Art. IX, Sec. 8, 9.

<sup>170</sup> *Public Utilities Act of California*, 1911, Sec. 26; *Laws of Ohio*, 1911, Ch. 549, Sec. 76; *Public Utilities Acts of Wisconsin*, 1911, Sec. 1797m-75.

<sup>171</sup> *Twenty-Fifth Annual Report of the Massachusetts Board of Gas and Electric Light Commissioners*, 1909, pp. 13-15.

<sup>172</sup> *Public Service Commissions Law of New York*, 1911, Secs. 54-2, 70; *Public Service Commission Law of Maryland*, 1912, Secs. 26, 35; *Public Utilities Act of New Jersey*, 1911, Sec. 19.

<sup>173</sup> *Public Service Commission Law of Maryland*, 1912, Sec. 16; *Public Service Commissions Law of New York*, 1911, Sec. 65-2; *Laws of Ohio*, 1911, Ch. 549, Sec. 16; *Public Utilities Acts of Oregon*, 1911, a pamphlet issued by the Railroad Commission of Oregon, Sec. 542; *Public Utilities Act of Rhode Island*, 1912, Sec. 39; *Public Service Commission Act of Washington*, 1912, Sec. 31; *Revised Statutes of Wisconsin*, Sec. 1797m-89.

<sup>174</sup> *Public Utilities Act of California*, 1912, Sec. 32; *Public Utilities Act of Georgia* (pamphlet, 1907), Sec. 5; *Laws of Kansas*, 1911, Ch. 238, Sec.

16; *Public Utilities Act of Nevada*, 1911, Sec. 19; *Public Utilities Act of New Jersey*, 1911, Sec. 16 (e); *Laws of Ohio*, 1911, Ch. 549, Sec. 25; *Constitution of Oklahoma*, Art. IX, Sec. 18; *Public Utilities Act of Oregon*, 1911, Sec. 530; *Public Utilities Act of Rhode Island*, 1912, Sec. 21; *Acts of Vermont*, 1908, No. 116, Sec. 9 (IV); *Public Service Commission Law of Washington*, 1911, Sec. 53; *Revised Statutes of Wisconsin*, Sec. 1797m-46.

175 *Public Utilities Act of Connecticut*, 1911, Sec. 23; *Public Service Commission Law of Maryland*, 1912, Secs. 23, 37; *Revised Laws of Massachusetts*, 1910, Ch. 121, Sec. 35; *Public Service Commission Act of New Hampshire*, 1911, Sec. 11 (c); *Public Service Commissions Law of New York*, 1911, Secs. 49, 72.

176 *Acts and Resolves of Massachusetts*, 1906, Ch. 433.

177 *Public Utilities Act of California*, 1912, Sec. 14 (b); *Laws of Kansas*, 1911, Ch. 238, Sec. 11; *Public Service Commission Law of Maryland*, 1912, Sec. 15; *Public Utilities Act of Nevada*, 1911, Sec. 11; *Public Service Commission Act of New Jersey*, 1911, Sec. 16 (d); *Public Service Commission Act of New Hampshire*, 1911, Sec. 7 (a); *Public Service Commissions Law of New York*, 1911, Sec. 66 (12); *Laws of Ohio*, 1911, Ch. 549, Sec. 18; *Public Utilities Acts of Oregon*, 1911, Secs. 504, 506; *Public Utilities Act of Rhode Island*, 1912, Sec. 48; *Acts of Vermont*, 1908, No. 116, Secs. 18, 19; *Public Service Commission Law of Washington*, 1911, Sec. 14; *Revised Statutes of Wisconsin*, Sec. 1797m-27, 29.

178 *Public Utilities Act of California*, 1912, Sec. 63; *Laws of Kansas*, 1911, Ch. 238, Sec. 30; *Public Utilities Act of New Jersey*, 1911, Sec. 17 (h); *Revised Statutes of Wisconsin*, Sec. 1797m-105.

179 *Public Service Commission Law of Washington*, 1911, Sec. 15.

180 *Public Service Commissions Law of New York*, 1911, Sec. 66-12.

181 *Public Utilities Act of California*, 1912, Sec. 17-4 (b); *Laws of Kansas*, 1911, Ch. 238, Sec. 12; *Public Service Commission Law of Maryland*, 1912, Sec. 16; *Public Utilities Act of Nevada*, 1911, Sec. 12; *Laws of Ohio*, 1911, Ch. 549, Sec. 20; *Public Utilities Acts of Oregon*, 1911, Sec. 542; *Public Utilities Act of Rhode Island*, 1912, Secs. 39, 41; *Public Service Commission Law of Washington*, 1911, Sec. 29; *Revised Statutes of Wisconsin*, Sec. 1797m-89.

182 *Public Utilities Act of California*, 1912, Sec. 46 (a); *Public Utilities Act of Connecticut*, 1911, Sec. 19; *Laws of Kansas*, 1911, Ch. 238, Sec. 22; *Public Service Commission Law of Maryland*, Sec. 31 $\frac{3}{4}$ ; *Revised Laws of Massachusetts*, Ch. 121, Sec. 6; *Public Utilities Act of Nevada*, 1911, Sec. 10; *Public Utilities Act of New Jersey*, 1911, Sec. 16 (f); *Public Service*

*Commissions Law of New York*, 1911, Sec. 66-3; *Laws of Ohio*, 1911, Ch. 549, Secs. 36, 38; *Public Utilities Acts of Oregon*, 1911, Secs. 500, 501; *Public Utilities Act of Rhode Island*, 1912, Secs. 45, 46; *Acts of Vermont*, 1908, No. 116, Sec. 9 (I); *Public Service Commission Laws of Washington*, 1911, Sec. 54; *Revised Statutes of Wisconsin*, Sec. 1797 m-22, 23.

<sup>183</sup> *Revised Laws of Massachusetts*, Ch. 58, Sec. 14; *Public Service Commission Act of New Hampshire*, 1911, Sec. 5 (c); *Public Service Commissions Law of New York*, 1911, Sec. 66-2; *Public Utilities Acts of Oregon*, 1911, Sec. 502; *Public Service Commission Law of Washington*, 1911, Secs. 67, 74; *Revised Statutes of Wisconsin*, Sec. 1797 m-41.

<sup>184</sup> *Revised Laws of Massachusetts*, Ch. 58, Sec. 10; *Public Service Commission Law of Maryland*, 1911, Sec. 31¾; *Public Service Commissions Law of New York*, 1911, Sec. 67-2; *Public Service Commission Law of Washington*, 1911, Sec. 74.

<sup>185</sup> *Public Service Commission Law of Washington*, 1911, Sec. 74.

<sup>186</sup> *Public Service Commissions Law of New York*, 1911, Sec. 67-3; *Public Service Commission Law of Washington*, 1911, Sec. 74.

<sup>187</sup> *Public Utilities Acts of Oregon*, 1911, Sec. 502.

<sup>188</sup> *Revised Statutes of Wisconsin*, Sec. 1797m-24; *Public Utilities Acts of Oregon*, 1911, Sec. 502; *Public Utilities Act of Rhode Island*, 1912, Sec. 47; *Laws of Ohio*, 1911, Ch. 549, Sec. 39; *Public Utilities Act of New Jersey*, 1911, Sec. 16 (h); *Public Utilities Act of California*, 1912, Sec. 46 (a).

<sup>189</sup> *Laws of Kansas*, 1911, Ch. 238, Sec. 22.

<sup>190</sup> *Public Utilities Act of California*, 1912, Sec. 46 (c); *Public Utilities Act of Connecticut*, 1911, Sec. 20; *Public Service Commission Law of Maryland*, 1911, Sec. 32; *Revised Laws of Massachusetts*, Ch. 121, Sec. 36; Ch. 58, Sec. 11; *Public Utilities Act of Nevada*, 1911, Sec. 10; *Public Utilities Act of New Jersey*, 1911, Sec. 16 (j); *Public Service Commissions Law of New York*, 1911, Sec. 67-5; *Laws of Ohio*, 1911, Ch. 549, Sec. 39; *Public Utilities Acts of Oregon*, 1911, Sec. 502; *Public Utilities Act of Rhode Island*, 1912, Sec. 47; *Public Service Commission Law of Washington*, 1911, Sec. 74; *Revised Statutes of Wisconsin*, Sec. 1797m-24.

<sup>191</sup> *Public Utilities Act of California*, 1912, Sec. 38; *Public Utilities Act of Connecticut*, 1911, Sec. 21; *Public Service Commission Law of Maryland*, 1911, Sec. 23; *Laws of Ohio*, 1911, Ch. 549, Sec. 44; *Public Utilities Acts of Oregon*, 1911, Sec. 487.

<sup>192</sup> *Public Utilities Act of Connecticut*, 1911, Sec. 21.

193 *Public Utilities Act of California*, 1912, Sec. 40; *Laws of Ohio*, 1911, Ch. 549, Sec. 66; *Constitution of Oklahoma*, Art. IX, Sec. 5; *Public Service Commission Law of Washington*, 1911, Sec. 73; *Revised Statutes of Wisconsin*, Sec. 1797m-4.

194 *Public Service Commission Law of Washington*, 1911, Secs. 67, 70.

195 *Laws of Kansas*, 1911, Ch. 238, Sec. 32.

196 *Public Utilities Act of Connecticut*, 1911, Secs. 17, 18.

197 *Public Utilities Act of Nevada*, 1911, Sec. 27; *Public Service Commissions Law of New York*, 1911, Sec. 47; *Public Utilities Acts of Oregon*, 1911, Sec. 552; *Public Utilities Act of Rhode Island*, 1912, Sec. 49; *Acts of Vermont*, 1908, No. 116, Sec. 7; *Revised Statutes of Wisconsin*, Sec. 1797m-101; *Public Service Commission Law of Washington*, 1911, Sec. 63.

198 *Revised Laws of Massachusetts*, Ch. 121, Sec. 39.

199 *Public Service Commission Law of Maryland*, 1912, Sec. 22.

200 *Public Utilities Act of California*, 1912, Sec. 44.

201 *Acts and Resolves of Massachusetts*, 1885, Ch. 314.

202 *Acts and Resolves of Massachusetts*, 1887, Ch. 382.

203 Gray's *Competition and Capitalization as Controlled by the Massachusetts Gas Commission* in *The Quarterly Journal of Economics*, Vol. XV, pp. 254-260.

204 *Public Utilities Act of California*, 1912, Sec. 50 (a).

205 *Revised Statutes of Wisconsin*, Sec. 1797m-74.

206 *Laws of Ohio*, 1911, Ch. 549, Sec. 54.

207 *Laws of Kansas*, 1911, Ch. 238, Sec. 31; *Public Service Commission Law of Maryland*, 1912, Secs. 26, 33; *Public Utilities Act of New Hampshire*, 1911, Sec. 13 (a); *Public Utilities Act of New Jersey*, 1911, Sec. 24; *Public Service Commissions Law of New York*, 1911, Secs. 53, 68.

208 *Acts of Vermont*, 1908, No. 116, Sec. 23.

209 *Laws of Wisconsin*, 1911, Ch. 596; *Revised Statutes of Wisconsin*, Sec. 1797m-74, 76, 77, 78.

210 *Revised Laws of Massachusetts*, Ch. 25, Sec. 55; Ch. 34, Sec. 31.

211 *Public Utilities Act of Connecticut*, 1911, Sec. 37.

212 *Public Utilities Act of Rhode Island*, 1912, Sec. 51.

213 *Public Service Commissions Law of New York*, 1911, Sec. 68.

214 *Public Service Commission Law of Maryland*, 1912, Sec. 33.

215 *Revised Statutes of Wisconsin*, Sec. 1797m-74 (3), 79, 80, 82.

216 *Revised Laws of Massachusetts*, Ch. 34, Sec. 10.

217 *Public Utilities Act of New Jersey*, 1911, Sec. 25.

218 *Public Service Commission Law of Washington*, Secs. 8, 105.

219 *Revised Laws of Massachusetts*, Ch. 34, Secs. 21, 22, 23, 24, 27, 29, 30, 32; *Public Service Commissions Law of New York*, 1911, Sec. 66; *Acts of Vermont*, 1908, No. 116, Sec. 2; *Revised Statutes of Wisconsin*, Sec. 1797 m-1.

220 *Public Utilities Act of California*, 1912, Sec. 50 (c); *Laws of Kansas*, 1911, Ch. 238, Sec. 31; *Public Service Commission Law of Maryland*, 1912, Secs. 26, 33, 42; *Public Utilities Act of New Hampshire*, 1911, Sec. 13 (a); *Public Utilities Act of New Jersey*, 1911, Sec. 24; *Public Service Commissions Law of New York*, 1911, Secs. 53, 68; *Revised Laws of Massachusetts*, Ch. 121, Secs. 25, 26, 27; *Revised Statutes of Wisconsin*, Sec. 1797m-74.

221 *Public Utilities Act of California*, 1912, Sec. 50 (c); *Laws of Kansas*, 1911, Ch. 238, Sec. 33; *Public Service Commission Law of New Hampshire*, 1911, Sec. 13 (a); *Public Utilities Act of New Jersey*, 1911, Sec. 24.

222 *Public Utilities Act of Georgia*, 1907, Sec. 5.

223 *Laws of Kansas*, 1911, Ch. 238, Sec. 33; *Public Utilities Acts of Oregon*, 1911, Sec. 540; *Revised Statutes of Wisconsin*, Sec. 1797m-87.

224 *Laws of Ohio*, 1911, Ch. 549, Secs. 46-48, 53.

225 *Revised Laws of Massachusetts*, Ch. 121, Secs. 17, 19, 25, 26; Ch. 122, Sec. 2; *Public Statutes of Vermont*, Secs. 4520, 4525, 4836-4853.

226 *Laws of Kansas*, 1911, Ch. 238, Sec. 33; *Revised Laws of Massachusetts*, Ch. 121, Sec. 27; *Laws of Ohio*, 1911, Ch. 549, Secs. 46, 47, 53; *Public Utilities Acts of Oregon*, 1911, Sec. 540; *Public Utilities Act of Rhode Island*, 1912, Sec. 52; *Acts of Vermont*, 1908, No. 116, Sec. 17; *Revised Statutes of Wisconsin*, Sec. 1797m-87.

227 *Public Utilities Act of California*, 1912, Sec. 82.

228 *Public Utilities Act of California*, 1912, Sec. 62; *Public Utilities Act of Connecticut*, 1911, Sec. 23; *Laws of Kansas*, 1911, Ch. 238, Sec. 33; *Public Service Commission Law of Maryland*, 1912, Sec. 33; *Revised Laws of Massachusetts*, Ch. 121, Sec. 27; *Public Service Commission Law of New Hampshire*, 1911, Sec. 10 (c); *Public Service Commissions Law of New*

York, 1911, Sec. 71; *Public Utilities Acts of Oregon*, 1911, Sec. 525; *Revised Statutes of Wisconsin*, Sec. 1797m-52.

<sup>229</sup> *Constitution of Oklahoma*, Art. IX, Sec. 19.

<sup>230</sup> *Acts and Resolves of Massachusetts*, 1906, Ch. 433.

<sup>231</sup> *Public Utilities Act of California*, 1912, Sec. 67; *Public Utilities Act of New Jersey*, 1911, Sec. 38; *Public Service Commission Law of Washington*, 1911, Sec. 86.

<sup>232</sup> *Public Utilities Act of Connecticut*, 1911, Sec. 29; *Constitution of Oklahoma*, Art. IX, Sec. 20; *Public Utilities Act of Rhode Island*, 1912, Sec. 34; *Acts of Vermont*, 1908, No. 116, Sec. 12.

<sup>233</sup> *Laws of Kansas*, 1911, Ch. 238, Sec. 21; *Public Service Commission Law of Maryland*, 1912, Sec. 43; *Public Utilities Act of Nevada*, 1911, Sec. 26; *Public Service Commission Act of New Hampshire*, 1911, Sec. 17 (b); *Laws of Ohio*, 1911, Ch. 549, Sec. 72; *Public Utilities Acts of Oregon*, 1911, Sec. 533; *Revised Statutes of Wisconsin*, Sec. 1797m-64.

<sup>234</sup> *Public Utilities Act of Georgia*, 1907, Sec. 12; *Revised Laws of Massachusetts*, Ch. 121, Secs. 8, 9; *Public Service Commissions Law of New York*, 1911, Sec. 24.

<sup>235</sup> *Public Utilities Act of California*, 1912, Sec. 67; *Constitution of Oklahoma*, Art. IX, Sec. 20; *Public Utilities Act of Rhode Island*, 1912, Sec. 34; *Acts of Vermont*, 1908, No. 116, Sec. 12.

<sup>236</sup> *Public Utilities Act of Georgia*, 1907, Sec. 14; *Revised Statutes of Wisconsin*, Sec. 1797m-64.

<sup>237</sup> *Public Utilities Act of Connecticut*, 1911, Sec. 31.

<sup>238</sup> *Public Utilities Acts of Oregon*, 1911, Sec. 533.

<sup>239</sup> *Public Utilities Act of New Jersey*, 1911, Sec. 38.

<sup>240</sup> *Public Utilities Act of California*, 1912, Sec. 67.

<sup>241</sup> *Public Utilities Act of California*, 1912, Sec. 67; *Public Utilities Act of New Jersey*, 1911, Sec. 38; *Constitution of Oklahoma*, Art. IX, Sec. 22; *Acts of Vermont*, 1908, No. 116, Sec. 12; *Public Service Commission Act of Washington*, 1911, Sec. 86.

<sup>242</sup> *Revised Statutes of Wisconsin*, Sec. 1797m-67; *Public Utilities Act of Rhode Island*, 1912, Sec. 37; *Public Utilities Acts of Oregon*, 1911, Sec. 535; *Public Service Commission Act of New Hampshire*, 1911, Sec. 17 (d); *Public Utilities Act of Nevada*, 1911, Sec. 26 (b); *Public Service Commission Law of Maryland*, 1912, Sec. 44.

<sup>243</sup> *Public Utilities Act of California*, 1912, Sec. 67; *Acts of Vermont*, 1908, No. 116, Sec. 12.

<sup>244</sup> *Public Service Commission Act of Washington*, 1911, Sec. 92.

<sup>245</sup> *Public Service Commission Law of Maryland*, 1912, Sec. 46; *Public Utilities Act of Nevada*, 1911, Sec. 26 (e); *Public Service Commission Act of New Hampshire*, 1911, Sec. 17 (h); *Public Utilities Acts of Oregon*, 1911, Sec. 537; *Revised Statutes of Wisconsin*, Sec. 1797m-70.

<sup>246</sup> Minneapolis, St. Paul and Sault Ste. Marie Railway Company vs. Railroad Commission of Wisconsin, 136 Wisconsin 146, 166, (1908).

<sup>247</sup> Cedar Rapids Gas Light Company vs. City of Cedar Rapids, 144 Iowa 426, (1909); 223 United States 655, (1912), 32 Supreme Court Reporter, p. 389.

<sup>248</sup> City of Knoxville vs. Knoxville Water Company, 212 United States 1, (1909).

<sup>249</sup> *Constitution of Oklahoma*, Art. IX, Sec. 21.

<sup>250</sup> *Public Utilities Act of California*, 1912, Sec. 68 (d).

<sup>251</sup> *Public Service Commission Act of New Hampshire*, 1911, Sec. 17 (g).

<sup>252</sup> *Laws of Ohio*, 1911, Ch. 549, Sec. 73; *Public Utilities Acts of Oregon*, 1911, Sec. 534; *Public Service Commission Law of Washington*, 1912, Sec. 87.

<sup>253</sup> *Public Utilities Act of Nevada*, 1911, Sec. 26 (a).

<sup>254</sup> *Revised Statutes of Wisconsin*, Sec. 1797m-66.

<sup>255</sup> *Public Service Commission Law of Maryland*, 1912, Sec. 43.

<sup>256</sup> *Public Utilities Act of California*, 1912, Sec. 68 (b); *Public Service Commission Act of Washington*, 1912, Sec. 87.

<sup>257</sup> Thelen's *Report on Leading Railroad Commissions*.

<sup>258</sup> *Report of Committee de Public Service Corporations*.

<sup>259</sup> See especially the articles by Professor Gray in *The Quarterly Journal of Economics*, Vol. XIV, p. 509; Vol. XV, p. 254.

<sup>260</sup> *Twenty-sixth Annual Report of the Massachusetts Board of Gas and Electric Light Commissioners*, 1910, p. 42.

<sup>261</sup> *Twenty-sixth Annual Report of the Massachusetts Board of Gas and Electric Light Commissioners*, 1910, pp. 39-42.

<sup>262</sup> *Twenty-sixth Annual Report of the Massachusetts Board of Gas and Electric Light Commissioners*, 1910, pp. 44-47.

<sup>263</sup> For a clear account see the *Fourth Annual Report of the Railroad Commission of Wisconsin, 1909-1910, Part I*. An interesting and suggestive sketch is contained in Max Thelen's *Report on Leading Railroad Commissions*, pp. 31-42. Many statements in the text are based on cases adjudged by the commission.

<sup>264</sup> See the article by Mr. J. N. Cadby, Chief Inspector, in *The Telephone Engineer* for May, 1912.

<sup>265</sup> On the New York commissions see Thelen's *Report on Leading Railroad Commissions*, pp. 43-53, 65-73; Walker's *State Regulation of Public Service Corporations in the City of New York*, a pamphlet issued by the Public Service Commission; the addresses by Chairman Maltbie of the First District commission in *The City Club Bulletin* for January 20, 1909, and in *The Annals of the American Academy of Political and Social Science*, Vol. XXXVII, p. 170; and addresses of Chairman Stevens of the commission for the Second District in *Discussion of Present Day Problems*, a pamphlet issued by the Empire State Gas Association in October, 1907. The best source is, of course, the voluminous reports of the two commissions. Most statements in the text are based thereon.

<sup>266</sup> Walker's *State Regulation of Public Service Corporations in the City of New York*, pp. 39-41.

<sup>267</sup> Walker's *State Regulation of Public Service Corporations in the City of New York*, p. 45.

<sup>268</sup> Walker's *State Regulation of Public Service Corporations in the City of New York*, pp. 22-24.

<sup>269</sup> Addresses of President Pierce of the International Railway Company and of President Humphreys of Stevens Institute of Technology, in *Discussion of Present Day Problems*, a pamphlet published by the Empire State Gas Association in 1907.

<sup>270</sup> Baneroft's *Moderation in Control of Public Service Corporations in The Annals of the American Academy of Political and Social Science*, Vol. XXXI, p. 701; Bergren's *Restrictive Legislation against Public Service Corporations in New Jersey in The Annals of the American Academy of Political and Social Science*, Vol. XXXI, pp. 659-670; Jones's *American Municipal Services from the Standpoint of the Entrepreneur in The Annals of the American Academy of Political and Social Science*, Vol. XXVIII, p. 371; Whitridge's *Official Valuations of Private Property in Publications of the American Economic Association, 1910*, pp. 239-252; Cotton's *An Argument against an Official Valuation of Railroad Properties in Publications of the American Economic Association, 1910*, pp. 252-258.



271 Adams's *Municipal Gas and Electric Plants in Massachusetts* in the *Political Science Quarterly*, Vol. XVII, pp. 247-255.

272 Brennan's *Regulation and Control of Local Public Service Corporations by State Boards* in *The City Hall* for September, 1909.

273 See *The Municipality*, January, 1910, addresses by the City Attorney of Manitowoc, the Mayor of Madison, and a member of the City Council of Milwaukee.

274 Lapp's *Public Utilities Control* in *The American Political Science Review*, Vol. I, pp. 626-638; Bullock's *Control of Public Service Corporations in Massachusetts* in *The Publications of the American Economic Association*, 1903, pp. 384-414; Pollock's *The Public Service Commissions of the State of New York* in *The Annals of the American Academy of Political and Social Science*, Vol. XXXI, p. 649; Hatton's *Public Service Commissions* in *The Proceedings of the American Political Science Association*, 1907, pp. 305-315; Hudnall's *The Public Service Commission Law of Wisconsin* in *The Proceedings of the American Political Science Association*, 1907, pp. 316-323.

275 Statement to the writer by Mr. John McVicar of Des Moines.

276 Statement to the writer by Mr. N. S. Ketchum of the Iowa State Board of Railroad Commissioners.

277 *Code of Iowa, Supplement of 1907*, Sec. 1641-b.

278 Letter of A. H. Davison, Secretary of the Executive Council, September 9, 1912.

279 *Aldrich vs. Paine*, 106 Iowa 461, 467, (1898).

280 *Code of Iowa, Supplement of 1907*, Secs. 720, 721; *Laws of Iowa*, 1911, p. 25; *Brown vs. Carl*, 111 Iowa 608, 610, (1900).

281 *Code of Iowa*, 1897, Sec. 767.

282 *Code of Iowa*, 1897, Sec. 775; *Supplement of 1907*, Sec. 776.

283 *Code of Iowa, Supplement of 1907*, Sec. 2033-c, d.

284 *Code of Iowa*, 1897, Sec. 775; *Supplement of 1907*, Sec. 776.

285 *Code of Iowa*, 1897, Sec. 2158.

286 *Chamberlain vs. Iowa Telephone Company*, 119 Iowa 619, (1903).

287 *Code of Iowa, Supplement of 1907*, Sec. 725.

288 *Code of Iowa*, 1897, Secs. 767, 775, 834.

289 *Code of Iowa*, 1897, Sec. 775.

<sup>290</sup> *Code of Iowa, Supplement of 1907*, Sec. 720.

<sup>291</sup> *Laws of Iowa*, 1909, p. 36; 1911, p. 26.

<sup>292</sup> *Code of Iowa, Supplement of 1907*, Sec. 724.

<sup>293</sup> *Constitution of Iowa*, 1857, Art. XI, Sec. 3; *Windsor vs. Des Moines*, 110 Iowa 175, (1900).

<sup>294</sup> *Code of Iowa, Supplement of 1907*, Sec. 894.

<sup>295</sup> *Code of Iowa, Supplement of 1907*, Sec. 742.

<sup>296</sup> *Code of Iowa, Supplement of 1907*, Sec. 741-b.

<sup>297</sup> *Code of Iowa, Supplement of 1907*, Sec. 741-c.

<sup>298</sup> *Code of Iowa, Supplement of 1907*, Title V, Ch. 14-a.

<sup>299</sup> *Code of Iowa, Supplement of 1907*, Sec. 747-a.

<sup>300</sup> Data obtained by questionnaire. The cities are: Des Moines, Dubuque, Davenport, Cedar Rapids, Waterloo, Clinton, Burlington, Ottumwa, Muscatine, Fort Dodge, Marshalltown, Boone, Centerville, Webster City, Cedar Falls, Shenandoah, and Fairfield.

<sup>301</sup> *The Register and Leader*, July 5, 1912; letter to the writer from Mayor James R. Hanna, August 28, 1912.

<sup>302</sup> *City of Des Moines vs. Des Moines City Railway Company*, 214 United States 179, (1909).

<sup>303</sup> *The Register and Leader*, February 28, 1910, and August 22, 1912.

<sup>304</sup> *Des Moines Gas Company vs. City of Des Moines*, Federal Reporter (1912), not yet published.

<sup>305</sup> *Des Moines Water Company vs. City of Des Moines*, 192 Federal Reporter 193, (1911).

<sup>306</sup> *Des Moines Water Company vs. City of Des Moines*, 192 Federal Reporter 193, 198, (1911).

<sup>307</sup> *Chamberlain vs. Iowa Telephone Company*, 119 Iowa 619, (1903).

<sup>308</sup> Compare Gray's *The Gas Commission of Massachusetts in The Quarterly Journal of Economics*, Vol. XIV, pp. 509-536, 510.

<sup>309</sup> *Des Moines Water Company vs. City of Des Moines*, 192 Federal Reporter 193, 194, (1911).

<sup>310</sup> Neenah (Wisconsin) and Dubuque (Iowa).

<sup>311</sup> See *Fourth Annual Report of the Department of Finance and Municipal Accounts*, Table of Contents.

<sup>312</sup> Computed by the writer from the *Fourth Annual Report of the Department of Finance and Municipal Accounts*, 1911, and subject, therefore, to the errors and omissions thereof. The item "annual operating" expenses is especially untrustworthy.

<sup>313</sup> *Code of Iowa, Supplement of 1907*, Sec. 1056-a 10.

<sup>314</sup> *House File*, No. 147, and *Senate File*, No. 366, Thirty-third General Assembly, 1909.

<sup>315</sup> *House File*, No. 89, and *Senate File*, No. 42, Thirty-fourth General Assembly, 1911.

<sup>316</sup> *Journal of the House of Representatives*, 1911, p. 1543; *Journal of the Senate*, 1911, p. 1473.

<sup>317</sup> *Journal of the Senate*, 1909, p. 178.

<sup>318</sup> *Journal of the House of Representatives*, 1909, pp. 199, 733, 745, 746, 747, 825, 860, 909; 1911, pp. 407, 421, 473, 563, 797, 821; *Journal of the Senate*, 1909, pp. 178, 838, 1230; 1911, pp. 404, 433, 555.

<sup>319</sup> Statements of Messrs. John McVicar and James R. Hanna, of Des Moines.

<sup>320</sup> Peterson's *Corrupt Practices Legislation in Iowa* in this series.

<sup>321</sup> See Sikes's *The Relation of Chicago to Public Service Corporations in The Annals of the American Academy of Political and Social Science*, Vol. XXXI, pp. 689-694.

<sup>322</sup> Brennan's *Regulation and Control of Local Public Service Corporations by State Boards* in *The City Hall*, September, 1909, pp. 130-134, 133.

<sup>323</sup> Wyman's *Public Service Corporations*, Chapter II.

<sup>324</sup> Compare Cleveland's *Municipal Ownership as a Form of Governmental Control* in *The Annals of the American Academy of Political and Social Science*, Vol. XXVIII, pp. 359-370.

<sup>325</sup> Meyer's *Central Utilities Commissions and Home Rule* in *The American Political Science Review*, Vol. V, pp. 374-393, at 386, 387.

<sup>326</sup> Meyer's *Central Utilities Commissions and Home Rule* in *The American Political Science Review*, Vol. V, pp. 374, 388.

<sup>327</sup> Morgan's *The Indeterminate Permit as a Satisfactory Franchise* in *The Annals of the American Academy of Political and Social Science*, Vol. XXXVII, pp. 142-159.

<sup>328</sup> Meyer's *Central Utilities Commissions and Home Rule* in *The American Political Science Review*, Vol. V, pp. 374, 388.

<sup>329</sup> *Code of Iowa*, 1873, Sec. 1090; *Code of Iowa*, 1897, Sec. 1619.

<sup>330</sup> Howe's *The City: The Hope of Democracy*, Chs. VIII, IX; Bemis's *Municipal Monopolies*, Ch. IX; Bruère's *Public Utilities Regulation in New York* in *The Annals of the American Academy of Political and Social Science*, Vol. XXXI, pp. 535-551.

<sup>331</sup> *Code of Iowa*, 1897, Sec. 726.

<sup>332</sup> Compare Friedman's *A Word About Commissions* in *The Harvard Law Review*, Vol. XXV, pp. 704, 715; and Whitney's *Official Valuation of Railroad Properties in The Publications of the American Economic Association*, 1910, pp. 259-262.

<sup>333</sup> Opinion of the Justices, 138 Massachusetts 601, 603, (1885); *City of Aurora vs. Schoeberlein*, 230 Illinois 496, 502, 504, (1907).

<sup>334</sup> *Burfenning vs. Chicago*, St. Paul, Minneapolis and Omaha Railway Company, 163 United States 321, 323, (1896).

<sup>335</sup> *United States vs. Ju Toy*, 198 United States 253, 261, 263, (1905).

<sup>336</sup> *Oceanic Steam Navigation Company vs. Stranahan*, 214 United States 320, 340-343, (1909).

<sup>337</sup> *Code of Iowa*, 1897, Sec. 2820; *Wood vs. Farmer*, 69 Iowa 533, (1886).

<sup>338</sup> Compare Friedman's *A Word About Commissions* in *The Harvard Law Review*, Vol. XXV, pp. 704-716, at 710, 711.

<sup>339</sup> Railroad Commission Cases, 116 United States 307, 335, (1887); *Chicago, Milwaukee and St. Paul Railway Company vs. Minnesota*, 134 United States 418, 456, 457, (1890); *Reagan vs. Farmers' Loan and Trust Company*, 154 United States 362, 399, (1894); *Prentiss vs. Atlantic Coast Line Company*, 211 United States 210, 226, (1908).

<sup>340</sup> *Prentiss vs. Atlantic Coast Line Company*, 211 United States 210, 228-230, (1908).

<sup>341</sup> *Constitution of Iowa*, 1857, Art. III, Sec. 1.

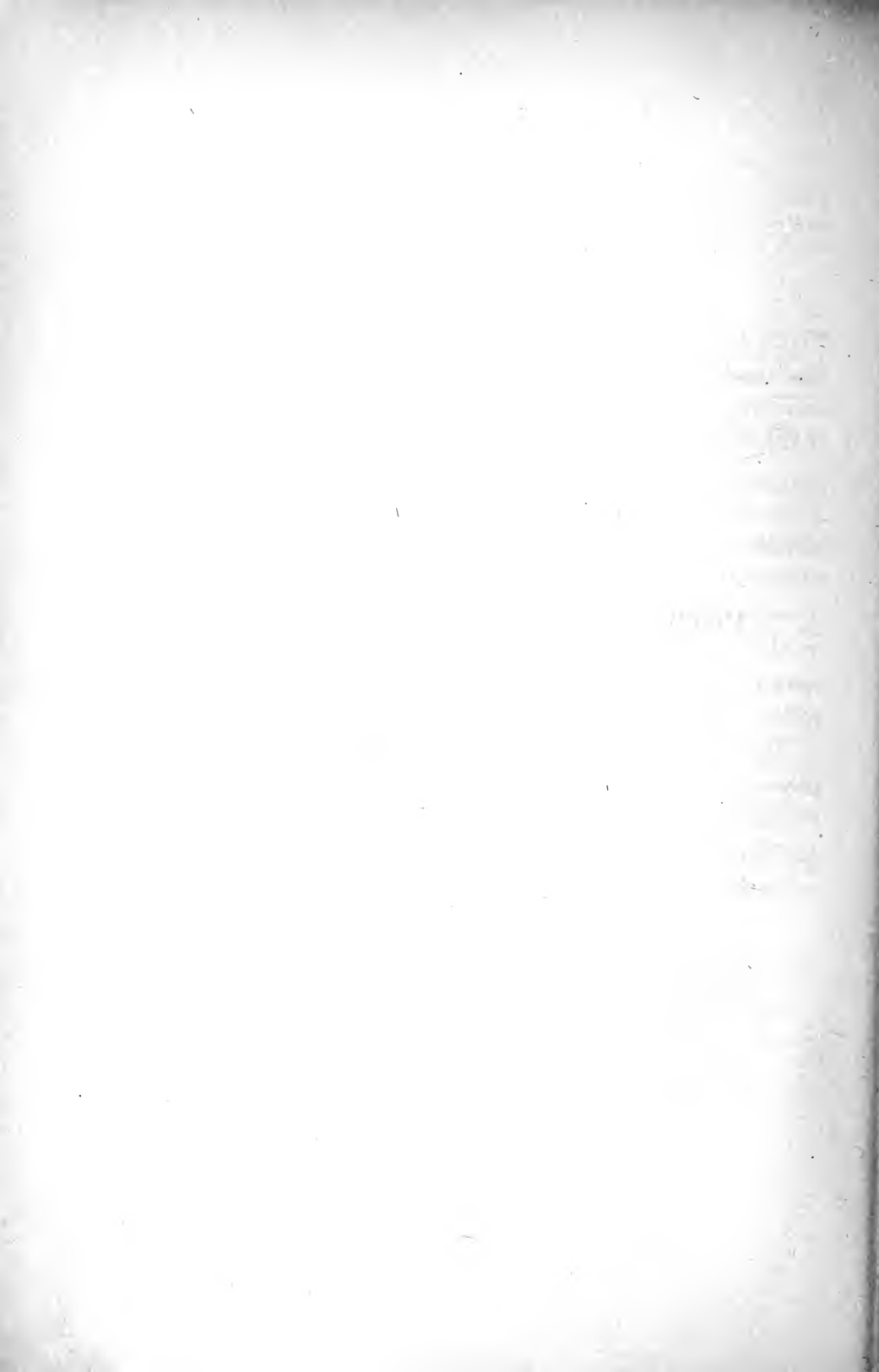
<sup>342</sup> *Constitution of Iowa*, 1857, Art. V, Sec. 4.

<sup>343</sup> Compare Gray's *Public Service Commissions* in *The Proceedings of the American Political Science Association*, Vol. IV, pp. 324-335, at 334.

<sup>344</sup> Walker's *State Regulation of Public Service Corporations in the City of New York*, p. 13.

<sup>345</sup> *Laws of Wisconsin*, 1911, Ch. 593; *Revised Statutes of Wisconsin*, Sec. 1753-21.

PRIMARY ELECTIONS IN IOWA



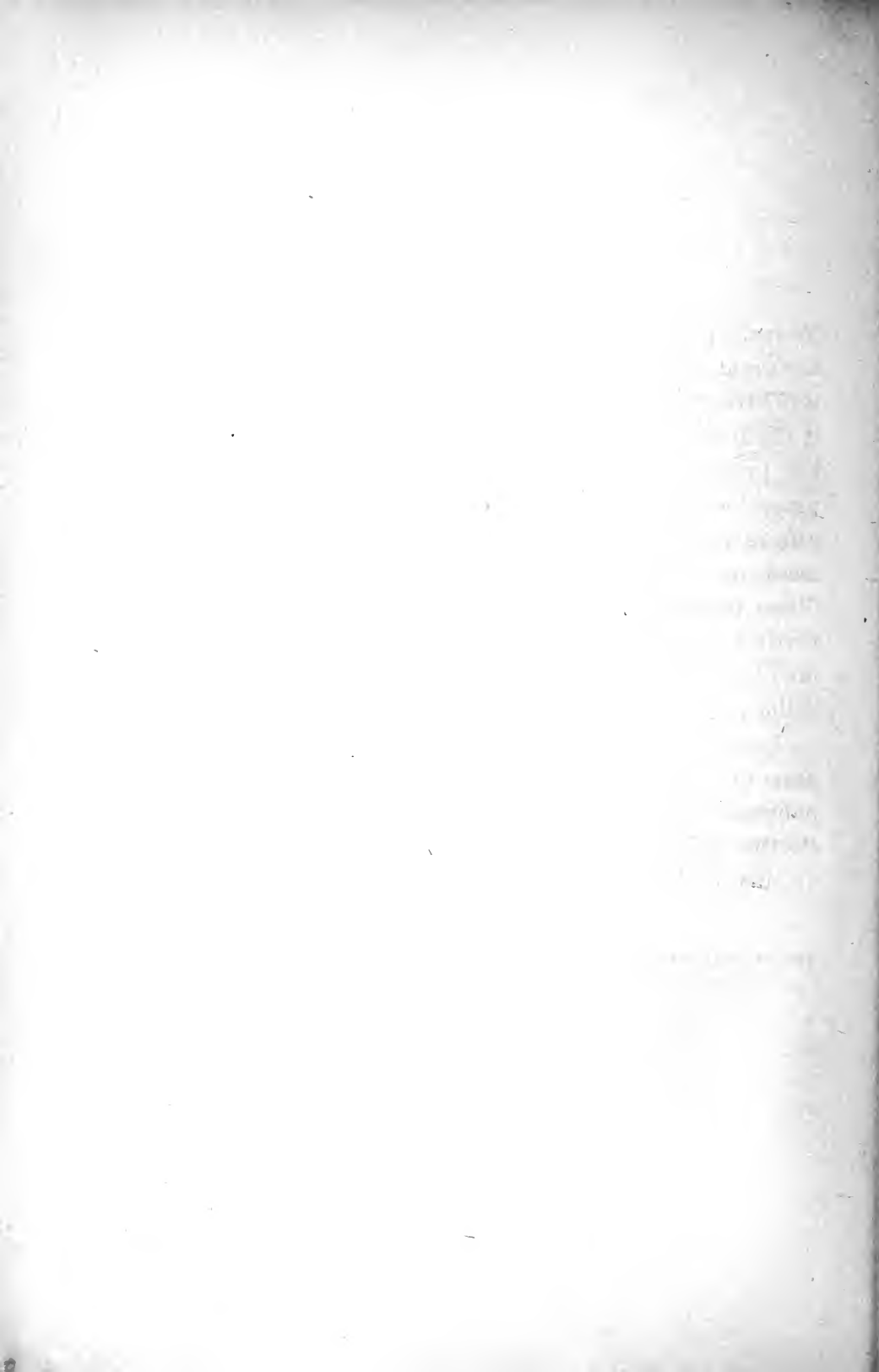
## AUTHOR'S PREFACE

To make popular government really democratic is one of the great political problems of the present age. It matters little that strict election laws are on the statute books if the foundation upon which popular government rests, the primary, is not adequately regulated. Whatever promotes the participation of the masses in political affairs awakens and keeps alive their interest in government, and should on that account be encouraged. The direct primary has been found to meet a real political need: indeed, the demand for comprehensive primary laws is as great to-day as the demand for the Australian ballot was twenty-five years ago.

In the following pages it has been the writer's purpose to give a brief historical analysis of American political methods in the nominations of candidates for elective offices and to discuss briefly the problems of nomination by direct popular vote in the State of Iowa.

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## I

### EARLY PARTY MACHINERY IN THE UNITED STATES

THE existence of well organized political parties contesting for supremacy at every National, State, and local election is a political phenomenon so common that its absence rather than its presence would occasion comment. Yet the framers of our National Constitution feared the organization of political parties and sought to devise a scheme of government which would overcome "the superior force of an interested and overbearing majority". In his farewell address Washington denounced "the spirit of party" as the worst enemy of popular government; but he lived to see his advice unheeded and his own administration assailed to promote the growth of the party spirit which he had decried. Now, in our own time, the spirit of party is again assailed and significant movements have been started to minimize its influence.

The history of nominating methods in American politics may be divided into three periods, namely, the period of the congressional and legislative caucus, the period of the nominating convention, and the period of the direct primary. As the method of each period served a real need in its time, so the problem of the present is to adjust political institutions to new conditions.

Democracy has never been entirely satisfied with the representative government bequeathed by the Fathers.

From the very beginning of the Republic there was a demand for a larger participation in the affairs of government by the masses. The first struggle was for the extension of the suffrage. Having obtained that much, the people demanded the right to choose their own candidates for office and to determine their own public policies. Moreover, the rapid change from rural to urban life in the United States within the last century has greatly increased the demand for the popular control of political machinery.

Soon after the Revolution democracy, conscious of its own power, refused to accept the guidance of self-appointed leaders; and so the parlor caucuses of "leading citizens" gave way to the more popular legislative and congressional caucus as a means of nominating elective officers. There were many reasons why the legislative and congressional caucus was preferred as a means of giving expression to party opinion. A trip to the State or National capital was no small undertaking before the days of the railroad, when roads were scarcely laid out and streams unbridged. Moreover, the representatives of the people at the State and National capitals were presumed to know the wishes of their constituents. And so very naturally the State representatives assumed the responsibility of selecting candidates for all elective State officers, while the representatives in Congress placed in nomination the candidates for the Presidency and Vice Presidency. While this method was from the first subject to severe criticism as an unauthorized assumption of power, it proved to be a real means of giving effect to party opinion, and was therefore tolerated until democracy found a more direct method of expressing the public will.

As time went on the growth of the railroad, the telegraph, and the post office brought the people of the United States closer and closer together. The public press rapidly assumed the rôle of a party organ, voicing, moulding, and directing public opinion. Under such conditions it is little wonder that the old institutions of party machinery gave way, and that the people began to suspect that the personal interest of the participants in the legislative and congressional caucus was altogether too great. In his day Andrew Jackson made it his special mission to deal the death blow to "King Caucus". He and his followers asserted that the framers of the Constitution were very careful to provide that Congress should not elect the President; but now a party majority of Congressmen were doing that very thing — and even in *secret* caucus. Thus the congressional and legislative caucus was under grave suspicion: it was thought to be tainted with graft and a desire for patronage. Jackson would never have been the caucus nominee, although he was the people's choice. But the people lacked a convenient and effective method of giving expression to their choice.

In the period of transition to the convention system, following the discrediting of the congressional and legislative caucus, nominations were made by State legislatures, by mass meetings, by newspaper announcements, and by a general concurrence of party meetings and agencies.

In 1830 the Anti-Masonic party assembled in convention in Philadelphia. It adopted resolutions arranging for a second convention to be held in the following year, and recommended that each State be allowed a number of delegates equal to the number of electoral

votes to which it was entitled in the Electoral College or the number of its Representatives and Senators in Congress. But the manner of choosing these delegates was not specified. Following these recommendations the first delegate convention was held in September, 1831. No platform was adopted, but a near approach to it was made by the appointment of a committee to issue an address to the people. In the year following, however, the first party platform was written. By 1840 the convention system had become firmly established as a method of nominating public officers and had taken upon itself the function of giving expression to party issues.

The convention system held undisputed sway in American politics until after the close of the Civil War. The point of emphasis, however, is that during all this time it was neither recognized nor regulated by law. Political parties were free to carry on the nominating process as custom, tradition, or party rules might dictate. Perhaps it was unfortunate for the new nominating system that it was born at the time that Jackson established his famous principle of rotation in office as a necessary safeguard of free government. The number of voters had been increased, the number of elective officers had been increased, and nearly every office became the spoils of party victory.

The nominating convention showed evidences of weakness from the beginning. As early as 1844 Calhoun denounced it as a hundred times more objectionable than the congressional caucus — although he had contributed largely to the overthrow of the old system. Unscrupulous party managers quickly saw the opportunities which it afforded for enrichment; and so within both of the great parties there was a struggle to control the party

machinery. Corruption and abuses multiplied until the protests of a restless people demanded some public regulation and control of the nominating machinery.

The specific abuses of the convention system which called for regulation by law may be briefly summarized. (1) In the all-absorbing struggle to control the convention it soon became evident that there was no guaranty that participation in a party caucus or primary would be confined to members of the party immediately concerned. In the rural communities there was little difficulty on this account; but in the large cities and urban centers party primaries were invaded and controlled by men of any or of no political persuasion. Sometimes this control was secured in a quiet and orderly manner, and sometimes it was accompanied by violence and disorder of the worst kind. (2) Party tests were established which excluded many bona fide voters. (3) While bribery at an election was punishable, bribery in a primary or caucus was no legal offense. Moreover, there was no pretense of concealment of corrupt practices, for there was no penalty at law. (4) In voting there was no appeal from the ruling of the chairman. (5) Ballot boxes were stuffed, the counts falsified, or any one of many ingenious devices might be employed to insure the desired result. (6) In some cases primaries properly conducted were held upon wholly insufficient or inadequate notice in order that only the few interested would be found in attendance; or if properly called, caucuses were frequently held in objectionable or inaccessible places or in rooms wholly inadequate for the number of voters eligible to participate.

The attempts of the parties to eliminate the worst evils of the convention system by regulation within the

party were not as a rule effective. Accordingly, the voters generally appealed to the legislatures for relief. The progress of this new reform movement may therefore be traced through legislative acts.

## II

### THE DEVELOPMENT OF THE DIRECT PRIMARY

IN the year 1866 in California an act was passed "to protect the elections of voluntary associations and to punish frauds therein." This statute was a purely optional measure, applying only to such political associations or parties as might invoke its protection and subject themselves to its provisions. It provided for a public call of the caucus, for sworn supervision of elections, and for the prevention of illegal voting. All expense incurred in the primary was to be borne by the party. In the same year New York passed a law covering bribery and the intimidation of voters or delegates. Although neither of these laws contemplated anything like a complete public control over party primaries, they nevertheless constitute an important step in the development of political parties. In 1871 Ohio and Pennsylvania passed laws very similar to those just noted. The adoption of the direct primary in Crawford County, Pennsylvania, during the sixties was much in advance of most of the movements for direct nominations.

Down to 1880 primary legislation made but little progress. But the period from 1880 to 1890 was one of agitation for better regulation of elections, which tended to stimulate interest in the methods of nomination as well. As early as 1880 direct nomination was urged as the best remedy for the evils of the party system; but most of the legislation passed during this period only

aimed to prohibit the most obvious kinds of fraud in the primaries. There was a tendency to enumerate in greater detail the procedure to be followed in the primary as well as in the election; but since the laws were mostly optional the primary was still almost wholly under party control. A few mandatory acts were passed, but these were generally of a local or special nature.

The general adoption of the Australian ballot about 1890 was a distinct legal recognition of political parties. The State now prescribed the method of conducting elections; and the State was to print the ballots and determine what names were to appear upon it. Party officers were to certify to the proper legal officers the nominations, which were then to be printed as the officially recognized party candidates. The public having thus become accustomed to the idea of legislative control, it was an easy step to require that all nominations should be made only in accordance with such rules and regulations as might be prescribed by law. Primary reform now advanced rapidly, one of the important phases of legislation in this period being the development of a definite test of party allegiance and the official registration of party voters. By 1899 two-thirds of the States had enacted primary laws of one kind or another; but no State had yet passed a mandatory act, placing the primary on the same basis as the election.

The period from 1899 to the present time has been one of unprecedented activity in primary reform legislation. Moreover, the most striking features of this legislation have been (1) the tendency to apply as nearly as possible the laws governing regular elections to the conduct of primaries, (2) the tendency to substitute nomination by direct vote for the indirect convention system, and (3)



the tendency to require the preparation and distribution of the primary ballots by public authorities rather than by private individuals or organizations.

Every State in the Union has now legislated against the abuses arising under the voluntary party system of nomination; and most of the States have primary laws that are State-wide in their operation, mandatory in character, and fairly complete in their provisions. Party machinery in the South is, however, still largely under party control; while the most advanced position with regard to the regulation of primaries has been taken by the States of the Mississippi Valley and of the Pacific Coast. Popular nominations had been experimented with in Crawford County, Pennsylvania, back in the sixties; but the widespread interest in this method of nomination within the last decade has undoubtedly been aroused chiefly by startling disclosures of the betrayal of public trust by party leaders. The regulated primary election, offering that wider participation in government desired by the people, could no longer be resisted by the old party leaders. Half-way and compromise measures were only temporary expedients, which were sure to be followed up in succeeding legislative assemblies with a renewed demand for a compulsory, State-wide act.

There are several nominating systems which combine the primary and the petition methods. In some States, in order to place a name upon the primary election ballot, a number of party voters resident within the district must file a petition with the proper officers of county or State. This may be a fixed number, or as is more often the case, a certain percentage of the party voters within the district is required. But in no State does the number of petitioners exceed ten per cent of the party vote — in

fact, it is usually very much less. In other States a fee is required of the candidate in return for the privilege of having his name placed upon the ballot. This fee may be either a lump sum or a percentage of the salary of the office. Again, in some jurisdictions only an application signed by the candidate is required.

The alphabetical order has been the most common arrangement of the names which appear on the ballot. This method, having been severely criticised as giving an advantage to the first name on the list, the present tendency is toward a system of rotation by which each name is presumed to appear at the head of the list an equal number of times. In a few States names are placed on the ballot in the order in which their declaration of candidacy has been filed, a method which too often results in an undignified rush to be first.

There is considerable variation in recent legislation relative to the vote required for nomination. Simple pluralities are not popular, though convenient: they are adopted in most northern States, though often resulting in nominations by small minorities. Majority rule has been a popular watchword in America; and yet where there are several candidates of nearly equal strength majorities are difficult to obtain and it becomes necessary to accept plurality nominations, or hold a second primary, or entrust the choice to a convention, or adopt a system of second choices. In a number of States a percentage less than a majority has been required — usually from thirty to forty per cent of the vote. If a leading candidate fails to receive such a percentage the choice falls to a convention. A system of preferential second-choice voting has been adopted in five States, whereby the voter may designate a first and a second choice. Either

the second choice votes are added to the first choice votes or by a process of elimination the second choice votes are added to the first choice votes to obtain majority nominations.

As the primary becomes more and more like a regular election the question of party membership increases in importance if the party is to assume responsibility for its own nominations and for the declaration of party principles. Who are to be considered Democrats and who are to be considered Republicans? The States now generally define by law the tests of party affiliation. Only in the Southern States are the tests of party organizations accepted.

The Legislative Reference Department of the Wisconsin Library Commission issued, in December, 1908, a bulletin on the test of party affiliation in primary elections in the several States, in which the following tests of party affiliation, to which the voter must subscribe before being permitted to participate in the primary, are listed: (1) past allegiance, (2) present affiliation, (3) future intention, (4) past action and present intention, (5) past action and future intention, (6) present affiliation and future intention, and (7) past, present, and future affiliation. The voter's declaration may be made at the primary and no record kept of it, or his declaration may be made a matter of permanent record. To-day the open primary, where all party tickets are on the same ballot with no test of party affiliation required, is gaining in popularity.

Political parties early took upon themselves the function of declaring the party's principles in convention assembled. But the substitution of the direct vote for the delegate convention has called forth some

new methods of giving expression to party principles. In the South, where the population (excluding the colored people) is more homogeneous than in the North and where the race problem is an important factor, there is really but one effective political party. There the optional State-wide primary is the rule; and during the primary campaign each candidate makes a statement of his position on public matters. In Wisconsin, under the statute law, the candidates for State and legislative offices, together with the hold-over members of the party in the legislature, draw up a platform of party principles. Thus, in Wisconsin the platform becomes a candidates' platform. In a number of other jurisdictions the State central committee and the candidates for State office formulate the platform. In those States which require a choice by a convention, unless a minimum percentage of the vote is obtained, the delegates to this convention, chosen by the primary itself, draw up the platform. Oregon and Texas have provided for a popular expression on public policies. The Texas law states that "any political party shall never place in the platform or resolution of the party they represent any demand for specific legislation on any subject unless the demand for such specific legislation shall have been submitted to a direct vote of the people, and shall have been endorsed by a majority vote of all the votes cast in the primary election of such party."

### III

#### HISTORY OF PRIMARY REGULATION IN IOWA

THE first effort toward securing State regulation of primary elections in Iowa was made in 1896, when three different bills were rejected by the Twenty-sixth General Assembly. In 1898 renewed efforts resulted in the adoption of a local optional primary law; and by 1902 this local primary had been adopted in thirty-six of the ninety-nine counties of the State by at least one of the parties.

The movement within the General Assembly for a compulsory State-wide primary election law was begun in January, 1902, when State Senator J. J. Crossley introduced a measure known as the "Crossley Bill". This bill was never even reported to the Senate from the committee to which it had been promptly referred; while the House measure, which was identical with that of the Senate, was lost after the addition of many amendments and a long and heated debate. Senator Crossley persistently introduced his State-wide primary election bill at each succeeding session of the General Assembly until it was finally passed and approved on April 4, 1907. The chief features of the Iowa primary law, as originally adopted in 1907, may be summarized as follows:—

1. The law is compulsory and State-wide for all State offices except judicial offices.
2. It provides for a popular choice of presidential electors and an advisory vote on United States Senators.
3. All parties participate in the primary on the same day, at the same place, and use the same ballot box.

4. The judges and clerks of the primary election are chosen in the same manner as for general elections and with the same compensation.

5. The Australian ballot is employed, each party having a separate ballot, with the names of candidates arranged alphabetically under each office.

6. Party affiliation is determined by the elector's oral choice of ballot, which choice is made a matter of record. But party affiliation can easily be changed by filing a declaration of change with the county auditor ten days prior to the primary election, or by taking an oath when offering to vote that one has in good faith changed his party affiliation.

7. Candidates for nomination must file nomination papers from thirty to forty days prior to the primary election, depending upon the office sought. These nomination papers must contain the signatures of a certain per cent of the candidate's party vote, depending upon the office sought.

Nomination papers of candidates for United States Senator, Elector at Large, and State officers must have the signatures of one per cent of their party vote in each of at least ten counties and in the aggregate not less than one-half of one per cent of the total vote of his party in the State as shown by the last general election.

Candidates for offices chosen from districts composed of more than one county must have the signatures of two per cent of their party vote in at least one-half of the counties and in the aggregate not less than one per cent of his party vote in the district.

Offices filled by the voters of the county must have the signatures of two per cent of their party vote in the county.

8. A candidate to receive the nomination of his party must receive at least thirty-five per cent of all the votes cast by his party for such office. Tie votes are determined by the board of canvassers or judges of election by lot; and vacancies are filled by the party committee for county, district, or State.

9. Delegates to county conventions as well as members of the county central committee are chosen at the primary election. The county convention, composed of the delegates chosen in the various voting precincts, is empowered to make nominations of candidates for the party for any office to be filled by the voters of a county where no candidate for such office has been nominated at the preceding primary election. The county convention selects delegates to State and district conventions. Moreover, any of these conventions may adopt resolutions or platforms.

10. The nomination of candidates by petition is still permitted under certain conditions. It was in this way that the names of Progressive candidates were placed upon the official ballot in 1912.

11. Penalties are imposed for misconduct on the part of officials or for certain corrupt practices.

Such are in brief the provisions of the Iowa primary election law as originally adopted in 1907. Primary legislation was one of the local issues upon which the "Standpat" and "Progressive" wings of the Republican party in Iowa were divided. The Progressives heralded the passage of the law as one of the greatest political reforms ever accomplished in Iowa; while the Standpatters declared that it was passed only to serve the ambitions of leading Progressives. They urged many objections to the law, declaring that it would never

work well in practice. The first application of the law in 1908 was made the occasion for one of the bitterest political contests in the history of the Republican party in Iowa.

The first result of the Iowa primary was the apparent choice of candidates in alphabetical order. It was claimed that Allison won over Cummins in the senatorial primary in 1908 because of his alphabetical advantage. The sudden death of Senator Allison necessitated a special primary on the senatorship, and in this primary Cummins won easily over Lacey. The candidates for Governor and Lieutenant Governor likewise appear to have been selected alphabetically. The Standpat Carroll won over the Progressive Garst for Governor; while the Progressive Clarke won over the Standpat Murphy for Lieutenant Governor.

The vote cast at the first primary election varied from forty to sixty per cent of the party vote in different localities. Many saw in this light vote the failure of the system. The public announcement and record of party affiliation undoubtedly kept many away from the primary polls. Those who opposed the passage of the law, though for the most part successful at the polls, saw all of their objections verified in its first trial and still condemned it. In like manner those who were responsible for the enactment of the primary law, though defeated at the polls, still praised the system and saw no good reason for abandoning it.

These two opposing views are clearly reflected in the press comments on the first primary election held under the law. The *Register and Leader*, a leading Progressive organ, in an editorial of June 5, 1908, entitled *Stand by the Primary*, observed:



Not only has the popular will been expressed but it has been expressed quietly, without disorder, coercion or bribery, there has been a freedom from drunkenness and fraud. As for expense, which will be most talked about by those who would abandon the new system, we undertake to say that more money has been spent in a single campaign in the 7th congressional district than has been spent this year in the entire state. . . . It should be remembered that the Australian ballot was not wholly satisfactory on first trial. But no one would propose to go back to the days of the unlegalized ballot.

The *Sioux City Tribune*, another organ of the Progressive Republicans, said:

The *Tribune* had a large force of trained men on the streets of Sioux City all day and most of the night, and there was little criticism of the primary. On the contrary man after man was heard to praise the law as he came from the booth where he had, unmolested, been able to declare his judgment on men and issues.

The number of votes cast and the universal good order and good feeling throughout the day are unassailable testimony to the wholesomeness and popularity of the law. In this city there would not have been 400 men at caucuses, whereas more than 4000 of the very best citizens were at the primary.

The *Burlington Hawkeye*, an organ of the Standpat Republicans, remarked:

The light vote was a surprise all around . . . . After all the publicity given the primary law itself, the energetic campaign by public speakers and the press, and one of the biggest political uproars Iowa ever had, one that by its strenuousness attracted National attention, the people failed to come out and vote . . . . in the numbers predicted. . . . Is it worth the extra expense to the tax payers?

The *Dubuque Times*, Standpat Republican, declared:

The primary election law is a failure, because it imposes two general elections and two campaigns upon the press and the people, because it unnecessarily imposes enormous expense upon the tax payers of the State and upon the candidates or their friends.

The *Cedar Rapids Republican*, an organ of the Stand-pat Republicans, commented as follows:

Without waiting for the results so far as candidates are concerned . . . . it is safe to say that enough has transpired to demonstrate that it is utterly vicious, and worse even than it was said to be by those who opposed it at the time it was passed. Every objection urged against this law has been shown to be well founded.

Other comments on the operation of the law declare that the primary nomination method is a good deal of a farce; that it is as large and unwieldy as Richard's corn husker; that it was the contest and not the primary that drew; that the law ought to be benched; that it is a great victory for clean politics; that it is the correct system, and by its enactment Iowa has taken a mighty step forward in popular government; and that it will go down in history as a grand fizzle.

The *News*, published at Winterset, the home of Senator Crossley, the father of the Iowa primary law, says:

Senator Crossley leaves next week for Alaska. Here's hoping that he takes his primary bill with him and dumps it into the Arctic.

The Iowa primary election law was amended in seventeen different sections at the first session of the General Assembly following its adoption. Most of these amendments, however, do not materially change the character of the law, but relate chiefly to procedure, or are designed

to make the law more explicit. Briefly stated the amendments passed in 1909 are as follows:—

1. The statement that the vote on United States Senator is advisory was repealed (Section 1).

2. Primary expenses are to be borne in the same manner as general election expenses; and judges and clerks of elections are to receive twenty-five cents per hour (Section 5).

3. The time of opening and closing the polls in precincts where registration is not required was changed (Section 6).

4. Candidates for party committeemen are not required to file nomination papers (Section 10).

5. The Secretary of State is to arrange names of candidates for State offices as they shall appear on the ballot in the several counties (Section 13).

6. The County Auditor is to arrange names of candidates for district and county offices as they shall appear on the official ballot.

7. A slight change is made in the form in which candidates for party committeeman appear on the primary ballot (Section 14).

8. Provisions relating to the form and distribution of sample ballots were enacted (Section 15).

9. Candidates are given the right to demand a recounting of ballots under certain conditions (Section 18).

10. The Board of Supervisors are to make a list of the candidates who failed to receive thirty-five per cent of their party vote, and give a copy of the same to the chairman of each party's central committee (Section 19).

11. The Board of Supervisors are required to publish the results of the primary election (Section 21).

12. The Executive Council is to make a list of the

candidates for State offices who failed to receive thirty-five per cent of their party vote, and give a copy of the same to the chairman of each party's State Central Committee (Section 22).

13. Provisions for the proper certification of nominations made by conventions or party committees were added (Section 23).

14. The manner of filling vacancies for the office of United States Senator, occurring after the primary but before the general election, was provided at a special session of the General Assembly after the death of Senator Allison (Section 24).

15. New provisions relating to date of the county convention and to notification of delegates and their term of office, and limitations on powers of the county convention were made (Section 25).

16. Provisions relative to district conventions were made similar to those for the county (Section 26).

17. Provisions relative to the State convention were made similar to those for county and district conventions (Section 27).

The two most important of the seventeen amendments enumerated are, first, the provision for the rotation of the names of candidates on the primary ballot, to avoid the advantage which Adams and Brown had over Young and Zeller under the alphabetical arrangement, and (2) the provision for the filling of vacancies occurring after the conventions have been held but prior to the election.

It was the provision relating to the rotation of names on the ballot which most interested the candidates for office at the second trial of the law in June, 1910. Again, at this second primary election there were many surprises and some disappointments. The returns show that

in most cases where a candidate's name headed the list in the county or voting precinct he usually polled the most votes. In many instances the majority of voters are said to have voted for the first name on the list.

The General Assembly added but two amendments to the primary law in 1911. One of these, changing the date of holding the primary from the first Tuesday after the first Monday in June to the first Monday in June, called forth considerable ridicule from the press of the State. The other amendment repealed Section 19, which relates to the canvass of the primary vote by the Board of Supervisors, but reënacted most of the original section and added to it provisions declaring under what conditions persons whose names were not on the official primary ballot may be considered as the nominees of the party on whose tickets their names had been written.

## IV

### CRITICISMS OF THE IOWA PRIMARY

Thus far the Iowa primary has been subjected to no little criticism — especially from the press of the State. As already pointed out, those who opposed the passage of the law seem to see their objections verified in the workings of its provisions; while the friends of the measure are only confirmed in their faith in the system. It is, however, a significant fact that there is no real demand for the repeal of the law, although suggestions for its modification are frequently advanced. The criticisms which followed the several trials of the law are of a popular rather than a scientific character. Indeed, there has been little academic discussion of the merits of the primary system in Iowa since its adoption in 1907.

#### THE LIGHT VOTE

The most general criticism of the Iowa primary has been provoked by the light vote, the contention being that the failure of the system to bring out a full vote was in itself discrediting. But this criticism overlooks the fact that the participation of from fifty to sixty per cent of the voters in the primary was vastly more than the total of the many small caucus groups which previously assembled to select delegates to county conventions.

Estimating the Republican strength in Iowa by the vote cast for Taft electors in 1908 (namely, 275,209), the number of primary ballots cast for all three Republican

candidates for Governor at the primary in 1908 was 93,346 less than the vote cast for presidential electors. At the primary in 1910, with only two Republican candidates for the office of Governor (both of whom were well known, having been candidates for that office in the first primary), the Republican party polled nearly 5000 votes less than in 1908 when there were three candidates in the field. In 1912, with three candidates in the field, the Republican party polled 181,219 votes, or only 644 more votes than were polled for the office of Governor by the same party in 1908.

At the primary in 1908 the Democratic party had but one candidate for the office of Governor, and he polled 50,065 votes; while at the general election in November he received 197,015 votes — which was about 4000 votes less than were cast for Bryan electors. At the primary in 1910 the Democrats had three candidates for the office of Governor, and the total Democratic vote (46,982) cast for all of them was over 3000 less than the single candidate received in 1908. In 1912 two candidates on the Democratic ticket polled 57,370 votes for the office of Governor, but at the general election of 1912 the Democratic candidate's total vote was nearly 180,000. Thus it seems that the number of contestants does not necessarily influence the size of the vote cast at the primary.

The spirited contest within the Republican party in 1912 brought out 247,573 votes for senatorial candidates, a larger proportion of the voters than at the two preceding primary elections; and so no charge that the vote was light was made after the 1912 primary.

County and district contests seem to bring out more votes than are cast in the uncontested districts and counties. At the primary in 1910 there were contests

TABLE COMPARING THE TOTAL VOTE CAST AT THE GENERAL ELECTION BY ALL PARTIES WITH THE TOTAL VOTE CAST FOR THE SAME OFFICES AT THE PRIMARY

ELECTIONS	TOTAL VOTE CAST FOR GOVERNOR	LIEUTENANT GOVERNOR	SECRETARY OF STATE	STATE AUDITOR	STATE TREASURER	ATTORNEY GENERAL	SUPERINTENDENT OF PUBLIC INSTRUCTION
General Election of 1906 .....	432,538	393,367	392,171	392,044	391,428	390,890	390,593
First Primary Election June 1908 .....	234,554	224,610	213,267	218,292	212,523	209,387	210,757
General Election of 1908 .....	454,124	448,951	448,247	447,447	447,508	446,793	446,845
Second Primary Election June 1910 .....	224,432	203,864	199,885	198,042	196,753	196,848	195,499
General Election of 1910 .....	412,770	371,041	369,211	369,150	368,604	370,577	366,314
Third Primary Election June 1912 .....	241,630	222,041	222,020	218,889	214,230	208,144	204,553
General Election of 1912 .....							

among the Republicans in five of the eleven congressional districts, and it appears that more than half of the Republican vote of the entire State was cast in these five districts. It is asserted that a lively contest in Dubuque County for all elective offices on the Democratic ticket brought out 4178 Democratic votes at the primary. This was a larger vote than the Democratic party polled in the remainder of the third district where their normal strength is about 17,000 votes. Dubuque, however, is the only strongly Democratic county in the district and usually polls about 6500 Democratic votes. Moreover, in 1908 Taft electors received 4708 votes in Dubuque Coun-



ty; but as the Republican situation was hopeless there were no contests in the county, and only 966 Republican votes were cast at the primary in 1910. Thus the Republicans polled but one-fifth of their vote at the primary.

Local contests sometimes seem to overshadow State or district contests at the primary election. Thus in 1910 the office of sheriff in Dubuque County received a third more votes than were cast for the office of Governor in the same county.

To explain the light vote at the 1910 primary seems to have been the task of the press of the State from the country weekly to the city daily. But the explanations offered are often colored with party bias or preëxisting prejudice. An examination of the returns shows that the cities cast a fair proportion of their normal vote. The great slump came in the rural districts, where scant notice was paid to the primary by the farmers who were much more concerned, during the first week in June, in plowing their corn than in endorsing or condemning the Taft administration.

Another explanation for the light vote at the primary is that the voters themselves are indifferent. The party workers are as active as under the old system, but the people seem to care little which way things go. Even the *Register and Leader*, the Progressive organ which stoutly defended the Iowa primary against its earlier critics, referred to the results of the second primary editorially as follows:

Many explanations can be given for the light vote, and are being given. But behind them all there is an evident disappointment that the Republicans of the State did not turn out and express their preferences. With politics a biennial affair it would seem that any important issue should bring the people to

the polls. Certainly there was enough involved in the present campaign to justify a rousing primary. But the people have not responded. If in the future they prove equally indifferent a serious question will be raised as to the feasibility of direct popular appeal. Iowa will not abandon the direct primary but there will be much less dogmatic insistence on it than there has been.

#### THE UNREPRESENTATIVE CHARACTER OF THE PRIMARY

It is further charged that the primary in Iowa is unrepresentative because the mass of the voters do not appear at the polls and because the test of party affiliation is not rigid enough to keep minority parties from determining the nominations of the majority party. It is asserted that the members of the minor parties, having made practically all of their nominations at a pre-primary caucus, may under the Iowa law freely and aggressively participate in the primary election of the majority party if their consciences will permit them to do so.

Again, in the selection of township officers complaint is made that two or three votes have often nominated important township officers. A man with two or three boys of voting age may get a nomination and at the same time be a *persona non grata* in the community which he represents. This objection is partly removed by an amendment, passed in 1911, which provides that no candidate for an office of a subdivision of a county shall be declared nominated who receives less than five per centum of the votes cast in such subdivision for Governor on the party ticket with which he affiliates, nor less than five votes.

Furthermore, in the choosing of delegates to the

county conventions the primary is declared to be unrepresentative. A few men, it is said, make up a list of delegates in advance for each voting precinct, print the names on gummed paper, and send them out to the voters who vote the ticket straight, not knowing what the proposed delegates stand for. To be sure, it is answered that any other two or three men can put up opposing delegate tickets, and if none are put up no one ought to complain.

#### UNINTELLIGENT VOTING

Another serious charge advanced against the primary method of choosing candidates is that most of those who vote do not cast their ballots intelligently. Iowa boasts of a very small per cent of illiteracy in proportion to the total population; yet the public press of Iowa rings with the assertion that the majority of voters at the second Iowa primary did not vote intelligently. Some attribute this apparent unintelligent voting to a lack of knowledge of the candidates on the part of the voters. The primary election returns seem to justify the statement that "in counties where a contestant's name appeared first on the ballot he invariably carried that county. If Carroll headed the list the Carroll voters voted almost in all cases for the head of the list for every other office, imagining they were Carroll men or vice versa." "Which is our side?" is said to have been the anxious inquiry of many a voter who had failed to acquaint himself with the candidates for nomination.

In the last two primary campaigns the issue between the two factions of the Republican party was clearly drawn on the endorsement of the administration of President Taft. The endorsement of the President meant the

condemnation of the Insurgent Senators who had opposed the administration policy, declared the Progressives. The Standpatters succeeded in nominating their candidate for Governor in 1910, and they undoubtedly determined the nominations in 1912. In 1910 the result was a personal victory for the Republican candidate, but an empty honor as far as the Standpatters were concerned; for the State convention held in accordance with the provisions of the primary law was Progressive by a large majority, and the Insurgent Senators made the chief speeches and wrote the platform.

Some people attribute these inconsistent results to unintelligent voting; but the *Des Moines Capital* has offered another explanation. It declares that in the primary of 1910 candidates for offices for which there were no contests received continuing smaller votes, according to their position on the ticket. For instance, the candidate for Lieutenant Governor received more votes in most counties than did the candidate for Secretary of State whose name followed on the ballot. The next office down the list as printed on the ballot was that of State Auditor, and he received less votes generally than did the Secretary of State. The State Treasurer followed the State Auditor, and his vote was less than that which the State Auditor received. Thus, the facts seem to indicate that the voters in many instances, having voted for candidates where there was a contest, quit marking before they reached the end of the ballot.

#### THE LONG BALLOT

While the facts (see table on page 34 above) seem to substantiate in a measure the contention of the *Des Moines Capital*, the results are, in the opinion of the

writer, not so much due to a lack of intelligence or indifference as to the inordinate length of the ballot. Students of government have become thoroughly convinced that the ballot should be materially shortened in order that the voter may be able to thoroughly acquaint himself with the qualifications of the more important and policy-determining officers. It is the complaint of even the most intelligent voters that they are bewildered by long lists of names on the party ballot. Candidacy for the minor offices is to-day scarcely more than a lottery.

Immediately after the primary election of 1910 the *Dubuque Telegraph-Herald* declared that the Short Ballot must be adopted to make the direct primary a success. And on the day following the primary of 1912 the *Register and Leader* editorially demanded that the primary law be supplemented by the Short Ballot, saying in part:

It is likely that in the end the only way to make it possible for the right sort of men to present themselves for the minor offices will be to take the minor offices off the ballot entirely.

Why should the people elect a supreme court reporter? Nobody can give an intelligent reason. At the general election he is taken as part of the party ticket and voted for in the general faith that the party nominee must be a proper man. In the old convention he was nominated as part of the general frame-up of the convention. But at the primary before which he must make his own individual campaign, and where he must be voted for on the individual information of the voter, he cannot even at great expense attract general attention, and the polling booth becomes a mere lottery. . . .

On the ballot yesterday in Des Moines there were the names of twenty-three candidates for the office of constable. Not one voter in ten knew anything of the qualifications of any one of the twenty-three men. There is no reason why constables should be nominated and elected. But why not go farther? There is no reason why there should be such an officer as constable.

The legislature will be called upon at the coming session to make radical changes in the primary election law. It will be a good time to go to the root of the matter and put our state and county business on a business basis. We must have a shorter ballot in order to act intelligently at the primaries. A shorter ballot will work for business efficiency in every branch of the government.

It is safe to say that, if the Short Ballot is adopted in connection with the primary law, many of the present criticisms of the primary will disappear.

#### THE PRIMARY A MENACE TO PARTY

It has been frequently urged that the primary tends to destroy the integrity of parties. This same argument was raised against the adoption of the Australian ballot, and later against the proposition to take the party circle off the Australian ballot in Iowa. That these changes have promoted greater independence in voting can not be denied; but that they have given a more wholesome tone to elections is equally evident. No one would now seriously advocate returning to the old system of the unregulated ballot. In fact, there is a growing demand for the adoption of the original Australian ballot with its office grouping instead of the party column. It must be admitted that all of these changes tend to minimize the party influence. The so-called open primary has been especially assailed because it permits the voter without any test of party affiliation to vote for the candidates of either party so long as he does not vote both tickets at the same time. It is objected, further, that without some test of affiliation party responsibility ceases.

Iowa has adopted the non-partisan primary for cities operating under the Des Moines plan. Perhaps the fu-

ture will see an extension of this system to all primary elections. Indeed, Professor Jesse Macy has gone so far as to say that it may seriously be questioned whether the continuance of what is now known as party government is desirable. Professor C. E. Merriam is also of the opinion that "the system of party enrollment or registration seems to lay undue stress on the rigidity of party organization, although this may be to some extent offset by liberal provision for supplementary enrollment or change of party registration".

Perhaps the solution lies in the adoption of the second choice plan as an addition to the present system. This would seem to make the Iowa primary law more satisfactory — more especially since the present thirty-five per cent rule frequently breaks down when there are several equally strong candidates.

#### THE COST OF THE PRIMARY

The cost of candidacy under the Iowa primary law has been very generally criticised. The *Dubuque Telegraph-Herald*, a Democratic paper, has demanded a stringent statutory regulation of expenditures by candidates, asserting that as much as \$2,000 had been spent in a single county by a contestant. A poor man, it is declared, can not afford to go into a primary contest with a man of means. The *Washington Democrat* laments that it cost \$1,500 to determine which of two candidates should be nominated for sheriff, and that places on the Board of Supervisors involved expenditures of money far in excess of the salary attached. "The man with the largest purse", says the *Waterloo Times-Tribune*, "is most likely to get up the most enthusiasm and get most of the votes at the polls." "Judge Prouty", says the

*Story City Herald*, "spent \$5,000 in his primary campaign for the congressional nomination." The *Charles City Intelligencer* remarks that "the recent primary campaign cost Lafe Young, candidate for Senator, nearly \$10,000."

The expense of the primary to the State is also criticised. The *Des Moines Daily Capital* asserts that the primary election costs ninety-six cents per ballot in Scott County. One dollar per ballot is frequently asserted to be the cost of the primary to the taxpayers of Iowa. "The present primary law", says the *Anita Tribune*, "is an expensive luxury which could be easily denied the people as a whole, and would be a saving of not less than a quarter million of dollars to the tax-payers of the State during each biennial period."

A Congressman from Iowa informed the writer that he had found it necessary to run a twenty dollar political advertisement in each of the seventy newspapers in his district. It is generally conceded then that primary campaigns as now conducted are more expensive to the candidate than a contest for delegates under the old system. The public, however, can not obtain too much information relative to candidates and issues; and as long as the expenditures for such purpose are not so great as to bar the man of small means the expenditures are probably justified. There is at present no provision in the laws of Iowa limiting the amount which a candidate may expend in a primary campaign. The enactment of a thorough-going corrupt practices act, applicable to primary and final elections alike would no doubt materially lessen the cost of candidacy. Perhaps the system in force in Wisconsin and Oregon, wherein the State issues a publicity pamphlet giving a certain amount of space to the claims of candidates, is the ultimate solution of the problem.



## THE PERSISTENCE OF THE CAUCUS

That the primary has not always brought out as many candidates as might be expected is due no doubt in part to the pre-primary caucuses which are generally held in secret. In these "parlor" or "office" caucuses the party leaders determine who are to be the party's representatives on the primary ballot. Thus contests within the party are frequently eliminated from the primary. In the primary campaign of 1912 there were but three contests out of ten State offices to be filled on the Democratic ticket. At the same time it should be observed that the persistence of the caucus is not conclusive evidence of the failure of the primary, since these caucus slates are easily broken and the authority of the bosses overthrown by simply complying with the provisions of the primary law.

## THE TIME OF HOLDING THE PRIMARY

The date of holding the primary (the first Monday in June) has been criticised as one of the most unfortunate features of the Iowa law. In the first place, it is contended that the date is too long before the election, entailing the needless expense of a long campaign; and in the second place, it comes at a time of the year when it is most difficult for the farmers to leave their work. Public interest demands that campaigns be brief. Accordingly, provisions which would fix the date of the primary about six or eight weeks before the general election would seem to be adequate for all purposes of public discussion.

## SOME GENERAL OBSERVATIONS

The Iowa primary law has perhaps been criticised too much from the standpoint of "political" results: whereas it should be judged rather from the viewpoint of the

opportunity which it presents. The old convention method was open to as much criticism and more abuse than the primary. The new system has not as a matter of fact destroyed the party, although it has overthrown some of the old party practices. The primary law is not perfect: it will require considerable revision and amendment before it will be entirely satisfactory. Moreover, it must be remembered that the enactment of the primary law was bitterly opposed, so that many of its provisions represent compromises.

Since there seems to be no turning back from the principle of direct primary nomination, where it has once been established, it would appear to be the task of future General Assemblies in this State to expand and strengthen the primary election law in the light both of local experience and of the advanced legislation of other States. A number of States have already adopted the presidential preference primary, and have successfully tested it in the campaign of 1912. The enactment of such a law in Iowa will no doubt be seriously considered by the Thirty-fifth General Assembly. Again, it will be remembered that the Oregon plan of electing United States Senators was passed by the Thirty-fourth General Assembly, but was defeated by the Governor's veto on constitutional grounds. Since, however, the constitutionality of a similar measure, based upon the Oregon plan and enacted by Minnesota in 1911, has not been questioned, efforts will doubtless be renewed to secure the adoption of this principle at the regular session of the Thirty-fifth General Assembly in 1913.

The writer has attempted to summarize in the concluding chapter of this paper the general consensus of expert opinion as to the existing standards of pri-

mary legislation — standards which should be considered from the viewpoint of political science and of popular government, regardless of the effects of their adoption upon the fortunes of a particular individual or upon the immediate success or failure of a particular party.

## V

### STANDARDS OF PRIMARY REGULATION

THE history of primary elections in Iowa, and in other jurisdictions as well, when interrogated from the viewpoint of political science, suggests certain well defined standards of regulation. These may be summarized briefly in terms of the following propositions:—

*First.* The methods of nominating candidates for elective offices should be defined and regulated by law. In a democracy the function of nominating candidates for office is so vital that it may not safely be left to the customary orderings of voluntary, extra-legal organizations.

*Second.* The regulated primary should be State-wide and applicable to all elective offices, including those of the judiciary. Limited primaries are but temporary expedients. Moreover, there is a growing conviction that the primary would produce as good, if not better, results in the selection of candidates for judicial offices as are obtained through the convention system. It may be added that the presidential preference primary falls within the principles of primary regulation, and that, pending the adoption of the proposed constitutional amendment providing for their election by the people, the Oregon plan of selecting United States Senators at the State primary might well be adopted.

*Third.* There is a tendency in primary regulation to depart from the strictly closed or partisan primary, re-

quiring a severe test of party allegiance, in favor of an open primary. Moreover, the open primary tends to the non-partisan primary, which in Iowa has already been made a feature of commission governed cities.

*Fourth.* The adoption of the "short ballot" would be a recognition of a principle which is demanded both by sound political science and by universal political experience. Indeed, the adoption of a "short ballot" for primary and general elections is regarded as one of the most effective means of carrying out the spirit of modern democracy.

*Fifth.* The primary ballot should be prepared and authenticated by public officials; and the names of candidates should be rotated on the ballots according to a system — thus avoiding the fortuitous advantages of the fixed alphabetical arrangement.

*Sixth.* The primary election should be equipped with the same election machinery as may be provided for the general elections. That is to say, primary elections should be held in the same manner as are general elections.

*Seventh.* Simple pluralities, or some percentage less than a majority, should be regarded as sufficient in primary elections. Theoretically there is much to be said in favor of a system of second choices; but such a system would seem to require a campaign of education to acquaint the voter with its intelligent operation.

*Eighth.* Primary elections should be held not more than six or eight weeks before the final election. Long campaigns entail needless expense.

*Ninth.* The purity of primary elections should be protected by a comprehensive corrupt practices act. Indeed, legislation defining corrupt and illegal practices

and limiting the costs of candidacy are as necessary in the case of the primary as in the final election. (See Peterson's history of *Corrupt Practices Legislation in Iowa* in the *Iowa Applied History Series*.)

*Tenth.* Difficulties growing out of combining the convention system with the primary system for platform purposes suggest that a candidates' convention be substituted for the delegate convention — especially since it will devolve upon the successful candidates to carry out their own declaration of principles.

**CORRUPT PRACTICES LEGISLATION  
IN IOWA**





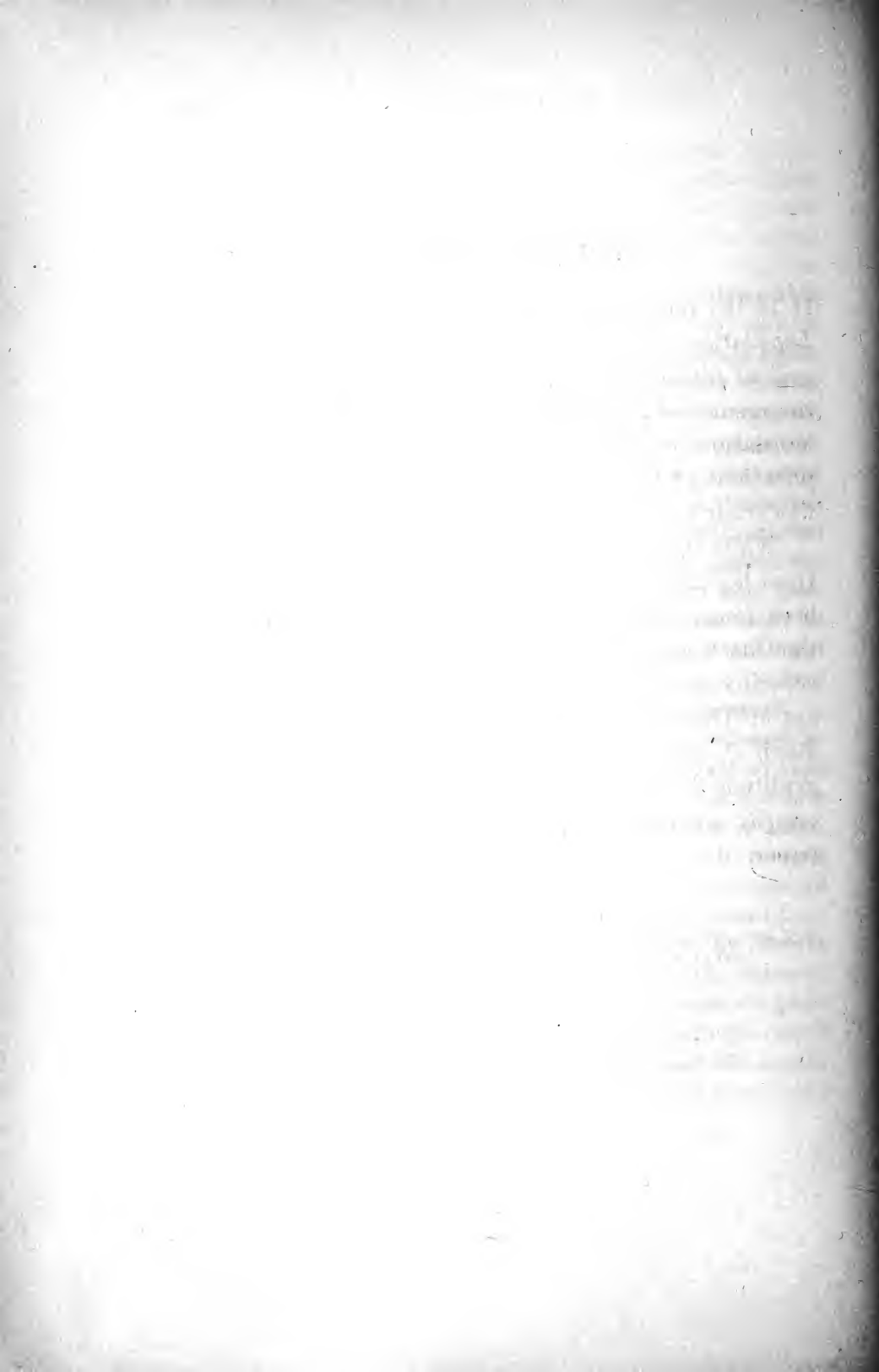
## AUTHOR'S PREFACE

It is the purpose of this paper on *Corrupt Practices Legislation in Iowa* to treat the subject comparatively as well as historically. Accordingly, a chapter embodying the results of a comparative study of corrupt practices legislation in other jurisdictions is included. Some applications of the results of this historical and comparative study are made in the final chapter.

While the materials of this paper are drawn largely from legislative sources, current political literature has been found useful. To Mr. Dwight Akers, Secretary of the City Club of Chicago, I am indebted for assistance in securing newspaper material. And to the Superintendent of The State Historical Society of Iowa, Professor Benj. F. Shambaugh, I especially wish to express my gratitude for invaluable suggestions and criticisms generously given at every stage of the preparation of the paper.

HENRY J. PETERSON

THE IOWA STATE TEACHERS' COLLEGE  
CEDAR FALLS 1912



## GENERAL INTRODUCTION

THE value of the ballot has not always been appreciated by the voter. Indeed, there are not a few citizens who still fail to realize the fact that the privilege of choosing men to public office was gained only after centuries of struggle. Some have been willing to sell the privilege of voting for a consideration. Others, feeling a dependence upon their employers for a means of livelihood, have been too easily influenced in casting their ballots. Moreover, certain individuals and organizations, fully aware of the advantage of having public offices filled by persons whom they may control, have not been slow to take advantage of these conditions. Thus, as everyone knows, there has been much corruption and no little intimidation in connection with elections.

To remedy these evils there has developed a species of legislation known as "corrupt practices acts", which may be taken to include all laws directed against conduct which in practice or design tends to hinder or improperly influence an elector in the exercise of his right of franchise so that his judgment is perverted or he fails to cast his vote in accordance with his real desire.

In early Iowa conditions were not favorable to the growth of corrupt practices. Offices were neither numerous, nor lucrative, nor specially attractive. There were no well organized special interests to seek favors from officeholders. Consequently there was little occasion for the improper influencing of voters, and the provisions of law relative to corrupt practices were brief

and fragmentary. But with the development of the country, the coming of railroads, the organization of municipal utilities, the building of factories, and the opening of mines conditions changed. Here as elsewhere the well organized industrial interests desired special favors in connection with the making and administration of law.

Since the year 1890 corrupt practices legislation in the United States has been aimed primarily at the control of the use of money in elections, on the theory that prevention of the commission of election offenses is more important and desirable than provisions for the punishment of such acts after they have been committed. Legislation along these lines includes (1) acts restricting campaign contributions as to source, amount, or the agency for raising funds, with corresponding restrictions on campaign expenditures, (2) laws requiring the publicity of campaign funds, and (3) statutes providing for State aid in conducting campaigns.

It appears that New York was the pioneer State in this kind of legislation, having enacted in 1890 a statute providing for the publicity of campaign contributions and expenditures. It was not, however, until 1907 that a similar law was passed by the General Assembly of Iowa. Moreover, a beginning has been made in Iowa in restricting the political activities of officeholders and public employees: Iowa prohibits campaign contributions by corporations and certain public officers and employees and forbids the employment of paid political workers on election day. But Iowa has no legislation restricting the amount which may be raised or expended. Nor are there any provisions for State aid to parties or candidates in conducting the campaign.

The need and importance of corrupt practices legislation are coming to be much more generally recognized throughout the United States, and corrupt practices acts are becoming correspondingly more numerous, more comprehensive, and more specific. Regarding the effect of the unrestricted use of money in elections, Governor Stokes in his message to the New Jersey legislature in 1906 says that "the elimination of money as a controlling factor in our elections is necessary to an honest expression of public opinion. The rich man should not be permitted, on account of his riches, to have an advantage over the man of small means in a contest for official preferment. Capacity, not wealth, manhood, rather than money, should be the test of fitness. Legislation can do something to this end."<sup>1</sup> Mr. Alton B. Parker clearly points out the effect of political corruption on the electorate — which after all is the important thing to consider. "There is, however", he says, "something worse if possible than the escape of such offenders [corporations or their agents active in politics] from justice. It is the gradual demoralization of voters and the dulling of the public conscience caused by the efforts to make these vast sums of money procure the ballots they were intended to procure, corruptly and otherwise".<sup>2</sup> Finally, Lord John Russell briefly sums up the effect of controlled elections upon the government as well as upon the electorate by saying that "there are no defects in the distribution of the franchise, however unjust, which are so destructive of public virtue or the credit of our representative system as these acts of bribery and corruption".<sup>3</sup>

On the other hand, those who lack confidence in the efficacy of corrupt practices legislation declare that while many of the laws against election offenses are altogether

admirable as to purpose, their enforcement has thus far been almost a complete failure. With the elections largely under the control of political parties — all of which are at times guilty of more or less corruption — with prosecuting officers often themselves beneficiaries of corruption or bound by loyalty to the party, and with courts inclined to give persons accused of election offenses the benefit of every doubt, it is said that there is no adequate agency to compel the observance of the laws. Moreover, it is pointed out that there is lacking a strong public opposition to election offenses. Too often the average party voter seems to hold that the end justifies the means, and so he is inclined to excuse any act which brings triumph to his party. Again, it is observed that if a defeated candidate contests the election he becomes unpopular and is scorned as being a “poor loser”.

While it is true that corrupt practices acts have been difficult of enforcement and public opinion has not yet been fully aroused to the importance of uninfluenced elections, nevertheless corrupt practices legislation has had beneficial results. By means of laws passed during recent years — preventive rather than punitive — temptations have been removed. Furthermore, the value of a law is not measured by the number of cases successfully prosecuted under it, but rather by its success in removing evil conditions. The average citizen is not a law breaker; and so the prevalence of corruption is always greatly diminished by a clear statutory definition of corrupt practices. As suggested, the method of procedure in cases of corrupt practices has been one of the serious handicaps in the application of corrupt practices acts. With changes in procedure, such as have been adopted in Wisconsin, it is possible for public spirited men to take

a hand in the enforcement of the law and thus arouse public sentiment against political corruption. Moreover, that public opinion is being aroused to the need of corrupt practices legislation and the enforcement of such laws may be inferred from the public indignation against Lorimer and those Senators who voted in favor of his admission to the United States Senate.

# I

## HISTORY OF CORRUPT PRACTICES LEGISLATION IN IOWA

### THE MICHIGAN ACT OF 1827

FOR the historical precursors of corrupt practices legislation in Iowa one must turn to the statute laws of the Territory of Michigan and of the original Territory of Wisconsin. An examination of the laws of Michigan reveals the fact that as early as 1820 reference was made to corrupt practices in "An Act to regulate the election of a Delegate to the Congress of the United States of America", two sections of which read as follows:

Section 17. *And be it enacted*, That if any person shall be guilty of any disorderly conduct at the election, or during the time of the examination, canvass and enumeration of the ballots, or of using corrupt, sinister, indirect or undue means to influence any elector or electors in giving in his or their ballots, the inspectors, or a majority of those acting at the time, are hereby authorised and required to commit the offender to imprisonment for a space not exceeding thirty days: and all sheriffs, undersheriffs, constables and gaolers are hereby strictly charged and required to aid and obey the inspectors herein.

Section 23. *And be it enacted*, That if any person shall, by bribery, menace or other corrupt means or device whatsoever, directly or indirectly attempt to deter any elector from giving his vote, or to influence him in giving the same, and shall be thereof convicted, such person shall forfeit and pay for every such offence, a sum not exceeding one thousand dollars, to the use



of the territory of Michigan, to be recovered on indictment, or by information, or by action of debt in any court of record.<sup>4</sup>

These two sections seem to overlap or conflict in that both define undue influence and each prescribes a different method of procedure and different punishment. It would appear, however, that Section 17 is directed primarily against disorderly conduct at elections, while Section 23 attempts to prevent the intimidation of voters generally. Moreover, in 1825 the provisions of the act of 1820 were made applicable to elections at which county officials were chosen.<sup>5</sup>

In 1827 the act of 1820 was revised under the title of "An Act to provide for the election of a Delegate in the Congress of the United States." This act, which was approved on April 12th, contains the following provisions in reference to corrupt practices:

Sec. 12. That if any person shall, directly or indirectly, give or promise, any meat, drink, or other reward, with an intention to procure his election, or the election of any favorite candidate, he shall forfeit and pay, for every such offense, a sum not exceeding five hundred dollars: and if any person shall furnish an elector who cannot read, with a ticket, informing him that it contains a name or names different from those which are written or printed therein, with an intent to induce him to vote contrary to his inclination, he shall forfeit and pay a sum not exceeding one hundred dollars: and if any person shall, by bribery or menace, directly or indirectly attempt to deter any elector from giving his vote, and shall be thereof convicted, such person shall forfeit and pay, for every such offense, a sum not exceeding two hundred dollars.<sup>6</sup>

Moreover, by an act approved on April 13, 1827, it was provided that the election of members of the Legislative Council should be held agreeably to the act regulating

the election of Delegates to Congress.<sup>7</sup> Thus, provisions relative to corrupt practices which were first enacted in reference to the election of Delegate to Congress in 1820 and later (1827) revised were extended in 1825 to elections at which county officers were chosen and in 1827 to elections at which members of the Legislative Council were chosen.

In this connection it is important to note that the provisions of the act of April 12, 1827, were in full force when the Iowa country was made a part of the Territory of Michigan in 1834. And so it may be said that the first corrupt practices legislation in Iowa consisted of Section 12 of the Michigan act of 1827, which along with other laws was extended over the Iowa country by virtue of the act of Congress of June 28, 1834,<sup>8</sup> and the act of the Legislative Council of the Michigan Territory of September 6, 1834, providing for the establishment of the original counties of Dubuque and Demoine.<sup>9</sup>

#### TERRITORIAL LEGISLATION 1836-1846

In 1836 the Iowa country was included in the newly established Territory of Wisconsin<sup>10</sup> and under that jurisdiction it remained for two years. It does not appear, however, that the Legislative Assembly of the original Territory of Wisconsin added anything to the corrupt practices provisions already in force, except two clauses in the general election law of January 18, 1838, which read as follows:

And if any elector shall vote more than once at any election held under the authority of this act, he shall be fined in the sum of one hundred dollars, to be recovered by indictment before any court of competent jurisdiction, and the whole of such fine shall

be appropriated to the use of the county in which the offense may have been committed.

And if any person shall vote at any election who is not a qualified voter, he shall forfeit and pay any sum not exceeding fifty dollars nor less than twenty-five, to be recovered in the same manner as other penalties under this act are: *provided however*, that if such person shall have been considered by the judges of the election a legal voter then such person shall not be so fined.<sup>11</sup>

By the act of Congress of June 12, 1838, establishing the independent Territory of Iowa the laws of the original Territory of Wisconsin (including, of course, the laws transmitted from the Michigan Territory) were declared to be in force in the new Territory.<sup>12</sup> Furthermore, it appears that the Legislative Assembly of the Territory of Iowa reenacted, in January, 1839, the general election law which had first been passed by the Wisconsin Assembly in 1838.<sup>13</sup> Thus, the statutory provisions relative to corrupt practices in the Territory of Iowa were at the outset the same as in the original Territory of Wisconsin. Moreover, the act of January 25, 1839, with its two brief references to corrupt practices was included in the *Revised Statutes of 1842-1843*.<sup>14</sup> But under the provisions of the general repeal act of July 30, 1840, it seems that the corrupt practices legislation (Section 12 of the act of 1827) which had been handed down from the Territory of Michigan was lifted from the statute books of Iowa.<sup>15</sup>

#### THE ACT OF 1849

It was not until 1849, nearly three years after Iowa had been admitted into the Union, that the General Assembly passed a distinct corrupt practices act under the

title of "An Act to preserve the purity of elections." Moreover, this act seems to have been in part the result of charges of election frauds on the part of both of the leading political parties in connection with (1) the elections of 1846, 1847, and 1848, (2) the attempts to bribe a member of the General Assembly in connection with the election of United States Senators in 1846, and (3) the deadlock of the General Assembly over the choice of United States Senators in 1846-1848.

In reference to the election of 1846 the *Iowa Capital Reporter*, presenting the Democratic view, says: "Our federal opponents in some parts of the state, chagrined at the idea that the thousands of dollars lavished by the eastern lords of the loom and spindle, through the Whig committee at Washington, have failed to throw the entire political control of Iowa into their hands, have so forgotten their obligations as men and citizens of a republic, as to menace us with a refusal of the Whig House to go into an election of United States Senators. This is in character with those political desperadoes who shamelessly *boast* of purchasing freemen at the polls like cattle in the shambles."<sup>16</sup> Whereupon the *Bloomington Herald* sarcastically replied that the *Reporter* put too low an estimate on the Whigs when it judged them by the example set by practical Locofocoism. "There could be no slander", it declared, "so severe on the *rank and file* of the Locofoco party as the *fear* expressed by the Reporter and its kindred spirits, in supposing that those who vote their ticket can be *bought*.— Think of this ye hardhanded rank and file! The leaders of your party say, shamefully *say*, that the Whigs have succeeded thus far in this state by *bribery*, and corruption! Now we ask you, in all seriousness, who among you have been bought with the

'gold of eastern manufacturers?' If any, come out and say so. We cannot believe it. We will not believe that you are as worthless as the *Reporter* charges. What is the condition of that press, that charges its own partizans with being bought? Reflect."<sup>17</sup>

The *Capital Reporter* answered the suggestions of the *Herald* by raising two questions: "*first*; whether it [the *Herald*] denies the charge that a considerable sum of money was sent into Johnson County by the Whigs, for the purpose of operating upon the election; *secondly*, whether it denies, and asks for the proof of the charge, that direct offers of bribery were made by one of the Whig candidates in this district."<sup>18</sup> The *Herald* in reply further emphasized the low estimate the *Reporter* had of its own party members in suggesting that they might be bribed. "The Reporter is very angry with us", it says, "because we drew a plain and natural inference from its remarks upon this subject of 'bribery.' It stated in substance, that the Whigs had succeeded in obtaining all that they had, in the late election, by pipe-laying, bribery, hog-driving, etc. Now in the name of common sense, if there was any 'bribery' done, who was bribed? Certainly not the Whigs — they were right anyhow, and if any one was bribed it must have been some of the Reporter's, heretofore, political friends."<sup>19</sup>

Again in the election of 1847 there were charges of the corruption of the electorate. The *Iowa Standard*, commenting on the Democratic victory, finds that "Some of our brother editors are endeavoring to account for our defeat, in a well grounded apprehension that there has been foul play; such as 'hog driving', 'pipe laying', etc. This is very probable.— We say to our friends, never despair.— Try it again. 'Better luck next time'.—'Truth

is mighty and will prevail' sooner or later. Don't waste time and words about 'illegal votes', 'importations', etc. Bow to the will of the *apparent* majority for the time being, like good Whigs, and acknowledge that the majority is against us.'<sup>20</sup>

The election contest brought by Daniel F. Miller questioning the right of William Thompson to a seat in Congress from the first congressional district was, perhaps, an additional influence in bringing about general legislation against corrupt practices.<sup>21</sup> This contest grew out of the election of 1848 and was based on the charge that the election officials had rejected legal votes as being illegal and at the same time counted illegal votes. Moreover, the Whig platform for 1848 calls attention to the alleged political corruption of the time, declaring that "under cover of an assumed love of law and order, it [the Democratic party] has undertaken and cast from office a citizen chosen by a large majority of the popular vote, while, at the same time, it is represented in Congress by men elected without the shadow of laws".<sup>22</sup>

The need of corrupt practices legislation was further emphasized by the charges made by Nelson King, the Representative from Keokuk County, during the session of the First General Assembly. King declared that attempts were made to secure his vote for A. C. Dodge or J. C. Hall as United States Senator.<sup>23</sup> The deadlock of the General Assembly for two years in an effort to select United States Senators was, perhaps, a further factor,<sup>24</sup> since during the first two years of statehood the choice of United States Senators had been the chief issue leading to the charges of electorate and legislative corruption.

Due partly, it would seem, to the causes above given,

the General Assembly in 1849 passed the act entitled "An Act to preserve the purity of elections" which for that time was a rather comprehensive measure. Moreover, this important statute includes several provisions that are not necessarily a part of a general corrupt practices act. Thus, it prescribes the qualifications and disqualifications for voting, the method of challenging persons suspected of being illegal voters, and the oath or affirmation which the challenged voter was required to take before he was permitted to vote, and makes provision that ballots containing misspelled names of candidates were to be counted as the election judges might decide, providing the names on the ballot sounded as spelled. The act also provided for the punishment of election judges who willfully and corruptly violated their duty and of persons found guilty of stuffing the ballot box. The sections particularly defining corrupt practices read as follows:

Sec. 2 [3]. Any person who shall vote more than once at the same election, or who shall vote at any election, knowing himself not qualified thus to vote, shall, upon conviction, be fined not less than one hundred nor more than one thousand dollars, and be imprisoned in the county jail not less than one month, nor more than six months.

Sec. 4. Any person who shall advise, assist, or induce another to vote twice at the same election, or to give his vote knowing him not entitled to do so, shall receive the same punishment as above provided for the principal offender.

Sec. 5. Any person who by bribery shall attempt to influence any elector in giving his vote, or who shall use any threat, to compel such elector to vote contrary to his inclination, or to deter him from giving his vote, or who shall furnish an elector who cannot read, with a ticket informing him that it contains a name or names different from those which are written or printed there-

on, with an intent to induce him to vote contrary to his inclination, or who shall fraudulently or deceitfully change the ballot of any elector by which he shall be caused to vote for a person different from the one intended by such elector, shall, on conviction thereof, be punished in the same manner as is above provided for persons who vote twice at the same election.

Sec. 4 [6]. Any judge of election who shall mark the ballot of an elector for the purpose of ascertaining for whom the elector voted, or open and read the ballot of any elector after it has been given in, and before it shall have been deposited in the ballot box, shall, on conviction thereof, be fined not less than one hundred, nor more than one thousand dollars.

It was further provided that prosecutions under the act were to be conducted by indictment in the district court of the proper county. Moreover, the act repealed only such portions of former statutes as were inconsistent with its provisions.<sup>25</sup>

#### PROVISIONS OF THE CODE OF 1851

The corrupt practices provisions of the *Code of 1851* amplified the legislation of 1849 by giving more complete definitions of bribery, illegal voting, and undue influence and by adding a section to the provisions for guarding against collusion between election officials and persons attempting to commit election frauds.<sup>26</sup> Thus, the provision of the act of 1849 directed against bribery was superseded by the following section:

2691. If any person offer or give a bribe to any elector for the purpose of influencing his vote at any election authorized by law; and if any elector entitled to vote at such election receives such bribe, he shall be punished by fine not exceeding five hundred dollars or imprisoned in the county jail not exceeding one year, or by both fine and imprisonment at the discretion of the court.



Furthermore, it appears that two sections were added to the provisions of the act of 1849 in defining illegal voting. These read as follows:

2694. If any person go or come into any county of this state and vote in such county, not being a resident thereof, he shall be punished by a fine not exceeding two hundred dollars or by imprisonment in the county jail not exceeding one year.

2695. If any person willfully vote who has not been a resident of this state for six months next preceding the election, or who at the time of the election is not twenty-one years of age, or who is not a citizen of the United States, or who is not duly qualified from other disability to vote at the place where and time when the vote is to be given; he shall be fined in a sum not exceeding three hundred dollars or imprisoned in the county jail not exceeding one year.

The definition of undue influence was broadened by including the following sections:

2698. If any person unlawfully and by force, or threats of force, prevent or endeavor to prevent an elector from giving his vote at any public election in this state, he shall be punished by imprisonment in the county jail not exceeding six months and a fine not more than two hundred dollars.

2700. If any person procure or endeavor to procure the vote of any elector or the influence of any person over other electors at any election, for himself or for or against any candidate, by means of violence, threats of violence, or threats of withdrawing custom or dealing in business or trade, or enforcing the payments of debts, or bringing a suit or criminal prosecution, or any other threat of injury to be inflicted by him or by his means, he shall be punished by fine not exceeding five hundred dollars or imprisonment in the county jail not more than one year.

Further precaution was taken to prevent dishonest election officials from making agreements with those

wishing to control elections by incorporating the following section :

2702. When any one who offers to vote at any election is objected to by an elector as a person not possessing the requisite qualifications, if any judge of such election unlawfully permit him to vote without producing proof of such qualification in the manner directed by law, or if any such judge willfully refuse the vote of any person who complies with the requisites prescribed by law to prove his qualifications, he shall be punished by fine not exceeding two hundred dollars nor less than twenty dollars or by imprisonment in the county jail not exceeding six months.

Changes were also made in the penalties prescribed. Indeed, the tendency was to lessen the severity of the punishment by decreasing the amount of the fine and the length of the jail sentence by leaving to the court discretion as to the imposing of a fine or jail sentence and by the omission of a minimum penalty.

#### LEGISLATION FROM 1851 TO 1880

The provisions of the *Code of 1851* relative to corrupt practices were copied literally in the *Revision of 1860*<sup>27</sup> and later in the *Code of 1873*.<sup>28</sup> Indeed, from the time of the adoption of the *Code of 1851* to the year 1880 there was little if any additional legislation against corrupt practices in Iowa. There were, of course, introduced in the General Assembly some corrupt practices bills, which, however, failed of enactment. For instance, in 1858 there was passed by the House of Representatives a bill "to preserve the purity of elections"<sup>29</sup> which was laid on the table in the Senate.<sup>30</sup> In 1868 Mr. H. C. Rippey of the House of Representatives introduced a bill prohibiting betting on elections. The *Journal* records that this bill

was in due time laid on the table.<sup>31</sup> Again in 1872 a bill "to more effectually protect the ballot" was allowed to perish in the hands of the Committee on Elections to which it had been referred.<sup>32</sup>

As a phase of the general agitation against the liquor traffic in Iowa there was introduced by Senator W. A. Maginnis in 1876 a bill "to regulate the sale and gift of spirituous malt and vinous liquors on election day."<sup>33</sup> This bill was referred to the Committee on Suppression of Intemperance, which failed to report it to the Senate. During the following session (1878) the House, by a vote of 67 yeas, 28 nays, with 5 absent or not voting, passed a bill "to prohibit the sale of intoxicating liquors within two miles of cities and towns, and on election days".<sup>34</sup> In the Senate the bill was referred to the Committee on Suppression of Intemperance, upon the recommendation of which it was later referred to the Committee on Judiciary where it was permitted to expire.<sup>35</sup>

During the 1878 session of the General Assembly there was also introduced in the House of Representatives "a bill for an act to preserve the purity of elections." This measure was referred to the Committee on Elections by which it was reported without recommendation. No action appears to have been taken by the House.<sup>36</sup>

Meanwhile the liquor agitation resulted in the passing of a law in 1880 which made liquor treating at or within a mile of the polls on election day a misdemeanor.<sup>37</sup> During the same session there were introduced in the Senate two other bills directed against election offenses: one was "for an act for the prevention of bribery of voters and public officers", which was lost in the Senate on engrossment;<sup>38</sup> the other, which proposed "to amend section 3993 of the *Code of 1873* defining offenses against

the right of suffrage", passed the Senate,<sup>39</sup> but died in the House Committee on Judiciary.<sup>40</sup>

#### LEGISLATION FROM 1880 TO 1897

During the decade from 1880 to 1890 there was little legislation against election offenses, although several corrupt practices bills were introduced in the General Assembly. In 1884 Senator E. J. Gault proposed "a bill for an act to punish bribing and intimidation of voters and to preserve the purity and freedom of elections." The Committee on Elections after amending the bill reported it favorably, but no action seems to have been taken by the Senate.<sup>41</sup> Governor William Larrabee in his inaugural address on January 14, 1886, suggested the need of strengthening the corrupt practices provisions of the law. "The successful attempts to defile the purity of the ballot-box elsewhere", he declared, "already appear to exert their influence in our own State, for indications of illegitimate voting are by no means wanting in our larger cities, and appear to demand a revision of our election laws."<sup>42</sup>

While no action was taken directly on the Governor's recommendation to revise the election law, there was included in the registration act of that year a section which provided for the punishment of persons intimidating or trying to intimidate voters by gathering around the polls, hindering or delaying voters going to or from the polls, or soliciting the vote of any elector or attempting in any way to influence him in casting his vote. By the same act it was also made unlawful for any person who was not an election judge to give or offer to give tickets to anyone within one hundred feet of the polls, or for anyone to display his ballot so as to show how he had voted.<sup>43</sup>

During the same session there was also introduced in the House of Representatives a bill "to further protect the purity of the ballot box" which, however, seems to have failed to come to a vote.<sup>44</sup>

In his inaugural on January 12, 1888, Governor Larabee again emphasized the importance of uninfluenced elections. "The purity of the ballot box", he said, "is the bulwark of our liberties. To defile it, whether by fraud or intimidation, is to strike at the very foundation of republican government."<sup>45</sup> Although no corrupt practices legislation was enacted by the General Assembly at this session, there was proposed in the House of Representatives a bill which seems to have contained provisions regarding election expenses. It passed the House,<sup>46</sup> but did not come to a vote in the Senate.<sup>47</sup>

Upon his election in 1889 Governor Horace Boies expressed a deep interest in securing legislation that would permit the voter freely to cast his ballot according to his own wishes. To bring about this condition the Governor in his first inaugural address, which was submitted on February 27, 1890, favored the secret ballot in these words:—

The duty of the elector is plain: by the most sacred of human obligations he is bound to bring to the aid of the government of which he is a member the weight of his unbiased intelligence upon every political issue his vote helps to determine. And yet in countless ways the State is deprived of that which so justly belongs to it. . . . Self-constituted overseers pursue those who stop to consult their conscience or exercise their reason in the discharge of one of the most important of duties. The strong overcome the weak, employers too often control employes, the rich direct the poor, and all of these rob in a degree the nation and the State of that upon which their safety depends—the

deliberate judgment of those who exercise the almost sacred privilege of the elective franchise. . . . It is a humiliating fact, and yet one that it is criminal negligence to ignore, that some men are corrupt enough to buy, and others base enough to sell, the noblest birthright of an American citizen.

No duty is more plain than that which demands of the legislative department of every government the enactment of laws which shall to the utmost limit of utility surround the ballot-box with safeguards that will banish from all elections the corrupt use of money and secure to the state the unbiased judgment of each elector. This can, as I believe, be most effectually accomplished through statutes which compel the deposit of a secret ballot, the contents of which can never be made known except by him who deposits it, and then without evidence to corroborate his statement. Such laws put it beyond the power of others to criticize the elector's ballot who desires to keep it secret, and compels those disposed to use money corruptly to rely upon the uncorroborated word of men base enough to sell their votes.<sup>48</sup>

In response to the Governor's suggestion, several bills providing for the so-called "Australian ballot" were introduced in the General Assembly, but not one of them came to a final vote.<sup>49</sup>

In his second inaugural, on January 20, 1892, Governor Boies again pointed out the necessity of corrupt practices legislation, restating practically the same arguments for the secret ballot.<sup>50</sup> Petitions from the people also poured in on the General Assembly.<sup>51</sup> Finally, in response to these suggestions the General Assembly passed the general election law which provided for the Australian ballot.<sup>52</sup>

In his first inaugural Governor Boies had called attention to the prevalence of the intimidation of employees by their employers.<sup>53</sup> That such intimidation has been and still is practiced scarcely needs proof by the citation

of specific instances.<sup>54</sup> To eliminate this evil if possible there was included in the election law of 1892 the following provisions:

Sec. 24. Any person entitled to vote at a general election in this state shall, on the day of such election, be entitled to absent himself from any services or employment in which he is then engaged or employed for a period of two hours, between the time of opening and closing the polls, and such voter shall not, because of so absenting himself, be liable to any penalty, or shall any deduction be made on account of such absence from his usual salary or wages; provided, however, that application for such leave of absence shall be made prior to the day of election. The employer may specify the hours during which said employe may absent himself as aforesaid. Any person or corporation who shall refuse to an employe the privilege hereby conferred, or shall subject an employe to a penalty or deduction of wages because of the exercise of such privilege, or who shall in any manner attempt to influence or control such voter as to how he shall vote, by offering any reward or threatening his discharge from employment, or otherwise intimidating him from a full and free exercise of his right to vote, or shall, directly or indirectly, violate the provisions of this section, shall be deemed guilty of a misdemeanor, and be fined in any sum not less than five dollars (\$5) or more than one hundred dollars (\$100).<sup>55</sup>

The act of 1892 also contained various provisions similar to those found in the act of 1886 guarding against the intimidation of voters and against attempts to nullify the secrecy of the ballot. The law made it illegal to electioneer or solicit votes on election day within any polling place, or within one hundred feet of the polling place; to interrupt, hinder or oppose a voter while approaching the polls; to interfere or attempt to interfere when the voter was within the voting booth or when marking his ballot; or to endeavor to induce a voter, be-

fore voting, to show how he intended to mark or had marked his ballot, and to willfully hinder the voting of others. Moreover, to further protect the secrecy of the ballot the act contained provisions making it unlawful for anyone purposely to expose or place identification marks on his ballot, or to make a false statement as to his inability to mark his ballot.

It was during the 1892 session that Mr. C. H. Robinson introduced in the House of Representatives "a bill for an act to prevent and punish improper use of money at elections." The bill passed the House by a vote of 78 yeas, 2 nays, with 20 absent or not voting.<sup>56</sup> In the Senate, however, the bill was not reported by the committee to which it had been referred.<sup>57</sup> In 1894 Mr. Robinson introduced a similar bill; and again his measure was passed by the House.<sup>58</sup> It was then taken up in the Senate and passed without a dissenting vote.<sup>59</sup> Thus was enacted the first legislation in Iowa to restrict the purposes for which money may be used in an election. The act makes the paying for political work for a candidate, for a political party, or for any measure on election day, or the receiving of pay for such work, a misdemeanor. Contracts made for the conveyance of voters to the polls are, however, specifically exempted. The same act also declares unlawful agreements to pay or receive remuneration for refraining from voting or advising others to refrain from voting.<sup>60</sup>

The chapter of the *Code of 1897* "On Offenses Against the Right of Suffrage"<sup>61</sup> includes the provisions of the *Code of 1851*<sup>62</sup> and of the act of 1894 for the prevention and punishment of the improper use of money at elections;<sup>63</sup> while the provisions against corrupt practices found in the general election law of the *Code of 1897*<sup>64</sup>



are very similar to those of the general election law enacted in 1892.<sup>65</sup> The *Code of 1897* also includes provisions prohibiting the keeping of saloons open on election day<sup>66</sup> and betting on election results.<sup>67</sup>

#### RECENT LEGISLATION 1897 TO 1912

In 1898 Senator Junkin proposed a bill defining corrupt practices in elections and providing penalties for its violation, upon which, nevertheless, no action seems to have been taken.<sup>68</sup> There was, however, incorporated in an act passed by the Twenty-seventh General Assembly, creating the Board of Control of State Institutions, a section prohibiting political activity or political contributions on the part of members of the Board or any officer or employee of an institution under the control of the Board.<sup>69</sup>

In 1902 Mr. William G. Kerr introduced in the House of Representatives a rather comprehensive but somewhat loosely drawn measure directed against corrupt practices.<sup>70</sup> This bill placed a limitation on political contributions and expenditures by candidates for the United States House of Representatives, by candidates for State elective offices, or by other persons in their behalf. The amount of the contribution or expenditure permitted was graduated according to the number of votes cast for the office. To secure his nomination or election, or both, the candidate or others working for him might contribute or expend in a district having not more than 5000 voters a sum not to exceed \$100; for each 100 voters over 5000 and under 25,000, \$1.50; and for each 100 voters over 25,000 and under 50,000, \$1.00. Contributions or expenditures in excess of these sums voided the election of the person making it.

The Kerr bill also provided that a candidate should file a sworn itemized statement of contributions and expenditures for his nomination or election within fifteen days after the primary or election with the clerk of the county in which he resided and a duplicate with the board or officer issuing his certificate of election. Failure to observe this provision was to be punished by a fine not to exceed \$1,000. Furthermore, the certificate of election was not to be issued, salary paid, or permission given to any person to enter upon the duties of the office to which he had been elected until the provisions of the law had been complied with.

A political committee was defined as "every two or more persons who shall be elected, appointed or associated for the purpose, wholly or in part, of directing the raising, collection or disbursement of money, and every two or more persons who shall cooperate in the raising, collection or disbursement of money used or to be used to further or defeat the nomination or election of any person or any class or number of persons to public office by popular vote, or to further or defeat any measure or proposition submitted to popular vote". Every political committee was required to choose a treasurer before being permitted to receive or expend money for political purposes.

All money collected or expended by a political committee or a member of the committee must first pass through the hands of the treasurer, who was required to keep a detailed account of money received or expended. All other persons receiving or expending more than twenty dollars for political purposes, unless received from or paid to the treasurer of the committee, were also required to keep itemized accounts of receipts and ex-

penditures. These statements were to be filed within twenty days after the primary, convention, or election in the office of the clerk of the county in which the treasurer lived. Any one receiving money or other thing of value from a political committee to expend for it was required to file a statement with the treasurer within eight days after the primary, convention, or election.

Moreover, according to the provisions of the Kerr bill no claim against a candidate or political committee might be paid unless presented for payment within eight days after the primary, convention, or election, unless the district court on investigation decided there was good reason for the delay. An additional statement must then be filed by the treasurer, unless such item had already been included in the statement filed. Violation of these provisions of the bill by the treasurer, political committee, or other person required to keep accounts, constituted a misdemeanor. The filed statements or duplicates were to be kept for four years, and the total receipts and expenditures published in two newspapers of opposite political parties in the county in which the nominated or elected person resided.

At any time during the term of an elective officer (except members of the General Assembly or of Congress) any elector might present a written application, verified by his affidavit, to the Attorney General pointing out some violation of the provisions of the proposed law or some other law by such officer, his agent, or political committee, or agent of such committee of the party of which the officer was the nominee, to secure his nomination or election. On the ground of this violation the elector might then request the Attorney General to bring action against the officer for his removal. The applicant

was required to put up a bond of \$1,000 as a guarantee of good faith.

Within ten days of the filing of the application and bond it was the duty of the Attorney General to bring action or order the county attorney of the proper county to bring action against the person accused. The county attorney, if so ordered, was required to bring action within ten days after being notified by the Attorney General. If the Attorney General or county attorney failed to take action the applicant was given power to bring action, but at his own expense. Such cases were to be given preference over all other civil actions on the docket of any court of the State in which the suit was brought. If the charges against the officeholder were sustained, the election was voided, the vacancy filled as directed by law, and the defendant obliged to pay the costs. If the charges were not sustained, the plaintiff had to pay the costs. Testifying in such cases was made compulsory, but witnesses were granted immunity. The election of a member of the General Assembly might also be contested by any elector, but the contest was to be decided as prescribed by law then in force.

This bill, which is by far the most complete corrupt practices legislation thus far proposed in the General Assembly of Iowa, was on motion of Mr. Kerr himself dropped from the calendar.<sup>71</sup>

Several bills had been introduced during previous sessions of the General Assembly providing for primaries. It was under the leadership and at the suggestion of Governor Cummins that the first primary law was enacted. In his message to the Thirtieth General Assembly primary legislation and the inclusion in such legislation of penalties for fraud, intimidation, and bribery were

recommended.<sup>72</sup> Responding to this suggestion the legislature passed an act providing for primaries in counties having a population of 75,000 or more. This act declares the offering, giving, or receiving of bribes, illegal voting, or aiding illegal voters, to be offenses against the primary. To agree to perform any service in the interest of any candidate in the primary for pay or to receive pay for work done are also made unlawful. Conveyance of voters to the polls for a reasonable remuneration, however, is permitted.<sup>73</sup>

During the 1904 session of the General Assembly various other bills directed against corrupt practices were introduced in the House of Representatives, but none of them were placed on the statute books. Mr. J. F. Lundt proposed a bill making it a misdemeanor for a candidate directly or indirectly to use or distribute money to buy cigars, beer, or whiskey to secure votes. As a penalty the bill provided for the revoking of the offender's candidacy, depriving him of his right to vote at the following election, and for imposing a fine.<sup>74</sup>

Early in the same session Mr. L. D. Teter introduced a bill directed against election offenses,<sup>75</sup> but later withdrew it and incorporated its provisions in a more comprehensive measure. This more complete bill prohibited during a primary or election campaign the use of liquor, cigars, refreshments, money, railroad passes, or "anything of value whatsoever" to influence voters, and provided for the filing of statements of campaign expenditures by the candidates in primaries or elections with the auditor of the county in which the candidate lived. These statements were to include money spent by or for the candidate and the assessment of his political party. It contained the further proviso that political

assessments were permissible if the money was used for paying the expenses of holding political meetings. The amount of money which a candidate might be assessed by the political organization was fixed in the same manner as the limitation on a candidate's total expenditures in the Kerr bill of 1902. As a penalty for the violation of its provisions by a candidate the bill provided for the voiding of his nomination or election. One-half of the fines collected through violations were to be paid to the informant in each case.<sup>76</sup>

Another bill introduced in 1904 had, it would seem, a two-fold object in view: to compel careless electors to come out and vote; and to strengthen the law of 1894 directed against corrupt agreements to refrain from voting. This bill made failure to vote on the part of an elector who was physically able a misdemeanor and barred the offender from exercising his right to the franchise for two consecutive elections.<sup>77</sup>

Not discouraged by the failure of his earlier measure, Mr. Teter introduced in the House during the next session (1906) a bill containing the same provisions regarding the publicity of campaign expenditures and the limitation as to the amount of political assessment of candidates. It added, however, a provision permitting payment for the conveyance of voters to the polls out of money raised through the assessment of candidates.<sup>78</sup> Two similar measures were also proposed by Mr. J. I. Nichols. One provided for the publicity of campaign contributions and expenditures on the part of political officials handling campaign funds.<sup>79</sup> This bill was later withdrawn.<sup>80</sup> The other bill made it a misdemeanor for political officials conducting a campaign to spend campaign funds for intoxicating liquor.<sup>81</sup> This bill was in-

definitely postponed on the recommendation of the Committee on Judiciary.<sup>82</sup>

In the meantime the New York insurance scandal and the publication of the Harriman-Roosevelt correspondence had called the attention of the people throughout the country to the political activity of corporations and to the necessity of ousting them from politics. As a means to this end laws were passed in various States restricting or prohibiting corporation contributions to campaign funds, as well as legislation requiring publicity of political contributions and expenditures. This nationwide agitation directed the attention of the people of Iowa to their own political condition. Here the railroads had been especially active in politics — a fact that is well brought out by Governor Cummins in his message to the General Assembly in 1906. "In this state", the Governor asserted, "the railway companies are the political corporations, and while they have not introduced here all the methods which have been observed elsewhere, it is manifest that they have intended to direct the course of the state, and that they still intend to direct it if it be within their power."<sup>83</sup>

The situation as regards railroad domination in Iowa politics was further indicated by Mr. Leon Brown in the *Register and Leader* in discussing the reason for passing the bill prohibiting corporation contributions to campaign funds. "It was the demand of the people", he writes, "that the railroads get out of politics in this state that gave birth to primary agitation and it was their persistent and intolerable participation in the effort to control politics through conventions that invited the Peterson bill to prohibit them from financing campaigns again in Iowa."<sup>84</sup> The same paper says:

Divorcement of politics and corporations has been made as complete as human-made law makes possible. The Peterson bill to prohibit corporations from contributing to campaign funds of political parties and to the campaigns of candidates for office both before the primary and the general election, supplements the primary bill. Not again, it is thought, will Iowa see the spectacle of railroad corporations financing a campaign to defeat for nomination and for election a man devoted to the mission of securing legislation in restriction of corporations. Never again will the railroads spend \$250,000 to defeat a single candidate for office in Iowa.<sup>85</sup>

That the people of the State were becoming aroused over the situation is evidenced by the platforms of the two leading political parties in 1906. The Republican platform adopted at the State convention, which was held on August 1st, declared that "we are unalterably opposed to the domination of corporate influences in public affairs. We favor the enactment of stringent statutes, to purge the politics of our state and nation from the corrupting influences of corporate power. And we pledge ourselves to the enactment of such laws as will render it unprofitable and unpopular for corporations to engage in politics or in any way contribute to political campaigns."<sup>86</sup> The Democratic platform adopted at the State convention, which was held at Waterloo on August 7th, contained a similar plank. "We believe", it is asserted, "the politics of our state should be unhampered by the influence of corporate power and are in favor of stringent laws punishing all corporations or persons representing them who contribute campaign funds to any political organization."<sup>87</sup>

Governor Cummins, elected on an anti-corporation platform, also gave expression to the popular protest in



his message to the General Assembly which met on January 14, 1907; and he recommended legislation to remedy the condition.

That it has become a custom with corporations of various kinds to make contributions to accomplish or defeat the nomination of candidates for public office, and to assist in the election of candidates for public office, is so well known and has been so completely established that I need not pause to prove its existence. There are many reasons, of the weightiest character, which demand an immediate prohibition against such misuse of corporate funds, coupled with a penalty of imprisonment for the violation of the law: First, the growing tendency to use money in political campaigns is subversive of the fundamental principles of good government, for it not only destroys purity of motive, but it overthrows the safety which is always found in individual and independent action. Second, it is a plain theft from every stockholder who does not give his assent to the contribution, and the misappropriation is peculiarly obnoxious because it oftentimes puts the money of a stockholder at work for a candidate whose success the stockholder does not desire. Third, the practice gives to the corporation an influence in public affairs simply because of the money contributed — an influence which is necessarily both selfish and vicious. Corporations should, of their own motion, vigorously exclude themselves from politics, and the most effective way to give them strength to resist temptation is to fix a penalty for participation, so severe that the honest course will be the most attractive one. I recommend, with all my earnestness, the enactment of a measure upon this subject that will stop, at once and forever, so odious a misuse of corporate property.<sup>88</sup>

With public opinion thus clearly crystallized, the General Assembly was ready for action. On January 28, 1907, Senator C. E. Peterson introduced in the Senate a bill to prohibit corporation contributions to campaign

funds. This bill was referred to the Committee on Corporations of which Senator Peterson was a member. The committee reported the bill for passage, but with certain amendments. These amendments considerably strengthened the bill by making its provisions applicable to primaries as well as elections, by adding safeguards against indirect corporate political contributions, by including corporate bribery of public officials, and by modifying the immunity clause for witnesses in permitting the prosecution of witnesses guilty of perjury. Slight changes were also made by unanimous consent in the wording of the amendments before the bill passed the Senate.<sup>89</sup>

The importance of the Peterson bill and the significance of the amendments which were made to it in the Senate warrants its presentation in full as first introduced and later amended by the Senate. The omissions are bracketed, while changes suggested by the committee and adopted by the Senate are italicised.

A Bill for an act prohibiting any corporation doing business within the state or any officer, agent or representative thereof acting for such corporation, from giving or contributing any money, property, labor or thing of value, to any member of any political committee, party or employe thereof, or to any candidate for any office, for campaign expenses or political purpose whatsoever[.], *or to any person, partnership or corporation for the purpose of influencing or causing said person, partnership or corporation to influence any elector of the state to vote for or against any candidate for public office or candidate for nomination for any public office or to any public officer for the purpose of influencing his official action.* And prohibiting any member of any political committee, party or employe thereof, or any candidate for any office from soliciting, requesting or knowingly

receiving any such contribution from any corporation for campaign expenses or political purpose whatsoever, and providing a penalty for the violation thereof.

*Be it enacted by the General Assembly of the State of Iowa:*

Section 1. It shall be unlawful for any corporation doing business within the state, or any officer, agent or representative thereof acting for such corporation, to give or contribute any money, property, labor or thing of value, directly or indirectly, to any member of any political committee, political party, or employe or representative thereof or to any candidate for any *public office or candidate for nomination to any public office* or to the representative of such candidate, for campaign expenses or for any political purpose whatsoever[.], *or to any person, partnership or corporation for the purpose of influencing or causing such person, partnership or corporation to influence any elector of the state to vote for or against any candidate for public office or for nomination for public office or to any public officer for the purpose of influencing his official action.*

Sec. 2. It shall be unlawful for any member of any political committee, political party, or employe or representative thereof, or candidate for any office, or representative of such candidate, to solicit, request or knowingly receive from any corporation or any officer, agent, or representative thereof, any money, property or thing of value belonging to such corporation, for campaign expenses or for any political purpose whatsoever.

Sec. 3. No person, and no agent or officer of any corporation within the purview of this act shall be privileged from testifying in relation to anything herein prohibited; and no person having so testified shall be liable to any prosecution or punishment for any offense concerning which he is required to give his testimony [or produce any documentary evidence.], *provided that he shall not be exempted from prosecution and punishment for perjury committed in so testifying.*

Sec. 4. Any person convicted of a violation of any of the provisions of this act shall be punished by imprisonment in the

county jail not less than six months or more than one year, and in the discretion of the court, by fine not exceeding one thousand dollars (\$1000.00).<sup>90</sup>

The bill as amended passed the Senate without a dissenting vote — only three members being absent or not voting. In the House of Representatives the bill was referred to the Committee on Judiciary. That there might be no question raised regarding the freedom of the press in general, and in discussing political issues, candidates, and public officers in particular, the committee recommended that the bill be amended by striking out the period at the end of Section 1, and inserting a comma followed by the clause: “but nothing in this act shall be construed to restrain or abridge the liberty of the press or prohibit the consideration and discussion therein of candidacies, nominations, public officers or political questions.” This amendment was adopted. But Representative J. F. Offill’s proposition that the bill be amended so as to apply only to railroads was voted down. The bill as amended then passed the House of Representatives by a vote of 85 yeas and 9 nays, with 14 absent or not voting.<sup>91</sup> The Senate agreed to the House amendment, and the bill as thus amended received the Governor’s signature on March 26, 1907.<sup>92</sup>

To supplement the act prohibiting corporate campaign contributions Governor Cummins favored legislation requiring the publicity of campaign contributions and expenditures. In recommending such action to the Thirty-second General Assembly the Governor said:

I recognize that there must be some expenditure of money in every political campaign, whether for nomination or for election. There are legitimate purposes for which money can be expended, and to this extent, when contributed by individuals, there can be

no criticism of the practice. We will all agree, however, that the expenditure of money in political controversies has passed beyond a fair and reasonable limit. Other countries and other States have attempted to restrict the use of money within honest bounds through that very efficient corrective — publicity. I think the State of Iowa should do likewise, and I strongly recommend a law that will require not only political committees, but candidates for nomination and for election, to publish their expenditures.<sup>93</sup>

Following this recommendation, Mr. L. D. Teter again introduced a bill providing for the publicity of campaign expenditures, which contained the provisions of his bill of 1906 and in addition a section similar to a provision of the Nichols bill requiring a statement of expenditures by political officials. Mr. Teter's bill was referred to the Committee on Elections, which failed to report it.<sup>94</sup>

The committee, however, reported a bill of its own drafting on the publicity of campaign expenditures. Mr. Teter moved to substitute his own bill, with the last section, which limited the amount of a candidate's party assessment and the purposes for which money so raised might be used, omitted. The substitute was lost, and the bill with some proposed changes was again referred to the Committee on Elections. The committee, having again considered the bill, reported a substitute bill which passed the House of Representatives without a dissenting vote.<sup>95</sup> In the Senate the vote was 32 yeas and 7 nays, with 11 absent or not voting.<sup>96</sup>

The act as passed is entitled "An Act to amend title six, Chapter 3 of the Code, relating to elections", and applies to primaries and to municipal and general elections. By its provisions candidates are required to file a sworn itemized statement of all contributions and ex-

penditures with the proper official within ten days after the primary or election. A statement is also required from the committee chairmen of the various political committees. These statements are open to public inspection at all times, and remain on file as a part of the permanent records in the offices where filed. The act also contains a section prohibiting treating "in or about the polling place" at municipal, primary, and general elections, and makes it the duty of the election officials to enforce the provisions.<sup>97</sup>

As passed the bill was made clearer in regard to the disposal of the publicity statements. The original bill merely provided for the filing of the statement with the auditor of the county where the candidate or political officer lived. Moreover, it restricted the use of money raised by the assessment of candidates to paying the expenses of political meetings and the conveyance of voters to and from the polls. The act would seem to have been weakened in that the original provision prohibiting treating in a primary or election campaign was struck out and the provision prohibiting treating near the polls on primary or election day only was substituted.

During the 1907 session a State-wide primary law was also enacted. This act copies the provisions of the primary act of 1904 regarding corrupt practices except that it makes illegal the paying or offering to pay for political work for a candidate as well as receiving pay for such work. The provision specifically permitting the making of contracts for the conveyance of voters to the polls is eliminated, and instead there is substituted a provision permitting the making of contracts with newspapers for political announcements and the paying for securing signatures to nominating petitions.<sup>98</sup>

As a part of the progressive legislation of the 1907 session of the General Assembly there was also enacted a law providing for the so-called commission form of government for municipalities. The condition leading to the passage of this act was the corruption and inefficiency in the administration of the larger cities of the State under the old system of municipal government. Under the old plan of city government it had been easy to build up political machines through the control of elections. John J. Hamilton describes the means by which this was made possible in Des Moines in these words :

The methods, too, by which certain aldermen secured and held their places in the council were open to censure. Bribery of voters was shamelessly practiced. Ballot boxes had been stolen or unlawfully exposed to manipulation before the count of votes. The machinery of elections and nominations was often kept in the hands of reckless and unscrupulous men and in some cases of actual criminals. Judges of election or agents of "the city hall ring" unlawfully admitted to seats beside them were seen to "kill" ballots unfriendly to the ruling cabal by putting additional pencil marks upon them so that they must be thrown out. Returns from the "tough" precincts were, in close elections, held back until the machine could determine how many votes were needed to hold it in power; which number, with a safe margin, was suspiciously forthcoming.<sup>99</sup>

As a part of the plan to secure popular control of municipal government, the commission government statute contains provisions similar to the primary act of the same year prohibiting (1) the offering or receiving of bribes, (2) illegal voting, and (3) knowingly aiding illegal voting at municipal elections. The commission act differs from the primary act in its provisions against paid political workers in that it merely penalizes the

person who agrees to work for a candidate for pay. To further lessen the possibility of the building up of a political machine, secure more efficient service, and prevent the assessment of officeholders the act provides that:

Any officer or employe of such city, who, by solicitation or otherwise, shall exert his influence directly or indirectly to influence other officers or employes of such city to adopt his political views or to favor any particular person or candidate for office, or who shall in any manner contribute money, labor, or other valuable thing to any person for election purposes, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding three hundred dollars (\$300) or by imprisonment in the county jail not exceeding thirty (30) days.<sup>100</sup>

Other bills were introduced in the House of Representatives in the 1907 session, but none of them were enacted into law. Mr. W. P. Alfred proposed a bill to alter the code definition of bribery by making it include treating.<sup>101</sup> A measure to prohibit treating by a candidate before "any nomination or any proposed nomination or previous to or during any election", and for the publicity of campaign contributions and expenditures, was introduced by C. B. Paul.<sup>102</sup> This bill proposed also to limit the purpose for which money might be used, to promote the nomination or election of a candidate, to the bona fide personal expenses of the candidate and the expenses of holding political meetings. Even such expenditures were to be limited to certain fixed amounts, according to the office sought by the candidate. Thus a candidate for a State office might pay out a sum not to exceed \$750, while a candidate for a school office was not permitted to spend more than \$25. The Paul bill, however, seems to have died in the Committee on Elections.<sup>103</sup>

During the session of 1909 there was introduced in



the House of Representatives a bill to limit the amount a candidate might spend to secure his nomination or election to five per cent of a term's salary. The bill, being unfavorably reported by the committee to which it had been referred, was indefinitely postponed by the House.<sup>104</sup> In the Senate it appears that Mr. E. G. Moon proposed an amendment to the election law so as to provide for the filing by the chairmen of the various political committees of statements of campaign contributions and expenditures five days before an election and ten days after the election. This bill was lost by a vote of 24 to 19.<sup>105</sup>

An act passed at the 1911 session of the General Assembly (being amendatory to the law of 1907 providing for commission government for cities) further emphasizes the desire of the people to take municipal employees out of politics and protect them from political assessments by including a provision prohibiting campaign contributions by members of the fire and police departments of commission governed cities.<sup>106</sup> In the Senate there was introduced a bill "prohibiting candidates for office from giving away, paying for, or treating to any drinks, cigars or other refreshments, or paying or providing for the admission to shows, entertainments or other performances and providing a penalty therefor." This bill was, on the recommendation of the Committee on Elections, indefinitely postponed.<sup>107</sup> In the House of Representatives it appears that Mr. A. A. Lenocker proposed a bill for compulsory voting at general and city elections. Electors under seventy years of age, and not having a reasonable excuse, were to pay a "tax" to the county of \$3.00. The bill was referred to the Committee on Elections, whose report to indefinitely postpone the bill was adopted by the House.<sup>108</sup>

II  
AN ANALYSIS OF CORRUPT PRACTICES  
LEGISLATION IN IOWA

BRIBERY

BRIBERY may be defined as the deliberate purchase or sale of votes for money or other consideration. Its purpose in connection with elections is to secure for the candidate or party the vote of a member of an opposing party or of a voter who claims no party affiliations. At a primary, however, the choice being between candidates for the party nomination, the purpose is to secure the support of one's party members.

Bribery is an offense not readily susceptible of direct proof, as it is usually the result of a bargain between two persons both of whom are interested in keeping the fact secret. Other reasons making the enforcement of any legislation against bribery difficult have already been suggested. Thus, while Iowa has enacted legislation directed against bribery, cases coming before the courts are not numerous. Indeed, it would be difficult to determine to what extent bribery has and does prevail in Iowa. It is doubtless true that there has been considerable traffic in votes in our larger cities — perhaps more especially in connection with municipal elections. Here the inducements for bribery are great: political machines to keep themselves in power, or public utility corporations uniting with the vicious elements to keep their agents in power, have frequently resorted to vote buying and other

forms of corruption. Outside of the larger cities, however, it is doubtful if there has been much bribery. Party feeling has always been strong in our rural communities, and elections throughout the State have not usually been considered close politically — except in some of the congressional districts.

According to the Territorial laws of Michigan any person who directly or indirectly attempted to influence a voter through bribery was liable to a fine of not to exceed \$1,000;<sup>109</sup> but by the legislation of 1827 this sum was reduced to \$200.<sup>110</sup>

Iowa legislation against bribery dates from the year 1849, when the law made bribery punishable by a fine of from \$100 to \$1,000 and a jail sentence of from one to six months.<sup>111</sup> The *Code of 1851* broadens the earlier definition of bribery by including the offering and receiving of bribes, and at the same time fixes the penalty for bribery at a fine not to exceed \$500 or imprisonment in the county jail for a term not to exceed one year, or both.<sup>112</sup> In municipal elections in commission governed cities persons giving or receiving bribes in the form of money "or other consideration" may be fined from \$100 to \$500 and also given a jail sentence of from ten to ninety days.<sup>113</sup> The act regulating primary elections provides as penalties for the offering or giving or receiving of a bribe in the form of money or other consideration the same fine or a jail sentence of from thirty days to six months.<sup>114</sup>

Moreover, the Attorney General's office has interpreted the bribery provision of the law to mean that the giving of pencils, pens, or other things of value, however slight, to voters for the sake of influencing their vote constitutes bribery. On the other hand, the Supreme Court has held that it does not constitute bribery, at an

election to relocate a county seat, for persons interested in the location at a particular place to give or furnish facilities for the convenience of the whole county.

Some party members who would refuse to accept a bribe for voting the ticket of the opposing party have been willing to accept money for refraining from voting. To reach this class of offenders an act was passed in 1894 providing that a person who makes an agreement with another to pay or receive money or other valuable thing for not voting, or for inducing another voter not to vote, is guilty of a misdemeanor and may be fined from \$50 to \$300 or sentenced to a term in jail not to exceed ninety days.<sup>115</sup>

Unless the briber has some means of knowing whether the purchased vote is delivered, money expended for bribery is, of course, fruitless. To ascertain how ballots have been cast, various methods have been resorted to — such as marking ballots, showing of the ballots by the voter, or collusion with the election officials. To fortify bribery laws provisions are therefore necessary to preserve the secrecy of the ballot. An act of 1885 providing for the registration of voters for municipal elections contained a section for this purpose, making it illegal for a voter to expose his ballot in such a way as to intentionally show how he voted or for any one to give or offer tickets to any one not an election judge within one hundred feet of the polls. It was made the duty of the election judges to prevent the violation of these provisions by posting notices within one hundred feet of the polling place and “in other ways”, and at the same time to cause the arrest of offenders. Violation of the act constituted a misdemeanor, penalized by a fine of from \$50 to \$200 or by a jail sentence of from twenty days to six months, or both.<sup>116</sup>

The general election law of 1892 which provides for the Australian ballot — the adoption of which was for the purpose of eliminating bribery and intimidation — contains similar provisions for maintaining the secrecy of the ballot. The act defines as election offenses the following: (1) purposely exposing one's ballot; (2) attempting to induce a voter to show how he intends to mark or has marked his ballot; (3) placing on the ballot any identification marks; (4) collusion between the parties concerned in a bribery agreement and election officials by the voters making false statements regarding their inability to mark the ballot. All these acts are punishable by a fine of from \$5 to \$100 or a jail sentence of from ten to thirty days, or both.<sup>117</sup>

The *Code of 1897* contains the provisions of the law of 1892, except that it does not charge election judges with the enforcement of the statute and incorporates the definition and penalty for bribery as given in the *Code of 1851* along with the provisions of the law of 1894 regarding payments for refraining from voting or inducing others to refrain from voting. Since the primary act and the act providing for commission government in certain cities were passed after the enactment of the *Code of 1897* their provisions are of course not found therein.

In interpreting the section of the *Code of 1897* prohibiting the placing of distinguishing marks on the ballot by voters, the Supreme Court of Iowa has held that where a voter marked the squares opposite each candidate's name on a party ticket and also made a mark in the circle at the head of the other party ticket, the latter could not be considered as an identification mark.<sup>118</sup> However, a ballot crossed in the squares opposite all the names of a party ticket — except for township trustee which was left

blank and a cross inserted in the square opposite the blank for township trustee in another party ticket where there was no candidate for township trustee — the ballot was considered as marked for identification purposes since there was no apparent reason for such mark except to serve as an identification mark (*Morrison vs. Pepperman*, 112 Iowa 471). Furthermore, where the unauthorized mark is not of a character to be used readily for the purpose of identification the ballot ought to be counted; but where the unauthorized marks are made deliberately and may be used as a means of identifying the ballot it ought to be rejected (*Whittam vs. Zahorik*, 91 Iowa 23).

While bribery is usually the result of a bargain between two persons, bribery *en masse* is possible. Thus, the Supreme Court has held that a promise made by a candidate for a county office to serve for a less amount than the fees provided by law and to turn the balance into the county treasury as an inducement to get votes is indirect bribery since most of the voters are taxpayers. Hence it was held that the offer not only invalidated the votes cast by those influenced by the offer, but also voided the election of the offending candidate.<sup>119</sup> In rendering this opinion the Supreme Court pointed out the evil of such a system of bidding for office as tending to divert the elector's attention from the personal merits of the candidates to the price to be paid for the office. Aside from the evil effect on the attitude of the voters in respect to their duties as citizens, it would lead, the court held, to the election of incapable and untrustworthy officers.

#### UNDUE INFLUENCE

Undue influence may be defined as the bringing to bear of direct or indirect pressure on a voter to influence

him in casting his ballot. It may take the form of brute force or violence, or threat to use such force or violence, or, as is at present more usual, of open or veiled threat of pecuniary, social, or spiritual injury. The difficulty of reaching this form of corruption through legislation is at once apparent. The employer through a casual hint or conversation gives his employees to understand what will happen or not happen if the election goes a certain way; sample ballots marked to indicate the candidates favored by the employer are distributed among the employees;<sup>120</sup> employees are sent out on the employer's time to work with other employees; false reports are circulated as to the attitude of candidates on certain questions, such as the labor question or the church; candidates of only a certain party are permitted to address the workers in shops or factories; or "advice" is enclosed in pay envelopes.

The incident of a Mormon apostle influencing the Mormon voters in early Iowa is a good example of an attempt to exert religious influence in politics.<sup>121</sup>

In Iowa instances of the intimidation of railroad employees are, perhaps, more numerous than those of any other class of workers. This is perhaps due to the fact that the railroads are the largest and most completely organized interest in the State. Conversations with railroad employees usually bring out the fact that the authorities have been in the habit of "advising" their employees as to whom they should vote for, in spite of legislation forbidding such activity. Legislation against undue influence, therefore, has for its object the elimination of such conditions, for the purpose of leaving the voter free to express at the polls his unbiased opinion on political affairs.

According to the Michigan Territorial legislation of 1820 a person convicted of using threats or "other corrupt means or device whatsoever", direct or indirect, in attempting to influence an elector in voting or refraining from voting might be fined not to exceed \$1,000.<sup>122</sup> Again, an act of 1827 provided that any person who by menace, directly or indirectly, attempted to keep an elector from casting his ballot might be fined not more than \$200 for each offense; while deceiving an elector regarding the contents of his ballots was made punishable by a fine not exceeding \$100.<sup>123</sup>

The Iowa corrupt practices legislation of 1849 provided that any person who used any threat to get a voter to cast his ballot contrary to his wishes, or to deter him from voting, purposely deceived an illiterate voter regarding the contents of his ballot, or changed an elector's ballot so that he voted contrary to his wishes, might be fined from \$100 to \$1,000 and be imprisoned in the county jail from one to six months.<sup>124</sup> These provisions, however, were repealed by the *Code of 1851*, which defines as undue influence procuring or endeavoring to procure the vote of any elector, or the influence of any person over other electors at any election for himself, or for or against any candidate, by means of violence, threats of violence, or threats of withdrawing custom or dealing in business or trade, or enforcing the payment of debts, or bringing any civil or criminal action, or any other threat of injury to be inflicted by him or by his means. Violation of this section of the Code was punishable by a fine of not more than \$500 or a jail sentence not to exceed one year. The *Code of 1851* further provides that preventing or attempting to prevent a voter from casting his ballot by force or threat of force may be pun-



ished by a fine of not more than \$200 and a jail sentence of not to exceed six months. Deceiving an illiterate voter concerning the contents of his ballot or changing it so the voter's ballot is cast contrary to his wishes was penalized by a fine of from \$100 to \$1,000 and a jail sentence of not exceeding two years.<sup>125</sup>

While Iowa has been comparatively free from the violence which has too often characterized elections in some of the large cities of the country, elections in this State have not at all places and at all times been peaceful gatherings of electors to express their political opinions, free from outside pressure. Even at present one sometimes reads of disturbances in connection with elections held in Iowa. Concerning the Des Moines primary election to select candidates for the final election of municipal officers in the spring of 1912 the *Register and Leader* says that "voters had objection to the loafers and tough element which hung around the polling places last Monday. Several persons who called at the city hall stated that they had turned away without voting last Monday owing to the gang of hangers-on around the polls."<sup>126</sup>

It was to prevent this form of intimidation that an act was passed in 1886 containing a provision which made it illegal at a municipal election to loaf within one hundred feet of the polls, hinder or delay a voter in going to or from the polling place, or solicit or attempt in any way to influence a voter in casting his ballot. The penalty for the violation of this statute was a fine of from \$50 to \$200 or a jail sentence of from twenty days to six months, or both. It was made the duty of the election judges to prevent, as far as possible, the violation of these provisions by posting notices within one hundred feet of the polls in conspicuous places "and in other ways", and to cause the arrest of offenders.<sup>127</sup>

A general election law passed in 1892, applying to all except school elections, restated the above as election offenses, though in some cases with slight changes or omissions, and added some other acts of a similar nature. The provisions of the statute in some respects are not very clear and seem somewhat conflicting. Electioneering or the soliciting of votes within one hundred feet of the polls, interrupting, hindering, or opposing a voter while approaching the polls, might be punished by a fine of from \$25 to \$100, or a jail sentence of from ten to thirty days for each offense, or both. Moreover, any one interfering or attempting to interfere with a voter when inside the polling place or when marking his ballot, or trying to get the voter to show how he intended to mark or had marked his ballot, might be fined from \$5 to \$100 or imprisoned for a term of from ten to thirty days, or both. It was made the duty of the election judges to enforce these provisions. The act finally adds the general provision that willfully hindering the voting of others may be punished by a fine of from \$10 to \$100 or a jail sentence of from ten to thirty days, or both.<sup>128</sup>

The provisions of the present law as found in the *Code of 1897* covering this form of intimidation of voters include the provisions of the *Code of 1851*, except that the provision against deceiving an illiterate voter as to the contents of his ballot is directed only against election officials, and the provisions of the general election law of 1892, except for the omission of the general prohibition of the hindering of voters. It stipulates that the violation of the provisions taken from the general election law of 1892 may be punished by a fine of from \$5 to \$100 or a jail sentence of from ten to thirty days, or both. The provision which made it obligatory for the election judges

to enforce the law on this point is also omitted. Moreover, the *Code of 1897* forbids loitering or congregating at or within one hundred feet of the polling place, but provides no penalty for the enforcement of this clause.<sup>129</sup> However, the *Code of 1897* provides that "when the performance of any act is prohibited by any statute and no penalty for the violation of such act is imposed, the doing of such act is a misdemeanor" (*Code of 1897*, p. 1934).

The object of employing personal workers at elections is two-fold. In the first place the personal worker is supposed to be able to swing from five to fifteen votes for the candidate or party for which he is working.<sup>130</sup> Again, the employment of personal workers may be used indirectly as a cloak for buying the worker's vote. Iowa legislation directed against the employment of such paid personal workers dates from the year 1894, when an act was passed by the General Assembly making the hiring of workers on election day a misdemeanor and provides that both the giver and receiver of money or other thing of value for this purpose may be fined from \$50 to \$300, or sentenced to jail for a term not to exceed ninety days. The act makes an exception, however, in the case of contracts made by individuals or political committees for the conveyance of voters to and from the polling place for reasonable pay.<sup>131</sup> Earlier legislation, however, permits each political party to employ three poll watchers.<sup>132</sup>

A primary election law of 1904 prohibited the employment of paid personal workers in a primary. This law provided as punishment, for any person who agreed to "perform any service in the interest of any candidate" for money or other valuable thing or accepted pay for work performed, a fine of not more than \$300 or a jail sentence not to exceed thirty days. The law exempted

contracts for the conveyance of voters to and from the polls<sup>133</sup>— a provision that was repealed by the primary law of 1907. According to the 1907 act the giving, offering, or receiving of money or other valuable thing for political work in a primary is penalized by a fine of not more than \$300 or imprisonment not to exceed ninety days; but the act permits contracts for political advertisements and for securing signatures to nominating petitions at a reasonable remuneration.<sup>134</sup> The act passed during the same session providing for the commission plan of government makes it illegal for any person to agree to perform any services for a candidate for a municipal office. Violation of this provision is punished by a fine not to exceed \$300 or a jail sentence of not more than thirty days.<sup>135</sup>

The Spoils System is based partly on a theory of the political activity of the officeholder as a return for his appointment; and so, corrupt practices acts have contained provisions for the elimination of such activities. The importance of legislation directed against the political influence of officeholders is admirably brought out by President Cleveland in his instructions to cabinet members which read as follows:

Officeholders are the agents of the people, not their masters. Not only is their time and labor due to the Government, but they should scrupulously avoid, in their political action, as well as in the discharge of their official duty, offending, by display of obstructive partisanship, their neighbors who have relations with them as public officials.

They should also constantly remember that their party friends, from whom they have received preferment, have not invested them with the power of arbitrarily managing their political affairs. They have no right as officeholders to dictate the

political action of their party associates or to throttle freedom of action within party lines by methods and practices which pervert every useful and justifiable purpose of party organization.<sup>136</sup>

To prevent political activity on the part of public officials and employees the act creating the Board of Control of State Institutions prohibits the use of political influence by members of the Board or any officer or employee of any institution under the control of the Board. Any such person who by soliciting or otherwise uses his position directly or indirectly to influence the political views of other officers or employees connected with such institutions may be removed from office by the proper authority.<sup>137</sup> With the same object in view the act providing for commission government in Iowa makes it a misdemeanor for any officer or employee of the city to solicit or otherwise exert his influence, directly or indirectly, to affect the political views of other officials or employees or to secure their votes for a particular person or candidate. Violation of this act may be punished by a fine of not to exceed \$300 or a jail sentence of not to exceed thirty days.<sup>138</sup>

Perhaps the most demoralizing phase of corrupt practices in Iowa elections has been the control or attempted control on the part of employers of the votes of their employees. Employers have, at least in the past, realized more fully than employees the value of a vote in a system of government like ours. Some employers seem to act on the assumption that the giving of employment carries with it the right to control the employee's vote. That employers are in a position to use such influence with employees, and have often done so, few will question.

The activity of the railroads in this respect has been especially notorious in Iowa. For example, in 1910 the railroads used influence with their employees to defeat a certain candidate for the office of railroad commissioner. And at the same election the saloon interests were accused of opposing in the same way the election of the Republican candidate for Attorney General.<sup>139</sup>

In an attempt, therefore, to remove influences affecting employees in exercising their right of franchise, the Iowa legislature included in the general election law of 1892 certain restrictions on employers.<sup>140</sup> To prevent employers from intimidating their employees by granting those who vote "right" time to vote, while refusing those suspected of voting "wrong" the necessary time for voting, this statute compels employers to give their employees two hours' time for voting without penalty of any kind. The law, however, requires employees prior to election day to notify their employer, who may then fix the time. An employer who refuses to grant his employees time to vote, penalizes them for taking time off for voting, attempts to influence or control the voter in casting his ballot by offering a reward, threatens to discharge the employee, or in any other way tries to intimidate the employee, or directly or indirectly violates the provisions of the act in any manner may be fined from \$5 to \$100.<sup>141</sup> It seems to be true, however, that the penalty provided has not noticeably deterred the more powerful employers from attempting to influence their employees at elections.

#### TREATING

As a rule the purpose of treating is not to buy the votes of members of opposing parties, but rather to

“enthuse” and confirm the members of one’s own party. In a primary campaign, however, the appeal being primarily to the party members by candidates for the party nomination, there is little difference between treating and bribery, except in the name. To give the voters the impression that he is a “good fellow” the candidate hands out his notorious campaign cigars or treats the prospective voter to drinks — at least these are the usual forms of treating in an Iowa campaign. The effectiveness of this sort of an argument with a certain class of voters can hardly be questioned.

As early as 1827 the Michigan Legislative Council provided that any person who directly or indirectly gave or promised any meat, drink, or “other reward” with the intent of securing his own election or that of a favorite candidate might be fined a sum not to exceed \$500 for every offense.<sup>142</sup> It was not, however, till 1880 that Iowa legislated directly against treating. Treating by means of liquor and cigars has been, and in some communities still is, one of the most corrupting influences in connection with elections. Too often candidates have been elected to office for no other reason than that they are “good spenders” in the campaign. The Iowa statute of 1880 made it a misdemeanor to give or offer intoxicating liquor, including ale, wine, or beer, to a voter at or within one mile of the polls on election day before the time of closing the polls. On conviction the offender was liable to a fine of from \$5 to \$100, or a jail sentence of not to exceed thirty days, or both.<sup>143</sup> Moreover, the act of 1907 providing for the publicity of campaign funds contains a section making it the duty of election officials at municipal, primary, and general elections to prohibit the placing of, keeping, or giving to voters, cigars, food, or

other refreshments or treats in or about the polling place. Violation is punishable by a fine of from \$50 to \$300, or imprisonment of from thirty days to six months.<sup>144</sup>

#### ILLEGAL VOTING

Illegal voting means the casting of a ballot by a person who for some reason or another is not by law entitled to the privilege. This is an offense not easily reached by legislation, since intent is usually held to be the important consideration by the courts when passing on such cases. "Repeating" and "colonizing" are the principal forms of illegal voting.

The general election law enacted by the Legislative Assembly in 1839 contained a section making illegal voting punishable by a fine of from \$25 to \$50. Moreover, if the election judges considered the person casting the ballot a legal voter he could not later be accused of illegal voting. Repeating was punishable by a fine of \$100.<sup>145</sup> By the legislation of 1849 the following acts were declared illegal: (1) repeating; (2) voting by a person who knew he did not possess the required qualifications; (3) advising, assisting, or inducing another to vote twice at the same election, or to vote when he knew such person not to be a qualified voter. Violation of these provisions was punishable by a fine of from \$100 to \$1,000, or a jail sentence of from one to six months.<sup>146</sup>

The provisions of the *Code of 1851*, which still constitute the law regarding offenses of this character, changed the penalty (1) for counselling a person to vote, when knowing such person to be unqualified, to a fine of from \$50 to \$500 and a jail sentence of not to exceed one year, (2) for repeating, a fine not to exceed \$200 or a jail sentence of not more than one year, and (3) for voting



when knowing oneself to be unqualified, a similar fine of \$200 or imprisonment for a term not to exceed six months.<sup>147</sup> Under the latter provision it has been held that the State may prove disability without stating in the indictment what the disability is. The essential point is that the person voting knows himself to be disqualified.<sup>148</sup>

The *Code of 1851* provided further that voting in a county of which one is not a resident may be punished by a fine not to exceed \$200, or a jail sentence of not more than one year. It stated that a person who votes, being disqualified by reason of non-residence, nonage, not being a United States citizen, or on account of some other disability, may be fined not more than \$300, or imprisoned in the county jail for a term of not more than one year.

It is no defense on the part of a person accused of illegal voting to show that he voted on the advice of other voters who were not learned in the law.<sup>149</sup> The court argued that if such a rule were permitted the purity of the ballot could not be maintained, since evasion of the law would be possible for any one. It is the duty of citizens who are ignorant of the qualifications of voters to inform themselves by looking up the law or seeking the advice of persons qualified to give the needed information. Voting outside of the township of which one is a resident is also an offense against this section;<sup>150</sup> for residence is not merely a question of fact but intent as well. Living in a township the required time would not make one a resident if such person were there merely for temporary purposes and did not intend to make that place his home. Voting outside of the precinct in which a person has his residence may not necessarily be sufficient evidence to convict him of illegal voting; for, if the person so voting believes himself to be a legal voter

of another precinct and has consulted legal advisers, he is not considered guilty of illegal voting.<sup>151</sup>

The Code further provides that a judge who illegally permits a person, challenged by an elector as being unqualified, to vote without requiring proof, or refuses the ballot to one complying with the requirements of the law, may be fined from \$20 to \$200 or sentenced to jail not to exceed six months.

The Supreme Court has held that to render an election officer liable for refusing the ballot of a voter it must appear not only that the voter was qualified to vote, but also that the ballot was offered to the officer who refused to receive it during the time when it was the duty of the officer to receive votes (*State vs. Clark*, 102 Iowa 685).

The origin of State regulation of primary elections in Iowa may be traced to the legislation of 1898. In order to exclude from the party primary persons who are not members of the party a law was enacted which provides that at any party primary to nominate candidates or to choose delegates to party convention, it is illegal for a person who is not at the time of the primary a bona fide member of the party to participate. Nor may persons who are not qualified voters take part in such primary. To violate this section, or to knowingly procure, aid, or abet such violation, is made a misdemeanor. The penalty in either case is a fine not to exceed \$100 or a jail sentence of not more than thirty days. Moreover, it is considered prima facie evidence of violation of the act for any person who has taken part in one party primary to vote in the primary of another party at the same election. The election judges are given the power to administer oaths and to examine any person offering to vote regarding his right to take part in the primary: it is made their duty

to do so if a challenged person desires to vote. Persons testifying falsely regarding any material matter affecting his right to vote are held guilty of perjury.<sup>152</sup>

The primary election law of 1904, which made the holding of party primaries obligatory in counties having a population of 75,000 or more, declares as illegal, willfully voting or offering to vote without the residence qualifications, the age qualification, United States citizenship, or knowing oneself not to be a qualified voter of the precinct where one attempts to vote. Voting under these circumstances constitutes a misdemeanor punishable by a fine of from \$100 to \$500 and imprisonment for from ten to ninety days. Knowingly procuring, aiding, or abetting the violation of these provisions are penalized in the same manner.<sup>153</sup>

The act of 1907 providing for State-wide primaries has the same provisions regarding illegal voting, but the penalty for violation is changed to a jail sentence of from thirty days to six months or a fine of from \$100 to \$500.<sup>154</sup> The act providing for the adoption of commission government in certain municipalities contains the same definition of illegal voting, but provides as penalty a jail sentence of from ten to ninety days with a fine of the same amount as provided in the primary act of 1907.<sup>155</sup>

#### BETTING ON ELECTION RESULTS

The purpose of betting, so far as it concerns the subject of corrupt practices, is to indicate to the party members a confidence in the outcome of the election, to bring the wavering voters who desire to be on the winning side to the support of their ticket, and to discourage the members of the opposing party. Betting is also resorted to as a means of concealing bribery.

The Iowa law provides that "any person who records or registers bets or wagers or sells pools . . . upon the result of any political nomination or election . . . shall be fined not exceeding one thousand dollars, or imprisoned in the county jail not exceeding one year, or both."<sup>156</sup> According to an interpretation of this section, issuing from the office of the Attorney General, "the making of any bet or wager on the result of any election or on the success or failure of any candidate for any office, is a crime under our laws."<sup>157</sup> *The Marshalltown Times-Republican* in commenting upon this interpretation declares that "a year in the county jail for wagering a cigar on whether John Doe would beat Richard Roe for township constable, would be paying dearly for the smoke, but such penalty could be paid under the Iowa law", according to the ruling from the Attorney General's office.<sup>158</sup>

#### RESTRICTIONS ON CAMPAIGN CONTRIBUTIONS

In a political campaign money is needed for a number of purposes. Of these, perhaps the principal legal expenditures are for the maintenance of the party headquarters; hiring of halls; paying of speakers and political "workers" of various kinds; conveyance of voters; making up and distributing political literature; advertising through newspapers, bulletin boards, motion picture shows, and the like; distributing banners, buttons, flags, and campaign emblems; and incidentals such as postage, messenger fees, telephone, and telegrams. Moreover, services rendered during the campaign are usually paid for at an exorbitant rate. In the past a large share of the money collected has been appropriated by the agents handling the funds. Illegal purposes, such

as the purchase of votes and treating, greatly increase the sum used in conducting a campaign.

It was Henry Watterson who said that in a campaign money counts more than principles. Harriman estimated that the fund of \$240,000 raised by him for the 1904 New York campaign turned 50,000 voters in New York City alone and made a difference of 100,000 in the general result. Money being so essential, parties are obliged to solicit large funds. Moreover, a large campaign contribution seems to imply that the party receiving it is placed in a position of debtor to the contributor and is expected to return the favor if it gets into power.

It is a well known fact that business affected by some form of State regulation or desiring special favors from the government endeavors to call to its aid the influence of parties through campaign contributions. This idea was well expressed by Jay Gould when, in describing the political activity of the Erie Railroad, he said that in a Republican district his corporation contributed to the Republican campaign fund and in a Democratic district to the Democratic campaign fund, while in a close district contributions were made to the funds of both parties — always for the Erie Railroad. A primary motive then in prohibiting campaign contributions from certain sources is to eliminate selfish interests that contribute to party funds as a matter of business in order to be in a position to secure legislation in their favor or to ward off legislation or the enforcement of laws which might be injurious to their enterprises.

To eliminate this influence in Iowa politics legislation was enacted in 1907 which makes it "unlawful for any corporation doing business within the State, or any officer, agent or representative thereof acting for such

corporation, to give or contribute any money, property, labor or thing of value, directly or indirectly, to any member of any political committee, political party, or employe or representative thereof, or to any candidate for any public office or candidate for nomination to any public office or to the representative of such candidate, for campaign expenses or for any political purpose whatsoever, or to any person, partnership or corporation for the purpose of influencing or causing such person, partnership or corporation to influence any elector of the state to vote for or against any candidate for public office or for nomination for public office or to any public officer for the purpose of influencing his official action". This act is not to be interpreted, however, so as to check in any way the freedom of the press in discussing candidates, nominations, public officers, or political questions.

The act of 1907 also makes it illegal for a member of a political committee, political party, or an employe or representative of a political party or committee, or a candidate or his agent to solicit, request, or knowingly receive from a corporation or its representative or officers any money, property, or thing of value for any political purpose. Testifying in a case arising under the law is compulsory, but immunity is granted the person testifying except in the commission of perjury in connection with the giving of his testimony. Conviction of a violation of the act carries with it imprisonment of from six months to one year and, in the discretion of the court, a fine of not more than \$1,000.<sup>159</sup>

Iowa legislation restricting campaign contributions is not confined to prohibitions on corporation contributions. A beginning has been made in the direction of restricting party assessments of public officers and employes. As-

assessments are levied on officeholders on the theory that they owe their position to the party rather than to the people, and that they ought to contribute to the support of the patriots who helped put them into their positions but who themselves belong to the unofficial side of the party. The party assessment differs little from a property qualification for officeholding, is an incentive to dishonesty, and tends to keep good men out of the public service. To be sure, the payment of such assessments is not compulsory, but the officeholder or employee knows very well that a refusal to pay is likely to be punished by dismissal or some other mark of disfavor.

To prevent the assessment of officials or employees connected with State institutions controlled by the Board of Control, the act creating the Board provides that any member or officer of the Board of Control, or any officer or employee of any institution subject to the Board, who in any manner contributes money or other thing of value to any person for election purposes may be removed by the proper authorities.<sup>160</sup> A later law provides that any officer or employee of a commission governed city who in any manner contributes money, labor, or other valuable thing to any person for election purposes is considered as having committed a misdemeanor and may be fined not to exceed \$300 or imprisoned in the county jail for not more than thirty days.<sup>161</sup> An amendment to this act declares it to be a misdemeanor for a member of the fire or police department in such cities to make any direct or indirect contributions of money or other valuable thing to a candidate for nomination or election or to a campaign or political committee. Violation of the statute is punishable by a fine of from \$25 to \$100 or imprisonment for not to exceed thirty days.<sup>162</sup>

## PUBLICITY OF CAMPAIGN FUNDS

It is not so much the campaign contribution itself that has fallen into disrepute as the secrecy involving such contributions and the belief that large contributions from corporations have been repaid corruptly by the granting of special favors through the government. Publicity of campaign contributions and expenditures has been advocated in recent years as a cure for political corruption. This idea is based on the theory that corrupt bargains will not be entered into where publicity is required, or if entered into such bargains can not be kept in the face of a dissenting public opinion. No party or candidate would dare to show an expenditure for the illegal influence of voters; nor will an individual or corporation that expects a return for the contribution care to contribute if uncertain of the party's power to fulfil the understanding.

It was in view of these considerations that the Iowa legislature in 1907 passed an act requiring the publicity of campaign contributions and expenditures.<sup>163</sup> The act applies to all elections except school elections. Within sixty days after a primary or an election the candidate is required to file a sworn itemized statement of contributions and expenditures accounting for all money or other things of value expended or promised directly or indirectly by him and, to the best of his knowledge, by others in his behalf to aid or secure his nomination or election. If he is a candidate for a municipal or county office the statement must be filed with the county auditor. If he is a candidate for an office voted on in more than one county, the statement should be filed with the Secretary of State. Blanks for this purpose are furnished by the State. The statement must show when the contribution was received,



the amount thereof, and the source. It must also indicate the date, purpose, amount, and to whom payments are made. The statements must also include the assessments of any persons, committees, or organizations in charge of the candidate's campaign.

Statements are also required from the committee chairman of the State, district, or county, filed at the same time and place, giving similar information and stating in addition the amounts or balances remaining on hand. The person filing the statement is required to make a sworn statement as to the accuracy and truth of the statement. These statements are open to public inspection at all times, and they remain on file as a part of the permanent records in the office where filed. In cases arising under this law witnesses may not be excused on the ground that they may incriminate themselves or as a result of their testimony become exposed to public ignominy, but they are immune from prosecution for anything brought out in the trial. Failing to comply with the law is a misdemeanor punishable by a fine of from \$50 to \$300, or a jail sentence of from thirty days to six months.

### III

#### A COMPARATIVE STUDY OF CORRUPT PRACTICES LEGISLATION

WHEN in recent years the American commonwealths came to realize the need of more stringent corrupt practices legislation, the reformers instinctively turned to the statutes of Great Britain for guidance. In England, as a result of popular agitation against corruption connected with the elections as well as a feeling on the part of the political organizations that the financing of elections was becoming too burdensome, the Parliament passed a comprehensive corrupt practices act as early as 1883. Moreover, this act, supplemented by the legislation of 1895, is so complete and apparently so satisfactory that it still serves as a model for American legislation directed against corrupt practices.

Unlike the American laws — except in Oregon — the English corrupt practices acts differentiate between “corrupt practices” and “illegal practices”. Corrupt practices according to the English statutes are bribery, treating, undue influence, personation, and knowingly making false declarations with regard to the returns of election expenses. They are, in fact, such acts as no man of ordinary intelligence could commit without being fully conscious that he is doing wrong. Illegal practices, on the other hand, are the minor offenses, such as providing bands and banners, hiring carriages for the conveyance of voters to the polls, and exceeding the legal maximum

of election expenses. In other words, illegal practices are such acts as a person might commit without realizing that he is doing wrong or breaking a law.<sup>164</sup>

#### BRIBERY

The English legal definition of bribery, which was given in the Corrupt Practices Act of 1854 and left intact by the legislation of 1883, is made extremely broad on account of the very elusive character of the offense, and perhaps also on account of the tendency of the courts to interpret legislation of this sort rather strictly. According to this definition a person is guilty of bribery who "directly or indirectly gives, lends, procures, agrees to give, agrees to lend, agrees to procure, offers, promises, promises to procure, promises to endeavor to procure any money or valuable consideration, any office, place, or employment to or for any voter, to or for any person on behalf of any voter, to or for any other person to induce any voter to vote or refrain from voting, or to induce such voter to vote or refrain from voting, or to induce such person to procure or endeavor to procure the return of any person, or vote of any person." A person who for himself or for another "receives or agrees or contracts to receive, the gifts, loans, offers, promises, procurements or agreements, either before, during, or after an election; any person who provides money with intent that it, or any part of it, shall be expended in bribery; and any person who pays money in discharge or repayment of money so expended" is also, according to the English statute, guilty of bribery.<sup>165</sup>

Some States have attempted to frame definitions of bribery as comprehensive as those found in English law; and it appears that some of these American definitions

include provisions not found in the English act. Thus, the Delaware law declares the offering on the part of a candidate to serve for nothing or for less than the lawful salary to be bribery.<sup>166</sup> Moreover, the Indiana provision seems to define the employment of paid political workers on primary or election day as a means of bribery.<sup>167</sup> Oklahoma legislation includes as bribery the giving, promising, or loaning of money to be used for election bets, for betting with an elector that he will vote for a certain named candidate or ticket, and the gift or promise of money gained in this way.<sup>168</sup> The Montana bribery provision includes the paying of a person's naturalization fees;<sup>169</sup> while the Washington act provides that offering, promising, or giving of victuals or drink shall be considered bribery.<sup>170</sup> Illinois classifies the soliciting or receiving of liquor for voting as "the infamous crime of bribing".<sup>171</sup>

#### TREATING

The Minnesota Corrupt Practices Act, passed at the 1912 special session of the legislature, contains a section directed against treating similar to the Oregon provision, which is itself an elaboration of the English definition. According to the Minnesota legislation "no person or candidate shall, either by himself or by any other person, while such person or candidate is seeking a nomination or election, directly or indirectly, give or provide, or pay, wholly or in part, the expenses of giving or providing any meat or drink or other entertainment or provision, clothing, liquors, cigars or tobacco, to or for any person for the purpose of or with the intent or hope to influence that person or any other person to give or refrain from giving his vote at such primary or election to or for any

candidate or political party ticket, or measure before the people or on account of such person or other person having voted or refrained from voting for any candidate or the candidates of any political party or organization or measure before the people, or being about to vote, or refrain from voting, at such election. No elector shall accept or take any such meat, drink, entertainment, provision, clothing, liquor, cigars, or tobacco, and such acceptance shall be a ground of challenge to his vote and of rejecting his vote on a contest."<sup>172</sup>

The Missouri act contains similar provisions directed against treating, but recognizes the theory that to be effective the treating in question must be recent; and so it is made an offense only when done within ten days of a primary or sixty days of an election.<sup>173</sup>

#### UNDUE INFLUENCE

The English legal definition of undue influence is copied almost literally in some American jurisdictions. But the Oregon provision is an amplification of the English definition, providing that "every person who shall directly or indirectly, by himself or any other person in his behalf, make use of or threaten to make use of any force, coercion, violence, restraint, or undue influence, or inflict or threaten to inflict, by himself or any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person in order to induce or compel such person to vote or refrain from voting for any candidate or the ticket of any political party, or any measure before the people, or any person who, being a minister, preacher, or priest, or any officer of any church, religious or other corporation or organization, otherwise than by public speech or print, shall urge, persuade or

command any voter to vote or refrain from voting for or against any candidate or political party ticket or measure submitted to the people, for or on account of his religious duty, or the interest of any corporation, church or other organization, or who shall by abduction, duress or any fraudulent contrivance, impede or prevent the free exercise of the franchise by any voter at any election, or shall thereby compel, induce or prevail upon any elector to give or to refrain from giving his vote at any election, shall be guilty of undue influence, and shall be punished as for a corrupt practice."<sup>174</sup>

#### INTIMIDATION

Most of the States have enacted legislation similar to that of Iowa directed against intimidation of employees by employers and interference with voters at the polls. Oregon entirely prohibits electioneering on election day. To protect candidates as well as to prevent the "nursing" of their constituency by candidates, the Oregon law further provides that religious, charitable, or other similar organizations may not demand or ask contributions from a candidate, nor may the candidate make such payment if asked. Neither may tickets for entertainments or balls or "advertising" space in any book, program, or other publication be offered a candidate. It is considered a corrupt practice for a candidate to make such payment or contribution with the apparent hope or intent to influence the election results. The candidate's usual business advertising or payments to organizations to which he has been a regular contributor for more than six months prior to his becoming a candidate, or ordinary church contributions are exempted.<sup>175</sup> Minnesota also attempts to secure peaceful elections so that the voter

may be free to cast his ballot undisturbed by outside influences. Thus, the distribution of campaign literature and providing, selling, or wearing political badges, buttons, or similar insignia, are prohibited on election day.<sup>176</sup>

#### PERSONATION

Personation is the form of illegal voting which is clearly defined by English law. Personation is committed by a person who at an election "applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person, or who, having voted once at any such election, applies at the same election for a ballot paper in his own name."<sup>177</sup> To prevent colonizing for the purpose of personating, New York legislation provides in detail for the control of hotels, lodging houses, and rooming places.<sup>178</sup> The Indiana law prohibits the importing of voters from the outside or from locality to locality within the State.<sup>179</sup> The Kentucky law prohibits the use of the naturalization papers of one person, dead or living, by another person.<sup>180</sup> The New Jersey act directed against colonizing prohibits the providing wholly or in part for the expense of boarding, lodging, or maintaining a person at any place or domicile in any election precinct or ward or district to secure his vote.<sup>181</sup>

#### BETTING

The Minnesota corrupt practices act contains, perhaps, as broad a definition of betting on election results as can be found in the statutes of any State. According to this provision "any candidate who, before or during any primary or election campaign, makes any bet or wager of anything of pecuniary value, or in any manner

becomes a party to any such bet or wager on the result of the primary or election in his electoral district, in any part thereof, or on any event or contingency relating to any pending primary or election, or who provides money or other valuable thing to be used by any person in betting or wagering upon the results of any impending primary or election, shall be guilty of a violation of this act. Any person, who for the purpose of influencing the result of any primary or election, makes any bet or wager of anything of pecuniary value on the result of such primary or election, in his electoral district or any part thereof, or of any pending primary or election, or on any event or contingency relating thereto, shall be guilty of a violation of this act, and in addition thereto, any such act shall be a ground of challenge against his right to vote."<sup>182</sup> The New Jersey provision states more directly its purpose to protect the voter as well as to provide punishment for betting as a matter of public policy. A part of the section directed against betting reads as follows: "Nor shall it be lawful for any person, directly or indirectly, to make a bet or wager with a voter, depending upon the result of any election, with the intent thereby to procure the challenge of such voter, or to prevent him from voting at such election."<sup>183</sup> The Kentucky law strikes at the more subtle purpose of betting by prohibiting the betting of any person with another that such other person will vote for a named candidate.<sup>184</sup>

#### RESTRICTIONS ON CAMPAIGN CONTRIBUTIONS AND EXPENDITURES

It is not, however, by elaborate definitions of the gross forms of election offenses that the more advanced States are attempting to eliminate corruption in the choice of



public officials; but rather, as before indicated, by creating conditions for the prevention of corruption, intimidation, or deception of voters. In this direction our State laws also, in many instances, follow the lines of English legislation. Indeed, the Peoples Power League of Oregon advanced as an argument for the Huntly Bill the fact that it was "patterned after the very successful British laws of 1883 and 1895."<sup>185</sup>

Restrictions of campaign contributions and expenditures are forms of this kind of legislation. The reasons for prohibiting campaign funds coming from certain sources have already been discussed (See above Ch. II). A reason for restricting the total amount of money spent in elections is to prevent the raising of large funds to debauch the electorate, for a large campaign fund is almost sure to lead to political corruption. Restriction of the amount which a candidate may contribute or expend is to keep rich and poor candidates on terms of equality, prevent a candidate from purchasing an office through corrupt use of money, and do away with the temptation an officer might have to reimburse himself, directly or indirectly, from the public office for his extravagant expenditure. Placing a money standard on candidates also leads to the election of low grade men.

Restrictions as to the purposes for which money may be expended is based on the theory that the use of money in any way to influence even remotely the vote of the elector through corruption, show, or deceit should be prohibited. A reason for legislation requiring that all funds collected and expended pass through the hands of a treasurer or some other legally recognized official or officials is to make it possible to hold some one responsible and thus render the enforcement of laws of this character more easy of accomplishment.

A number of States have laws similar to that of Iowa which prohibit corporate contributions to campaign funds. The Oregon law prohibits political contributions from all non-elective officeholders; nor may any one receive or solicit funds from such officers. The act further prohibits the contribution or knowingly receiving of funds in the name of any other than the person furnishing the money.<sup>186</sup> According to Arizona legislation the assessments of candidates must be voluntary and the amount agreed upon at a meeting at which none but candidates are present.<sup>187</sup> Ohio requires every corporation or public utility to file with the tax commission every year an affidavit sworn to by an officer having knowledge of the facts set forth as to whether the corporation or public utility during the past year, directly or indirectly, made any political contributions.<sup>188</sup>

Several States require the appointment of a committee and treasurer to have charge of campaign contributions and expenditures. Maryland requires all committees to appoint a treasurer before they may collect or expend campaign funds. Written notice must be given the proper officials of such appointment, and all money collected or expended must pass through the hands of the treasurer. The treasurer is required to give a bond approved of by the committee. The candidate may appoint a "Political Agent" to assist him in his candidacy. The political agent and treasurer may act for more than one candidate.<sup>189</sup> According to the New Jersey law a candidate may appoint a committee of from one to five members to "receive, expend, audit, and disburse" all campaign funds. The candidate may declare himself the person selected for such purpose or may designate the regular party committee to act for him. The committee

may act conjointly for any number of candidates. One of the committee, who is selected by the other members as treasurer, receives and expends the political funds.<sup>190</sup> The Minnesota act permits a candidate for nomination to select a "single personal campaign committee to consist of one or more persons." The candidate may delegate to this committee the expenditure of any part of the total expenditure permitted him or in his behalf.<sup>191</sup> According to Wisconsin legislation "no person or group of persons, other than the candidate or his personal campaign committee or a party committee, shall make any disbursement for political purposes otherwise than through a personal campaign committee or a party committee, except that expenses incurred for rent of hall or other rooms, for hiring speakers, for printing, for postage, for telegraphing or telephoning, for advertising, for distributing printed matter, for clerical assistance and for hotel and traveling expenses may be contributed and paid by a person or group of persons residing within the county where such expenses are incurred; and except that a speaker may pay his actual traveling expenses in going to and from meetings addressed by him."<sup>192</sup>

The size of campaign funds is regulated in several ways. In Minnesota a candidate for Governor may expend, \$7,000; candidates for other State offices, \$3,500; for State Senator, \$600; for member of the House of Representatives, \$400; for presidential elector-at-large, \$500; and for presidential elector for any congressional district, \$100. For other offices the amount is based on the salary or fees, an expenditure of one-third of the first year's salary being permitted. If there is no compensation attached to the office, or if it is one just created and in cases not specifically provided for, the candidate is

restricted to an expenditure of \$100. In a general election the State Central Committee may expend in addition a sum not to exceed \$10,000.<sup>193</sup> The New Jersey law is similar to the Minnesota act regarding fixed expenditures for candidates, except that it provides that the candidate may spend not to exceed twenty-five per cent of a year's salary in the campaign for nomination and a similar amount in the campaign for election.<sup>194</sup>

West Virginia limits a candidate's expenditure according to the number of votes cast for the office at the last election. If there were 5000 votes or less cast the candidate is limited to an expenditure of \$250; for each additional 100 votes over 5000 up to 25,000, \$2.00; for each additional 100 votes over 25,000 to 50,000, \$1.00; for each additional 100 votes over 50,000, 50 cents.<sup>195</sup>

Wyoming legislation permits candidates to expend twenty per cent of a year's salary for nomination and twenty per cent for election expenses. But no candidate is restricted to an expenditure of less than \$100. Moreover, this does not include traveling expenses and payments for space in the *State Campaign Book*.<sup>196</sup>

Oregon fixes a candidate's expenditure for the primary campaign at fifteen per cent of one year's salary in addition to the fee for space in a State publicity pamphlet. In the campaign for election he may expend ten per cent of a year's salary. No candidate, however, is restricted to less than \$100. The act further provides that "the contribution, expenditure or liability of a descendant, ascendant, brother, sister, uncle, aunt, nephew, niece, wife, partner, employer, employee or fellow official or fellow employee of a corporation shall be deemed to be that of the candidate himself."<sup>197</sup>

The Nebraska act forbids a political committee to

receive more than \$1,000 from any one person during the same campaign. Nor may the treasurer or any other person accept a single political contribution to exceed \$25 within two days of the election.<sup>198</sup>

Various methods are provided to regulate the purposes for which money may be expended in elections. Some States prescribe minutely what payments are permitted and prohibit all other payments; others list illegal expenditures; and still others include both legal and illegal expenditures. Again, some States restrict the use of money for certain purposes on election day.

Maine permits a candidate at a caucus, primary or general election, to expend money for postage, telegrams, telephones, stationery, printing, express, and traveling. The treasurer of the political committee or the political agent of the candidate may expend money only for the following expenses:

(a) Of hiring public halls and music for conventions, public meetings, and public primaries, and for advertising the same by posters or otherwise; (b) of printing and circulating political newspapers, pamphlets, and books; (c) of printing and distributing ballots and posters; (d) of renting rooms to be used by political committees; (e) of compensating clerks and other persons employed in committee rooms and at the polls; (f) of traveling expenses of political agents, committees and public speakers; (g) of necessary postage, telegrams, telephones, printing, express, and conveyance charges.<sup>199</sup>

Minnesota legislation limits the candidate's contributions or expenditures to secure nomination or election to the following purposes:

(1) For the candidates' necessary personal traveling expenses; for postage, telegraph, telephone, or other public messenger service.

(2) For rent and necessary furnishing of hall or room during such candidacy, for the delivery of speeches, relative to principles or candidates.

(3) For payment of speakers and musicians at public meetings, and their necessary traveling expenses.

(4) Printing and distribution of list of candidates, sample ballots, pamphlets, newspapers, circulars, cards, hand bills, posters and announcements relative to candidates, or public issue or principles.

(5) For copying and classifying poll lists, for making canvasses of voters and for challengers at the polls.

(6) For filing fees to the proper public officer, and if nominated at any primary for contributions to the party committee.

(7) For campaign advertising in newspapers, periodicals, or magazines.

According to the same statute personal campaign or party committees may expend campaign funds only for the following purposes:

(1) For maintenance of headquarters and for hall rentals incident to the holding of public meetings.

(2) For necessary stationery, postage, telegraph, telephone, messenger and clerical assistance to be employed at a candidate's headquarters or at the headquarters of the committee, incident to the writing, addressing and mailing of letters and campaign literature.

(3) For the necessary expenses, incident to the furnishing and printing of badges, banners and other insignia, to the printing and posting of hand bills, posters, lithographs and other campaign literature, and the distribution thereof through the mails or otherwise.

(4) For campaign advertising in newspapers, periodicals, or magazines, as provided in this act. (i. e. as "Paid Advertisements.")

(5) For wages, and actual necessary personal expenses of public speakers, organizers and musicians.

- (6) For traveling expenses of members of the committee.
- (7) For preparing poll lists and for challengers at the polls.

The act also provides that no person may pay a voter for "loss of time" for voting or registering. Nor may any one pay personal workers at primaries or elections, except poll watchers. No person may "buy, sell, give or provide any political badges, buttons or other political insignia to be worn at or about the polls on the day of any primary or election, and no such political badge, button or other insignia shall be worn at or about the polls on any primary or election day." Conveyance of voters to the polls is also prohibited. Nor may money be paid to induce a person to become a candidate, withdraw as a candidate, or refrain from becoming a candidate.<sup>200</sup> The Massachusetts act permits a political committee to hire "not more than one conveyance to be used at each polling place at elections only."<sup>201</sup>

New Jersey prohibits the expenditures for the conveyance of voters to the polls and for the hiring of any "watchers, agents or challengers for any work on election day." Each party or organization may, however, employ two challengers or agents in each polling place who must wear badges furnished by the State showing what candidate or party employs them. The act contains elaborate provisions for conveyance to the polls, at State expense, of voters living at a distance of at least two miles or who are "aged or infirm" and have no means of conveyance of their own nor live near a trolley line.<sup>202</sup>

#### PUBLICITY OF CAMPAIGN CONTRIBUTIONS AND EXPENDITURES

The purpose of requiring publicity of campaign contributions and expenditures has already been stated (See above Ch. II, p. 72). There is some difference of opinion

as to when the publicity statements of candidates, or others handling political funds, ought to be filed or made public. Publicity before election would tend to prevent the collection or expenditure of large campaign funds on account of the fear of the effect on voters. Publicity after the election may have the same effect on the size of the campaign fund, as large contributors for selfish purposes would not care to contribute, fearing that an aroused public opinion would make uncertain the carrying out of ante-election promises or understandings. A possible weakness is the dependence of such contributors on the short memory of the public. Publicity both before and after the primary or election would seem to be the solution. One difficulty in making laws of this character effective is that of securing complete detailed statements as to who the contributors are and for what purpose the money was expended.<sup>203</sup>

In accordance with Minnesota legislation statements of campaign contributions and expenditures must be filed with the proper officer by candidates, secretaries of every personal campaign committee, and secretaries of every party committee on the second Saturday after a candidate or committee has made its first disbursement or incurred any obligation, and every second Saturday of each calendar month thereafter until all disbursements have been accounted for; and all such persons are also required on the Saturday preceding any election or primary, to "file a financial statement verified upon the oath of such candidate or upon the oath of the secretary of such committee" covering all transactions not included in former statements. Each statement following the first is to contain a summary of all preceding statements and also a summary of all items given before. Statements



must also be filed by other political committees, within thirty days after any primary or election. The statements are to include in detail all contributions received or promised, source, date, and the total amount; also all disbursements or obligations, to whom, specific purpose for which paid, date, and the total amount. Failure to file statements keeps the candidate's name off the ticket. If statements are not filed at the proper time, the officer with whom they are supposed to be filed must notify the candidate or committee of the failure. He is also required to notify the county attorney of the county where the candidate resides or where the headquarters of the negligent committee are located. The county attorney is also required to notify the delinquent candidate or secretary, and if no statement is filed within ten days the county attorney is required to prosecute.<sup>204</sup>

Oregon provides for the filing with the proper officer of sworn itemized statements of campaign contributions, expenditures, and liabilities within fifteen days after nomination or election. Treasurers of political committees, political agents, as well as persons who receive or expend more than \$50, are likewise required to keep similar accounts and file statements within ten days after the election. "Every payment, except payments less in the aggregate than five dollars to any person, shall be vouched for by a receipted bill stating the particulars of expense", which must also be filed with the statements. "The books of account of every treasurer of any political party, committee or organization, during an election campaign, shall be open at all reasonable office hours to the inspection of the treasurer and chairman of any opposing political party or organization for the same electoral district; and his right of inspection may be enforced by writ of mandamus by any court of competent jurisdiction."

The Oregon act contains elaborate provisions for the inspection of the filed statements within ten days after filing by the officers with whom they are filed. If not filed, or if the filed statement does not meet the requirements of the law, or upon the written complaint of candidate or voter on the same grounds, the officer is required to notify the delinquent person. The complaint entered by the candidate or voter must state in detail the reasons for complaint, be sworn to, and filed with the officer within sixty days after the filing of the statement or amended statement. Failure to comply, on being notified, means prosecution by the district attorney, if the evidence seems to him sufficient to warrant it. The circuit court of the county in which the statements are to be filed may upon the application of the Attorney General, district attorney, or the petition of a candidate or voter, compel the filing of the proper statement. All statements filed are to be left for six months as part of the public records subject to public inspection, and certified copies may be secured as of other public records. The totals of each statement and the name of the person or candidate filing the statement are published in the following annual report of the officer with whom the statements are filed.<sup>205</sup>

According to the English law the returning officer at an election is required to publish a summary of the returns of election expenses in not less than two newspapers circulating in the county or borough where the election was held, within ten days after receiving the statement from the candidate's election agent. The returning agent is also required to specify the time and place where the complete statements may be inspected.<sup>206</sup>

The New York act provides that vouchers need not be filed for expenditures of less than \$5, except when pay-

ments are to political workers, watchers, or messengers.<sup>207</sup> The New Jersey law provides that a candidate seeking to avoid the responsibility of any payment made by any person in his behalf, of which he has knowledge, must set forth such payment and disclaim responsibility for the same. The act further provides that all claims against the committee must be presented within four days after a primary election and ten days after the general election and paid within fifteen days after the completion of the official canvass. Payments of claims may be made after the time limit only after the court of the county wherein the statement is filed is satisfied that there was no intentional misconduct, or that there was good reason for the delay.<sup>208</sup> The Minnesota act prohibits any payment of claims unless presented within ten days after the primary or election.<sup>209</sup>

#### STATE AID IN CAMPAIGNS

State financing of political campaigns has been advocated in recent years. It has been urged against this plan that it is a good thing for a party to be obliged to appeal to the public for financial support. State aid, it is held, will tend to fossilize parties. State aid thus far has been restricted to the publishing of publicity pamphlets, in connection with which the candidates or parties are charged a nominal sum for space taken.<sup>210</sup>

The Oregon act provides for the publication of a pamphlet by the Secretary of State for the information of voters regarding candidates and parties. In this pamphlet a candidate or his friends — unless the candidate notifies the Secretary of State to the contrary — may secure space for urging his nomination. Not later than thirty-three days before the primary the informa-

tion desired to be conveyed to the voters and signed by the candidate is filed with the Secretary. Persons opposing the candidate may also file signed statements giving reasons why such person ought not to be nominated. Such opposing statement must, however, first have been served upon the candidate. The candidate is given one page and his opponent one page at the same rate. A person submitting a statement is subject to the general laws regarding slander and libel. Candidates must pay for at least one page at a rate varying from \$100 for a candidate for United States Senator to \$10 for State Senator or State Representative. A candidate may secure up to three additional pages for which he must pay at the rate of \$100 per page. The candidates' names appear in the pamphlet in the same order as on the official ballot. The county clerks are required to furnish the Secretary of State with the names and addresses of the registered voters; and at least eight days before the primary the Secretary of State must mail the pamphlets to the voters. The authority for all information must be given.

A committee or organization may secure, at a rate of \$100 per page, four pages in which to advocate candidates for the nomination for President or Vice President. Any elector favoring or opposing such candidates may at a similar rate secure up to four pages to favor or oppose such candidates. Not later than thirty days before the general election the State executive committee and managing officers of any political party or organization, having nominated candidates or independent candidates, may file arguments for the success of the party and its candidates or opposing a party or its candidates. Authority must be given for all information filed. The

party is limited to twenty-four pages at a rate of \$50 per page and the independent candidate to two pages at the same rate. Regular candidates may secure up to four pages at a rate of \$100 per page, but for candidates for the presidency or vice presidency there are no charges. These pamphlets must be circulated at least ten days before the election.<sup>211</sup>

According to the Wisconsin laws statements relative to amendments to the Constitution and measures filed by the State central committee or by some one authorized by it to be submitted to popular vote may also be included in the publicity pamphlet without charges. The candidate may permit his party to use space allotted to him. The charges for space in the pamphlet distributed before the primary or election varies with the office from \$300 for the first page with \$150 for a second page for a candidate for the United States Senate to \$20 for a single page allowed a candidate for a member of the State assembly. The party is charged at the rate of \$300 a page.<sup>212</sup>

#### RESTRICTIONS ON PUBLICATIONS

The importance of periodicals and campaign literature as a means of informing voters of political matters is unquestioned, and the need of preventing newspapers or other publications from deceiving the voters as to ownership of the paper or character of the published article is apparent. To prevent fraud of this character legislation has been enacted in some States (1) to prohibit the purchase of editorial support, publication of political advertisements as news, or the publication and distribution of anonymous or libelous campaign literature, and (2) to secure publicity of ownership.

According to Minnesota legislation no publisher of a

newspaper, periodical, or magazine may insert in any part of such publication any paid matter intended to influence, or such as will tend to influence, voters unless marked in pica capital letters as "Paid Advertisement" with the amount paid, name and address of the candidate in whose behalf the matter is inserted and of any other person authorizing the publication and the author thereof. Nor may the publisher of any such publication insert in any part of the paper any matter of a political nature, or any political editorial relative to a candidate, unless the publisher files with the Secretary of State within six months before a primary or election, or ten days before a special election, a sworn statement giving the name or names of the owners.

Candidates or members of personal campaign or party committees having an interest in a newspaper or periodical circulating in whole or in part within the State must, before printing any political matter to influence voters except as paid advertisements, file with the county auditor of the county in which they live a verified declaration stating the name of the publication with the exact nature and extent of control.

No owner, publisher, editor, reporter, agent, or employe of a publication may "directly or indirectly, solicit, receive or accept any payment, promise, or compensation, nor shall any person pay or promise to pay, or in any manner compensate any such owner, publisher, editor, reporter, agent or employe, directly or indirectly, for influencing or attempting to influence through any printing matter in such newspaper any voting at any election or primary through any means whatsoever, except through the matter inserted in such newspaper or periodical as 'Paid Advertisement', and so designated."

The Minnesota act further provides that all other campaign literature must bear the name and address of the author, the candidate in whose behalf it is published and circulated, as well as of other persons or committees causing it to be published. It also provides that no one may knowingly make, publish, or cause to be published, any false statements relative to a candidate or measure to be voted on which will tend to influence or is intended to influence a voter.<sup>213</sup>

The Texas act directed against corrupt practices prohibits publications from receiving political advertising at more than the usual rates. The act also prohibits an editor or manager of a publication from demanding or receiving pay for editorial support or opposition of a candidate or measure.<sup>214</sup>

According to Oregon legislation political literature must bear the name of the author, printer, and publisher. Libelous publications are prohibited, but it is sufficient defense for the person accused to prove that he had reasonable ground for believing the charges were true and that he was not actuated by malice. The author of any such statement of charges must, moreover, at least fifteen days before circulating such statement serve the person accused with a written copy calling his attention specially to the charges. It must also be shown that before circulating the publication the author received and read the denial or explanation of the accused person, if any were offered.<sup>215</sup>

The Ohio law prohibits any newspaper or other publication from demanding through notice printed in its columns, or by personal call of some officer or agent of the publication, promises, pledges, or committals from candidates.<sup>216</sup>

## ENFORCEMENT OF THE LAW: PROCEDURE

The failure to prevent corrupt practices has not been so much the lack of statutory definitions and provisions for penalties as the non-enforcement of the laws enacted. No special provision for judicial procedure was provided in the earlier laws; nor was it made the duty of any one in particular to enforce the legislative provisions. The county attorney, as a county official aptly said, has enough troubles without looking for additional burdens. The electors, feeling no direct interest or knowing the process a difficult one, seldom have taken action.

To make the law effective the Wisconsin act provides that any elector, having knowledge of the violation of the corrupt practices statute of 1911 by any candidates for whom that elector had a right to vote or by the personal campaign committee of the candidate or by any member of the committee, may, by a verified petition, apply to the county judge of the county in which the violation took place, to the attorney general, or to the governor for permission to bring a special proceeding to investigate and decide whether the charge is true or not, and for the appointment of special counsel to conduct the proceeding for the State. If it appears from the petition "or otherwise" that there has been such violation and that it is possible to secure sufficient evidence to bring successful suit the official appealed to must permit the bringing of the proceedings and must appoint special counsel to conduct the proceedings. If permission is granted and special counsel appointed, the elector bringing the suit may "by a special proceeding brought in the circuit court in the name of the state upon the relation of such elector,



investigate and determine whether or not such candidate, committee or member thereof, has violated any provision of this act." In the proceeding the complaint giving the name of the offender and detailed grounds for the contest must be served with the summons and filed within five days after being served. The answer to the complaint must be served and filed within ten days after the service of the summons and complaint. An additional five days notice of the trial is required.

Moreover, an election contest of this character has precedence over any civil case of a different character pending in the court. The court is always to be considered open for trial of these cases, whether in or out of term. The method of trial is the same as in other civil actions, but the court may without a jury decide the facts of the case as well as the issues of law. If more than one case of this nature is before the court at the same time they may be consolidated and heard together, the expenses in connection with the cases being apportioned equally. If the decision is for the plaintiff, he may compel the defendant to make good his expenditures. The plaintiff may not be compelled to pay any judgment for costs, unless it is shown that the proceeding was not instituted by him in good faith. Moreover, "all costs and disbursements in such cases shall be in the discretion of the court." Appeal may be taken, but the party appealing may not obtain a stay of the proceedings. Nor may an injunction to suspend or stay any proceeding be issued except by applying to the court, or the presiding judge of the court, upon notifying all parties concerned and after hearing. A candidate or other person involved may also be criminally prosecuted. The special counsel may be paid not to exceed \$25 while trying the case and

not to exceed \$10 per day for the time spent in preparing the case. A judgment under this provision does not bar later criminal action.<sup>217</sup>

The New Jersey act makes it the duty of the prosecutor of the pleas of the county, on being notified by any officer or other person of any violation of the corrupt practices act, to "diligently inquire into the facts of such violation." If there is reasonable ground for prosecution it is made his duty to present the charges, with all the evidence he can procure, to the grand jury of the county. If the prosecutor fails or refuses to do his duty as required, he is held guilty of a misdemeanor and on conviction forfeits his office. Any citizen may employ an attorney to assist the prosecutor to perform his duties. The prosecutor and court must recognize the attorney as associate counsel in the proceedings. No prosecution, action, or proceeding may be dismissed without notice to or against the objection of the associate counsel until the reasons of the prosecutor for the dismissal with the objections of the associate counsel have been filed in writing, argued by the counsel, and fully considered by the court. The court, however, is empowered to fix the time within which reasons or objections may be filed. The act further provides that a contest must be commenced within ten days after the primary or thirty days after a general election, unless the ground of action is discovered from the publicity statements filed, when action may be brought not later than ten days or thirty days after such discovery, respectively. An action to annul the nomination or election of any nominated or elected person must be filed in the circuit court of the county in which the person resides whose right is contested.<sup>218</sup>

The New Jersey definition of agency is based on the

English definition. Moreover, a reason advanced for the success of the English act is its broad definition of agency, preventing a candidate from profiting by the acts of a second party while disclaiming responsibility. According to the New Jersey provision "any candidate who procures, aids, assists, counsels, or advises the payment of any money or other valuable thing by or on behalf of a committee selected under the provisions of section one of this act [the section relative to the expenditure of campaign funds by a committee designated by candidate] and such payment is made for any purpose which, if the money was expended by the candidate, would work a forfeiture of the office to which he has been elected, such payment shall be deemed to have been made by such candidate, and he shall forfeit any office to which he may have been elected at the election in reference to which such payment was made by or on behalf of such committee." The act is modified, however, by the provision that in a case coming before a court under the act where it appears from the evidence that the offense complained of was not committed by the candidate, or with his knowledge, or consent, or was committed without his sanction or connivance, and that all reasonable means were taken by the candidate or for him, or that the offenses complained of were trivial, unimportant or limited in character, and that in all respects his candidacy and election were free from all offensive or illegal acts, or that any act or omission of any candidate complained of arose from accidental miscalculation or from some other reasonable cause of a similar nature and not from lack of good faith, and it seems to the court under the circumstances to be unjust that the candidate shall forfeit his nomination, position or office, then the nomination or

election may not be declared void nor the candidate removed from nor deprived of his nomination, position, or office. The act further provides that if any candidate wishes to avoid the responsibility of a payment made for him by others of which he has knowledge, he must "set forth such payment and disclaim responsibility therefor."<sup>219</sup>

#### PENALTIES FOR VIOLATION OF ELECTION LAWS

Penalties imposed for the violation of election laws vary with the nature of the offense and with the States where the act is committed. Fines, imprisonment in jail or penitentiary, loss of charter by corporations or right to do business in the State, disfranchisement, voiding of the election, and disqualification for holding office are the various penalties prescribed in cases of violation.

Offenders against the English election laws are heard before two judges who are annually selected by the other judges. The judges report their findings to the House of Commons — but their findings are never challenged by the House. According to English legislation every person guilty of a corrupt practice — that is, bribery, treating, undue influence, knowingly making a false statement in the return of election expenses, or personation — may be fined, imprisoned, and deprived of his political rights for a period of seven years. In addition, if a candidate is guilty of such corrupt practice, or if bribery or personation has been committed with his knowledge and consent, the election of the candidate is voided and he may never be elected to Parliament by that constituency. Furthermore, if the election court finds that a corrupt practice has been committed by his agents, the candidate's election is voided and he may not be elected from

that constituency for a period of seven years. Relief, however, may be given in the case of treating or undue influence committed by an agent, other than the candidate's election agent, if of a trivial nature, and if the candidate and his election agent did not connive at it but took all reasonable means to prevent the commission of such act. For illegal practices the penalties are similar, but not so severe; and relief may be secured more readily — discretion being left, to a great extent, with the court.<sup>220</sup>

The Florida primary act provides, as a penalty for bribery, disfranchisement of the briber for a term not to exceed ten years and not less than a year's imprisonment. For a second offense the penalty is disfranchisement for life as to primary elections; and the offender may also be sentenced to serve not more than five years in the penitentiary.<sup>221</sup>

Indiana legislation provides that a person guilty of bribery may be fined, deprived of his political rights for any determinate period, and, if elected to office, his election is voided.<sup>222</sup> In accordance with the Minnesota law a corporation guilty of making political contributions may be fined not to exceed \$10,000, and if a domestic concern it may be deprived of its charter. If the offender is a foreign corporation, it may, in addition to the fine, be deprived of its right to do business in the State. The agent of the corporation making the payment may be fined from \$100 to \$5,000, or sentenced to serve from one to five years in the penitentiary, or both. Violation of the act by an officer of the corporation is considered prima facie evidence of violation by the corporation.<sup>223</sup> Violation of the New Jersey corrupt practices act is made a misdemeanor and punished as such. In case of an

elected candidate being found guilty his election is also voided. This includes the failure on the part of a candidate to file a statement of his election receipts and expenditures.<sup>224</sup> The Wisconsin act provides that any person violating its provisions may upon conviction be punished by a jail sentence of from one month to one year, by a penitentiary sentence of from one to three years, or by a fine of from \$25 to \$1,000, or by both a fine and imprisonment. The conviction of a candidate elected to office voids his election.<sup>225</sup>

## IV

### SUGGESTIONS FOR REFORM IN THE CORRUPT PRACTICES LEGISLATION OF IOWA

A COMPARISON of the legislation in Iowa on corrupt practices with the provisions of the more advanced State laws directed against such offenses reveals the fact that the Iowa provisions are incomplete and fragmentary.

#### RE-DEFINITION OF CORRUPT PRACTICES

It is apparent that a re-definition of the grosser forms of election offenses would be desirable in this State. The English definitions, which are quite comprehensive and which have served as models for other States, could safely be followed in Iowa. Treating ought to be prohibited entirely in connection with political campaigns. The prevention of undue influence through any sort of electioneering, distribution of political literature, distribution or wearing of political insignia on primary or election day would also seem advisable. In fact it would seem desirable to prohibit all forms of political activity on the part of candidates or their agents after the Saturday night prior to the Monday or Tuesday on which the election is held. Furthermore, there seems to be no good reason why a candidate or party should be permitted to turn a political campaign into a continuous vaudeville performance and through numerous bands, elaborate posters, display of banners, buttons, and other political marks of distinction seek to influence the voters to cast their ballots for

the candidates or party making the most noise or the biggest show.

#### RESPONSIBILITY IN HANDLING CAMPAIGN FUNDS

Again, Iowa legislation does not now require that political funds pass through the hands of any certain responsible person or committee. It is true that the law requires the candidate to include in his filed statement the sums he knows to have been expended by others in his behalf; but this too often means simply that the candidate takes care to be ignorant of any such payments by others, or that those making expenditures for him are very careful to keep him in ignorance of such expenditures on their part. Nor is there any restriction in the Iowa law as to the amount that may be received from individuals during the whole campaign or prior to the campaign.

#### PARTY ASSESSMENTS

Regarding party assessments the only requirement is that they be included in the candidate's statement. With our present theory of party support this is a difficult point on which to legislate. It is true that in some States the law provides that party assessments shall be voluntary; but such provisions mean very little in practice. Aside from being wrong in principle, the chief objection to the party assessments in Iowa is that locally the contribution too often goes to the support and maintenance of a "county courthouse gang". That all non-elective officers and employees ought to be protected from assessments by prohibitive laws is a proposition that will hardly be questioned.



## LIMITATIONS ON EXPENDITURES: CONVEYANCE OF VOTERS

There is no provision in the Iowa statutes regarding the total amount which the party or candidate may expend. Nor is there any attempt to restrict to legitimate educative purposes the money used by candidates or parties. One of the chief expenditures in an Iowa campaign is for transportation of voters to the polls. Even in our school elections — which in many places have degenerated into squabbles among banks for the control of school funds — voters are besieged by political workers urging them to make use of their conveyances. It would seem advisable to eliminate this method of influencing voters by prohibiting the transportation of voters to or from the polls or any part of the way. A citizen who does not take enough interest in his right of franchise to walk to the polls or furnish or pay for his own conveyance would hardly seem to be a desirable factor in the election. If a voter is infirm, or lives at a distance and is too poor to secure transportation, it might be well to provide some method of State aid similar to that found in New Jersey.<sup>226</sup>

## STATEMENTS OF CONTRIBUTIONS AND EXPENDITURES

While the Iowa law requires that candidates and political committees file statements of political contributions and expenditures, yet an examination into the manner in which the law is observed, and the inadequacy of the law even if observed, indicates the need of amending these provisions. In the first place statements ought to be filed before as well as after primaries and elections. Again, the law merely requires the filing of the statements with the proper officials without making it anybody's business to see that such information is

really filed or that the statements when filed meet the requirements of the law. When received the statements are now filed away, there being no provision for publicity through newspapers or otherwise. It is doubtful if the majority of the statements filed are ever opened and examined. The filed reports are, as a matter of fact, often incomplete as to the information required. The date of the contribution or expenditure is often omitted; so also are the names of the donor or recipient in case of an expenditure. The contributions and expenditures are not always given in detail. In fact, the space for contributions is often left blank, as is sometimes also the space for expenditures — the inference being that there were no contributions or expenditures.<sup>227</sup> There is no provision for vouchers for expenditures or other method of auditing. The payment of claims ought to be permitted only within a certain time.

#### CONTROL OF VOLUNTEER ORGANIZATIONS

Another important problem in corrupt practices legislation is the control of the political activities of volunteer organizations. It would seem that the public is at least entitled to know how much various organizations, which are non-partisan and throw their influence to the party or candidates, who through principle or intimidation are favorable to the purposes of such organizations, spend in the primaries and elections and for what purpose such expenditures are made.<sup>228</sup>

An influence of a similar character, but less tangible and therefore more dangerous and more difficult to reach through legislation, is the activity of the local boss and his co-workers who are in the political game for love of the excitement or personal interest or, as is more often

the case, as representatives of some interest or allied interests — the so-called “invisible government” desiring to control politics. As to all such who seek to secure the nomination and election of men not necessarily corrupt but rather in fact men who through birth, environment, or economic interest are “acceptable” to special interests, no corrupt practices act seems thus far to have been well enough drawn or enforced to prevent their activities.<sup>229</sup> Indeed, along this line public opinion rather than formal legislation must be relied upon. Until men see that money paid for “political work” is as a rule bribery in a disguised form, the eradication of such conditions and the prevention of the influence of such men in our politics through legislation seems quite impossible.

#### STATE AID TO POLITICAL CAMPAIGNS: OFFICIAL INFORMATION

Iowa has no provision for State aid to political campaigns. The most essential thing for a candidate desirous of serving the public as an officeholder is that he may have some means of placing before the voters a statement of the principles he favors and of his qualifications for the office. Moreover, it is still more important that the voters be furnished with at least a minimum of reliable information concerning the multitude of candidates whose names appear on our long ballots. It is possible that the most convenient and economical method would be to have the State take charge of such publicity through a system of publishing and distributing campaign books like that in force in Wisconsin or Oregon. Considering the purpose and character of such service there appears to be no good reason why the government should not perform it without charge. As to a system of

direct financial aid to parties this would seem even more difficult. An objection to the Colorado plan — which afforded financial support according to party vote, with prohibition of outside contributions except by candidates — is that such a system would tend to maintain the dominant party in power and discourage the growth of minor parties or the development of new parties.

A further aid to political parties that would seem altogether proper is some provision for the opening of public buildings, such as school houses and auditoriums of State-supported colleges and universities, for political meetings freely and without charge.

#### RESTRICTIONS ON PUBLICATIONS

Iowa has no legislation regulating the political activity of newspapers and other publications, or the publication and distribution of political dodgers of various sorts. That this is an essential feature of a comprehensive and adequate corrupt practices act can not be questioned. Indeed, it is a well known fact that some of the more influential dailies as well as some of the rural weeklies have been suspected of operating under corrupt influences in matters political. It must also be admitted that paid political matter appears in the columns of some papers as news or as editorials with no indication that such is their real character. The campaign "roorback" is of as recent appearance as the 1912 spring primaries. Nor is the real ownership of our papers generally known. For regulation along these lines it would seem that the Minnesota act would be a good model, especially for provisions regarding the labeling of paid political matter and the giving of official notice of ownership of papers publishing political matter. Other provisions of the Min-

nesota act which might well be written into the Iowa statutes are those which relate to the (1) soliciting or receiving of pay for the political influence of a publication except as paid advertising, (2) providing that all campaign literature bear the name and address of the author, of the candidate in whose behalf it is published, and of any other person or committee responsible for the publishing of the literature, and (3) prohibiting anyone from publishing false statements intended to influence voters regarding candidates or measures to be voted upon.<sup>230</sup> The Oregon provision directed against libelous campaign literature is, perhaps, stronger than that of Minnesota.<sup>231</sup>

#### METHODS OF PROCEDURE

As already indicated the weakness in corrupt practices prevention has been in the method of procedure. Iowa legislation provides no special procedure for handling corrupt practices offenses. The problem is to devise some method which will force the public prosecutor to act or some method for independent action on the part of the people who desire to enforce the law and at the same time prevent election contests on flimsy or false grounds. It would seem that the Wisconsin provision is the best plan thus far provided by any State.<sup>232</sup>

#### PENALTIES

Another problem for Iowa legislation is the nature of the penalties for the violation of corrupt practices provisions. It is doubtful whether the system of fines and imprisonment alone is effective. Moreover, where such penalties are imposed by the Iowa laws their application seems to be a matter of guesswork. Thus, for undue

influence exercised by employers the penalty is a fine of from \$5 to \$100. As suggested above, this penalty has not noticeably deterred large employers from attempts to influence their employees. It would seem that in matters of this sort some attempt should be made to fit the penalty to the nature of the offense. Corporations, either foreign or domestic, when guilty of violating the election laws ought not to be allowed to carry on business within the State. Moreover, in addition to penalties in the form of fines and imprisonment, violation of corrupt practices provisions by a candidate or his agents ought to void the election. In addition it would seem that any person guilty of such violation should be deprived of his political rights, at least for a limited period. The provisions for punishing violators of corrupt practices acts contained in the English law and in the recent State laws of Oregon, Minnesota, or Wisconsin seem altogether unobjectionable.

#### SUMMARY

Thus it appears from an historical analysis of corrupt practices legislation in Iowa and from a comparative study of legislation and administrative methods in other jurisdictions that this State is in need of a comprehensive corrupt practices act which will define more fully both corrupt practices and illegal practices, provide more adequate provisions for penalties and procedure, establish a system of State aid in campaigns, and above all aim at preventative methods and measures.

## NOTES AND REFERENCES

<sup>1</sup> Quoted from a pamphlet containing *Recommendations by the President, five Governors, and an Attorney General on Corrupt Practices in Elections* sent out by Robert Luce, p. 4.

<sup>2</sup> *Chicago Record-Herald*, 25th Year, No. 113, September 18, 1905.

The gradual demoralization of the whole electorate by means of bribery is strikingly described by Mr. George Kennan in these words:

“When Mr. Addicks’ agents first began to buy votes in southern Delaware, they could ‘get’ only a part of the negroes, and a few men from the poorest class of whites; but the corrupting influence of money, used boldly and with impunity throughout a long series of years, finally had its effect upon men of a higher type — men who could not plead poverty as an excuse for their acts. Well-to-do farmers in Sussex County, who own their farms and have money in the bank, now sell their votes regularly every other year; and as for the colored population, which polls in the two lower counties a vote of about five thousand, it has been corrupted *en masse*. Many informants in Kent and Sussex told me that in the circle of their personal acquaintance they did not know a single negro who ‘voted his sentiments’. Every man of them sold his vote for what it would bring.”— *The Outlook*, Vol. LXXIII, No. 8, p. 432.

<sup>3</sup> Christie’s *The Ballot and Corruption and Expenditure at Elections*, p. 91.

<sup>4</sup> *Laws of the Territory of Michigan*, Vol. I, pp. 527–529. This act was copied from the laws of New York, Ohio, and Vermont.

<sup>5</sup> *Laws of the Territory of Michigan*, Vol. II, p. 280.

<sup>6</sup> *Laws of the Territory of Michigan*, Vol. II, p. 563.

<sup>7</sup> *Laws of the Territory of Michigan*, Vol. II, p. 645.

<sup>8</sup> Shambaugh’s *Documentary Material Relating to the History of Iowa*, Vol. I, p. 76.

<sup>9</sup> Shambaugh’s *Documentary Material Relating to the History of Iowa*, Vol. II, p. 284.

<sup>10</sup> Shambaugh’s *Documentary Material Relating to the History of Iowa*, Vol. I, p. 78.

<sup>11</sup> *Laws of the Territory of Wisconsin, 1836-1838*, pp. 408, 409.

<sup>12</sup> Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, pp. 107, 112, 113.

<sup>13</sup> *Laws of the Territory of Iowa, 1838-1839*, pp. 185-196. Sections 11 and 12 of this act relate to corrupt practices.

<sup>14</sup> *Revised Statutes of the Territory of Iowa, 1842-1843*, pp. 248, 249.

<sup>15</sup> *Laws of the Territory of Iowa (Extra Session), 1840*, pp. 20, 21.

<sup>16</sup> Quoted from the *Iowa Capital Reporter* in the *Bloomington Herald (New Series)*, Vol. I, No. 27, November 20, 1846.

<sup>17</sup> *The Bloomington Herald (New Series)*, Vol. I, No. 27, November 20, 1846.

<sup>18</sup> Quoted from the *Iowa Capital Reporter* in the *Bloomington Herald (New Series)*, Vol. I, No. 28, November 27, 1846.

<sup>19</sup> *The Bloomington Herald (New Series)*, Vol. I, No. 28, November 27, 1846.

<sup>20</sup> *The Iowa Standard (New Series)*, Vol. II, No. 5, August 11, 1847.

<sup>21</sup> *Congressional Globe*, 1st Session, 31st Congress, Part II, pp. 1292-1296.

This case is of special interest in that it brought to light a letter showing that pressure in the nature of religious influence was used to induce the Mormon voters to cast their ballots for the Whig candidate. A part of the letter is quoted in a speech by Mr. Leffler.

“Burlington, (Iowa,) July 8, 1850 [1848].

Dear Friends and Brethren:

It has seemed good unto me, your brother and companion in tribulation and counsellor in the church of God, to advise and request you to cast your votes at the ensuing election in favor of the Whig candidates for office. This letter is placed in the hands of Colonel F. H. Warren, who will give you, or cause the same to be done, all necessary information how and where to act. . . .

Your brother in Christ,

Orson Hyde.”

— *Congressional Globe*, 1st Session, 31st Congress, Appendix, pp. 818-823.

This incident is discussed in Pelzer's *The History and Principles of the Democratic Party of Iowa* in *The Iowa Journal of History and Politics*, Vol. VI, pp. 181-184.

<sup>22</sup> Fairall's *Manual of Iowa Politics*, Vol. I, p. 24.



<sup>23</sup> Ethyl E. Martin's *A Bribery Episode in the First Election of United States Senators in Iowa* in *The Iowa Journal of History and Politics*, Vol. VII, pp. 483-502.

In this connection mention may be made of the fact that the first recorded instance of legislative bribery and bribery of a voter in Iowa occurred while Iowa was a part of the original Territory of Wisconsin. This was the case of Alexander W. McGregor, a member of the House of Representatives from the county of Dubuque. McGregor seems to have promised John Wilson that he would secure for him a franchise for a ferry privilege in return for a sum of money and Wilson's influence to secure his election. — See Parish's *The Bribery of Alexander W. McGregor* in *The Iowa Journal of History and Politics*, Vol. III, pp. 384-398.

<sup>24</sup> Clark's *History of Senatorial Elections in Iowa*, Chapter I.

<sup>25</sup> *Laws of Iowa*, 1849, pp. 132-135.

<sup>26</sup> *Code of 1851*, pp. 371-373.

<sup>27</sup> *Revision of 1860*, pp. 742-744.

<sup>28</sup> *Code of 1873*, pp. 622-624.

<sup>29</sup> *Journal of the House of Representatives*, 1858, pp. 223, 303, 383, 631, 642, 657, 750, 761.

<sup>30</sup> *Journal of the Senate*, 1858, pp. 580, 581, 600.

<sup>31</sup> *Journal of the House of Representatives*, 1868, pp. 106, 112, 204.

<sup>32</sup> *Journal of the Senate*, 1872, p. 365.

<sup>33</sup> *Journal of the Senate*, 1876, p. 120.

<sup>34</sup> *Journal of the House of Representatives*, 1878, pp. 52, 230, 239.

<sup>35</sup> *Journal of the Senate*, 1878, pp. 183, 187, 287.

<sup>36</sup> *Journal of the House of Representatives*, 1878, pp. 68, 537.

<sup>37</sup> *Laws of Iowa*, 1880, p. 79.

<sup>38</sup> *Journal of the Senate*, 1880, pp. 60, 372.

<sup>39</sup> *Journal of the Senate*, 1880, pp. 60, 270.

<sup>40</sup> *Journal of the House of Representatives*, 1880, pp. 400, 429.

<sup>41</sup> *Journal of the Senate*, 1884, pp. 399, 566.

<sup>42</sup> Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. VI, p. 8.

<sup>43</sup> *Laws of Iowa*, 1886, p. 192.

- <sup>44</sup> *Journal of the House of Representatives*, 1886, pp. 238, 343, 719.
- <sup>45</sup> Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. VI, p. 88.
- <sup>46</sup> *Journal of the House of Representatives*, 1888, pp. 144, 487, 515, 516.
- <sup>47</sup> *Journal of the Senate*, 1888, pp. 516, 518, 964.
- <sup>48</sup> Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. VI, pp. 275, 276.
- <sup>49</sup> *Journal of the Senate*, 1890, pp. 86, 91, 92; also *Journal of the House of Representatives*, 1890, pp. 121, 124, 130.
- <sup>50</sup> Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. VI, pp. 336, 337.
- <sup>51</sup> *Journal of the House of Representatives*, 1892, pp. 78, 79, 84, 106, 107, 108, 120, 145, 172, 182, 218, 223, 249, 269, 270, 271, 279, 297, 298, 309, 333, 419; also *Journal of the Senate*, 1892, pp. 81, 132, 140, 182, 183, 192, 196, 216, 217, 242, 287, 315.
- <sup>52</sup> *Laws of Iowa*, 1892, pp. 47-62.
- <sup>53</sup> Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. VI, p. 276.
- <sup>54</sup> The report of the Des Moines division of the Amalgamated Association of Street and Electric Railway Employees, printed in the *Register and Leader*, Vol. LXIII, July 31, 1912, in showing the improved conditions of the street car workers states that "under the old order of things . . . we were expected to carry out the wishes of the Company on matters political."
- <sup>55</sup> *Laws of Iowa*, 1892, p. 58.
- <sup>56</sup> *Journal of the House of Representatives*, 1892, pp. 149, 253, 621.
- <sup>57</sup> *Journal of the Senate*, 1892, p. 575.
- <sup>58</sup> *Journal of the House of Representatives*, 1894, pp. 84, 163, 275.
- <sup>59</sup> *Journal of the Senate*, 1894, pp. 176, 293, 669.
- <sup>60</sup> *Laws of Iowa*, 1894, p. 62.
- <sup>61</sup> *Code of 1897*, pp. 1935-1937.
- <sup>62</sup> *Code of 1851*, pp. 371-373.
- <sup>63</sup> *Laws of Iowa*, 1894, p. 62.
- <sup>64</sup> *Code of 1897*, pp. 419-421.

- <sup>65</sup> *Laws of Iowa*, 1892, pp. 58-60.
- <sup>66</sup> *Code of 1897*, p. 861.
- <sup>67</sup> *Code of 1897*, p. 1948.
- <sup>68</sup> *Journal of the Senate*, 1898, p. 579.
- <sup>69</sup> *Laws of Iowa*, 1898, p. 70.
- <sup>70</sup> *House File*, No. 251, Twenty-ninth General Assembly (1902).
- <sup>71</sup> *Journal of the House of Representatives*, 1902, p. 1248.
- <sup>72</sup> *Iowa Documents*, 1904, Vol. I, No. 1, pp. 15, 16.
- <sup>73</sup> *Laws of Iowa*, 1904, p. 36.
- <sup>74</sup> *House File*, No. 30, Thirtieth General Assembly (1904); *Journal of the House*, 1904, pp. 104, 313.
- <sup>75</sup> *House File*, No. 84, Thirtieth General Assembly (1904); *Journal of the House*, 1904, pp. 121, 287.
- <sup>76</sup> *House File*, No. 253, Thirtieth General Assembly (1904); *Journal of the House*, 1904, pp. 278, 1085.
- <sup>77</sup> *House File*, No. 97, Thirtieth General Assembly (1904); *Journal of the House*, 1904, pp. 129, 322.
- <sup>78</sup> *House File*, No. 85, Thirty-first General Assembly (1906); *Journal of the House*, 1906, pp. 162, 1088, 1166, 1167.
- <sup>79</sup> *House File*, No. 162, Thirty-first General Assembly (1906).
- <sup>80</sup> *Journal of the House of Representatives*, 1906, p. 948.
- <sup>81</sup> *House File*, No. 163, Thirty-first General Assembly (1906).
- <sup>82</sup> *Journal of the House of Representatives*, 1906, pp. 398, 399.
- <sup>83</sup> *Iowa Documents*, 1906, Vol. I, No. 1, p. 13.
- <sup>84</sup> *Register and Leader* (Des Moines), Vol. LVII, No. 272, March 31, 1907.
- <sup>85</sup> *Register and Leader* (Des Moines), Vol. LVII, No. 282, April 10, 1907.
- <sup>86</sup> *Iowa Official Register*, 1907-1908, p. 389.
- <sup>87</sup> *Iowa Official Register*, 1907-1908, p. 393.
- <sup>88</sup> *Iowa Documents*, 1907, Vol. I, No. 1, pp. 23, 24.
- <sup>89</sup> *Journal of the Senate*, 1907, pp. 142, 217, 229, 230, 269, 270, 589, 719, 720, 874, 875.

<sup>90</sup> *Senate File*, No. 38, Thirty-second General Assembly (1907); also *Laws of Iowa*, 1907, pp. 76, 77.

<sup>91</sup> *Journal of the House of Representatives*, 1907, pp. 300, 314, 476, 501, 540, 597, 658, 659, 660.

<sup>92</sup> *Laws of Iowa*, 1907, pp. 76, 77.

<sup>93</sup> *Iowa Documents*, 1907, Vol. I, No. 1, p. 24.

<sup>94</sup> *House File*, No. 10, Thirty-second General Assembly (1907); *Journal of the House of Representatives*, 1907, p. 110.

<sup>95</sup> *House File*, No. 477, Thirty-second General Assembly (1907); *Journal of the House of Representatives*, 1907, pp. 1198-1200, 1243, 1244, 1269, 1270, 1370, 1461-1463.

<sup>96</sup> *Journal of the Senate*, 1907, pp. 1401.

<sup>97</sup> *Laws of Iowa*, 1907, pp. 50, 51.

<sup>98</sup> *Laws of Iowa*, 1907, pp. 63, 64.

Senator J. J. Crossley was, perhaps, the most active member of the General Assembly in securing the passage of this legislation. In 1902 he introduced a primary bill, Senate File, No. 2; in 1904, Senate File, No. 3; in 1906, Senate File, No. 2; and in 1907, Senate File, No. 3. As a member of the Committee on Elections he had much to do with the shaping of the bill finally enacted into law. In an article on *The Regulation of Primary Elections by Law* in *The Iowa Journal of History and Politics*, Vol. I, 1903, pp. 165-192, Senator Crossley reviews the evolution of the primary method of nominating candidates.

<sup>99</sup> Hamilton's *The Dethronement of the City Boss*, p. 93.

<sup>100</sup> *Laws of Iowa*, 1907, pp. 41, 42, 44.

<sup>101</sup> *House File*, No. 265, Thirty-second General Assembly (1907); *Journal of the House of Representatives*, 1907, pp. 341, 906.

<sup>102</sup> *House File*, No. 359, Thirty-second General Assembly (1907).

<sup>103</sup> *Journal of the House of Representatives*, 1907, p. 594.

<sup>104</sup> *House File*, No. 284, Thirty-third General Assembly (1909); *Journal of the House of Representatives*, 1909, pp. 475, 1038, 1342.

<sup>105</sup> *Senate File*, No. 268, Thirty-third General Assembly (1909); *Journal of the Senate*, 1909, pp. 546, 652, 938, 939.

<sup>106</sup> *Laws of Iowa*, 1911, p. 39.

<sup>107</sup> *Senate File*, No. 46, Thirty-fourth General Assembly (1911); *Journal of the Senate*, 1911, p. 1057.

<sup>108</sup> *House File*, No. 95, Thirty-fourth General Assembly (1911); *Journal of the House of Representatives*, 1911, p. 476.

<sup>109</sup> *Laws of the Territory of Michigan*, Vol. I, p. 529.

<sup>110</sup> *Laws of the Territory of Michigan*, Vol. II, p. 563.

<sup>111</sup> *Laws of Iowa*, 1849, p. 133.

<sup>112</sup> *Code of 1851*, p. 371.

<sup>113</sup> *Laws of Iowa*, 1907, p. 42.

<sup>114</sup> *Laws of Iowa*, 1907, pp. 63, 64.

<sup>115</sup> *Laws of Iowa*, 1894, p. 62.

<sup>116</sup> *Laws of Iowa*, 1886, p. 192.

<sup>117</sup> *Laws of Iowa*, 1892, p. 60.

<sup>118</sup> *Kelso vs. Wright*, 110 Iowa 560.

<sup>119</sup> *Carrothers vs. Russel*, 53 Iowa 346.

<sup>120</sup> In the Iowa elections of 1910 the railroad interests were desirous of defeating one of the Republican candidates for Railroad Commissioner. The following is the form of a sample ballot distributed by the railroads to their employees:

For Railroad Commissioner vote for two:

David J. Palmer

James H. Wilson

To vote place x in  before each name as above.

<sup>121</sup> Pelzer's *The History and Principles of the Democratic Party of Iowa* in *The Iowa Journal of History and Politics*, Vol. VI, p. 182.

<sup>122</sup> *Laws of the Territory of Michigan*, Vol. I, p. 529.

<sup>123</sup> *Laws of the Territory of Michigan*, Vol. II, p. 563.

<sup>124</sup> *Laws of Iowa*, 1849, p. 133.

<sup>125</sup> *Code of 1851*, pp. 371, 372.

<sup>126</sup> *Register and Leader* (Des Moines), March, 1912.

<sup>127</sup> *Laws of Iowa*, 1886, p. 192.

<sup>128</sup> *Laws of Iowa*, 1892, pp. 59, 60.

<sup>129</sup> *Code of 1897*, pp. 419, 421, 1936, 1937.

- <sup>130</sup> *Register and Leader* (Des Moines), Vol. LXII, No. 352, June 18, 1912.
- <sup>131</sup> *Laws of Iowa*, 1894, p. 62.
- <sup>132</sup> *Laws of Iowa*, 1886, p. 193.
- <sup>133</sup> *Laws of Iowa*, 1904, p. 36.
- <sup>134</sup> *Laws of Iowa*, 1907, p. 63.
- <sup>135</sup> *Laws of Iowa*, 1907, pp. 41, 42.
- <sup>136</sup> Quoted from Jones's *Readings on Parties and Elections*, pp. 261, 262.
- <sup>137</sup> *Laws of Iowa*, 1898, p. 70.
- <sup>138</sup> *Laws of Iowa*, 1907, p. 44.
- <sup>139</sup> *Register and Leader* (Des Moines), Vol. LXI, No. 130, November 8, 1910; *The Marshalltown Times-Republican*, Vol. XXXVI, No. 263, November 8, 1910, and No. 264, November 8, 1910.
- <sup>140</sup> *Laws of Iowa*, 1892, p. 47.
- <sup>141</sup> *Laws of Iowa*, 1892, p. 58.
- <sup>142</sup> *Laws of the Territory of Michigan*, Vol. II, p. 563.
- <sup>143</sup> *Laws of Iowa*, 1880, p. 79.
- <sup>144</sup> *Laws of Iowa*, 1907, p. 51.
- <sup>145</sup> *Laws of the Territory of Iowa*, 1838-1839, pp. 166, 188, 189.
- <sup>146</sup> *Laws of Iowa*, 1849, p. 133.
- <sup>147</sup> *Code of 1851*, pp. 371-373.
- <sup>148</sup> *State vs. Douglas*, 7 Iowa 413.
- <sup>149</sup> *State vs. Sheeley*, 15 Iowa 404.
- <sup>150</sup> *State vs. Minnick*, 15 Iowa 123.
- <sup>151</sup> *State vs. Savre*, 129 Iowa 122.
- <sup>152</sup> *Laws of Iowa*, 1898, pp. 59, 60.
- <sup>153</sup> *Laws of Iowa*, 1904, p. 36.
- <sup>154</sup> *Laws of Iowa*, 1907, pp. 63, 64.
- <sup>155</sup> *Laws of Iowa*, 1907, p. 42.
- <sup>156</sup> *Code of 1897*, p. 1949.
- <sup>157</sup> Quoted from *The Marshalltown Times-Republican*.

- 158 *The Marshalltown Times-Republican* for March 12, 1912.
- 159 *Laws of Iowa*, 1907, pp. 76, 77.
- 160 *Laws of Iowa*, 1898, p. 70.
- 161 *Laws of Iowa*, 1907, p. 44.
- 162 *Laws of Iowa*, 1911, p. 39.
- 163 *Laws of Iowa*, 1907, pp. 50, 51.
- 164 Jelf's *The Corrupt and Illegal Practices Prevention Acts*, 1883 and 1895, (London, 1905), pp. 83-218.
- 165 Powell's *The Essentials of Self-Government*, (London, 1909), p. 169.
- 166 *Registration and Election Laws*, Delaware, (Dover, 1910), p. 129.
- 167 *Election Law*, Indiana, (Indianapolis, 1910), p. 111.
- 168 *General Election Laws*, Oklahoma, 1911, p. 29.
- 169 *Election Laws*, Montana, (Helena, 1910), p. 86.
- 170 *General Election Laws*, State of Washington, (1910), p. 61.
- 171 *Election Laws*, Illinois, (Springfield, 1910), p. 60.
- 172 *General Laws*, Special Session of 1912, Minnesota, (Minneapolis, 1912), pp. 26, 27.
- 173 *Election Laws*, Missouri, (Jefferson City, 1911), pp. 151, 152.
- 174 *Statutes Relating to Elections*, Oregon, (Salem, 1911), p. 177.
- 175 *Statutes Relating to Elections*, Oregon, (Salem, 1911), pp. 175, 176, 179.
- 176 *General Laws*, Special Session of 1912, Minnesota, (Minneapolis, 1912), p. 28.
- Another purpose of the provision referred to is to prevent the useless waste of money, since badges, buttons, and similar decorations are hardly of any educational value, but serve merely to make a show for the candidate or party.
- 177 Jelf's *The Corrupt and Illegal Practices Prevention Acts*, 1883 and 1895, (London, 1905), p. 210.
- 178 *Election Law*, New York, (Albany, 1911), pp. 194-204.
- 179 *Election Law*, Indiana, 1909, (Indianapolis, 1910), p. 110.
- 180 *Election Laws*, Kentucky, (1911), p. 69.

<sup>181</sup> *Supplement to an Act to Regulate Elections*, New Jersey, (Trenton, 1911), p. 11.

<sup>182</sup> *General Laws*, Special Session of 1912, Minnesota, (Minneapolis, 1912), pp. 27, 28.

<sup>183</sup> *Supplement to an Act to Regulate Elections*, New Jersey, (Trenton, 1911), p. 17.

<sup>184</sup> *Election Laws*, Kentucky, (1911), pp. 70, 71.

<sup>185</sup> A pamphlet containing a copy of all measures "Referred to the People by the Legislative Assembly", Oregon, (Salem, 1908), p. 103.

<sup>186</sup> *Statutes Relating to Elections*, Oregon, (Salem, 1911), pp. 174, 175.

<sup>187</sup> *Revised Statutes, Penal Code*, Arizona, (1901), p. 1190.

<sup>188</sup> *Laws of Ohio*, 1911, p. 255.

<sup>189</sup> *Registration and Election Laws*, Maryland, (1911), pp. 120-123.

<sup>190</sup> *Supplement to an Act to Regulate Elections*, New Jersey, (Trenton, 1911), pp. 3, 4.

<sup>191</sup> *General Laws*, Special Session of 1912, Minnesota, (Minneapolis, 1912), pp. 29, 33.

<sup>192</sup> *Amendments to Corrupt Practices Law*, Special Session, Wisconsin, (Madison, 1912), p. 4.

<sup>193</sup> *General Laws*, Special Session of 1912, Minnesota, (Minneapolis, 1912), pp. 25, 33.

<sup>194</sup> *Supplement to An Act to Regulate Elections*, New Jersey, (Trenton, 1911), pp. 8, 9.

<sup>195</sup> *Code Supplement of West Virginia*, 1909, p. 22.

<sup>196</sup> *Election Laws*, Wyoming, (Sheridan, 1911), pp. 74, 75.

<sup>197</sup> *Statutes Relating to Elections*, Oregon, (Salem, 1911), pp. 163-169.

<sup>198</sup> *General Election Laws*, Nebraska, (Lincoln, 1911), pp. 84-86.

<sup>199</sup> *Laws of Maine*, 1911, p. 128.

<sup>200</sup> *General Laws*, Special Session of 1912, Minnesota, (Minneapolis, 1912), pp. 23, 26, 29, 30.

<sup>201</sup> *Acts and Resolves of Massachusetts*, 1911, p. 602.

In a primary a candidate may expend money for one conveyance to bring voters to the polls. The English act prohibits hiring of vehicles, but a candidate may use his own or borrow those of his friends. Naturally this



has worked out directly opposite to the intention of the framers of the law in that the well-to-do are well supplied while the poorer candidates have few or none. The effect on the voters may easily be imagined.

<sup>202</sup> *Supplement to an Act to Regulate Elections*, New Jersey, (Trenton, 1911), pp. 9, 10.

<sup>203</sup> Brooks's *Corruption in American Politics and Life*, Ch. VI. This author gives a good discussion of campaign contributions and the publicity of campaign contributions and expenditures.

<sup>204</sup> *General Laws*, Special Session of 1912, Minnesota, (Minneapolis, 1912), pp. 30-36.

<sup>205</sup> *Statutes Relating to Elections*, Oregon, (Salem, 1911), pp. 170-174.

<sup>206</sup> Jelf's *The Corrupt and Illegal Practices Prevention Acts*, 1883 and 1895, (London, 1905), p. 134.

<sup>207</sup> *Election Law*, New York, (Albany, 1911), p. 223.

<sup>208</sup> *Supplement to an Act to Regulate Elections*, New Jersey, (Trenton, 1911), pp. 6-8.

<sup>209</sup> *General Laws*, Special Session of 1912, Minnesota, (Minneapolis, 1912), p. 30.

<sup>210</sup> *Session Laws of Colorado*, 1909, pp. 303-305. This act provided for the paying of election expenses by the State and candidates only. Each party was to receive for campaign purposes twenty-five cents for each vote cast at the last preceding general election for the nominee for Governor of that political party. A candidate might expend forty per cent of the first year's salary, or if paid by fees, twenty-five per cent of the fees collected during the preceding year. This statute, however, has been declared void by the Supreme Court of Colorado.

The Minnesota bill as first introduced provided for free campaign books; but this provision was eliminated before the bill became a law.

<sup>211</sup> *Statutes Relating to Elections*, Oregon, (Salem, 1911), pp. 163-169.

<sup>212</sup> *Wisconsin Corrupt Practices Law*, 1911, (Madison, 1912), pp. 9-11.

<sup>213</sup> *General Laws*, Special Session of 1912, Minnesota, (Minneapolis, 1912), pp. 23-26.

<sup>214</sup> *The Terrell Election Law*, Texas, (Austin, 1908), p. 33.

<sup>215</sup> *Statutes Relating to Elections*, Oregon, (Salem, 1911), pp. 179, 180.

<sup>216</sup> *Sections of the General Code Pertaining to Elections*, Ohio, (Columbus, 1911), p. 29.

- 217 *Wisconsin Corrupt Practices Law*, 1911, (Madison, 1912), pp. 13-15.
- 218 *Supplement to an Act to Regulate Elections*, New Jersey, (Trenton, 1911), pp. 19-21.
- 219 *Supplement to an Act to Regulate Elections*, New Jersey, (Trenton, 1911), pp. 6, 20, 21.
- 220 Jelf's *The Corrupt and Illegal Practices Prevention Acts*, 1883 and 1895, (London, 1905), pp. 89-115, 130-133.
- 221 *Laws Governing Primary Elections*, Florida, 1909, (Tallahassee, 1909), p. 9.
- 222 *Election Law of Indiana*, 1909, (Indianapolis, 1910), p. 111.
- 223 *General Laws*, Special Session of 1912, Minnesota, (Minneapolis, 1912), p. 34.
- 224 *Supplement to an Act to Regulate Elections*, New Jersey, (Trenton, 1911), pp. 6, 20.
- 225 *Wisconsin Corrupt Practices Law*, 1911, (Madison, 1912), p. 16.
- 226 *Supplement to an Act to Regulate Elections*, New Jersey, (Trenton, 1911), pp. 9, 10.
- 227 A candidate for Congress in one of the Iowa districts reported in 1910 without giving dates or names of the contributors, "Miscellaneous small contributions, \$295"; and as expenditures, without giving date or names of persons to whom the payments were made, "Advertising, \$171.50. Buttons, \$130."
- Another candidate reported expenditures as follows:—"7/15/10—11/8/10—Sundry persons—R. R. Fare, Livery, etc. \$105."
- Another candidate for Congress reported:—
- "June 7 to Nov. 8—
- |   |             |
|---|-------------|
| Railroad, sleeping car and auto fares . . . . .   | \$362.      |
| Hotel bills . . . . .   | \$345.      |
| Newspaper subscriptions and advertising, photos,<br>cuts, printing, and postage and incidentals | \$1992.75   |
| Subscription to Republican Congressional Cam-<br>paign Committee . . . . .                      | \$3000.00." |

Of the statements of the Congressional candidates examined only two reported contributions from the Republican National Committee— one reporting a contribution of \$500, the other of \$1000.

A candidate for Railroad Commissioner reported as part of his expenditures \$25 paid for a suit of clothes lost on a bet— seemingly forgetting Iowa's law against betting. The following explanation is added: "I in-

clude the suit of clothes as I think that if I had not been a candidate for Railroad Commissioner, I might not have gotten into the argument that ended in my betting the suit that X would carry the X district.''

One successful candidate for Congress reported that he had received no contributions, but made no statement regarding his expenditures.

<sup>228</sup> One of these Iowa organizations, disavowing any special political ends, advances as one of their principles that "we pledge ourselves that we will vote for no candidate of any party who is opposed to the inviolate rights and the personal freedom guaranteed to the individual citizen by the constitution."— See *Declaration of Principles and Platform of the German-American Liberal Citizens League of Iowa*, adopted by the State Convention at Cedar Rapids, Iowa, February 1, 1910, p. 2.

<sup>229</sup> An example of this would be the money which it is said was expended by local representatives of the railroads in the Iowa State campaign of 1910.

<sup>230</sup> *General Laws*, Special Session of 1912, Minnesota, (Minneapolis, 1912), pp. 23-26.

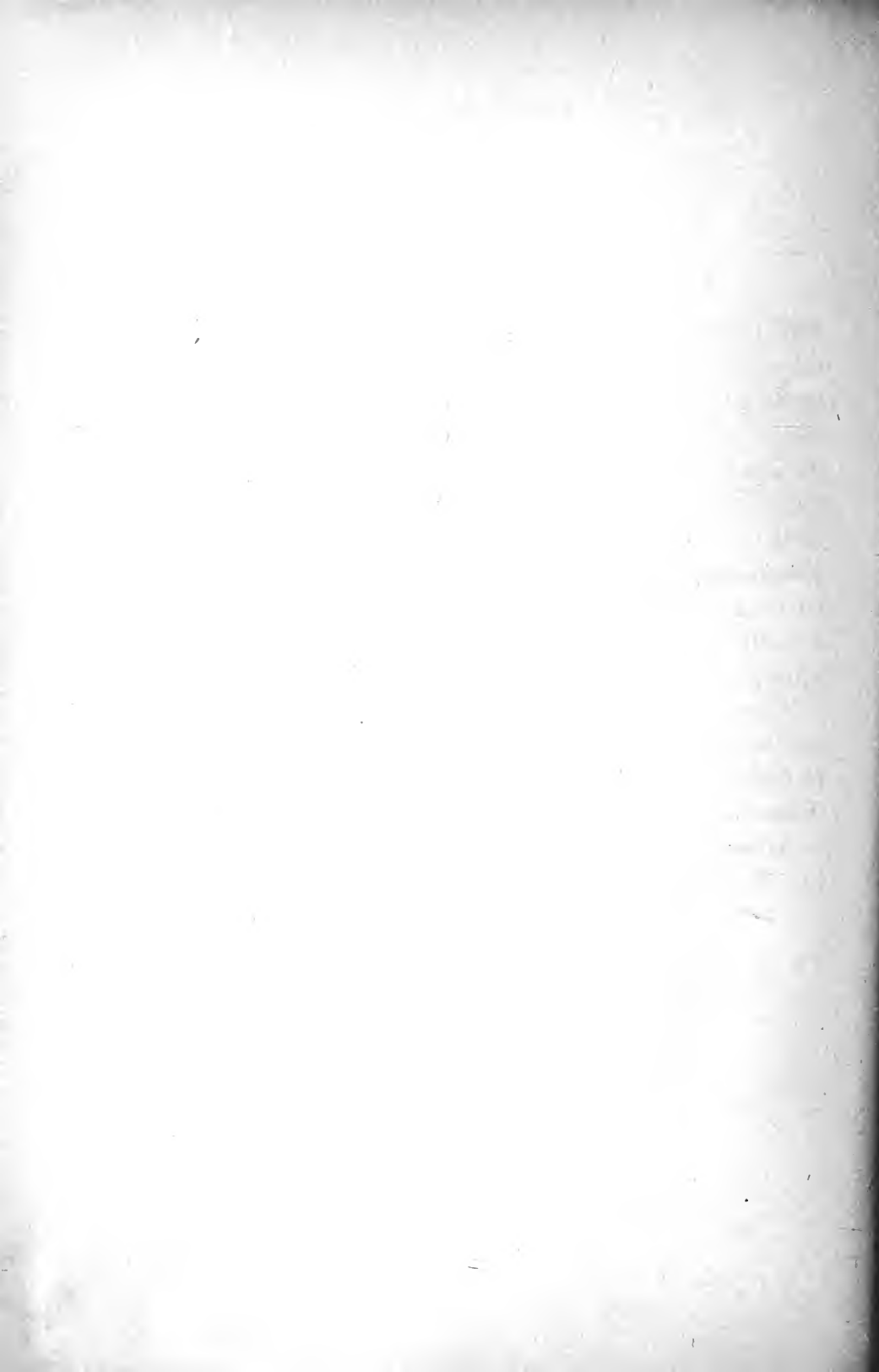
The act providing for Federal control of newspapers passed during the 1911-1912 session of Congress, requiring a newspaper to publish a sworn statement as to their owners, creditors, and officers, and to label as advertisements any paid matter appearing in their editorial or news columns, may make State legislation unnecessary along these lines.

<sup>231</sup> *Statutes Relating to Elections*, Oregon, (Salem, 1911), pp. 179, 180.

<sup>232</sup> *Wisconsin Corrupt Practices Law*, 1911, (Madison, 1912), pp. 13-16.



**WORK ACCIDENT INDEMNITY  
IN IOWA**



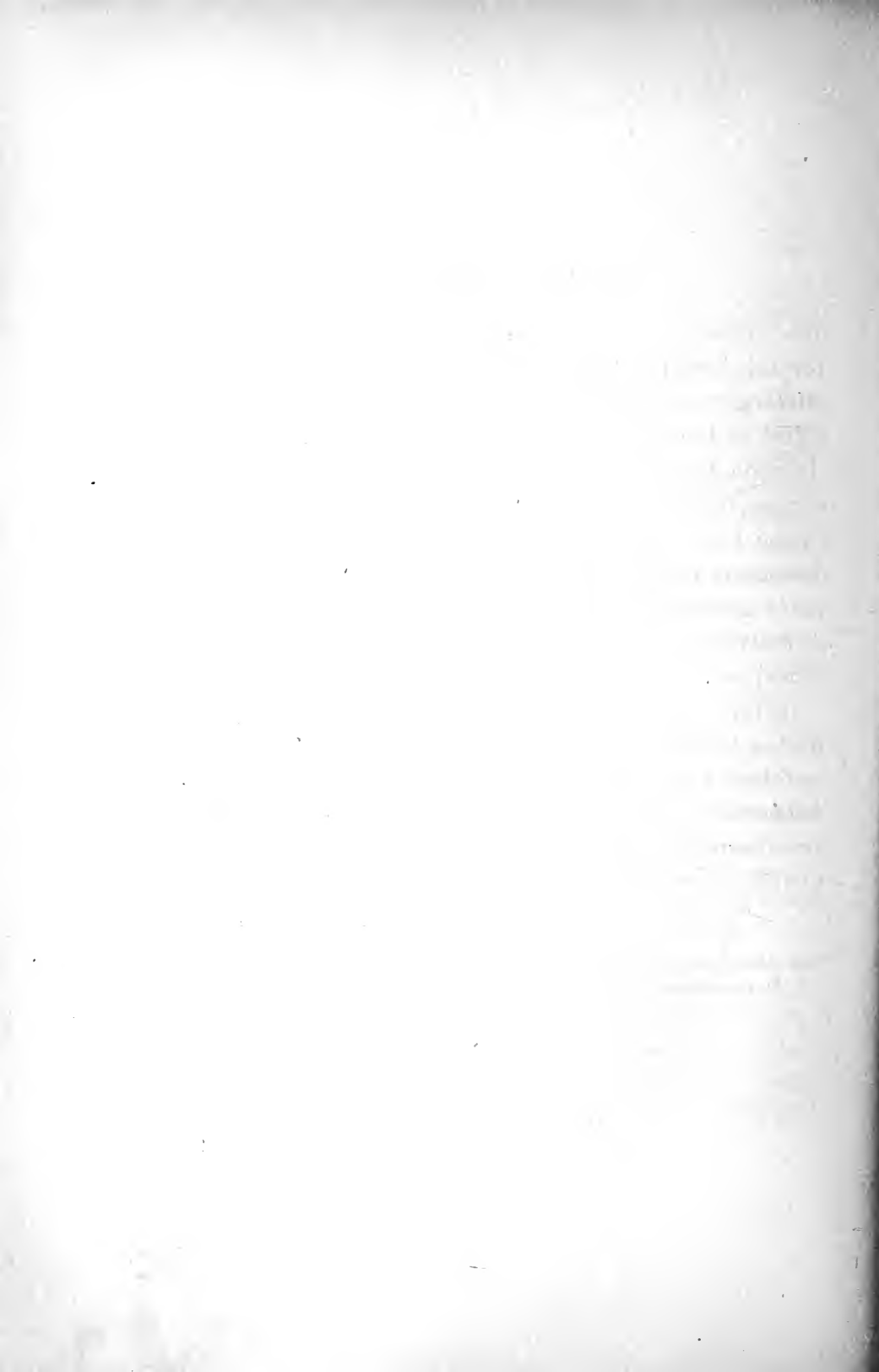
## AUTHOR'S PREFACE

THE following paper on *Work Accident Indemnity in Iowa* is substantially an abridgment of the author's *History of Work Accident Indemnity in Iowa*, as published in the *Iowa Economic History Series*. To state the main results of the longer work in a simpler and more concise form is, indeed, the purpose of this contribution to the *Iowa Applied History Series*. Accordingly, the discussion of the common law and the more historical parts generally are omitted, while the outline of indemnity systems in other States and countries is greatly condensed.

Citations to authorities for all statements of fact, as well as for many of the general principles advanced, will be found in the *Notes and References* of the longer work. Acknowledgments for assistance received by the author have been fully made in the preface to the book referred to and so are omitted here.

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## I

### THE NEED OF WORK ACCIDENT INDEMNITY

It has become clear to all informed persons that the employers' liability law of Iowa as it now stands no longer serves the ends of social justice. Both the Iowa Federation of Labor and the State Manufacturers' Association have demanded the abrogation of the existing law in favor of a system based on fundamentally different principles. The Iowa Employers' Liability Commission, created under the authority of the Thirty-fourth General Assembly, has recommended a compensation act on lines novel to the jurisprudence of this State. Twenty-six foreign governments have abandoned the principles of liability which Iowa has thus far retained, and sixteen of the United States have recently enacted laws looking to the same end.

Two facts make necessary a change in the present indemnity system: the appalling number of casualties that inevitably occur in modern industries, and the small proportion of the victims who are indemnified under existing laws.

Competent authorities estimate that work accidents in the United States annually cause more than thirty-five thousand deaths and about two million injuries, whereof probably half a million produce disability lasting more than one week. The annual casualty list of peaceful industry, in this country alone, equals the average yearly casualties of the American Civil War, plus

all those of the Philippine War, plus all those of the Russo-Japanese War. The Titanic disaster appalled the civilized world and compelled governmental action in two hemispheres; and yet as many men are killed every fortnight in the ordinary course of work — although few of the American Commonwealths so much as record their deaths.

The saddest feature of this fearful carnage of peace is its unavoidable continuance. Preventive measures, such as have been adopted in Europe, may reduce the number of work accidents and a rational indemnity system may mitigate the suffering thereby entailed. Yet, when every possible precaution has been taken, industry will continue to exact a frightful toll of life and limb. Even in Germany, which leads the world in accident prevention, 662,321 work injuries were reported in 1911, whereof 9,687 terminated fatally and 142,965 caused disability for more than thirteen weeks. The ugly fact is that work accidents, in the main, are due to causes inherent in mechanical industry, on the one hand, and in the hereditary traits of human nature, on the other hand.

Man has but lately tamed the more subtle and resistless forces of nature — forces whose powers of destruction when they escape control are fully commensurate with their beneficent potency when kept in command. These forces — steam, electricity, compressed air, water under pressure, and high explosives — operate, not the manual tools of other days, but a maze of complicated machinery which the individual workman can neither comprehend nor control, but to the movements of which his own motions must closely conform in rate, range, and direction.

Nor is the worker's danger confined to the task in

which he is himself engaged or to the appliances within his vision. The modern mill, mine, or railway combines a multitude of separate operations into one comprehensive mechanical process — insomuch that a hidden defect of even a minor part or a momentary lapse of memory or of attention by a single individual may imperil the lives of hundreds. A tower man misinterprets an order or a brittle rail gives way, and a train loaded with human freight dashes to destruction. A miner tamps his shot with slack, and a dust explosion wipes out a score of lives. A steel beam yields to a pressure that it was calculated to bear, in consequence of which a rising skyscraper collapses, and a small army of workmen are buried in the ruins.

Human nature, inherited from generations that knew not the machine, is but imperfectly fitted to meet the perils thus arising. The common man is neither an automaton nor an animated slide-rule. He does not readily think in terms of mechanical causation, and he often becomes confused in the face of a mechanical exigency which requires instantaneous action. His natural rhythm is both less rapid and less regular than that of the machines he operates, so that he sometimes fails to remove his hand before the die descends or allows himself to be struck by the recoiling lever. It requires an appreciable time for the red light or the warning gong to penetrate his consciousness, and so his response is apt to be tardy or in the wrong direction.

Moreover, this maladjustment of the man and the machine is aggravated by the continued influx of women, children, and untrained peasants into mechanical employments. A very great proportion of the operatives in every large-scale industry are unskilled. Careless-

ness, as a cause of accidents, is often but another name for youth or inexperience.

Even those accidents which statisticians commonly attribute to the fault of the injured are, in great part, properly chargeable to the inherent hazards of industry. If actual men and women could attain the common law standard of ordinary care, if human behavior were as invariable as that of inanimate objects, if forgetfulness were impossible and fatigue unknown, accidents would be reduced by at least two-fifths. Taking men and women as they are, however, a certain percentage of error is normal to human nature, and accidents from this cause are as inevitable as any other. Of a million letters posted in a given community a certain number will be wrongly addressed and a certain number left unstamped. Of a thousand men who mount to dizzy heights in erecting steel structures a certain number will fall to death; and of a thousand girls who feed metal strips into presses a certain number will have their fingers crushed. The proportions vary little from year to year: given sufficiently large numbers under stable conditions, they can be calculated with an approximation to mathematical accuracy.

Wherefore it comes about that every employment has a predictable hazard, rising in particular occupations like those of the railway switchmen or the structural ironworkers to the casualty rate of an active army in war time. Every machine-made product may be said to have a definite cost in human blood and tears — a life for so many tons of coal, a lacerated hand for so many laundered shirts.

This "blood tax" of industry can be neither shared nor shifted. No compensation can be made for the tor-

ture of scorched flesh or mangled bodies, for the anguish of widows and orphans, or for the perpetual ghastly consciousness of missing limbs. These things, and the whole hideous host of things like them which follow upon industrial injuries, are a part of the sacrifice which those who toil must make for the benefit of those who enjoy their products. But the heavy pecuniary cost of work accidents — the expense of burying the dead and caring for the wounded and the wages lost through the death or disability of wage-workers — may be distributed in any manner that the community may deem just and expedient. It may be imposed upon the individual sufferers and their dependents, it may be distributed over industrial workers as a class by means of compulsory accident insurance or over society at large through a system of pensions, or it may be taxed to the consumers of those goods in the production of which the injuries were sustained.

The consequences of imposing this pecuniary burden upon the injured workmen and their families are such as no civilized community can afford to tolerate. Work accidents, in the nature of the case, are principally sustained by wage-earners who are substantially propertyless, who have no savings to speak of, and whose incomes are too small to leave any adequate margin for accident insurance. One-half of the adult male wage-workers of the United States receive less than \$500 annually and only ten per cent are in receipt of more than \$800 per year. Of women wage-workers, three-fifths get less than \$325, and only one in twenty gets more than \$600 yearly.

One is not surprised to learn that out of 132 married men killed in Pittsburgh only six were insured in substantial amount, and that only 25 out of 214 left savings,

insurance, and trade union and fraternal benefits to the amount of \$500 each. In New York State 175 working-men who suffered fatal or permanently disabling accidents were insured in the average sum of \$106.49. The average value of 13,448,124 "industrial insurance" policies in force in 1902 was \$135 — a mere funeral benefit. The unvarnished fact is that the wage-worker neither does nor can provide for the contingencies of sickness, accident, and premature death.

Were disabling injuries sustained only by unmarried and unincumbered workers, matters would go hardly enough with such sufferers as receive no indemnity. But careful investigation in seven different States has conclusively shown that quite half the victims of work accidents are married men, and that a majority of even the unmarried contribute to the support of relatives. A serious work accident, therefore, commonly deprives a necessitous family of its sole or chief source of income. The inevitable result, in the absence of systematic indemnity, is poverty and the long train of evils that flow from poverty.

It is not only that the victims of unindemnified work accidents suffer prolonged incapacity and often needless death from want of means to secure proper care; not only that families are compelled to reduce a standard of living already low, and that women and children are forced into employments unsuited to their age and sex, with resultant physical and moral deterioration; but it is that the ever-present fear of undeserved want goes far to impair that spirit of hopefulness and enterprise upon which industrial efficiency so largely depends.

Lest anyone suppose that such evils do not obtain in agricultural Iowa, let it be recalled that the railways and

mines of this State took the lives of 1144 workmen and inflicted 14,863 injuries upon employees during the decade from 1901 to 1911. If the factory and building accidents reported to the Bureau of Labor Statistics since 1906 may be taken as a guide, such accidents must have caused an additional 100 deaths and at least 12,000 injuries during the ten year period. Taking the returns at their face value, not far from 125 deaths and 3000 injuries annually occur in the capitalistic industries of Iowa. But the returns of the Bureau of Labor Statistics are notoriously incomplete. More than 5000 injuries causing disability for more than one week were reported to the Industrial Commission of Wisconsin during the twelve months ending on June 30, 1912. During the first eight months of the current year, 6985 work accidents were reported to the Industrial Insurance Commission of the State of Washington. The number of men engaged in hazardous employments in Iowa is about the same as in Washington and not much less than in Wisconsin. It would be well within the mark to say that 5000 disabling injuries are sustained each year by the industrial wage-workers of this State.

The people of Iowa, therefore, like every other industrial community, must fairly face the problem of work accident indemnity. How they have dealt with this problem hitherto, and with what results, will be briefly set forth in the following chapter.

## II

### THE EXISTING INDEMNITY SYSTEM

THE common law of employers' liability, which forms the basis of work accident indemnity in Iowa, took shape some seventy-five years ago when machine industry was yet in its infancy; when the small shop where the master worked in the midst of his men still was, or very recently had been, the typical manufacturing establishment; and when work accidents were relatively few and could generally be attributed to some one's negligence. Capitalism was just coming into dominance. Wage-workers had no effective voice in government; while judges and legislators alike were drawn exclusively from the propertied and business classes.

Under such social and economic conditions the common law received a highly individualistic tone. The protection of private property became the chief function of the State. The teaching of Adam Smith, that the unrestrained pursuit of individual self-interest will necessarily promote the general welfare, and of Thomas Jefferson, that that is the best government which governs least, were deemed irrefutable if not actually inspired. Superior wealth and social position were looked upon as "natural" advantages which the State had no right to neutralize. Given only freedom of contract, equality before the law, and protection from violence and fraud, it was believed that every man might safely be left to fend for himself.



Such were the views which gave rise to the theory that the wage-worker stands on equal terms with his employer, that he is able to choose the conditions under which he will consent to serve, may decline any employment which he deems unduly hazardous and can exact extra pay for extra risk. The employee, it was held, "impliedly agrees" to work in the place and with the appliances and the co-employees and under the conditions provided by his master. He was bound to know, and to take upon himself, all the dangers and exposure to injury that were open to his observation, whether existing at the time of his employment or subsequently arising; and for such risks his wages were supposed to be his full compensation.

Three generations have passed away since these views commanded the general assent of bench and bar. Within that space of time the machine industry has wrought a revolution in the economic life of civilized mankind, greater in many respects than the changes of the preceding three thousand years. The new mode of industrial life has brought in its train new conceptions of social responsibility and of the scope and ends of government. But the common law doctrines of employers' liability live on even after being condemned by the very classes in whose supposed interest they were devised.

Employers' liability is but a branch of the law of negligence. Its cardinal principle is personal responsibility for personal wrong. Some one must be to blame for any untoward occurrence which is not the act of God. The law attempts to fix the blame and to fasten the liability upon the person at fault. If no one was at fault, if the injury could not have been prevented by the exercise of ordinary care, there is no remedy.

This fundamental principle has been elaborated into a highly complex body of legal doctrines with many ramifications and a multitude of subtle distinctions; but the gist of the law may be reduced to five propositions, convenient rubrics for which are: (1) duties of the master, (2) occupational risks, (3) the fellow-servant rule, (4) contributory negligence, and (5) assumption of risk.

#### DUTIES OF THE MASTER

An employer is bound to use ordinary care for the safety of those in his employ, to provide a reasonably safe place to work, reasonably safe tools and appliances and a sufficient number of reasonably competent and careful workmen to conduct his business in a reasonably safe manner, to instruct inexperienced servants in the performance of hazardous duties, and to warn his employees of dangers which are not readily discoverable by them, but which are, or ought to be, known to the employer. Any breach of this duty to exercise reasonable or ordinary care is negligence; and for an injury proximately, or directly, caused thereby the employer is liable.

#### OCCUPATIONAL RISKS

When the master has exercised reasonable care for the safety of his servants, his duties, and consequently his liabilities as well, are at an end. The inherent hazards of industry, which cause fully one-half of all work injuries, fall exclusively upon the employee. Despite every ordinary precaution on the part of all concerned, slate and coal fall from the roofs of mines, dynamite prematurely explodes, cables part, steam pipes burst, molten metal splashes upon those who are handling it, and

brakemen are thrown from the tops of moving cars. Such accidents are no one's fault, and for injuries sustained thereby the laws afford no remedy.

#### THE FELLOW-SERVANT RULE

Among the ordinary hazards of industry for which the master is not liable are included those arising from the negligence of co-employees or fellow-servants. The master is bound, indeed, to exercise reasonable care in the selection of employees and to discharge such as have shown themselves to be reckless or incompetent, but he is not answerable to one workman for the negligent acts or omissions of another who is engaged in the same common employment. In Iowa, however, as well as in most other jurisdictions, an employer can not so delegate certain masterial duties as to escape responsibility for their non-performance. This qualification is not without importance, but it leaves a multitude of injuries within the rule to which it is an exception.

The doctrine of co-employment might have had some slight justification if restricted to the fellow-craftsmen of a petty shop who might be supposed to know each other intimately and to be able to guard against each other's negligence. But with exquisite irony the doctrine was applied to railway corporations with their tens of thousands of employees scattered over the face of the continent. "Workingmen who had never heard of one another, nor had the faintest relation with one another, were held to be in common employment; and if one was injured by the negligence of the other there was no title to compensation." In Iowa, a track inspector and a locomotive engineer, a railway detective and the members of a train crew, a coal miner and the men who laid the mine track, have been held to be co-servants.

## CONTRIBUTORY NEGLIGENCE

Even though an employer may have been direlict in his duty and such direliction may have been a concurrent cause of an injury, there is no compensation if the injured person, by his own negligence, contributed in any degree to produce the accident. So strictly is this rule enforced that a moment's forgetfulness of a known danger, or the least imprudence — induced, it may be, by the employer's demand for speed — will suffice to defeat recovery. It matters not that the employee's fault may have been slight and that of the master gross by comparison: if the injured workman, by the use of due care, could have avoided the accident, he can not recover.

## ASSUMPTION OF RISK

Lastly, though the workman be blameless and his employer blameable the latter is relieved of all liability if only the former was, or might have been, aware of the dangerous condition which produced his injury. For, by a super-refinement of juristic ingenuity it is reasoned that, by continuing at work with knowledge of his master's negligence, the employee "consented" to the negligence, "assumed" the risk, and "waived" his right to recover. It was his privilege to demand that the defect be repaired and to quit his job when compliance was refused.

At common law, then, the workman who seeks to recover for an injury sustained in the course of his employment must prove, by a preponderance of evidence, that his injury was directly and immediately caused by his employer's neglect of some masterial duty and he himself was free from any contributory negligence in the premises. Despite such proof, the employer may escape

liability by showing that his negligence was so habitual and notorious that the injured workman must have known of it.

In Iowa these common law rules have, in certain respects, been modified by statute. The doctrines of co-employment and assumption of risk do not apply to injuries arising out of the use and operation of railways; nor is contributory negligence a bar to recovery for such injuries, though it may be considered in mitigation of damages. In other employments the fellow-servant and contributory negligence rules of the common law remain in full force; but assumption of risk applies only to defects which it was the employee's duty to repair and to dangers so "imminent and to such extent that a reasonably prudent person would not have continued in the prosecution of the work."

#### RESULTS OF THE EXISTING SYSTEM

The net result of the foregoing rules, even as modified in Iowa, is to place the pecuniary burden of industrial injuries almost wholly upon the hapless victims and their families. About two-fifths of all work accidents fall within the rule of contributory negligence which relieves the employer of liability and more than that proportion are caused by those ordinary risks of the industry which are perforce assumed by the employee. At a liberal estimate, employers' liability in Iowa covers not more than one-sixth of the injuries sustained in non-transportation industries.

Investigation in a half-dozen widely separated States indicates that the number of serious injuries actually indemnified is rather less than the proportion for which the employer is legally responsible. Substantial

indemnity was paid to the dependents of married men killed on the job in 48 cases out of 258 in Allegheny County, Pennsylvania, in 8 cases out of 115 in Erie County, New York, and in one-ninth of the cases investigated in Minnesota. In Wisconsin the Labor Bureau found that only one man out of four recovered any part of the wages lost through disability. Nine of the largest liability insurance companies operating throughout the country, in three years' time, settled 414,681 claims, paying compensation in 52,427 cases, or 12.64 per cent of the whole number.

The compensations allowed are wholly inadequate to offset the financial losses incurred by work accidents. An average of investigated cases shows that in the Pittsburgh District, \$254 is paid for the death of a breadwinner, \$56.64 for the loss of an eye, \$33.33 for an arm, and \$7.14 for a finger. The average indemnity paid, in reported cases, for the death of a workman with dependents was \$536 in Minnesota and \$388.53 in Michigan. In New York the injured workmen and their dependents bear eighty-three per cent of the financial cost of fatal injuries, ninety per cent of the cost of permanent disability, and seventy-one per cent of the losses from temporary incapacity. Hence when a skilled craftsman is killed or incapacitated in the course of duty, the children are taken out of school, the family removes to less comfortable quarters in a more undesirable neighborhood, the mother takes boarders or goes out to work, the boys sink to the rank of the unskilled, and the girls marry beneath the economic class in which they were born. When a similar calamity befalls a common laborer, the widow and the older children eke out such scanty earnings as they can at casual work or in the sweated

trades: if the family are numerous or the children young, the pitiful struggle often ends in dependence or crime.

Relief is given, when at all, only after delays that often make the final recovery little better than none. In Ohio it requires two years to reach final judgment in a fatal accident case. In Cook County, Illinois, of 42 suits begun in 1908 only two had been decided by October, 1910. In New York State the waiting period varies from six months to six years. In an Iowa case it required six years' time, four juries, and four appeals to the Supreme Court to determine a carpenter's right to indemnity. The claim of a railway brakeman for injuries sustained in Appanoose County, Iowa, though diligently prosecuted through successive courts, only reached the stage of jury trial twelve years after the accident occurred.

The cost to employers is out of all proportion to the benefits conferred on the injured and their dependents. Of \$23,523,000 paid to liability insurance companies, \$6,600,000, or \$28 out of every \$100, finally reached the beneficiaries. The employers of Iowa during the ten years 1902-1911, inclusive, paid for liability insurance \$1,592,770, whereof \$814,037 was expended in settlement of claims. Assuming that one-fourth of the last mentioned sum went to contingent-fee lawyers, not more than forty per cent of the total could have reached the victims of work accidents. Employers' premiums in this State are now close to \$300,000 annually, whereof probably two-thirds represents sheer waste.

To inadequacy, waste, and delay is to be added the ill-will engendered between employers and their workmen by litigation and by feelings of injustice on the one side and of resentment on the other. The employer is prone to stand upon his legal rights, or at least to regard

any relief beyond what the law requires as in the nature of charity. The worker is apt to believe that he has an equitable, if not a legal claim to indemnity, and his fellows are likely to sympathize with this attitude. The friction thus begotten is greatly aggravated by the unscrupulousness of claim adjusters, the pernicious activity of claim agents, the excessive verdicts which juries sometimes award, and the unfounded suits that are brought in the hope of drawing a prize from the judicial lottery. The resulting antagonism is, to employers at least, one of the most deplorable results of the present unhappy system.

Lastly, and most serious of all, the existing liability law does little to encourage accident prevention. It is highly significant that such safety devices as automatic couplers, air-brakes, guards on machinery, belt shifters, fire escapes, safety cages, emergency exits from mines, and countless others, have been adopted but tardily and only in consequence of penal legislation — not from the pressure of accident liability. Yet more convincing evidence to the same effect is afforded by accident statistics. American industries kill and cripple two or three times as many workmen, relatively to the number employed, as do the like industries of Europe under indemnity systems which make accident prevention a business proposition. The fatal accident rate, per 10,000 men employed, is 31 in the coal mines of the United States as against 13 in those of Great Britain and 25 on American railways as compared with 10 on the German lines.

Judged by its fruits, therefore, the common law of employers' liability must be condemned. In the language of former President Roosevelt, "it is neither just, expedient nor humane". Since work accidents are in-



evitable concomitants of that mechanical industry which has made modern civilization possible, and the products of which are enjoyed in fullest measure by the classes least exposed to its hazards; since the victims of these injuries are precisely those least able, out of their own meagre incomes, to provide against death or disability; since the evils of poverty affect not alone the families immediately concerned, but the State as well; an enlightened public policy demands that those who are crippled in the production of the community's wealth, and the dependents of those who are slain, shall be indemnified by those for whom they wrought.

Accordingly, the principle of negligence as a basis of indemnifying work accidents has been discarded as barbarous and out of date by every civilized nation except our own.

### III

#### ACCIDENT INDEMNITY ABROAD

ALMOST everywhere outside the United States indemnity for work accidents is based on the theory of occupational risks. Concisely stated, this theory runs:—The consumers of economic goods should bear all the money costs incurred in the production of them. Among these costs are to be reckoned the pecuniary losses from deaths and injuries occurring in the regular course of production—the expenses of burial for the dead and of medical attendance for the injured and the wages lost to workmen and their dependents through the death or disability of bread-winners. Wage-earners, if forced to bear these losses in the first instance are unable to recoup themselves by means of compensatory wages or otherwise. The pecuniary cost of work accidents ought, therefore, to be treated like other costs of production under the entrepreneur system—borne by the employers in the first instance and by them shifted in the form of enhanced price upon the consumers of those goods in the production of which the injuries were sustained.

There are two general methods of giving effect to the principle of occupational risks, commonly known, respectively, as “workmen’s compensation” and “industrial insurance”. Under the former plan, each employer is required to compensate injuries sustained in his employment, though he is permitted (and in some countries is required) to insure his liability. The second mode makes

the employers of each industrial group collectively responsible for the injuries sustained in that group. Both systems secure prompt and certain indemnity, based upon the earnings of the injured, for all injuries by accident arising out of and in the course of the employment, and provide for the non-litigious determination of claims.

The compensation system exists in Belgium, Denmark, Finland, France, Great Britain, Greece, Italy, the Netherlands, Russia, Spain, Sweden, and most of the self-governing British colonies. The British law is the best known and has, indeed, served as a model in most of the other countries mentioned.

#### WORKMEN'S COMPENSATION IN GREAT BRITAIN

The British Workmen's Compensation Act of 1906 applies to all employments and to all employees, except non-manual workers whose wages exceed 250 pounds per annum and persons casually employed otherwise than in the course of trade or business, and it covers all injuries "which cause death or disable the workman for one week". The sole defense to a claim for compensation under the act is that the injury was caused by the "serious and wilful misconduct" of the injured person, and even this defense is available only in cases of temporary disability. Contracting out is prohibited unless the employer provides a scheme of compensation not less favorable to the workman than the act itself.

The schedule of compensation provided by the English law is: (1) in cases of death, where there are no dependents, reasonable medical and funeral expenses; (2) in cases of death, where there are persons wholly dependent on the deceased, three years' wages, but not less than 150 pounds nor more than 300 pounds; (3) in

cases of death where there are none but partial dependents, payments proportional to such dependency; (4) in cases of total disability, one-half of weekly wages during disability; (5) in cases of partial disability, one-half of the loss of earning capacity. No compensation is paid for disability lasting less than one week, nor for the first week where incapacity does not last more than two weeks.

Disputes under the act may be adjudicated: (1) by an arbitration committee representing the employer and his employees, (2) by an arbitrator agreed on by the parties, (3) by a county judge, or (4) by an arbitrator appointed by him. Findings of fact, whether by an arbitrator or by a county judge, are final. On questions of law, appeals lie to the Court of Appeals and ultimately to the House of Lords. In practice, nearly all claims are settled by agreement, only one-fifth of the death claims and one-half of one per cent of the disability claims being taken into court. The number of appeals to higher courts is likewise small. In 1908 it appears that 328,957 injuries were compensated, 5358 disputes were referred to county courts, 112 cases were carried to the Court of Appeals, and only 3 cases reached the House of Lords. A peculiar feature of the British system is the survival of the earlier employers' liability act alongside of the compensation law so that recovery may be had under either act, though not under both.

#### ACCIDENT INSURANCE IN GERMANY

The German plan differs from the British in substituting compulsory mutual insurance for individual liability of employers and in requiring contributions from the workmen. The benefits provided are: (1) medical and surgical treatment and medicines and therapeutic

appliances in all cases and hospital care where needed; (2) a monthly pension to injured workmen continuing during disability and equal in cases of total disability to two-thirds of the workmen's wages and a proportionate payment for partial incapacity; (3) a burial allowance in all cases of death; and (4) a pension to the surviving dependents of a workman who is killed, not exceeding one-fifth of the average earnings of the deceased to any one dependent or three-fifths thereof to all dependents.

To provide these benefits employers are organized industry-wise in mutual accident insurance associations, membership in which is compulsory. There are sixty-six such associations for industrial and forty-eight for agricultural establishments, so constituted that each is thoroughly homogeneous in character. Most of the associations cover the whole Empire; only those for agriculture, iron and steel, other metals, textiles, woodworking, and the building trades are divided territorially. The associations are managed by the members under rigid supervision by the Imperial Insurance Office and by similar administrative agencies in certain States.

Funds are raised by assessments determined by comparing, for the whole industry and for each distinct branch, the actual expenditure on account of accidents with the aggregate pay roll for a period of years and taking the average ratio, increased by a small percentage for reserves, as the basis for the levy of the current year. The contribution of each employer depends, of course, upon his average pay roll together with his rating in the risk tariff thus constructed. A rating higher than the normal may be imposed upon any establishment for failure to comply with the accident prevention regulations prescribed by the association.

Minor injuries, causing disability for less than thirteen weeks, are cared for by the sick insurance funds, whereof employers contribute one-third and the insured workmen two-thirds, and which are jointly managed by employers and employees. It is estimated that the workers thus contribute some eight per cent of the whole cost of accident indemnity.

Claims for accident indemnity are passed upon, in the first instance, by the executive committee of the local section of the association affected. Disputes are referred to an arbitration court, composed of an equal number of employers and insured persons with a government official as umpire. Appeals lie from this court to the Imperial Insurance Office. In practice, about eighteen out of every hundred claims are taken to the arbitration courts, and about one-sixth of the decisions rendered by these courts (or three per cent of all claims arising) are appealed to the Imperial Insurance Office.

The insurance systems of Austria, Hungary, Luxemburg, and Switzerland are similar in principle to that of Germany. But Hungary, Luxemburg, and Switzerland, most of whose industries are too small for autonomous insurance, have each created a single mutual association for the whole country. In Hungary, sick and accident insurance are conducted by the same association under the joint management of employers and employees; while in Switzerland there is a National Insurance Institute, the governing body of which is appointed by the Federal Council upon the nomination of trade societies.

#### THE NORWAY PLAN

The German plan was deemed impracticable in Norway because of the small numbers of workmen in most

of the industrial groups. A system of compulsory state insurance was accordingly adopted, the National Insurance Institution combining the functions which in Germany are performed by the Imperial Insurance Office and the employers' mutual associations. The Norwegian system is, in most other respects, similar to the German plan.

#### COMPARISON OF THE EUROPEAN SYSTEMS

Most students of the subject are agreed that compulsory mutual or State insurance is far superior to the simple compensation plan. The chief advantages of the insurance system are: security of payment, uniform distribution of the burden, economy of operation, and effectiveness for accident prevention.

Where insurance is obligatory, the ultimate payment of all accident indemnities is assured; whereas, in Great Britain, the insolvency of an uninsured employer leaves his pensioners remediless.

Under the system of compulsory insurance the cost of accident indemnity is distributed over the whole industry and made a fixed charge upon the business, as regular and as calculable as any other operating expense. In Great Britain, where some employers do and others do not insure their liability, there is no such uniform distribution, and consequently no such complete shifting of the burden.

Both the German and the Norwegian plans are far more economical than the British. In England under the Workmen's Compensation Act, as under the common law, private liability insurance flourishes, with resultant waste hardly less than in the United States. Of every dollar paid in premiums to the British liability com-

panies, only fifty cents reaches the beneficiaries; whereas of each dollar collected by the German mutual associations nearly eighty-seven cents is ultimately paid to injured workmen or their dependents. Administrative costs in Norway are equally low.

The German system is superior to both its rivals in the vital matter of accident prevention. The method of risk tariffs, already explained, penalizes the indifferent and rewards the careful employer. The employers' associations have a strong incentive to keep down assessments by reducing the number of accidents and they are in a position to devise and enforce effective measures to that end. The workmen's sick insurance societies, also, have both the motive and the ability to cooperate in promoting safety. Private insurance companies have no such facilities as are at the disposal of homogeneous employers' associations for the experimental study of accident prevention; and, what is even more important, they are deterred by the keen competition for business from exerting adequate pressure upon their patrons. In Norway accident insurance and factory inspection are administered by separate departments of the government which has greatly hampered the work of accident prevention.



## IV

### RECENT INDEMNITY LEGISLATION IN THE UNITED STATES

As already intimated, the United States has been very backward both in the prevention and in the relief of work accidents. So late as 1909 the common law, with only minor modifications, obtained throughout the country, as it even now obtains in a majority of the States. No State has yet provided an indemnity system comparable in scope or efficiency with that of the least progressive European nations. Even the elementary task of gathering adequate and trustworthy statistics upon which to base legislation is attempted only by Massachusetts, Washington, and Wisconsin.

Within four years, however, the legislatures of sixteen Commonwealths have enacted laws more or less modeled upon those of Europe, and similar legislation is now pending in fourteen States. The new movement is not confined to any one section. Commissions have been appointed or laws enacted from Maine to California and from North Dakota to Texas. There is good ground to believe, therefore, that a State which holds fast to the common law will shortly find itself out of line with the nation at large.

Of the recent indemnity laws those of Montana and New York have been declared invalid by the courts, and for that reason will not be considered in the following summary. New York and Maryland have purely optional

acts, which may likewise be disregarded as of no practical consequence. Of the remaining thirteen statutes, ten provide for compensation after the British plan, two establish State insurance, and one creates an employers' mutual insurance association under State supervision. The leading features of all the acts are shown in the accompanying table.

#### BASIS OF RECOVERY

As to injuries within their scope all of the acts under review give compensation irrespective of fault. But ten States make gross and wilful misconduct or deliberate intention to produce the injury, on the part of the injured person, a bar to recovery, and six grant additional compensation or additional rights of action for the violation of safety laws by the employer.

#### EMPLOYMENTS COVERED

The laws of Arizona, Illinois, Kansas, Nevada, New Hampshire, and Washington are limited to specified employments declared in the acts themselves to be especially hazardous. The Massachusetts, Michigan, and Rhode Island acts exclude agriculture and domestic service; the acts of Rhode Island and Wisconsin exempt employers of fewer than five persons; while those of California and New Jersey apply to all employers. Employees of the State and its minor divisions are included in California, Michigan, and Wisconsin, and in Washington if engaged in extra-hazardous work. In several States the principal is answerable to the employees of a sub-contractor. Most of the statutes expressly exclude casual workers employed otherwise than in the regular course of business.

**TABLE I**  
**INDEMNITY LEGISLATION IN THE UNITED STATES**

STATE	YEAR OF ACT	CHARACTER OF PLAN	SCOPE OF ACT		
			EMPLOYMENTS COVERED	INJURIES COVERED	EMPLOYEES INCLUDED
Arizona	1912	Compulsory compensation	Specified dangerous employments	All arising out of and in course of employment	All in specified dangerous employments
California	1911	Elective compensation. Compulsory on State and its subdivisions	All	All growing out of employment	All except casual
Illinois	1911	Elective compensation	Specified dangerous employments employing at least 15 workmen	All arising out of and in course of employment	All exposed to necessary hazards of business, casual excepted
Kansas	1911	Elective compensation	Specified dangerous employments	All arising out of and in course of employment	All regularly engaged in the business
Maryland	1912	Elective insurance	All	All arising out of and in course of employment	All employees
Massachusetts	1911	Elective insurance	All except domestic servants and farm laborers	All arising out of and in course of employment	All except casual employees
Michigan	1912	Elective. Compulsory for State and its subdivisions. Compensation or insurance	All except domestic servants and farm laborers	All arising out of and in course of employment	All but casual employees
Montana	1909	Compulsory insurance	All in coal mines and washers	All in course of employment from causes arising therein	All except office employees
Nevada	1911	Compulsory for employer. Elective for employee. Compensation	Specified dangerous employments	All arising out of and in course of employment	All engaged in manual or mechanical labor
New Hampshire	1911	Elective compensation	Specified dangerous employments	All arising out of and in course of employment	All engaged in manual or mechanical labor
New Jersey	1911	Elective compensation	All	All arising out of and in course of employment	All
New York	1910	Compensation. Compulsory on employer, elective for employee	Specified dangerous employments	All arising out of and in course of employment	All manual and mechanical laborers in specified employments
Ohio	1911	Elective for employer. Compulsory for employee if employer elects Coöperative insurance	All establishments employing 5 or more workmen	All sustained in course of employment	All
Rhode Island	1912	Elective compensation	All but domestic service or agriculture and employers of less than 6 workmen	All arising out of and in course of employment	All but casual and those earning over \$1800 annually
Washington	1911	Compulsory insurance	Specified dangerous employments	All sustained in course of employment	All in listed employments, & others when employer and workmen elect under law
Wisconsin	1911	Elective. Compensation. Compulsory on State and municipalities	All	All growing out of employment	All except casual

TABLE I — CONTINUED

STATE	ELECTION		DEFENSES ABOGATED	LIABILITIES ABOGATED
	BY EMPLOYER	BY EMPLOYEE		
Arizona	Compulsory	Election after injury	Common law defenses abrogated	Acceptance of compensation excludes other liabilities
California	Affirmative by written notice. Compulsory on public bodies	Presumed unless notice to contrary	If employer does not elect under act: assumption of risk, fellow servant. Contributory negligence becomes comparative	Election under act cancels all other liabilities of employer
Illinois	Presumed unless notice to contrary	Presumed unless notice to contrary	If employer does not elect under act: assumption of risk, fellow servant, contributory negligence becomes comparative	Election under act cancels all other liabilities of employer
Kansas	Affirmative by statement	Presumed unless notice to contrary	If employer does not elect under act: assumption of risk, fellow servant, contributory negligence	Election under act cancels all other liabilities of employer
Maryland	By contract with employees filed with Insurance Commissioner	By contract with employer	Contract must provide for liability regardless of negligence	Contract abrogates all other liabilities
Massachusetts	Affirmative by written notice	Presumed unless notice to contrary	If employer does not elect under act: assumption of risk, fellow servant. Contributory negligence subject for jury	Election under act cancels all other liabilities of employer
Michigan	Affirmative by written notice	Presumed unless notice to contrary	If employer does not elect under act: assumption of risk, fellow servant rule, contributory negligence	Election under act excludes all other liabilities
Montana	Compulsory	Contribution compulsory, damage suit optional after injury	No provision	Acceptance of benefit releases employer from all other liabilities
Nevada	Compulsory	Election after injury	Assumption of risk and fellow servant rule abolished. Contributory negligence graded comparatively	Acceptance of compensation excludes other liabilities
New Hampshire	Affirmative by notice	Election after injury	If employer does not elect under act: assumption of risk, fellow servant	Acceptance of compensation excludes other liabilities
New Jersey	Presumed unless notice to contrary	Presumed unless notice to contrary	If employer does not elect under act: assumption of risk, fellow servant rule, contributory negligence	Election cancels all other liabilities of employer
New York	Compulsory	Election after injury	Not mentioned	Application for benefit under act releases employer from all other liabilities
Ohio	Affirmative by paying premiums	Compulsory if employer elects	Assumption of risk, fellow servant rule, and contributory negligence abolished	Election under act cancels all other liabilities of employer
Rhode Island	Affirmative by written notice	Presumed unless notice to contrary	If employer does not elect under act: assumption of risk, fellow servant rule, contributory negligence	Election under act cancels all other liabilities of employer
Washington	Compulsory	Compulsory	If employer default in premium payments, workmen may maintain action at law, and assumption of risk and fellow servant rule are abrogated. Contributory negligence made comparative	State insurance benefits exclude all others
Wisconsin	Affirmative by notice	Presumed unless notice to contrary. Compulsory on public employees	If employer does not elect under act: assumption of risk, fellow servant	Election under act cancels all other liabilities of employer

TABLE I — CONTINUED

STATE	GROSS NEGLIGENCE OR WILFUL MISCONDUCT		FUNDS PROVIDED BY	EMPLOYER'S VOLUNTARY RELIEF	ADMINISTRATION
	OF EMPLOYER	OF EMPLOYEE			
Arizona	No provision	No provision	Employer	Valid if not less favorable to employee than act	Attorney General
California	Gives employee option of damage suit	Forfeits compensation	Employer	Valid but benefits are in addition to those under act	Industrial Accident Board
Illinois	Gives employee option of damage suit	Forfeits compensation	Employer	Valid if not less favorable to employee than act	
Kansas	Gives employee option of damage suit	Forfeits compensation	Employer	Valid if as much as benefit covered by employee's contribution plus benefit under act	
Maryland		Forfeits compensation	Employer, one half. Employees, one half		Employers insurance fund by Insurance Commissioner
Massachusetts	Doubles compensation to employee	Forfeits compensation	Employer	No other benefits affect liability under act	Industrial Accident Board
Michigan	Not mentioned	Forfeits compensation under act. Gives contributory negligence defense at law to employer	Employer	No other benefits affect liability under act	Industrial Accident Board
Montana	Not mentioned	No provision	From employer, 1c per ton mined from employee 1% of wages	Not mentioned	State Auditor
Nevada	No provision	No provision	Employer	Not mentioned	
New Hampshire	Gives employee option of damage suit	Forfeits compensation	Employer	Not mentioned	
New Jersey	No provision	Forfeits compensation	Employer	Not mentioned	Court of Common Pleas
New York	No provision	Forfeits compensation	Employer	Not mentioned	
Ohio	Gives employee option of damage suit	Forfeits compensation	From employer 90%, from employees 10% of premium	Not mentioned	State Liability Board of Awards
Rhode Island	No provision	Forfeits compensation	Employer	Must be as favorable to employee as act, and approved by Superior Court	Superior Court
Washington	Gives compensation under act and right of damage suit for excess of damage	Forfeits compensation	Employer	Not mentioned	Industrial Insurance Department
Wisconsin	No provision	Forfeits compensation	Employer	Valid but compensation under act not reduced by employee's contribution	Commission

TABLE I — CONTINUED

STATE	MEDICAL AID	TOTAL DISABILITY	
		COMPENSATION	CONTINUANCE
Arizona	No provision	50% full time wages semi-monthly	During incapacity. Limited to \$4000
California	Limited to 90 days and \$100	65% average weekly wages	Limited to 15 years and 3 years' wages
Illinois	Limited to 8 weeks and \$200	50% average weekly wages \$5 to \$12	Limited to death benefit. Thereafter 8% death benefit yearly
Kansas	No provision	50% average weekly wages \$6 to \$15	During incapacity. Limited to 10 years
Maryland	No provision	50% weekly wages	During disability
Massachusetts	Limited to first 2 weeks	50% average weekly wages \$4 to \$10 Total not to exceed \$3000	500 weeks
Michigan	Limited to first three weeks	50% average weekly wages \$4 to \$10 Total not to exceed \$4000	500 weeks
Montana	At discretion of State Auditor	\$1 for each working day paid monthly	During disability
Nevada	No provision	60% average weekly wages	\$3000
New Hampshire	No provision	50% average weekly wages Limited to \$10	300 weeks
New Jersey	Limited to first 2 weeks and \$100	50% average weekly wages \$5 to \$10	400 weeks
New York	No provision	50% average weekly wages Limited to \$10	8 years
Ohio	At discretion of Board but limited to \$200	66 2-3% average weekly wages \$5 to \$12	During disability
Rhode Island	Limited to 2 weeks	50% average weekly wages \$4 to \$10	500 weeks
Washington	No provision	Not married \$20 per month Married \$25 per month Children each \$5 per month Total limited to \$35 per month	During disability
Wisconsin	Limited to 90 days	65% average weekly wages \$4.69 to \$9.38 Full wages if more is required	15 years or 4 times average annual wage

TABLE I — CONTINUED

STATE	PARTIAL DISABILITY		WAITING TIME	SPECIFIED INJURIES
	COMPENSATION	CONTINUANCE		
Arizona	50% wage loss semi-monthly	During disability. Limited to \$4000	2 weeks. Compensation from date of accident	No provision
California	65% weekly wage loss	15 years	1 week	No provision
Illinois	50% weekly wage loss	During disability	1 week	For permanent disfigurement. Maximum limit $\frac{1}{4}$ death benefit
Kansas	25% to 50% weekly wage loss. \$3 to \$12	During disability. Limited to 10 years	2 weeks	No provision
Maryland	Difference between total disability benefits and earnings after injury	During disability	1 week	Specific fractions of total disability payments
Massachusetts	50% weekly wage loss. Limited to \$10	300 weeks	2 weeks	Specified compensation
Michigan	50% weekly wage loss. Limited to \$10	300 weeks	2 weeks. Compensation from date of accident if disability continues 8 weeks	Specified compensation
Montana	No provision except for specific injuries		12 weeks	Specified compensation
Nevada	60% wage loss	\$3000	10 days	Specified compensation
New Hampshire	50% weekly wage loss. Limited to \$10	300 weeks	2 weeks	No provision
New Jersey	Proportionate to disability weekly \$5 to \$10	300 weeks	2 weeks	Specified compensation
New York	Not to exceed wage loss nor be less than $\frac{1}{2}$ wage loss. Limited to \$10	8 years	2 weeks	No provision
Ohio	66 2-3% weekly wage loss. \$5 to \$12	6 years or \$3400	1 week	No provision
Rhode Island	50% weekly wage loss. Limited to \$10	300 weeks	2 weeks	Specified compensation
Washington	Monthly sum proportionate to disability	\$1500	Not mentioned	Specified compensation
Wisconsin	65% weekly wage loss	15 years or \$3000	1 week. Compensation from beginning if injury lasts 4 weeks	No provision

TABLE I — CONTINUED

STATE	DEATH				
	TOTAL DEPENDENTS	PARTIAL DEPENDENTS	ALIEN DEPENDENTS	MODE OF PAYMENT	NO DEPENDENTS
Arizona	1200 times daily wages. Only to widow and minor children. \$4000 limit	Same as to total dependents	Not mentioned	Lump sum	Medical and burial expenses
California	3 years' wages \$1000 to \$5000	Proportionate to dependency	Not mentioned	Weekly.	Burial expenses. Maximum \$100
Illinois	50% wages for 8 years \$1500 to \$3500	Proportionate to dependency	Not mentioned	Weekly Commutable to lump sum by order of court	Burial expenses. Maximum \$150
Kansas	3 years' wages \$1200 to \$3600	Proportionate to dependency	Non-resident aliens receive sum not to exceed \$750	Lump sum	Burial expenses. Maximum \$100
Maryland	3 years' wages. Minimum limit \$1000	3 yrs.' wages of deceased less 6 yrs.' wages of dependent	Not mentioned	Lump sum or weekly according to contract	Medical and burial expenses \$75 to \$100
Massachusetts	50% wages for 300 weeks \$1200 to \$3000	Proportionate to dependency	Not mentioned	Weekly. Commutable to lump sum after 6 months	Burial expenses. Maximum \$200
Michigan	50% weekly wages for 300 weeks \$4 to \$10	Proportionate to dependency	Not mentioned	Weekly	Medical and burial expenses. Maximum \$200
Montana	\$3000	\$3000	Non-resident aliens receive no compensation	Lump sum	
Nevada	3 years' wages \$2000 to \$3000	Half the compensation to total dependents	Not mentioned	Lump sum	Burial expenses. Maximum \$300
New Hampshire	150 weeks' wages. Maximum limit \$3000	Proportionate to dependency	No compensation to aliens unless residents of State	Lump sum	Burial expenses. Maximum \$100
New Jersey	Widow 25% w'kly wages. Orphans 25 to 60% w'kly wage. Widow and 1 child 40% weekly wage. Each child to 4, 5% extra. 300 weeks. \$5-\$10 per week	Grand parents, grandchildren, incapacitated or minor brothers or sisters, 25% w'kly wages 300 w'ks	No compensation to aliens not living in United States	Weekly. Commutable to lump sum by order of court	Burial expenses. Maximum \$200
New York	1200 times daily wages Maximum limit \$3000	Proportionate to dependency	Not mentioned	Lump sum	Medical and burial expenses. Maximum \$100
Ohio	66 2-3% 6 years' wages \$1500 to \$3400 Funeral \$150 additional	362-3% w'ges for period det'm n'd by Board. Funeral \$150 additional	Not mentioned	Weekly. Commutable to lump sum by Board	Medical and hospital expenses, limited to \$200. Burial \$150
Rhode Island	50% weekly wages for 300 weeks \$4 to \$10	Proportionate to dependency	Not mentioned	Weekly	Last sickness and burial expenses. Maximum \$200
Washington	Widow \$20 a mo. till re-marriage. \$240 dower. Children \$5 each additional. Orphans \$10 a mo. each. Maximum \$35 a mo. Funeral \$75	50% average monthly support received from deceased	Non-resident aliens except father and mother not considered	Monthly. Substitution of lump sum if beneficiary be or move out of State	Burial expenses. Maximum \$75
Wisconsin	Four years' weekly wages \$1500 to \$3000	Proportionate to dependency	Act gives non-resident aliens same benefits	Weekly. Board may commute to lump sum	Burial expenses. Maximum \$100



## ELECTION

The first important indemnity legislation in this country — the New York Workmen's Compensation Act of 1910 — was held to be a denial of "due process of law". Since that decision only three legislatures have ventured to enact compulsory laws. The acts of Arizona, Nevada, and Washington are obligatory upon employers, and that of Washington upon workmen as well.

Ten States sought to evade constitutional difficulties and at the same time give practical effect to their enactments by making them elective in form, while imposing heavy penalties upon all who should elect to retain their common law rights. In these States — California, Illinois, Kansas, Massachusetts, Michigan, New Hampshire, New Jersey, Ohio, Rhode Island, and Wisconsin — employers who fail to bring themselves within the statutes are stripped of their common law defenses; while those who elect under the acts are either saved these defenses or exempted from liability suits. In most of the foregoing States the employer is required to make affirmative election by filing a written statement with the proper administrative authority. In Illinois and New Jersey, however, such election is presumed in the absence of written notice to the contrary. In California, Illinois, Kansas, Massachusetts, Michigan, New Jersey, Rhode Island, and Wisconsin the affirmative election of the employer carries with it that of the employees unless they severally give notice to the contrary; while in Ohio mere continuance in the employment with notice that the employer has accepted the act constitutes a waiver of other rights and remedies. In Arizona, New Hampshire, and Nevada the workman may elect after the injury whether to take

under the compensation statutes or to sue at common law or under the employers' liability acts.

#### SCHEDULES OF COMPENSATION

Limited medical aid is provided by nine of the thirteen statutes. Death benefits to persons wholly dependent upon the deceased amount to four years' wages in Arizona, Illinois, Ohio, and Wisconsin, and to three years' wages in most of the other States. The compensation to partial dependents usually is proportionate to dependency. Reasonable funeral expenses for those who leave no dependents are allowed by eleven States and for all who die as the result of work accidents by two. Pensions to the totally disabled range from fifty per cent of wages in New Jersey to sixty-six and two-thirds per cent in Ohio. Washington allows monthly pensions irrespective of wages but varying with the number of dependents. In most of the States compensation to those partially incapacitated is proportionate to the wage loss. A waiting period of one or two weeks, during which no compensation is paid to the injured, usually is exacted. Most of the indemnities are subject to certain maxima and minima and in some States pensions to the incapacitated terminate after a certain number of years.

#### INSURANCE

No insurance of the employers' liability under the compensation acts is required by Arizona, California, Illinois, Kansas, Nevada, New Jersey, Rhode Island, or Wisconsin. New Hampshire requires the employer to satisfy the Labor Commissioner, by giving bond or otherwise, of his pecuniary responsibility. In Michigan the employer who elects under the act must give to the In-

dustrial Accident Board satisfactory proof of his financial responsibility, or insure his liability either in an employers' mutual association or a private company, or pay his premiums to the Commissioner of Insurance. Liability under the Massachusetts act must be insured in the Massachusetts Employees' Insurance Association, provided for by the act, or in an approved liability insurance company. Ohio and Washington, lastly, have adopted the Norway plan of State insurance.

#### BURDEN OF THE ACTS

The burden of the new indemnity systems is placed wholly upon the employer in twelve States. In Ohio the employer is allowed to deduct from the wages of insured workmen ten per cent of the premiums payable by him.

#### ADMINISTRATION

California, Massachusetts, Michigan, Ohio, Washington, and Wisconsin have established special boards, maintained out of the public treasury and clothed with important supervisory and administrative powers. (See Table II). The other States provide no special administrative machinery. New Jersey, however, has an unpaid permanent commission whose duty it is to observe and report upon the operation of the Compensation Act.

#### ADJUDICATION OF CLAIMS

All the statutes under review seek to minimize the delay and expense of litigation. In California, Massachusetts, Michigan, and Wisconsin all disputes and in Ohio and Washington all claims are determined, in the first instance, by the administrative boards of these States. Awards so made are subject to court review only on questions of law in Massachusetts; and in Cali-

TABLE II  
ADMINISTRATIVE BOARDS

STATES	TITLE OF BOARD	MEMBERS	APPOINTMENT	TERM	SALARY	FUNCTIONS
California	Industrial Accident Board	3	Governor and Senate	4 yrs.	\$3600	Administration of Compensation Act. Determination of claims.
Massachusetts	Industrial Accident Board	5	Governor and Council	5 yrs.	Chairman \$5000 Others \$4500	Supervision of Employees' Insurance Association. Administration of Compensation Act. Determination of disputes. Collection of accident records.
Michigan	Industrial Accident Board	3	Governor and Senate	6 yrs.	\$3500	Administration of Compensation Act. Determination of disputes. Collection of accident records.
Ohio	Liability Board of Awards	3	Governor	6 yrs.	\$5000	Administration of Insurance Act
Washington	Industrial Insurance Department	3	Governor	6 yrs.	\$5000	Administration of Insurance Act
Wisconsin	Industrial Commission	3	Governor and Senate	6 yrs.	\$5000	Administers workmen's compensation act and all labor laws. Collects accident records.

fornia, Michigan, Washington, and Wisconsin, only on the ground that the same was obtained by fraud or was without the jurisdiction of the board or was unsupported by the facts found. In Ohio only a finding which wholly denies compensation can be reviewed by the courts. New Hampshire, New Jersey, and Rhode Island provide for the determination of claims, in default of agreement, by a single judge whose findings of fact are final. Arizona and Illinois require and Kansas and Nevada permit the arbitration of claims before resort is had to the courts. Jury trial, as to claims arising under the compensation or insurance acts, is wholly denied in California, Massachusetts, Michigan, New Hampshire, New Jersey, Rhode Island, and Wisconsin, and is somewhat restricted in Illinois, Kansas, and Washington. Nine States limit the fees of claimants' attorneys or make such fees subject to approval by the trial court or the administrative board.

TABLE III  
ADJUDICATION OF CLAIMS

STATES	PRIMARY DETERMINATION OF CLAIMS	COURT REVIEW	JURY TRIAL	FEES OF CLAIMANTS' ATTORNEYS
Arizona	By agreement, arbitration, reference to Attorney General, or action at law	Action at law upon failure of settlement	Allowed in suits at law	Fixed by court. Limited to 25% of award
California	All disputes determined by Industrial Accident Board	Only on grounds of fraud, want of jurisdiction, or insufficiency of facts found to support award	None	No provision
Illinois	By agreement or by Board of Arbitrators with umpire appointed by Court	On appeal from arbitrators. Trial <i>de novo</i>	If demanded with notice of appeal	Subject to approval of court
Kansas	By agreement or arbitration. Action at law in default of agreement or arbitration	Action at law in default of agreement or arbitration	If demanded with notice of appeal	Subject to approval of court
Massachusetts	By agreement approved by Board. Disputes determined by arbitrators with member of Board as chairman and reviewable by Board	On questions of law only	None	Subject to approval of Industrial Accident Board
Michigan	By agreement approved by Board. Disputes determined by arbitrators with member of Board as chairman and reviewable by Board	On questions of law only, by Supreme Court	None	Subject to approval of Industrial Accident Board
Nevada	By arbitration or suit at law	Original proceedings or appeal from arbitrators	Allowed	No provision
New Hampshire	By agreement or petition in equity	Original proceeding in equity	None	Subject to approval of court
New Jersey	By agreement or by Court of Common Pleas	Award of Court of Common Pleas reviewable only on questions of law	None	No provision
Ohio	By Liability Board of Awards. Findings final on facts	Original proceeding when compensation is denied on grounds going to basis of claim	If demanded in court trials	Fixed by trial judge
Rhode Island	By agreement approved by Superior Court or by petition in equity	Award of Superior Court reviewable only on questions of law	None	No provision
Washington	All claims determined by Industrial Insurance Department	By appeal on grounds of fraud, want of jurisdiction, or insufficiency of facts found to support award	Of right as to certain matters. In discretion of court as others	Subject to approval of court
Wisconsin	All disputes determined by Industrial Commission. Findings of fact final	Only on grounds of fraud, want of jurisdiction, or insufficiency of facts found to support award	None	Not to exceed 10% of award without Commission's authorization

## V

### STANDARDS OF INDEMNITY LEGISLATION

THE experience of European nations and the researches of many investigators have established certain standards for accident indemnity which may fairly be termed indisputable. The legislator, of course, is bound to consider not merely what is desirable but what is practical and expedient in the present state of constitutional law and of public opinion. Nevertheless, it is highly important that correct principles should be adopted at the outset of any new departure in social legislation. Details can readily be filled out or modified as experience may suggest, but a fundamental change in any system once adopted is not effected without much opposition, loss, and inconvenience. An attempt will accordingly be made to set forth briefly the standards of indemnity legislation upon which students of the subject generally are agreed.

#### BASIS OF INDEMNITY

There is no question, in the first place, that the law of negligence should be abrogated and the principle of occupational risks adopted in its stead. This principle has been endorsed by both organized labor and organized capital, by the American Federation of Labor and the National Association of Manufacturers, by the Railway Brotherhoods, by the Steel Corporation, and by the International Harvester Company. It forms the basis of

indemnity in twenty-six foreign countries and in thirteen American Commonwealths, and has been recommended for adoption by the Iowa Employers' Liability Commission and by the similar commissions of about a dozen States and of the Federal government. So generally, indeed, has it been approved by sociologists, jurists, and statesmen that, in the language of the Washington Supreme Court, "to assert to the contrary is to turn the face against the enlightened opinion of mankind."

#### COMPULSION OR ELECTION

One of the most difficult questions to be decided is how to make the compensation act effective without coming into conflict with judicial interpretation of the State and Federal Constitutions. On the one hand, reason and experience dictate compulsory legislation; on the other hand, there is some danger that such legislation may be invalidated by the courts.

Obviously, a purely permissive law, like that of Maryland or the surviving statute of New York, would be nugatory. Employers can, and some of them do, without express statutory authorization compensate injuries sustained in their employment irrespective of legal liability. Even a quasi-elective plan, such as has been adopted by ten States, is but partially effective. In Wisconsin, where the defense of contributory negligence remains operative for employers who do not elect under the act, only one-fourth of the accidents reported during the first year fell within the compensation law. In California, where the rule of comparative negligence is established as to injuries without the statute, only 36,000 employees had been brought within the act at the end of twelve months. Illinois and New Jersey, which presume affirm-

ative election in the absence of positive action by the employer, make a more favorable showing. The proportion of workmen excluded from the benefits of the Illinois act can not be determined from extant records, but it appears that the larger coal operators, many of the smaller manufacturers, and a majority of the building contractors have rejected the statute. In New Jersey, where the doctrine of contributory negligence is wholly abrogated and where liability insurance rates are higher at common law than under the act, almost ninety per cent of the accidents reported to the Employers' Liability Commission are within the statute. Comparison with Massachusetts, Washington, and Wisconsin indicates, however, that the New Jersey returns are very incomplete and that the above showing is, consequently, more favorable than the facts would warrant.

It must be concluded, therefore, that the quasi-elective acts, while representing a very great advance over the common law, leave a large proportion of work injuries unindemnified. Unequal justice results, since workmen in like establishments are under different laws. What is still more vital, the quasi-elective laws are but partially effectual for the prevention of accidents. Neither the Massachusetts Association nor the Ohio Liability Board can impose adequate penalties upon employers who fail to adopt rigid safety measures, for such a course would only drive the careless and indifferent out of the compensation scheme. Private liability companies are even less effective for the saving of life and limb because their efforts in this direction are handicapped by competition.

Fully appreciating these disadvantages of the quasi-elective plan a majority of the Employers' Liability



Commission of Iowa nevertheless felt themselves constrained by constitutional difficulties to recommend its adoption. It would be mere presumption for a layman to oppose his opinion on a constitutional question to that of the eminent lawyers who served on or advised the Iowa Commission. A word may, however, be ventured with respect to the state of the authorities upon the point at issue.

A compulsory compensation act was overthrown by the New York Court of Appeals as being in derogation of "due process of law". But this decision was regarded by fourteen teachers of constitutional law in thirteen of the leading universities as being opposed to the great weight of authority. It is in apparent conflict with the decision of the United States Supreme Court in the Oklahoma Bank Guarantee case and with a long line of State and Federal decisions upholding statutes that impose liability without fault. The New York precedent was expressly disregarded by the Supreme Court of Washington in upholding the stringent compulsory accident insurance act of that State and by the Supreme Court of Montana in passing upon the compulsory coal miners' insurance act. It did not deter Arizona from passing, nor the Federal Employers' Liability Commission from recommending, a compulsory statute.

It must be conceded, of course, that the quasi-elective plan is better supported by the adjudged cases. Statutes establishing such a system have been upheld by the courts of last resort in Massachusetts, Ohio, and Wisconsin, and by an inferior tribunal of New Jersey; and no such act has thus far been held invalid. To be effective, however, a quasi-elective plan must impose penalties upon rejection which amount to coercion. This point was

glossed over by the friendly courts which have rendered favorable decisions; but a reactionary tribunal, like the New York Court of Appeals, would have little difficulty in holding that such a law as that of Illinois or New Jersey practically imposes liability without fault and hence works a deprivation of property without due process of law. On the other hand, the courts of Massachusetts, Ohio, and Wisconsin laid much stress upon the police power as validating the acts of those States — a validation not needed for a genuinely optional law. It would seem that the very great advantages of compulsion would make a much clearer case of police legislation. If “the power to promote the public welfare by restraining the use of liberty and property” will justify any legislation upon the subject it will surely justify that which experience and expert opinion have approved as most likely to secure the ends proposed. Especially strong, on constitutional grounds, is the case for a compulsory mutual or State insurance act which might be construed as imposing a tax upon industry, proportional to the hazards thereof, to compensate injuries arising out of occupational risks.

If a quasi-elective system is to be adopted, the plan proposed by a majority of the Iowa commission appears altogether admirable. That plan provides: (1) that election under the statute shall be presumed until and unless formal rejection is made, which rejection must be annually renewed; (2) that as to an employer who elects to stand upon his rights at common law the defenses of fellow-servant, contributory negligence, and assumption of risk shall be wholly abrogated; (3) that such employer shall have the burden of proof to show that an injury

sustained in his service was not due to his negligence; (4) that where the employee does, and the employer does not, reject the compensation act, the existing defenses and the existing rule as to burden of proof shall be saved; and (5) that the compensations provided shall be exclusive of every other right or remedy as to employees and their dependents. But for injuries caused by the employer's failure to comply with the safety statutes or the lawful orders of the Industrial Commission, liability exists to the Association hereinafter described.

These provisions should be sufficient to bring most employers within the statute. The requirement of affirmative rejection is preferable to the plan of affirmative election in that it enlists inertia on behalf of the law. The abrogation of contributory negligence — the most important defense in liability cases — and the reversal of the burden of proof (which last appears to be original with the Iowa Commission) should prove especially efficacious. It needs no gift of prophecy to forecast the verdict of a jury in a liability suit when no defense can be interposed and the employer has the burden of proof to show that the injury was not due to his negligence. Liability insurance rates under the common law as thus modified would undoubtedly be higher than under the compensation act, which is the strongest argument that can be addressed to employers. There is little fear that employees will wish to reject the compensation scheme, and any who might do so would doubtless be discharged.

#### SCOPE OF INDEMNITY PROVISIONS

The Iowa Commission has recommended that the coercive features of the act which is proposed be confined to the State and its subdivisions and to private establish-

ments "where five or more employees [exclusive of officers or clerks] are employed in the same general employment and in the usual and ordinary transaction of the business". In practice such a provision would exclude agriculture, domestic service, the very small establishments of all kinds, and casual workmen not employed in the way of business.

On grounds of expediency the above limitations probably should be accepted. Ideally, indeed, indemnity should be provided for all work injuries. The painter who falls from a ladder while employed by a householder for a single day, the farm laborer who loses his hand in a corn shredder, the chauffeur who is crippled in a road accident, the blacksmith's helper whose eye is put out by a flying sliver of white-hot iron, have the same equitable claim to compensation as the railway trainman who is injured in the course of duty. Moreover, these employees stand in serious need of protection. Thanks to modern machinery, agriculture has become a hazardous occupation. Small establishments notoriously are deficient in provisions for the health and safety of employees. Practically, however, the Commission's recommendation is justified by the present state of public opinion. A bill which should attempt to include farmers and small employers would have little chance of passage. It would be difficult, moreover, to provide for a large number of small employers and of casual employees in the early stages of an insurance system. Ultimately every industrial wage-worker should be protected; but until the administrative machinery is well developed it would probably be unwise to attempt an all-inclusive act. If any one is to be excluded, the limitation to establishments employing five or more persons is preferable to the ex-

press exclusion of particular employments. Large farmers and wealthy households may well be required to insure their employees.

The intermediate employer plays an important rôle in modern industry. Employers of this class are continually shifting and often are financially irresponsible. The principal undertaker ought, therefore, to be made expressly liable for injuries sustained by the employees of any contractor or sub-contractor who undertakes or performs any part of the ordinary work or business of the principal upon the principal's premises. Such appears to be the intent of section seven of the bill drafted by the Iowa Commission, though the language employed is perhaps not so unambiguous as could be wished. Section eight sufficiently guards against contracting out of liability under the proposed act.

#### SCHEDULE OF COMPENSATION

Full compensation upon the principle of occupational risks includes (1) the reasonable expenses of burial for all who die as the result of work accidents; (2) the cost of alleviating the suffering of the injured and of restoring their earning capacity where practicable; (3) the net wage loss of the disabled during the entire period of incapacity; (4) the net income loss of those dependent upon the deceased throughout the period of such dependency. Anything less than this is, by so much, less than justice.

There is little to criticize in the Iowa Commission's proposals under this head. Friends of indemnity legislation should see to it that the compensations provided in the bill are not diminished by amendment.

Imperative convention demands what is styled a "de-

cent burial" for the dead. All who are familiar with the facts know that this convention often imposes a heavy burden upon working-class families. The hardship is all the greater in case of an unexpected death which deprives the family of its main source of income at the very time when it is called upon to meet an extraordinary expense. Hence the Commission has wisely provided that funeral expenses, not to exceed \$100, shall be paid in all cases of death as the result of work accidents.

The expense of caring for the injured and restoring their earning capacity is peculiarly a cost chargeable to the industry which occasioned such expense. Not justice only, but every consideration of expediency as well, requires that medical, surgical, and hospital care, medicines, and therapeutic supplies shall be furnished in all cases of work injury. German experience shows that the provision of medical relief by the employer secures prompt and expert treatment, prevents disability from minor injuries, shortens the period of incapacity in more serious cases, and aids in detecting simulation or malingering. Under such a system large employers will find it to their interest to keep a medical attendant at the works to dress minor wounds, disinfect cuts and bruises, and render first aid. The limitation of medical aid to four weeks and \$100, as proposed by the Iowa Commission, is unfortunate. Medical attendance should not be cut off until the victim is cured so far as science can effect a cure.

Two-thirds of average earnings is the amount fixed upon by the German government, after careful inquiry, as being full compensation for total incapacity. Some deduction from full wages is just since the invalid is spared the cost of tools, working clothes, street-car fare,

and other expenses entailed by his occupation. The pension of sixty per cent adopted by the Iowa Commission may fairly be considered a just minimum.

On the other hand, the fixed maximum of twelve dollars per week can not be justified by any equitable consideration. The idea of imposing a maximum was borrowed from England, where charity rather than indemnity is the basis of relief. A brick-layer's or linotype operator's family whose weekly income is reduced from \$35 to \$12 may not be driven to the almshouse, but their standard of life will be injuriously lowered and their children will be denied educational opportunities which an adequate indemnity would have secured to them. It should be understood that the purpose of compensation is not simply to prevent dependence but to place the burden of work accidents where it properly belongs—upon the industry that caused them. Proportionate indemnity to skilled workmen is not only just; it also affords added incentive to prevent accidents. Nor will the cost of such indemnity be a higher percentage of pay roll than in the case of unskilled workers. A similar criticism applies to the proposed reduction of invalid pensions after the lapse of 400 weeks. A man totally incapacitated for life is no less helpless eight years after the injury than he was at the beginning. Pensions of not less than sixty per cent of average wages ought, therefore, to be allowed during incapacity. Full wages should be paid in all cases of such utter helplessness as to require the constant attendance of another person.

No serious objection can be made to the "waiting period" of two weeks, proposed by the Iowa Commission. True, the loss of two weeks' wages is a hardship to any working-class family. At the same time a waiting period

of moderate length is dictated by urgent practical considerations. The immense majority of work injuries are of a trivial character, entailing disability, at most, for but a few days. If indemnity were allowed for every such injury, not only would the labor and cost of administration be enormously increased, but the temptation to simulate, or to prolong, incapacity would oftentimes prove irresistible. It might be well to provide, however, that in cases of proved permanent disability compensation should date from the beginning.

Cases of temporary partial incapacity do not appear to be covered in the Commission's bill. It is provided that for "disability partial in character and permanent in quality the compensation shall be based upon the extent of such disability"; but whether earning capacity in an employment other than that in which the injured was engaged at the time of the accident shall be considered in estimating the extent of disability is not stated. Greater explicitness would remove doubt and prevent litigation. Fixed compensations are, by the Commission's bill, allowed for certain specified injuries. This provision would greatly reduce the trouble and uncertainty of administration, but it might work injustice in individual cases. The loss of a thumb or even of an eye is a much more serious disablement in some employments than in others. Still, the advantages of fixed compensation for such injuries probably outweigh the objections.

Pensions to dependents are by the Iowa Commission's bill limited to three-fifths of the average wages of the deceased, but not more than \$12 nor less than \$5 per week for a period of three hundred weeks. The same objections apply to these limitations as to the others already discussed. Justice not charity, income loss not need, is



the equitable basis of accident indemnity. Even from the standpoint of charity, however, there is no justification for the arbitrary termination of either invalidity or dependent pensions. Need in either case may be as great after the lapse of six years as at the time of the accident. Pensions ought to continue throughout dependency — a widow's during widowhood, a child's at least until the full age of sixteen years.

But, while the compensations proposed by the Iowa Commission are lower than full justice requires, they are probably as high as would be expedient at the outset. In a national system, like that of Germany, substantially the whole cost of accident indemnity can be passed on to the consumer. But Iowa's manufacturers and coal operators must compete with those of adjoining States, and so relatively high compensations would place them at some disadvantage in the market. Inasmuch as no American Commonwealth has yet accepted the principle of full indemnity upon the basis of occupational risk, Iowa can not well do so at present. But that principle ought, nevertheless, to be regarded as the standard which the indemnity system should gradually approach.

Inadequate as are the proposed indemnities, as seen from the worker's point of view, employers may regard them as unduly high from the standpoint of interstate competition. It will be worth while to sift this latter contention with some care.

In the first place, the facts should be examined. It will be observed from Table IV that the compensations proposed by the Iowa Commission are appreciably lower than those of Wisconsin, and not higher, upon the whole, than those of Illinois. Kansas allows somewhat lower

benefits, though insurance rates under the compensation act of Kansas are, strangely enough, higher than in either Illinois or Wisconsin. Upon the whole, Iowa employers under the Commission's bill would be at no disadvantage in competition with those of Illinois, Kansas, or Wisconsin, even were stock company insurance to be continued in Iowa as in the other States. If the Commission's mutual insurance plan is adopted, and particularly if the State assumes the administrative expenses thereof, as it ought in fairness to do, the actual cost of accident indemnity in this State will be less than in any of the above-mentioned Commonwealths. With respect to other adjacent States, compensation laws are pending in Minnesota, North Dakota, Nebraska, and Missouri — though what sort of legislation, if any, will be enacted can not at this writing be foretold.

TABLE IV

COMPENSATIONS	IOWA COMMISSION'S BILL	ILLINOIS	KANSAS	WISCONSIN
FUNERAL	All cases, \$100	No dependents only, \$150	No dependents only, \$100	No dependents only, \$100
MEDICAL AID	4 weeks, \$100	8 weeks, \$200	None	90 days
DEATH BENEFITS TO TOTAL DEPENDENTS	60% of wages for 300 weeks. Maximum, \$3600 Minimum, \$1500	50% of wages for 8 years. Maximum, \$3500 Minimum, \$1500	3 years' wages. Maximum, \$3600 Minimum, \$1200	4 years' wages. Maximum, \$3000 Minimum, \$1500
TOTAL DISABILITY BENEFITS	60% of wages for 400 w'ks. Limits \$12 and \$5 per w'k. After 400 w'ks, \$10-\$25 per mo.	50% of wages for 8 yrs. Limits \$12 and \$5 per w'k. After 8 yrs., 8% of death benefit annually	50% of wages for 10 years. Limits \$15 and \$6 per week	65% of wages for 15 years. Maximum total, \$3000
TEMPORARY DISABILITY BENEFITS	After 2 weeks, 60% of wages. Limits \$12 and \$5 per week	After 1 week, 50% of wages. Limits \$12 and \$5 per week	After 2 weeks, 50% of wages. Limits \$15 and \$6 per week	After 1 week, 65% of wages. Limits \$9.38 and \$4.69

In the second place, it is easy to exaggerate the importance of indemnity rates as a factor in interstate competition. Uniform costs of production, over any large area, are a fiction of closet economics. Every community has its own particular advantages and disadvan-

tages in the way of wages, freight rates, market facilities, and the cost of fuel and materials. Compared with these items accident indemnity is but a bagatelle. A difference of \$1 per \$100 of pay roll would amount to less than two cents per ton of coal. Moreover, even under the common law, liability insurance varies as much as three hundred per cent from one State to another. At the present time Minnesota, the two Dakotas, Nebraska, and Missouri retain common law liability; while Kansas, Illinois, and Wisconsin have compensation acts of varying scope and widely different rates of indemnity. To equalize competitive conditions with all these neighbors is out of the question. The attempt would be the more futile in that, as already seen, four adjoining common law States are likely to adopt compensation systems during the current legislative year. In view of the action taken and to be taken by the several States, uniformity is not to be expected for a good many years to come. The General Assembly of Iowa ought not to be deterred, therefore, by such considerations as the foregoing, from adopting a reasonably adequate scale of compensation.

#### BURDEN OF INDEMNITIES

The Iowa Commission's bill places upon the employer the entire burden of providing the indemnities proposed. Strong opposition to this feature of the bill may be expected from those who believe that workmen should bear part of the expense of accident insurance. The arguments most often advanced in favor of requiring contributions from employees are three in number. These will be discussed in the inverse order of their importance.

First. It is urged with much earnestness, though not by the spokesmen of wage-earners, that if insurance is

provided wholly at the employer's expense the insured employees will feel themselves the recipients of charity and will suffer a lesion of their manhood and self-respect. This argument, however, overlooks the substantial facts of the case. The hazards of industry are as much a part of the worker's undertaking as the labor he performs and indemnity for injuries occasioned by these hazards is no more a matter of charity than are ordinary wages.

Second. It is contended that under a contributory system employees collectively will take greater interest in accident prevention and especially in detecting fraudulent claims. The contention appears to be sound as applied to the German system under which temporary disability is cared for by workmen's sickness insurance societies. But the German analogy is inapplicable to the more common forms of State, employers' mutual, or stock company insurance for the very obvious reason that none of these plans provide any machinery for collective action by insured workmen. Unless the contributions of employees are paid into a separate fund, allocated to the relief of temporary disability and administered by local employees' organizations, no great results in the direction contended for can be expected. There is much to be said in favor of such a plan, but it ought to be combined with a system of sickness insurance.

Third. Conceding that the whole cost of accident indemnity ought ultimately to be borne by consumers, it is clear that this result can never be attained under any system confined to the limits of a single State. So far as the expense of indemnity insurance exceeds that of adjoining States Iowa employers in competitive industries will be unable to shift the burden to the purchasers of

their products. It is on this ground that Ohio permits employers to deduct ten per cent of their premiums from the wages of their employees. But so small a deduction is of little consequence. The writer is informed by the Ohio Liability Board that most employers who have accepted the State insurance scheme pay the entire premiums thereunder rather than incur the extra book-keeping, and more particularly the irritation, caused by exacting the contributions from their men. A substantial contribution from employees to a pure accident indemnity fund would violate the fundamental principle that the pecuniary burden of occupational risks ought not to be imposed upon those who must, in any case, bear the far heavier burden of grief and pain. Moreover, if workmen are to contribute substantially to accident relief they would justly insist upon due representation in the management of the funds.

If the contributory plan is adopted, the workers' contributions should be set apart as a sickness and temporary disability insurance fund, charged with the payment of invalidity benefits for a certain number of weeks. Medical relief to the injured ought to be provided at the employers' expense and benefits paid in cases of permanent disability should be re-imbursed to the fund. The workmen's fund should be administered either by local workingmen's societies or by the State Insurance Department through the medium of such societies. This arrangement would be compatible with either State or employers' mutual accident insurance.

#### INSURANCE

Compulsory, economic, and efficient insurance is vital to the success of a compensation act. If insurance is not

obligatory there will be many failures of uninsured employers and, consequently, many unindemnified injuries. Such cases are by no means rare in England, and they would be relatively much more numerous in Iowa where industrial conditions are far less stable than in the old world. Even a requirement like that of New Hampshire or Michigan, that the employer make a showing of solvency, is not a sufficient safeguard. A firm which is entirely solvent at a time of industrial expansion may fail at the first crisis. Nothing short of an indemnity bond would provide adequate security as respects ordinary commercial enterprises — and such a bond would be a clumsy and expensive type of insurance. Interstate railways, however, so far as they are subject to the statute, might well be allowed to carry their own risks.

That the insurance required should be at once economical and efficient for accident prevention is too plain for argument. Stock company insurance meets neither of these requirements.

The wastefulness of commercial liability insurance has already been adverted to in these pages but the point is so important as to deserve further emphasis. In Great Britain, where the simple compensation plan has been tried long enough to afford a fair test, the underwriters' profits and expenses, advertising, solicitor's commissions, adjusters' salaries, attorney's fees, and court costs absorb one-half of the premiums paid, or add one hundred per cent to the cost of compensation. There is no reason to expect a more favorable result in Iowa. Waste inheres in the competitive character of the business. Every company which writes this class of insurance in the State must maintain a staff of agents, adjusters, inspectors, and general counsel practically

sufficient for the entire business if conducted by a single underwriter. Travelling allowances, as well as salaries are multiplied by this useless overlapping. There is a similar multiplication of "overhead" or office expenses. Further, no employer, individually, has much incentive to protect the insurer against fraudulent claims or excessive charges for medical service — both of which are large sources of loss to the liability companies.

Competition is even more fatal to accident prevention. The stock companies, to be sure, have done good work in diffusing information as to safety devices and they also make some attempt to adjust insurance rates to establishment risks. But their efforts in the latter direction have been neutralized by rate cutting. Careful inquiry by the Industrial Commission of Wisconsin has shown that premiums in that State range from full manual rates to thirty-five per cent thereof — the amount of the rebate depending more upon the size of the establishment and the bargaining ability of the manager than upon any determinable safety conditions. That similar rebating prevails in Iowa is doubted by no one who is at all familiar with the facts. Obviously, under such conditions no adequate pressure can be exerted upon employers who neglect safety requirements. The employer who finds himself penalized by one company simply seeks insurance with a more lenient competitor.

European countries have found an adequate remedy in compulsory mutual government insurance. In Germany expenses of all kinds — including accident prevention — absorb but fourteen per cent of the premiums or add only seventeen per cent to the cost of indemnity. In Norway the proportions are twelve and fourteen per cent respectively. In other words, benefits which in

Great Britain cost the employer \$3.72 per \$100 of pay roll cost, cost \$2.16 in Norway, and \$2.64 in Germany. The remarkable efficiency of the German mutuals for accident prevention was sufficiently discussed in another connection.

There is no reason why a State department or an employers' mutual, membership wherein is obligatory upon all employers subject to the compensation act, should not approximate these favorable results. Such department or association would need no advertising and would have no agents' commissions to pay nor profits to provide. Its outlays for litigation should be small, and it would need very few adjusters instead of the very expensive staffs of the several liability companies. Its administrative costs, too, might well be borne by the State, whereas a similar subvention could hardly be granted to commercial companies. Membership being compulsory, full reserves on the capitalized liability basis would not be necessary. Assessments could be based on current expenditures, with only a moderate safety reserve, and could be raised when necessary. By this means, the minimum of capital would be withdrawn from business enterprises. Premiums would be low at first and would only gradually increase, thus throwing the least possible strain upon industry. Lastly, and most important of all, the department or association could enforce effective penalties, in the way of higher rates, upon those employers who failed to maintain standard safety conditions.

The foregoing advantages can not be attained in anything like full measure unless insurance in the department or association is exclusive and compulsory. Insurance is emphatically a "business of increasing re-



turns" in that the proportion of general expenses bears an inverse ratio to the volume of transactions. Insofar, then, as competition limits the membership of the department or association, insurance costs will be enhanced. Besides, many of the wastes of competition will become inevitable — duplication of agents and adjusters, advertising, and perhaps commissions. Both sources of loss will be augmented by the efforts of stock companies, through specially devised, limited liability policies, to secure the preference risks and to throw the undesirable applicants upon the mutual or State fund. The effects of such competition have been felt in both Massachusetts and Ohio, and are likely to appear in aggravated form under the Michigan plan of four options — which seems specially designed to give the State fund a monopoly of bad risks. A further drawback is the necessity of full reserves under any optional system. Assessments upon the current expenditures basis will inevitably increase with the lapse of time, with the result that subscribers will desert the fund. Finally, if any choice of insurers is admitted, safety standards will be fixed, as now, by the most lenient underwriter.

Even exclusive mutual or State insurance, if coupled with a quasi-elective act, will not fully reach the end in view. The stock companies, shut out from competition under the statute, may offer special inducements to employers who reject the compensation plan. This they are strongly tempted to do because of their heavy stake in the outcome. If the German or Norway plan should be generally adopted the liability companies will be driven from the field, whereas if the English example is followed they will flourish as never before. They could even afford to accept business in Iowa at a loss in order to

influence legislation in other States. Such tactics appear to have been adopted in Ohio, where employers who reject the State insurance plan are insured at one-third of the Illinois liability rates, notwithstanding that the legal liability of such employers is higher in the former State than in the latter. Largely because of this action, only 25,000 employees have thus far (November, 1912) been brought within the protection of the Ohio statute — a very small proportion for the fourth industrial State in the Union.

Compulsory insurance in a State department or an employers' mutual association appears, therefore, to be the plan best calculated to secure the great ends of indemnity legislation. No other mode provides equal benefits at anything like the same costs or promises anything like the same efficiency for the saving of human life and limb.

As between mutual and State insurance, the balance of advantages probably lies with the former. The great objection to the State plan, in Iowa at least, is the danger of political manipulation. If authority to classify employments and fix premiums is vested in an administrative board, the administrators have a dangerous power of coercion and favoritism. If classes and rates are prescribed in the statute, the system is too inflexible to meet the requirements of a rapidly changing industrial situation. A mutual association not only avoids this difficulty: it should prove more acceptable to employers and be more heartily supported by them. It is probable, too, that a mutual, particularly if divided into semi-autonomous groups, would be more effectual for accident prevention.

If the mutual plan is to be adopted, the scheme pro-

posed by a majority of the Iowa Employers' Liability Commission measurably meets the requirements of the case. This scheme involves the creation of a self-governing Employers' Indemnity Association, of which all private employers who are within the terms of the statute and who have not rejected the act become *ipso facto* members. A board of ten directors is to be appointed by the Governor for the first year and thereafter elected by the members. Other officers, and all questions of internal organization, are to be provided for by the by-laws of the Association. The Association is empowered to issue policies of indemnity to its members, covering all liability under the compensation act, and to pay all compensations, make all settlements, and defend all suits under said act.

The Board of Directors is authorized, subject to the approval of the Industrial Commission hereinafter described, to distribute the members of the Association into risk groups, to determine and collect the assessments for each group and each establishment, to adopt and enforce rules and regulations for accident prevention, and, inferentially at least, to increase or diminish the assessments of each establishment according to the safety conditions maintained therein.

The Association is required to set aside each year ten per cent of the gross premiums collected until it shall have accumulated a reserve fund of one million dollars, which shall thereafter be maintained. Pending such accumulation, the Association must reinsure its risks in one or more liability companies approved by the Industrial Commission.

The greatest weakness of the foregoing plan inheres in the quasi-elective feature of the proposed act. Apart

from this unavoidable weakness, the Iowa Commission's proposals appear susceptible of improvement in certain details. In the first place, the State as the final almoner of widows and orphans, and of indigent invalids, might well defray the administrative expenses of the Association. Massachusetts makes an annual appropriation of \$15,000 for this purpose; surely some suitable amount ought to be appropriated by the General Assembly of Iowa. The State should also contribute something for the first ten years toward the required reserve. The public subvention here proposed is a measure of bare justice to employers. In nearly all European countries half or more of the administrative expenses are defrayed by the government. Switzerland contributed \$1,000,000 to the accident reserve fund. Since, as has already been pointed out, Iowa employers will not be able to incorporate the entire cost of indemnity in the price of their products, an equitable distribution of the burden can only be effected in some such manner as is here suggested.

In the second place, the distribution of votes, in the general meeting seems to give undue weight to small employers. While the Association should be safeguarded against the dominance of a few great employing corporations, it would appear no more than reasonable that those who will be called upon to pay the bulk of the assessments should have a controlling voice in the election of officers and the determination of policies. One vote for each one hundred insured employees, with a provision that each member shall have at least one vote and that no member shall cast, by his own right or by proxy, more than fifty votes would perhaps be fairer than the arrangement proposed.

Again, the reserve fund of one million dollars ap-

pears to be larger than would be necessary under a strictly compulsory system; but it may not be greater than safety requires under the quasi-elective plan proposed.

Lastly, a single association, so heterogeneous as would necessarily be the case, might prove cumbrous in practical operation. It might be advantageous, therefore, to divide the Association into semi-autonomous groups, as for example, manufacturers (which term should be broadly defined), coal mine operators, gypsum and clay mine operators, quarrymen, building and construction contractors, interurban and street railways, and a miscellaneous group. Each group could administer its own insurance and make its own safety rules, subject to the supervision of the Association and subject to the requirement that its members pay their due proportion to the common reserve fund. It would probably be unwise to attempt such grouping in the act itself, but the Association might well be empowered to provide therefor in its own constitution and by-laws.

Finally, subscribing employers should expressly be protected by the Association against damage suits by employees who reject the compensation plan. Such probably is the intended effect of section fifty-five of the Commission's bill, but the language on this head might well be made more explicit.

#### ADMINISTRATION

It can not be too strongly emphasized that the success of any system of accident indemnity will largely depend upon the provision of adequate administrative machinery. Many of the acts passed by other States fail at this point. Iowa should not make the same mistake.

State supervision is all the more essential if the Commission's insurance plan is to be adopted. Workmen might well object to a compensation system administered solely by employers.

The Iowa Employers' Liability Commission has recommended the creation of a permanent Industrial Commission clothed with fairly wide supervisory and administrative powers. The functions of the proposed Industrial Commission include: (1) the approval of agreements between employers and claimants as to compensation for work injuries, (2) the adjudication of disputes, (3) the making and enforcement of rules for executing the provisions of the compensation act, (4) the approval of risk ratings, insurance rates and safety rules adopted by the Employers' Indemnity Association, and (5) the securing and compiling of accident records. For the last named purpose every employer is required to keep a record of all injuries sustained in his employment, to report each accident to the Industrial Commission within forty-eight hours after its occurrence and to make a supplemental report upon the termination of disability. If State insurance is adopted, the Industrial Commission will, of course, exercise still wider powers.

To the foregoing functions, a majority of the Iowa Liability Commission proposes to add those now vested in the State Bureau of Labor Statistics. This suggestion, borrowed from Wisconsin, is eminently worthy of adoption. To begin with, such a consolidation would effect a notable saving in office expenses and salaries. To make the existing Bureau as efficient as those of Minnesota or Massachusetts, the Commissioner's salary would have to be doubled and the number of his assistants largely increased. It would be cheaper to abolish the Bureau and

vest its duties in the high grade Commission which is, in any case, indispensable to the success of the compensation act. Moreover, unified administration of the various labor laws is highly desirable. A main purpose of the compensation act being the prevention of accidents, the safety laws which have the same end in view ought obviously to be administered by the same board. Factory inspection necessarily carries with it the enforcement of the child labor laws and of other laws relating to places of employment. It would be absurd to maintain a separate bureau for the remaining functions of the Labor Commissioner. The same reasoning applies, of course, to the State Mine Inspectors.

A further, and perhaps the greatest advantage of the Industrial Commission plan is the possibility of supplementing the present inadequate safety laws by administrative orders. The attempt to embody safety regulations in statute law has never yielded satisfactory results, in Iowa or elsewhere. It is not enough to prescribe that "all machinery shall be properly guarded." What constitutes a proper guard for a line shaft or a band saw depends upon a variety of conditions which no legislature can anticipate. What is needed is a precise and detailed definition of the proper and requisite guards for each kind and type of machine under given conditions. The like may be said of methods of work, working clothes, warning signals, ventilation, dust removal, and all the other manifold conditions that affect safety and sanitation. Such details are too complex, varied and rapidly changing to be dealt with by the General Assembly. Nor can the large discretion necessary be safely vested in factory inspectors or a single-headed bureau. But a commission, clothed with quasi-judicial functions, can

well be empowered to frame a detailed safety code and, after hearing, to enforce compliance therewith in particular establishments.

The Industrial Commission ought, therefore, to be vested with the administration of the compensation act, the factory, child labor, fire escape, employment agency, and mine laws and all other labor legislation enacted or to be enacted. It should be empowered, after hearing, to make general or special orders, supplementary to the safety statutes, specifying in detail the mode of guarding machinery and places of employment, and, generally, to make all rules and regulations reasonably necessary to secure the health, safety and comfort of operatives. It should be authorized to appoint a sufficient number of clerks, statisticians, inspectors, and experts to carry into effect the powers entrusted to it. The Commission's employees, in all proper cases, should be subject to civil service rules similar to those now applicable to State Mine Inspectors.

An administrative body possessing the foregoing powers could serve effectually for the great work of accident prevention. In consultation with employers and workmen, the Industrial Commission could frame an efficient safety and health code covering, for example, building and construction operations, gypsum and clay mines, quarries, bakeshops, steam boilers, and harvesting machinery, as well as those employments and mechanical contrivances to which the present laws apply. It could maintain a traveling "safety exhibit", for the education of both employers and employees. In time the full accident records compiled in the administration of the insurance law would afford a scientific basis for accident prevention. Meanwhile, and above all, the insurance pre-



miums of each establishment, whether fixed by the Commission or by the Indemnity Association, would be based upon the degree of compliance with the safety code as shown by the inspectors' reports. Accident prevention would become a business proposition.

To protect the administrative board from political manipulation, the Iowa Employers' Liability Commission has proposed that not more than two members of the Industrial Commission shall be members of the same political party, that appointments shall be made by the Governor and Senate from a list of fifteen names, submitted by the Supreme Court, that all recommendations for the appointment of particular persons shall be in writing and open to public inspection, and that political activity by members of the Commission and the making of promises by candidates for appointment shall be prohibited.

The proposed method of selection can not be commended. Duties extraneous to its proper office ought not to be imposed upon any court and the nomination of administrative appointees is far from being a judicial function. The danger that the Supreme Court would thereby be dragged into politics is at least as great as the chance that such a method of appointment would bar political influence. The Supreme Court, besides, has no special fitness for the duty which would thus be thrust upon it. Judges are particularly qualified to choose a commission of lawyers, but legal talent is not the most essential requisite for the administration of the compensation act.

The following plan appears better calculated to attain the ends proposed:—The chairman of the Industrial Commission shall be appointed by the Governor, by and

with the advice and consent of the Senate, from a list of three qualified attorneys at law submitted by the Supreme Court. One Associate Commissioner shall be similarly appointed from a list of three competent persons nominated by the Iowa Federation of Labor; and one from a like number nominated by the Board of Directors of the Employers' Indemnity Association. Pending the formation of said Association, a temporary appointment shall be made from three persons of whom two shall be nominated by the Iowa Manufacturers' Association and one by the Iowa Coal Operators' Association. If State insurance is adopted, the last-mentioned mode of nomination could be made permanent.

Such a plan would secure proper representation to the parties most interested in the just and efficient administration of the law. Both the Association and the Federation are exceptionally fitted to choose capable administrators, and their heavy pecuniary stake should effectually prevent the presentation of unfit or inferior candidates. The public interest would be sufficiently safeguarded by this method of appointment. The chairman under the plan here suggested would be a lawyer of ability, able to act as *ex officio* counsel to the Commission, and would serve as umpire in any case of disagreement between the two associates.

The other safeguards proposed by the Iowa Commission are eminently proper. It might be well to add that no member of the Industrial Commission shall be a delegate or alternate to any political party convention. The phrase "or espouse the election or appointment of any person for any political office" appears somewhat ambiguous. More explicit language might well be employed.

The term of ten years proposed for members of the

Industrial Commission should make appointment thereon attractive to high-grade men, should give the Commissioners time to acquire expertness in their work, and should act as an additional bar against political influence.

All the pains expended in guarding against unfit appointments will be but wasted effort unless ample means are provided for the support of the Commission. Experience has abundantly shown that competent men can not, as a rule, be secured for meager salaries. The chairman should be paid not less than \$5,000 and the two associates not less than \$4,500 each. An annual appropriation of at least \$50,000, including the Commissioners' salaries, should be made for the work of the Industrial Commission. This would enable the Commission to provide sufficient clerical assistance, to increase the present wholly inadequate number of factory inspectors, to maintain a travelling "safety exhibit" in the interest of accident prevention, to employ a consulting actuary to pass upon the risk tariffs of the Indemnity Association, to appoint a claim investigator, and to pay the costs of arbitration cases which ought in justice to be borne by the State.

#### ADJUDICATION OF CLAIMS

The bill proposed by a majority of the Iowa Commission contains provisions in reference to the adjudication of claims which may be briefly summarized.

If the employer and the injured shall reach an agreement with regard to compensation under the act, the memorandum of agreement shall be submitted to the Industrial Commission and, if approved by it, shall for all purposes be enforceable under the statute. But no agreement shall be approved unless it conforms to the provisions of the act.

If the parties fail to agree, each may choose an arbitrator and the Commission must designate one of its members to act as chairman. The Committee of Arbitration, after such investigation as it deems necessary, makes an award which, unless a petition for review is filed by either party within five days, becomes enforceable under the act.

If a claim for review is filed, the Industrial Commission shall hear the parties thereto and may revise the decision of the Arbitration Committee in whole or in part or may refer the matter back to the Committee for further findings of fact.

When any party in interest presents a certified copy of an order or decision of the Commission, or a decision of an Arbitration Committee from which no claim for review has been filed within the time allowed therefor, or a memorandum of agreement approved by the Commission, to the district court of the county in which the injury occurred, said court shall enter a decree in accordance therewith.

No appeal is allowed from any decree entered as above upon any question of fact, nor from any decree based upon a decision of an Arbitration Committee or a memorandum of agreement.

Fees of attorneys and physicians for services under the act are subject to the approval of the Industrial Commission.

The foregoing provisions appear well calculated to secure "cheap and speedy justice". The device of arbitration committees is necessary to reduce the demands upon the Commission's time. It may even be found requisite to authorize the appointment of a claim adjuster or examiner to serve on such Committees. Espe-

cially commendable are the elimination of jury trial and the limitation of appeals. To minimize litigation is a prime object of compensation laws.

Under the bill as drawn, the costs of arbitration are divided between the parties thereto. It would seem but reasonable that such costs (except attorney's fees) should be borne by the State. The indemnities to the injured ought not to be diminished, nor the burden upon employers increased, by administrative expenses. The Committee of Arbitration should be empowered, however, to tax such costs to the losing party when, in its judgment, equity so requires.

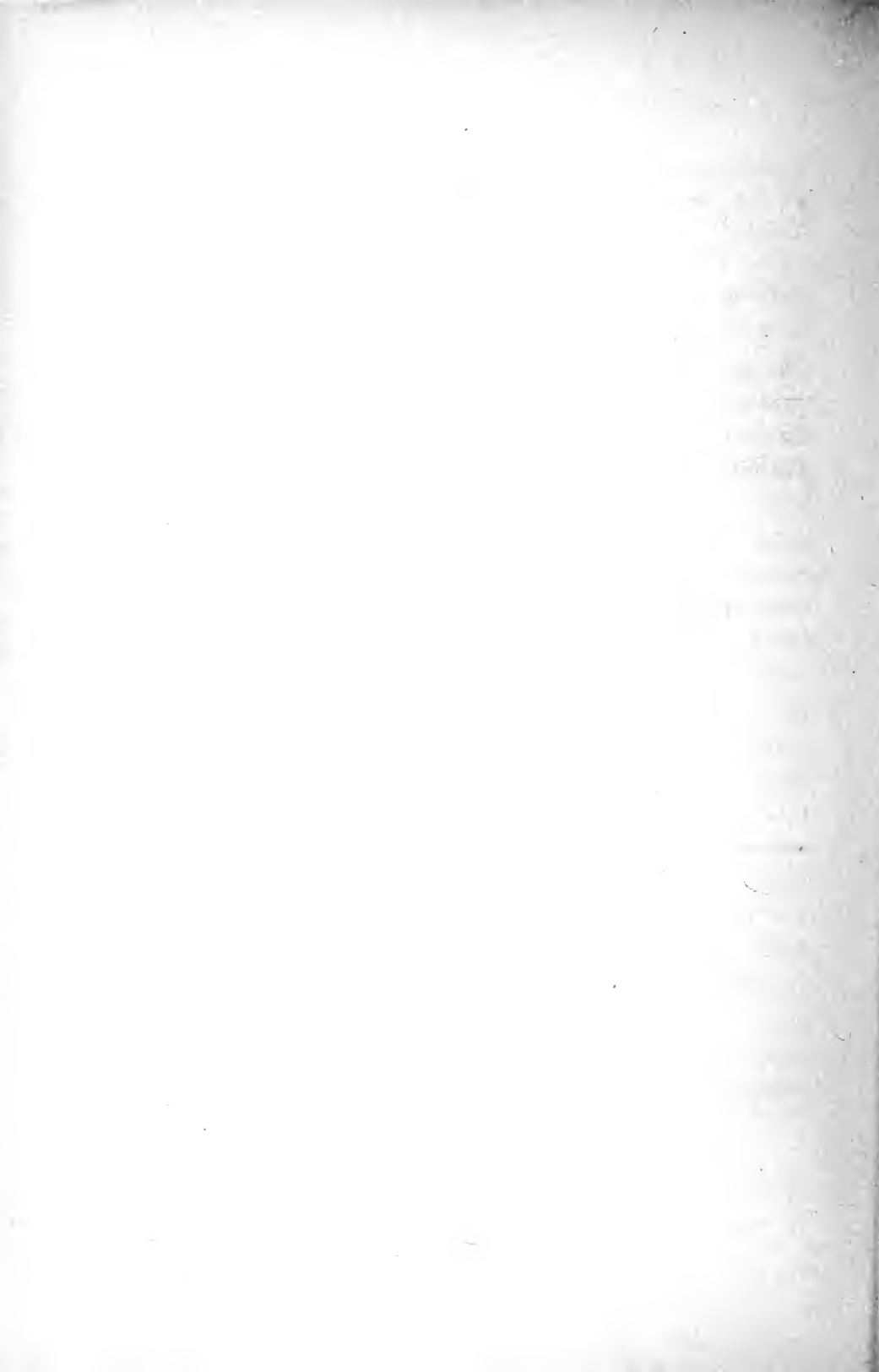
#### FINAL ESTIMATE

The foregoing survey indicates that the bill endorsed by a majority of the Iowa Employers' Liability Commission measurably fulfils the standards of indemnity legislation suggested by experience at home and abroad. Its gravest shortcomings are traceable to a single feature—the quasi-elective plan. Other criticisms implied in this discussion might be met without any radical alteration of principle. A similar remark holds of the chief objections likely to be raised by employers.

One member of the Iowa Commission, Mr. W. W. Baldwin, submitted a separate bill for a compulsory compensation act after the English model. The proposed compensations are similar to those of the British law and are, consequently, lower than those recommended by a majority of the Iowa Commission. Insurance is not required, and compensation claims are given no preference over other liabilities of the employer; nor are payments made exempt from attachment for debt. Disputes under the proposed act are to be determined by the dis-

trict court, by summary process, subject to appeal only on questions of law. The county attorney is required to represent claimants in court proceedings, and medical attention to the injured is to be furnished by the county as a part of its poor relief. No administrative machinery is provided. There is no provision looking to accident prevention, nor any requirement that accidents be reported. Settlements not in accordance with the act are declared invalid, but sufficient means is not provided to make this declaration effective. In view of conclusions already reached, detailed discussion of this bill is unnecessary.

**TAX ADMINISTRATION IN IOWA**





## AUTHOR'S PREFACE

WITH the exception of a number of changes bringing the narrative down to date and the addition of several paragraphs on the work of the Tax Commission created by the Thirty-fourth General Assembly, the first chapter of the following paper is substantially the same as the chapter on *Historical Analysis of the Iowa Revenue System* in volume two of the author's *History of Taxation in Iowa*, published in 1910 by The State Historical Society of Iowa. In view of the fact that at the present moment interest in taxation in Iowa centers about the problem of securing efficient administration, and especially in the creation of a permanent tax commission, the second chapter of this paper has been devoted to a comparative study of the tax commission and county assessor movement in the United States. In chapter three an attempt is made to define certain standards of tax administration which meet the test both of sound theory and of successful experience in other States. For a more detailed historical account of taxation in Iowa and for citations to authorities the reader is referred to the two-volume work mentioned above.

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# I

## AN HISTORICAL ANALYSIS OF TAX ADMINISTRATION IN IOWA

### INTRODUCTION

It will be generally conceded that an historical analysis of any subject, the narrative of which has been presented in detail, should be more than a mere statement of the leading facts. A repetition of the more important facts contained in the author's two-volume *History of Taxation in Iowa* without an interpretation of the same, made from the standpoint of underlying principles, would be largely superfluous. In a word, an historical analysis should present a new and more complete view of the whole problem under consideration. If the whole can be understood only by a careful study of all its parts — an axiom of present day research — it must also be conceded that modern industrial society can not be accurately judged on the installment plan. The attempt to do this invariably results in ill-advised reforms and misguided statesmanship. Analysis should be scholarly and scientific; but it must be supplemented by synthesis if a constructive program of legislative or administrative reform is to be formulated. One without the other is at best only the presentation of a half truth.

No one can study the history of taxation in Iowa without being impressed again and again with the fact that fiscal reform movements in Iowa have, for the most

part, been superficial and fragmentary. Frequently the result of local or class selfishness, they have not been based on thorough historical analysis and patient scientific synthesis of the whole tax problem. It is impossible for the busy, practical legislator to do this, however good his intentions; and it means too much labor for the mere propagandist. The result is that one reformer, or rather opportunist, becomes impressed with a certain phase of a tax question and immediately urges a made-to-order solution of the whole problem. Other reformers do likewise. When all possible solutions are on file, some shrewd third party is generally able to manipulate conflicting forces so that nothing at all is accomplished, or at least the real purpose of proposed legislation is defeated.

There is but one remedy for this condition: namely, to supplement the study in detail with a careful synthesis of the whole problem based upon an historical analysis. This has not been done in the past; and largely for that reason, ill-advised measures have too often taken the place of a rational program of sane, well balanced reform.

#### THE GENERAL PROPERTY TAX

Among the leading fiscal problems which have been examined historically and critically in the course of the author's two-volume *History of Taxation in Iowa*, by far the most important is the general property tax itself. Borrowed from an earlier jurisdiction, established by legislation in 1838, and continuing to the present time, the general property tax has always formed the very heart of our revenue system. This being true, it is manifestly necessary to understand this tax thoroughly before one can think clearly or judge fairly concerning the nature and scope of other revenue problems.

Any study of the general property tax should be made from two leading standpoints: first, the underlying principles, or the theory of public contributions upon which it rests should be interpreted; and second, the fiscal machinery for assessment, levy, and collection should be examined. Unless this distinction is carefully made, no discussion of the general property tax can be regarded as scientific and trustworthy. It has become the fashion in recent years to condemn and denounce this tax indiscriminately. Some leading economists and tax commissioners have vied with each other in their efforts along this line. While much that has been said is true, a great deal of error has also been revealed because writers have failed to make the simple and obvious distinction between mere forms of administration, on the one hand, and underlying principles of taxation, on the other. Had this distinction always been made, many pages of fiscal erudition would be more a statement of actual realities and, therefore, less a mere jumble of words.

Chapter IV of the author's *History of Taxation in Iowa* is entitled *The Administrative Failure of the General Property Tax*. This title, however, should not be taken to imply that the theory of public contributions upon which this tax is based is wrong and that a radical change of the whole system should be made for that reason. The history of the general property tax since 1872 has been a record of failure chiefly from the standpoint of administration. The inheritance tax of Iowa is also far from a real success, largely for the same reason. With the proper kind of revenue machinery in the various counties of the State, the collection of the inheritance tax would doubtless be greatly simplified and therefore rendered more efficient. The fact is that no

plan of taxation can succeed with a lax, disjointed system of administration. The general property tax of the American States and cities is no better and no worse than the administrative machinery and efficiency with which the same is assessed, levied, and collected. So long as people attempt to create a revenue system by the mere enactment of laws the general property tax and all other forms of taxation are sure to be more or less of a failure in practice. What is needed in Iowa and in other States is not more theories — some economists would have a separate theory for practically every form of property or business — but more efficient administration. Two points should, therefore, be carefully considered: first, the machinery of levy, assessment, and collection; and second, the underlying principles of contribution upon which the general property tax is based.

The machinery of levy, assessment, and collection created by the First Legislative Assembly may be briefly described. Under the law then enacted the levy was made by the board of county commissioners, the assessment by a county assessor elected annually, and the collection by the county sheriff who was required to pay the same over to the county treasurer. Corrections in the assessment roll were made by the county assessor and clerk of the board of county commissioners at a regular meeting held on the last Monday in June. Further than this no provision was made for equalization. Five per cent of the gross amount of taxes levied in the counties was set apart by the board of county commissioners as revenue for the Territory.

Provision was made in 1840 for the appointment of a deputy assessor, when deemed necessary, and such appointment was to be approved by the board of county

commissioners. Otherwise the fiscal machinery was not materially changed. In 1841 the board of county commissioners was required to levy an additional quarter of a mill tax for Territorial purposes, which was to be in lieu of the five per cent of gross taxes levied in the counties as provided in the act of 1839. The principle thus incorporated of levying a regular Territorial or State millage tax on property has continued to the present day; and, in fact, this would seem to be the only equitable method of apportionment in any State where a separation of revenue sources has not been completely realized.

In the *Revised Statutes* of 1842-1843 and by the provisions of an act approved on February 15, 1844, fundamental changes were made in the system. Township or precinct assessment was established. Local assessors were required to file the original assessment list with the clerk of the board of county commissioners, and also give legal notice so that all persons not satisfied might appear before said board. The levy was still made by the board of county commissioners, which was also required to examine carefully the several assessment rolls; but the collection of taxes was placed in the hands of the county treasurer or his deputy. The act meant a substantial increase of fiscal authority for the township; but it should be noted that the board of county commissioners when examining and correcting the assessment rolls might reduce an individual assessment, a privilege which is not at present granted to the county board of supervisors. The balance of fiscal authority between the county and the township revealed in these acts should be clearly understood as having an important and a vital bearing upon the problem of present day tax reform.

In 1845 county assessment was reintroduced, the powers of the board of county commissioners remaining the same as before — as also those of the county treasurer, save that he was given authority to impose the regular tax rate on property omitted by the county assessor. From the all-important standpoint of assessment this act meant that the county had completely regained its former power. In 1847 the sheriff was made *ex officio* assessor for his county and the recorder *ex officio* treasurer. Otherwise the machinery of assessment, levy, and collection remained the same. The county system also prevailed under the *Code of 1851*, the sheriff being *ex officio* county assessor with power to appoint an assistant assessor. Important changes, however, were made in the fiscal machinery of the State. The levy of taxes, formerly made by the board of county commissioners, was now placed in the hands of the county court, and the correction of the assessment roll was given to a county board composed of the county judge, clerk, and treasurer. Finally, a State board of equalization was created, the Census Board being given power to change any of the assessments or vary the rate of taxation in any of the counties, providing that the aggregate amount of valuation remained substantially the same.

The provision concerning the State board of equalization should be studied with much care in connection with similar provisions in later codes. It appears that by the *Code of 1851* the State board was given the important right to level up or level down “any of the assessments” in the various counties, on condition that it preserved unchanged as far as practicable. “what would have been the aggregate amount of valuation had no such equalization been made.” In other words, nearly two generations



ago our State board of equalization was given authority to change or equalize individual assessments, but not the aggregate amount of valuation — which meant the possession, at least on paper, of some real power. With county levy, assessment, and collection — by the county treasurer or his deputy — with the correction of the assessment roll by a special county board, and with the important right to change any assessments vested in the State board of equalization, the *Code of 1851* gave promise of the early realization of an efficient revenue system.

The strength of the *Code of 1851*, however, was more nominal than real. The fact that the county court was given the power to levy the taxes — a situation which recalls the judicial administration of the present inheritance tax law — while a separate county board possessed the power of correcting the assessment roll indicates the absence of any scientific plan or definite purpose. Again the obvious fact that the Census Board, from the nature and scope of its other duties, could not exercise in practice the authority which it possessed, was destined to make the State board of equalization a perfunctory body — or to phrase it differently, a fiscal sham.

The *Code of 1851*, however, was an important turning point in our revenue history. It represented a period of unstable equilibrium; and when such equilibrium was destroyed, the shadow of power remained with the county or was transferred to the State, while the real substance of fiscal authority was won by the advocates of the township system of local government — a fact which is primarily responsible for the administrative failure of the general property tax and also for the general disintegration and perfunctory character of the whole revenue system.

The first blow was soon struck against the delicately poised machinery of levy, assessment, and equalization created by the *Code of 1851*. The township system of assessment, or what is the same thing, fiscal decentralization, was temporarily reintroduced in 1853 by a law which was extreme in character. It provided for annually elected township assessors, and further stipulated that such assessors should meet at the office of the county judge in April to classify the several descriptions of property and again in July to act as a county board of equalization. In a word, the whole work of assessment and equalization, save for the nominal functions of the Census Board, was in the hands of township officials. For the first and last time in the revenue history of Iowa, the county was practically blotted from the fiscal map from the standpoint of assessment and equalization, the county board of equalization being in reality a township body, not a distinct and separate county organization. Passing from the *Code of 1851* to the law of 1853, the State moved in two short years from one extreme to the other. Manifestly the latter arrangement could not be permanent.

The pendulum of revenue administration swung in the opposite direction in 1857 when county assessment was once more established. The county assessor was now to be elected biennially; and when necessary he was to be assisted by one or more deputies, appointed by the county judge. The act of 1857 did not concern the levy and collection of taxes — the administration of that work remaining unchanged. It was essentially “An Act in relation to the assessment of property.” After the county assessor and his deputies had worked five months in completing the assessment roll — February 1st to

July 1st — it was submitted to the county judge who in coöperation with the clerk, surveyor, assessor, and sheriff, constituted a board for the equalization of assessments. As the assessments referred to in the act were not based on the township as a unit, it appears that the county board, nominally at least, did possess some real power of equalization as between individuals. In practice, however, such power could not be exercised; and so, while nominally real, it was in reality nominal — that is, a mere statutory makeshift.

The act of 1857 is also noteworthy from the standpoint of the power vested in the Census Board. In this respect fundamental changes were made. The power to increase or decrease individual assessments is not directly granted; nor is it believed that such power can be fairly assumed. The Census Board might add to or subtract from the aggregate valuation of a county, or it might increase or decrease the valuation of a town when the demands of justice so required. To call attention to the fact that under the *Code of 1851* practically the opposite was true, the Census Board having the power to change any rate or any assessments providing the aggregate valuation remained substantially the same, is to present a distinction of great value to the advocates of a program of constructive reform.

County assessment lasted but one year, the township system being permanently introduced in 1858. The law passed at that time was, therefore, a landmark in our revenue history. Under this act, the levy was made by the county board of equalization — composed of the county judge, surveyor, and treasurer — the collection by the county treasurer, and the assessment by township officials. County equalization meant the increase or de-

crease of the aggregate valuation of a township; but individuals might appear before the board and have their assessment corrected. The power of the Census Board remained the same as described above. It thus appears that under the act of 1858 the substance of power was lodged with township officials, the duties of county and State boards of equalization being in the main perfunctory. Nor should it be forgotten that an individual might still appeal to the county board.

In the *Revision of 1860* the machinery of levy, assessment, and equalization was finally shaped substantially as it operates to-day. In fiscal importance the township was again the gainer. The levy of taxes and the county equalization of assessments were made by the county board of supervisors — a body at that time composed of representatives elected in the civil townships. With assessment in the hands of township officials, this meant almost a complete victory for the advocates of fiscal decentralization. Levy, assessment, and county equalization were all vested in a body of men elected in the civil townships. The statutory provisions differed, however, from those of 1853 in that the county board of supervisors was constituted a body separate and distinct from the local assessors, who were, therefore, not permitted to meet and equalize their own assessments. Two other facts should be noted by the student of administration: first, the county board of supervisors could hear appeals from individuals and equalize assessments between persons, on the one hand, and between townships, on the other; and second, the State board of equalization was definitely deprived of all power over assessment, save that of increasing or decreasing the aggregate valuation of a county. Only one or two additional steps were now

required to make the fiscal authority of the township absolute — or in other words, to guarantee and emphasize the administrative failure of the general property tax.

While forms of property were daily multiplying and becoming more complex and corporations were growing with great rapidity, reformers, guided by prejudice rather than reason, were slowly but surely perfecting a plan of administrative decentralization which was destined in Iowa, as in a majority of States, to perpetuate a gross injustice, in fact a disgrace, to democratic institutions. If this judgment should be regarded as extreme, the attention of the reader is invited to the facts revealed in the chapters of the author's *History of Taxation in Iowa*, dealing with the statistical study and administrative failure of the general property tax. It will be noted that the statistical study (Vol. I, Ch. V) deals primarily with that period of our revenue history which followed the perfection of the township system above outlined. From the standpoint of the levy, assessment, and equalization of the general property tax the fifty years that have elapsed since the adoption of the *Revision of 1860* have added but few verbal and practically no real changes to the revenue laws of the State. The slight modifications that have been made have tended to perfect the incapacity of the revenue machinery, thus making it more and more an anachronism.

The minor changes required to complete the inefficiency of the system were not long in coming. In 1862 provision was made for the election of separate assessors in all the cities and incorporated towns of the State in addition to the one already elected in each civil township, which meant further administrative decentralization.

Up to this time the collection of taxes had always been a county function, usually in the hands of the county treasurer or his deputy. In 1868 a law was passed giving the board of supervisors, in counties having a population of over four thousand inhabitants, the power by a two-thirds vote to authorize the election of township collectors in all civil townships save that in which the county seat was located. Although the proposed system was limited and required a two-thirds vote of the board of supervisors, the law nevertheless represented another step away from the county and, therefore, toward further decentralization.

In a very real sense it may be alleged that the low water mark of revenue administration was reached in 1868. In passing this judgment the writer has in mind the fact that in 1870 two important laws were passed bearing upon the problem of administration: first, the personnel of the county board of supervisors, with its powers of levy and equalization, was changed from a mere organization of township representatives annually elected to a distinct county body of three members alternately chosen for terms of three years; and second, the township trustees were constituted as a local board of equalization with power to change individual assessments in the same manner that the newly organized county board could change the aggregate assessment of a township or the Census Board could alter the aggregate assessment of a county. It is significant and instructive to note that the Thirteenth General Assembly which made the county board of equalization a distinct county body also deprived it of the important power to change individual assessments — a privilege which was granted to the new township board of equalization. With the latter

act the victory of the township system was complete, both in legal forms and in economic realities. In assessment matters the State of Iowa had been moving backward since 1851. By 1870, whatever merit the machinery of assessment possessed in 1860, even on paper, had been largely destroyed. With railroads and other corporations springing up on every hand, Iowa possessed a revenue system wholly incapable of adjusting itself to the needs of a great industrial society.

No sooner had the substance of power in the assessment and equalization of general property passed from the county to the township than another important change was agitated. Should railway corporations be assessed by local officials or by a State board? Since 1862 these corporations had paid a tax on their gross receipts. People were now demanding a change to the ad valorem basis. Some localities merely demanded local taxation, but the cities especially desired both local assessment and local taxation. No one understood the folly of local assessment as applied to railway corporations better than Judge Nathaniel M. Hubbard, who so successfully guarded the interests of the railroads during the Fourteenth General Assembly. The result was that by the act of 1872 the assessment of railroads, the greatest of all public service corporations, was placed in the hands of the State board of equalization.

The fiscal situation when the *Code of 1873* was enacted is thus apparent. Save for optional township collection, the levy and collection of taxes was distinctly a county function. Through a series of compromises, which had lasted more than a quarter of a century, the advocates of the county system retained this power. In doing so, however, the far more important, in fact the

really essential, privilege was completely lost. Assessment became and was to remain a township function. The equalization of individual assessments — the only equalization that has any value even on paper — also became and was to remain a township, town, or city function. In other words, the real substance of fiscal authority over the assessment of general property was vested in the local units of government, while the shadow remained with the county or was transferred to the State.

Optional township collection of taxes as established in 1868 and continued in the *Code of 1873* did not prove to be practicable or desirable. The county as a unit for collection was less cumbersome and therefore more efficient. With the biennial election of assessors introduced in 1880 and 1882 and the semi-annual payment of taxes in 1884 we are brought to the *Code of 1897*, and indeed to the revenue system of to-day. The administrative machinery now operative in Iowa for assessment and equalization and for the levy and collection of taxes may be summarized as follows:

First. Levy of taxes by the county boards of supervisors and collection by the county treasurer or his deputies — in other words, substantially the county system aside from purely local tax levies.

Second. Assessment by local assessors and equalization between individual property owners — the only equalization in Iowa which has even a nominal value — by town, township, or city boards of equalization. In a word, the whole work of assessment of general property, the very basis of the fiscal pyramid, is in the hands of local officials, thus forming a thoroughly decentralized system.

Third. Perfunctory equalization of town, city, or



township values considered in the aggregate by the county board of supervisors — a mere paper provision which never had and never will have any meaning from the standpoint of real fiscal administration in Iowa or in any other State.

Fourth. Perfunctory equalization of county values considered in the aggregate by the Executive Council — which is the best example in Iowa of the administrative folly of placing a great and important function in the hands of an ex officio body.

Fifth. Assessment of certain public service corporations by the Executive Council — a task which can be wisely performed not by an ex officio board but by a permanent State tax commission giving all its time to the work.

In concluding this part of the historical analysis it may well be asked, should there be any surprise at the administrative failure of the general property tax? Was it probable or even possible for it to be otherwise? When the history of the great central question of assessment is calmly reviewed it is found to be characterized by hopeless decentralization, on the one hand, and the perfunctory labor of ex officio boards, on the other. The fact that the general property tax has been a failure and is rapidly becoming more so with the increasing complexity of our industrial life, may be attributed to the following causes: first, assessment by town, township, or city assessors; second, mere nominal equalization by ex officio boards; and third (a different way of stating the first two points), more than two generations of constant effort to create a revenue system by the mere enactment of law without the necessary help of efficient administrative machinery.

## THE PRINCIPLES OF CONTRIBUTION

If it is true that the administrative failure of the general property tax has long since been an accomplished fact in Iowa, what shall be said concerning the underlying principles of contribution upon which the tax is based? Can the unfortunate conditions outlined in the narrative above be explained entirely from the standpoint of faulty administration, or is the theory of the tax unsound and indefensible? Any comprehensive study of the revenue system must include an historical and critical survey of this problem. What are the fundamental principles of the general property tax?

The first act passed by the Legislative Assembly of the Territory of Iowa, in addition to poll and license taxes, merely provided for the levy of a tax on real and personal property. The law on this point was brief and affords no detailed explanation of the terms real and personal property, aside from the fact that real estate was made to include improvements on land. In the year following an act was passed providing for the assessment of real estate "at the actual value," without including the improvements thereon; but this proved to be only a temporary measure. By the provisions of a later act improvements were again included, and in fact have remained a permanent part of the value of real estate. The revenue measure enacted in 1841 clearly stipulated that the assessment should be made upon the value of land per acre, the value of town lots and of all other property subject to a tax for county purposes. In the law of 1844 there is the additional provision that money at interest and corporation stock are considered personal property and required to be taxed at their "true value".

Two years later the term "cash value" was applied to the assessment of real and personal property, and it was further provided that, in measuring such value, assessors should consider the fertility and quality of the soil, water privileges, the vicinity to roads, towns, villages, navigable water, and in fact all other local advantages. It thus appears that during the Territorial period the value, true value, or cash value of real and personal property was considered a just and equitable basis of taxation. Moreover, a rough method of estimating such value was outlined in the statutes.

Passing over slight changes made during the period from 1846 to 1850 there appears in the *Code of 1851* a more comprehensive statement of the underlying principles therein outlined, which are as follows: assessment of real property at its true value in money at a private sale, having regard to its quality, locality, natural advantages, general improvements in the vicinity, and all other elements of value; depreciated bank notes and depreciated corporation stocks or shares — a common form of property at that time — at their current value and rate; credits at what the person listing believed could be collected, annuities at their worth in money; and finally, the stock of goods of a merchant or manufacturer at the average value of such property in their possession during the year previous to the listing. A careful study of these principles reveals the fact that, when reduced to the last analysis, they are all included in the term "value". The measure of ability to pay taxes outlined in the *Code of 1851* is the true value of real and personal property. The provisions of the Code are more comprehensive than earlier laws largely because they give a broader and more detailed definition of the term real and personal

property. The theory of the general property tax remained the same.

The *Revision of 1860* added almost nothing either to the definition of general property or to the theory of its assessment. One term, however, is worthy of passing notice, namely, that included in the provision that real property should be assessed at its "true cash value". From the standpoint of verbal evolution rather than from any serious consideration of fiscal principles it is instructive to note how nearly a quarter of a century of revenue legislation produced the important change, first, from "value" to "true value" or worth in money, later to "cash value", and finally to "true cash value" as a proper basis of assessment. No doubt these changes were brought about as the result of compromise — the traditional method of securing "practical legislation".

After 1860 nothing essential was added to the fundamental principles of contribution upon which the general property tax is based. The verbal statement of the theory was reasonably complete; and law-makers were, therefore, in a position to survey other fields. Reformers at once began to produce a new crop of "solutions" in the extensive laboratory of fiscal legislation. In a word, the pendulum swung from a consideration of basic revenue principles, first, to a development of special methods of assessment (a series of fiscal experiments), and second, to a complete realization of the program of decentralization and perfunctory equalization. Thus, the question arises, does the administrative failure of the general property tax, which became more and more an established fact in later decades, imply an inherent criticism of the general theory of the contribution of this tax which is so clearly outlined in the *Revision of 1860*?

Nothing was added to the basic principles of general property taxation by the *Code of 1873*. In fact, no change was made until the enactment of the *Code of 1897*. It is instructive to note, however, that when the Revenue Commission in 1893 advanced their plan for the assessment of property at full value, the opposition was so strong that the bill was not even seriously considered by the General Assembly. The people at large and a number of leading papers seemed to think that something new was being foisted on the public. The *Iowa State Register*, for example, protested with more vehemence than logic in a number of editorials against what it styled the "tax eaters" revenue bill, which proposed assessment of real estate and personal property at full cash value. Perhaps the editor of that paper and the editors of other leading journals did not realize that the very thing they were condemning had been the law of the State for nearly two generations. From the very beginning of the Territorial period both the spirit and letter of our revenue laws had demanded taxation of property according to value. Different terms had been used, such as "value", "true value", "cash value", "true cash value", "current rate", and "actual worth in money"—indeed, almost any number of terms might be found by making a diligent examination of the session laws, revisions, and codes. The meaning—that is the spirit of the law—was always the same. From 1838 to 1897 the plain requirement of the law was taxation on the basis of value, which could mean only one thing, namely, value in the market as determined by the ordinary course of trade.

When the Revenue Commission of 1893 proposed a few slight verbal changes in this ancient fiscal doctrine

— changes which in practice would have proved harmless and would have left the general property tax as much of a failure as before from the standpoint of administration — people became alarmed and thought some novel scheme was being advanced. It was alleged again and again that no State attempted to assess property at its full value and that to do so in Iowa would be impracticable and unthinkable. The rejection of the Revenue Commission bill on this ground was an open and complete repudiation of our whole revenue history, which had always provided assessment at full value. The law had been evaded for so many years that its real nature and purpose had been entirely forgotten. Even to mention the enforcement of a measure which had been on the statute books for more than half a century was considered by the *Iowa State Register* as a calamity of the first magnitude.

The real climax, however, came with the enactment of the *Code of 1897*. At that time two courses of action were presented to the General Assembly: first, the problem of low and unequal assessments might be met honestly and squarely by the creation of adequate machinery of administration; or second, it might be ignored and possibly buried beneath an additional mass of legislation. The latter course proved to be the line of least resistance. Rather than meet the stern and difficult tasks of fiscal administration, our law-makers evaded the real issue by the enactment of what has rightly been called a statutory subterfuge. Those who framed the *Code of 1897*, however, were wise enough to preserve the old time value principle at the basis of the general property tax. Provision was made that all property subject to taxation should be listed at its "actual value". The only change

made was the requirement that assessment be made at twenty-five per cent of such actual value.

As a product of historical evolution the value principle was retained in the statute, the twenty-five per cent clause being merely a unique method of writing into law the administrative failure of the general property tax. To say the least, that provision of the *Code of 1897* is both striking and instructive which clearly and specifically retains the theory of property taxation, but in a form so modified as to admit and in fact emphasize the break down of financial administration! In this fact may be found much to suggest a desirable program of constructive reform.

#### THE TAXATION OF PRIVATE CORPORATIONS

Having examined the leading features of the general property tax, it seems desirable to discuss briefly special problems in taxation and to trace and analyze the special methods of assessment which from time to time have been devised and perfected. In doing this the obvious distinction between changes in the basic principles of contribution and mere changes of fiscal administration should always be kept in mind. Otherwise clear thinking is impossible. The various special problems in taxation will accordingly be considered from the standpoint both of economic theory and actual administration.

When the *Revised Statutes* of 1842-1843 were enacted the property of bodies corporate did not form a separate class but was included in the general property tax. This meant assessment by local assessors on the basis of value. In the *Code of 1851* it was provided that the property of certain corporations should be taxed through the shares of the stockholders, special provision being made for non-

resident owners of stock. This meant a change, not in fiscal administration, but rather in the method of determining the value of corporate property. Even this change was more nominal than real, as corporate stock had previously been included in general property.

The same provision regarding the taxation of the shares of stockholders in certain corporations was included in the law of 1858 with a more definite statement, however, as to the apportionment of the non-resident tax. It was therein stipulated that the county receiving the tax upon the property of non-resident stockholders should distribute and pay over the same to other counties in proportion to the improvements located in such counties. In the *Revision of 1860* and the *Code of 1873* there are simply plain statements requiring that the stock of corporations shall be assessed at its cash value. Two things should be especially noted with reference to the taxation of corporate stock up to 1873: first, that the law did not stipulate whether the real estate of such corporation should be separately taxed; and second, the real nature of corporate stock was not clearly defined. There is nothing in the *Code of 1851*, the *Revision of 1860*, or the *Code of 1873* to indicate whether corporate stock should be considered as credits. Nor was this a minor question in view of the fact that the holders of credits were permitted to deduct their just debts.

When the *Code of 1897* was enacted provision was again made for the assessment of shares of stock in all corporations organized under the laws of this State, except those not organized for pecuniary profit and also except corporations otherwise provided for by law. It was further stipulated, however, that, in arriving at the value of such shares of stock, the amount of their capital



invested in real estate should be deducted, such real estate being assessed the same as other real estate. In this manner a careful distinction was made between the real estate and the other property of corporations. The legal status of corporate stock, however, in connection with the deduction of just debts has not been definitely adjudicated. In fact, this is one of the most complicated questions in the history of the Iowa revenue system.

In some cases it has been held that corporate stock should not be classed as credits in such a manner as to permit the deduction of debts for purposes of assessment. The General Assembly in 1911 passed an act prohibiting the owners of stock in national banks from deducting their debts. The trend of court decisions, however, especially in recent years, has favored the doctrine that shares of corporate stock, when listed in the hands of individual share holders, should be considered as credits and therefore should be subject to the provision regarding the deducting of debts. The law now in operation in Iowa with reference to the taxation of corporation shares comprehends: first, the total exemption of such shares in certain cases, including the stock of manufacturing corporations; second, the deduction of debts from the amount of shares listed for purposes of assessment, which is true of corporate stock in general when not otherwise provided; and third, the listing of the shares of stock in national, State, and savings banks, and loan and trust companies, without granting any deduction for debts.

Since Iowa has never had what could be justly called a general corporation tax, it is difficult if not impossible to formulate many rules applicable to the taxation of all classes of corporations. With the breakdown in the ad-

ministration of the general property tax one method of assessment and taxation after another has been gradually evolved, but at no time have our law-makers endeavored to create a general corporation tax. The specific methods applied to various corporations should, therefore, be briefly reviewed; and in doing so, it is best to follow the chronological order.

#### THE TAXATION OF BANKS

In the author's *History of Taxation in Iowa* it was noted that banks of issue were prohibited under the Constitution of 1846, and that stringent provisions against this form of banking were placed in the *Code of 1851*. Nevertheless, banking associations doing a deposit and exchange business did exist during the Territorial period, the real estate and shares of stock in the same being listed under the general property tax. Even in the *Revised Statutes* of 1842-1843 the capital of exchange brokers and the property of all bodies corporate were made liable to assessment and taxation. In the revenue act passed by the First General Assembly personal property was made to include the capital stock, undivided profits, or means of any company incorporated or unincorporated. Finally, the *Code of 1851* contains a provision placing in the list of general property liable to taxation the stock or shares in any bank or company incorporated or otherwise, and whether incorporated in this or any other State.

It should also be noted that under the Constitution of 1857 banks of issue were made possible and that a general banking act and an act incorporating the State Bank of Iowa were passed in 1858. Under the former act two provisions were made regarding taxation: first, that all

taxes should be levied on and paid by the corporation as such and not by the individual stockholders; and second, that the value of banking property should be ascertained annually by the Bank Commissioners, the rate of taxation being the same as that imposed on other taxable property by the revenue laws of the State. Supplementary to the general provisions above outlined, the act creating the State Bank of Iowa prohibited the General Assembly from imposing a greater rate of tax than was imposed upon the property of individuals.

During the Civil War the national banking system was established and in 1866 the General Assembly of Iowa passed an act taxing the shares of such national banks. The banks were required to list the shares and were also made responsible for the tax. Years of litigation followed. The act of 1866 was declared unconstitutional on two grounds: first, that a tax on the stockholder would not permit the deduction of non-taxable United States securities; and second, that to tax capital and also shares of stock was double taxation. The taxation of shares, however, was sustained after the passage of the amendatory act of 1868 repealing the section which required the tax to be levied on the corporation as such. The ten per cent tax placed by Congress on State bank notes made their issue impossible, and accordingly the general banking act of Iowa and the State bank act were both repealed in 1870.

Subsequent history along the line of bank taxation may be briefly reviewed. Up to 1874 all personal property, which included that of private bankers, was listed and assessed each year in the name of the owner. The Fifteenth General Assembly, however, passed an act taxing the average value of moneys and credits under the

control of private bankers during the year. At the same time a savings bank act was passed, providing for the taxation of such banks on their paid-up capital. The Supreme Court promptly held that to tax national banks on their shares of stock and savings banks on their paid-up capital did not constitute a discrimination against national banks. It was further held, however, that national bank shares can not be assessed as personal property without listing the stockholders in order that owners of stock may deduct their just debts and thus avoid taxation at a higher rate than that imposed on other moneyed capital.

As a result of numerous court decisions and frequent amendments the system of bank taxation provided in the *Code of 1897* may be summarized as follows: first, the assessment of private bankers on the aggregate actual value of moneys and credits after deducting deposits and debts, the aggregate actual value of stocks and bonds after deducting the portion thereof exempt or otherwise taxed, and finally the real estate which is listed and assessed in the same manner as other real estate; second, the assessment of the shares of stock in national banks to the individual stockholders at the place where the bank is located; and third, the assessment of the capital stock of State and savings banks and loan and trust companies to said banks and loan and trust companies and not to the individual stockholders. In a word, the taxation of chartered banks in Iowa, as interpreted by Judge Emlin McClain in a leading opinion, is in reality levied on capital stock, surplus, and undivided profits. Prior to 1911 national banks were in a class by themselves from the standpoint of the deduction of debts from the amount of shares listed for taxation, but as has already been

suggested, the law in this respect was changed by the last General Assembly.

The question may now very appropriately be asked, to what extent have banking associations emerged from the so-called general property tax? It is true that the blanket provision requiring the assessment of real and personal property did not long apply to banks. New methods of determining value largely on the basis of capital stock were soon evolved. Granting this fact, however, is it correct or scientific to assume a serious departure from the principles of general property taxation? Has there been a real change either in fiscal administration or the underlying principles of contribution? This question should be answered in the negative. If by the general property tax is meant local assessment plus the value or *ad valorem* principle, then this tax is quite as applicable to both chartered and private banks at the present time as in the early history of our revenue system. On the one hand, local officials still administer the law; and on the other, taxation on the basis of capital stock, surplus, and undivided profits is essentially property rather than income taxation.

The relative success of bank taxation in Iowa — the fact that owners of bank stock pay much more than their just share of so-called personal property taxes — should not blind our eyes to the obvious consideration that it is after all only a specialized form of the old general property tax. Taxes are collected with relative ease from chartered banks for two reasons: first, because the tax is collected at the bank through the stoppage at source principle; and second, because a somewhat fixed and arbitrary plan of estimating value has been devised — a plan whereby assessment or valuation is virtually removed

from the whims of the local officials whose duty it is nominally to administer the law. The taxation of personal property in Iowa has attained the maximum of success when applied to banks simply because the minimum of administration is required. There has been no essential change either in the forms of administration or in the basic theory of contribution. In a word, banks have emerged from the general property tax largely in the imagination of theorists and not from the standpoint of a careful analysis of the facts of revenue history.

#### THE TAXATION OF INSURANCE COMPANIES

Turning now to a very brief analysis of the subject of insurance taxation, it may be said that in many ways insurance companies, when viewed from a fiscal standpoint, belong in a class by themselves. Prior to the enactment of the *Code of 1851* there was no special law applying to the taxation of insurance companies, which, like many other corporations at that time, were taxed on their real and personal property. The *Code of 1851* provided, however, that all insurance companies except mutuals should be taxed one per cent for county purposes and one per cent for State purposes on the amount of the premiums taken by them during the year previous to the listing. The same section appears in the laws of 1858 and in the *Revision of 1860*. In fact the taxation of insurance premiums still prevails in Iowa and is quite general throughout the Union. The Twelfth General Assembly passed an act leaving the two per cent rate unchanged, but requiring that the whole tax be paid into the State treasury and further providing that such tax should be in full for all taxes upon the corporation or its shares except taxes on real estate.

This law remained in force until 1872, when an important act was passed, providing: first, an elaborate set of fees; second, a retaliatory clause which was copied and much discussed in other States, and proved to be very unfortunate; and finally, a two and one-half per cent rate on gross premiums, joint stock companies organized under the laws of this State being excluded, such tax to be in full for all taxes both State and local. Mutual insurance companies were also exempted from the two and one-half per cent tax under the *Code of 1873*.

When the *Code of 1897* was enacted the following system of insurance taxation was provided: first, three and one-half per cent on the gross premiums of all companies organized outside of the United States; second, two and one-half per cent on the gross premiums of companies incorporated in any State of the United States outside of the State of Iowa; and finally, one per cent on the assessments, dues or premiums of other insurance companies doing business in this State except county mutuels and fraternal beneficiary associations, such tax on premiums to be in full for all taxes, State and local, except taxes on real estate and special assessments. The discriminating rate against foreign companies was sustained on the ground that it was in the nature of a license tax imposed as a condition to do business, but the provision exempting insurance companies from local taxation was declared to be unconstitutional by the Supreme Court, for the reason that it meant the application of a different rule of taxation to corporations than to individuals.

Accordingly, this provision was repealed in 1900; but the same thing was accomplished by the General Assembly in another way. In assessing the moneys and credits

of an insurance company organized under the laws of Iowa the debts which might be deducted were so defined that the obligations of the company were cancelled by liabilities. With the rate on foreign companies reduced to two and one-half per cent, and State mutuals placed in a class by themselves for purposes of license taxation, the laws now under consideration are brought up to date.

As to insurance companies and general property taxation only a word need be said. The State license tax on gross premiums is essentially an income rather than a property tax levied on the amount of business transacted. The general property tax does apply to the real estate of insurance companies, and since the decision of the Supreme Court, also to the moneys and credits of domestic associations; but it must be admitted that neither local assessment nor the ad valorem principle have any direct application to gross premiums.

#### THE TAXATION OF RAILROADS

From a chronological standpoint the subject of railway taxation should next be reviewed. Railroads are the most important of all the so-called public service corporations; they are especially important in the revenue history of Iowa for the reason that the general plan of taxation adopted for them in 1872 has in recent years been made applicable to some of the other public service corporations. In the second volume of the author's *History of Taxation in Iowa* the whole subject of railway taxation has been examined historically and critically; and in the discussion numerous quotations from editors, legislators, judges, Governors, in fact from men in various walks of life, are given. Where actual quotations are not given a digest of the argument appears; and the



original sources may always be found by consulting the references. The writer is in no way responsible for the arguments themselves nor for the drastic and partisan form in which they are frequently made. However, it is only from a full and honest investigation and exposition of all the facts and conflicting opinions of a period that one is enabled to form a sane and well poised judgment of the course of events.

For example, were a person to read the *Burlington Hawk-Eye*, the *Keokuk Daily Gate City*, and the *Davenport Gazette* for the years 1870 and 1872 he might easily conclude that there were but few honest members in the legislature of the State. But were he to examine through the columns of other papers, like the *Boone Democrat* or the *Ottumwa Courier*, the conditions in the interior of the State where transportation facilities were in their first stages of development and where the demand was for roads and not for taxation, he would be led to conclude that the law which now exists might have been passed without the General Assembly selling itself to the railroads. Indeed, the more one studies the history of this measure, the more he becomes convinced that its enactment was largely the result of economic conditions then prevailing in Iowa.

A careful study of railway taxation in Iowa should include the following important considerations:

First. The period from 1855 to 1862 should be judged not in the light of present conditions and theories, but rather from the standpoint of pioneer Iowa. No system should be removed from its industrial environment merely for the sake of negative criticism. The tax on the shares of stock in the hands of individual stockholders was the application of an old law to new conditions that

had not been contemplated by the framers of the law. In other words, it was one form of the general property tax. Assessment was left in the hands of local assessors and the value of railroad property was ascertained by simply listing the shares of capital stock. Difficulties soon presented themselves as to the proper method of tax distribution, which the General Assembly sought to remedy by amendment. On the whole the law was fairly well suited to the industrial conditions prevailing at that time.

Second. The system of taxation on gross receipts was enacted as a war measure. One-half of the revenue went to the State because the State needed revenue and not because the localities felt that the measure was just. The cities especially were not long in complaining; and the "four-fifths" clause in the law of 1870 was a compromise with the strong local demands for an ad valorem or general property tax.

Third. The agitation for a property tax on railroads, which developed soon after the war and resulted in the law of 1872, was the result of conflicting economic motives. It was a sectional question and should be judged as such. The older cities and counties, which were well supplied with roads and were heavily in debt for the same, naturally desired the right of taxing the roads. It was also natural for the farmer to feel that the railroad which happened to pass through his farm ought to be taxed in the same manner as his own property. On the other hand, frontier sections were indifferent to the whole question of taxation, their chief demand being for railroads. The cities thus desired both local assessment and local taxation, while the country at large was well satisfied with local taxation. Indeed, it

may be said that the country was doubly satisfied when the railroads came forward with the proposition to diffuse the value of city terminals through the rural districts. Thus, a compromise was effected that was welcomed by practically all members of the General Assembly save those from the cities. It is not surprising that the bill passed by a large vote both in the Senate and in the House of Representatives.

How this compromise measure of 1872 would operate, especially in regard to the cities, was pointed out at the time in editorials and in the speeches of Senators and Representatives. How it does operate has been explained in more than one decision of the Supreme Court. And finally, it has been shown statistically that, on the one hand, the law deprives cities of the right to tax millions of dollars worth of property situated within their limits, and on the other, confers special favors on a small per cent of townships that happen to possess a large railway mileage. Therefore, it follows logically that the present law, since it does not operate either to the benefit of the cities or to the benefit of a majority of rural districts, can not be said to favor a large majority of the voters of Iowa. This has been precisely the situation for a generation, despite the fact that this same majority has the power at all times to enact laws.

In this connection it is perhaps desirable to correct a misleading impression that has prevailed since the present law was passed in 1872. It is interesting to note that the *Keokuk Daily Gate City* predicted that the law would be permanent for the reason that it favored the country districts at the expense of the cities. Mr. F. H. Noble in his monograph entitled *Taxation in Iowa* takes a similar view, saying that "this system will probably be main-

tained, as it favors the rural districts, which have a majority in the legislature. Thus one rural county having more miles of main track than the county where the shops and costly stations are located receives more taxes." Mr. F. T. True of Council Bluffs and other earnest workers in the League of Iowa Municipalities are inclined to take the same gloomy view.

It would seem, however, that these opinions are without adequate foundation. If the country districts as a whole were favored, the above conclusions would be justified. But this is not the case, since the benefits under the present law go first to a small minority of townships and second to the railroads which escape high municipal rates. When these facts are once fully understood the contention that the rural members of the legislature will necessarily vote to retain the present law falls to the ground. The average man will not long vote against his own interests when once those interests are made clear to him. A few men like Governor Newbold and Judge Beck have understood this question in its true light.

Fourth. From these considerations, it is evident that the local taxation of the road-bed, main track, rolling stock and franchise — in fact all forms of railroad property that have no local habitation — results in inequality from the standpoint of tax distribution. That property which has no local habitation should not be localized by the tax laws is sound economic and administrative doctrine. On the other hand, the application of the "unit rule" to terminals removes from the cities, property in the form of depots, round-houses, machine shops, sidetracks, etc., which does have a definite and fixed local situation and therefore greatly increases the fiscal burdens of municipalities. The same is also true of the

right of way, consisting of land which ought to be taxed locally.

It will be understood that the assessment of all railroad property should be made by a central board or tax commission, the non-local value being taxed by the State at the general average rate of taxation, and the local value being apportioned among the localities where it is situated for taxation on the same basis as the property of individuals. It is the opinion, however, of a great many members of the legal fraternity that such a plan of railway tax distribution would be of doubtful constitutionality. Be this as it may, the author is of the opinion that a constitutional amendment should be enacted which will make absolutely clear and definite the right of the General Assembly to make any reasonable and necessary classification of property for purposes of taxation. Good reasons exist both from the standpoint of economic theory and administrative practice for drawing a line of demarcation between those forms of railroad property which have a local situation and those which do not possess a local habitation, requiring the local taxation of the former and the exclusive State taxation of the latter. This principle is believed to be at the very basis of true tax reform, rendering possible both an equitable system and an efficient administration.

Fifth. Finally, it should be borne in mind that the facts revealed and the general conditions discussed in the chapters on railway taxation in the author's *History of Taxation in Iowa* are by no means peculiar to Iowa. They exist in many other States; and in fact are being eliminated only as rapidly as the complex question of taxation is placed in the hands of competent officials. On every hand there is a growing interest in the great prob-

lem of equitable taxation; and the conviction is coming to prevail that the solution of this problem must come, if it comes at all, through an efficient non-partisan administration. There is no royal road to the goal of equal taxation. In Iowa as in other States it will be the fruit of hard labor, of ripe scholarship, and above all, of honest purpose.

Laws should be enacted not for any particular class, but for the whole people. While railroads and other quasi-public corporations have obligations to the public, they also have legal and economic rights which the public ought to respect. It can not be denied that all corporations should be required to bear their just share of the public burdens. But they should not be required to bear more than their just share. How much a railroad or other corporation should pay ought always to be a question of fact and never a matter of opinion. Industrial life has become exceedingly complex and institutions that were suited to earlier conditions no longer suffice. The problem of taxation is especially recognized by all authorities to be one of the most difficult. Consequently, it is the business of the State to approach this problem with firmness and candor, and to employ the most competent men to aid in its solution.

In concluding this review of the history of railway taxation, attention should be called to the important relation between that history and the principles of the general property tax. Up to 1862 the general property tax was made to apply both from the standpoint of theory and administration. Local assessment and the value principle prevailed. In the decade following 1862 gross receipts taxation was instituted largely as a war measure. The law of 1872 placed railroad assessment in

the hands of a State board, where it has remained down to the present time. In a word, local assessment was rightfully destroyed, but the theory of property taxation was written into the law and is now more firmly established than at any previous time in the history of our revenue system.

Passing from railroads to similar public service corporations the historical analysis may be briefly made. The property of palace, buffet, sleeping, and dining car companies, freight line and equipment companies, and the like, is assessed in the same manner as railroads proper and, therefore, the same general conclusions apply.

#### THE TAXATION OF OTHER PUBLIC SERVICE CORPORATIONS

Of all the leading public service corporations doing a State-wide business the property of express companies is perhaps the most intangible. It consists almost entirely in the right to do business over certain railroad or steamship lines and at certain terminals. The tangible property of these corporations is relatively a negligible quantity, and for that reason efficient assessment has always been a difficult problem. Prior to 1868 express and telegraph companies were included in the general property tax. The Twelfth General Assembly passed an act retaining both local assessment and the value principle, but providing a special method of determining value. The property of all express and telegraph companies under the provisions of the act was included in the valuation of the personal property of each company, the assessment being made at each office where such company or companies transacted business, the amount of personal property being arbitrarily fixed at forty per cent of the gross receipts. In addition it was further provided that all real and personal property owned by telegraph or

express companies should be taxed in the same manner and by the same officials as their other real estate. In other words, the law of 1868 preserved the principles of general property taxation, but established a fixed and arbitrary rule of listing personal property. This rule of assessment soon proved to be unsatisfactory and was repealed in 1870. Both telegraph and express companies were again assessed on the basis of their real and personal property, no special method of listing being applied. In the case of express companies no change was again made until 1896. At that time it was discovered that the property of express companies was not only intangible but also elusive, and in fact had practically evaded all taxation for years. Accordingly, Senator Funk drew up a bill taxing express companies two dollars on each hundred dollars of their gross receipts. In the law as passed the rate was reduced to one dollar. Nevertheless, the act served the purpose of not permitting express companies to get entirely out of the habit of contributing at least a small quota to support the burdens of government. The tax thus levied was paid into the State treasury and the rate was increased to two dollars in 1898. It was finally provided that nothing in these acts should be construed to release express companies from the assessment and taxation of their tangible property in the same manner as other tangible property was assessed and taxed.

Two years later, following a Supreme Court decision which required the property of all corporations organized for pecuniary profit to pay local as well as State taxes on the same basis as the property of individuals, the whole system of taxing express companies was changed. The Cheshire law represents a change from the



gross receipts to the ad valorem system of taxation. Many elements are considered by the Executive Council in the assessment of express companies, but by the provisions of the law of 1900 valuation was made with primary reference to the aggregate market value of all the shares of capital stock plus the cash value of the mortgages. In this way a rather fixed and arbitrary system (very objectionable to the representatives of these corporations) was established, which, however, has been modified and made more elastic by amendments passed since 1900. At the present time, the Executive Council is given practically the same latitude in assessing the property of express companies as in the assessment of railroads and telegraph and telephone companies. For all these and similar public service corporations what practically amounts to self-assessment has been instituted. The same plan of tax distribution now applies to express companies as to the property of railway corporations.

Returning to the study of telegraph companies it should be noted that the law of 1870, which again provided for general property taxation, was changed in 1878. The law of 1878 is one of the most instructive revenue acts ever passed by the General Assembly of Iowa. The ad valorem principle was retained; taxes were paid into the State treasury and were in lieu of all other taxes, State and local; and finally, the average rate of the general property tax, State, county, and municipal was levied. State assessment, exclusive State taxation, and the ad valorem principle were embraced in this law. By a decision of the Supreme Court this law was made applicable to telephone companies. Finally, in the *Code of 1897* more elaborate reports, including gross receipts, operating expenses, and the like, were required to be submitted to the Executive Council.

The whole system, however, after being in practical operation for more than twenty years, was destroyed by a Supreme Court decision. But the ad valorem principle and assessment by the Executive Council were both retained. The change made was one of taxation, not of assessment. The plan of tax distribution was made similar to that which had been applied to railroads since 1872 and which was by the same General Assembly being applied to express companies.

In completing this analysis of the history of taxation of public service corporations doing a State-wide business it should be noted that the most significant fact of that history is the adherence to an ad valorem system, or in other words, to the underlying principles of the general property tax. In fact, the only real exception to this rule was the gross receipts tax applied to railroads as a war measure from 1862 to 1872, and to express companies from 1896 to 1900. Under the law of 1868 as repealed in 1870 the forty per cent of gross receipts was merely a method of ascertaining the personal property of telegraph and express companies. In view of these facts it is apparent that any plan of scientific reform for the assessment and taxation of State-wide public service corporations should be based on the ad valorem principle as the only safe corner-stone.

In regard to the assessment of public service corporations a universal change from a local to a State system has been noted. It would seem that this is both a desirable and a necessary change. Any program of sane, well balanced reform must, therefore, recognize the principle of State assessment. It logically follows from these considerations that only two fundamental changes are necessary: first, in the plan of tax distribution all non-

local values should be taxed solely by the State; and second, a State tax commission for expert assessment in lieu of the present ex officio assessment by the Executive Council should be created.

#### THE INHERITANCE TAX

A proposal for inheritance taxation was definitely outlined in the report of the Revenue Commission submitted to the Twenty-fifth General Assembly and also in the report of the Code Commissioners in 1895. The law, as first passed in 1896, provided for a tax of five per cent on all estates above one thousand dollars passing to collateral heirs or strangers in blood. At least four points should be noted concerning our present inheritance tax: first, that the administration of the same has been somewhat indefinite and decentralized; second, that the tax is levied on the estate as a whole and not on the individual inheritance; third, that the so-called thousand dollar exemption is merely descriptive of the estates liable to the tax and is not an exemption as that term is ordinarily understood; and fourth, that the law was quite carefully redrafted by the Thirty-fourth General Assembly and therefore should be allowed to stand, at least for the present, in order to give the new measure time in which to demonstrate its efficiency. This, however, would not prevent the enactment of a separate law providing for a direct inheritance tax.

The history of inheritance taxation in Iowa, like the history of the general property tax, seems to indicate the necessity of a thorough reorganization of our assessment system. For a number of years this tax was practically a failure, and is now only a partial success for the obvious reason that no county official has been held

definitely responsible to the State treasurer. The county administration, in a word, has been broken up and dismembered and made too largely a judicial function. In the second place, sixteen years of history have taught the desirability of a separate measure rather than an amendment to the present law in case it is desired to create some form of direct inheritance taxation. The constitutionality and practicability of a tax on estates passing to collateral heirs have already been established. With a better organized fiscal administration in the counties and a more carefully drafted law, the collateral inheritance tax may easily be made a very important part of our revenue system. It is a simple, just, and productive tax. Any plan of taxing individual inheritances passing to direct heirs will necessarily involve different legal and possibly constitutional principles, and should, therefore, stand or fall on its own merits.

Finally, the history of the inheritance tax has made evident the necessity of popular education along this line. Of all forms of taxation, it is, perhaps, the most democratic; yet the farmer members in the House of Representatives have been the strongest and most uncompromising opponents of the measure. On the other hand, the Senate has been uniformly favorable to this class of legislation. It is a strange fact that the very people whom inheritance taxation both direct and collateral is everywhere designed to benefit should be unfriendly to the plan.

#### GENERAL CONCLUSIONS

In concluding this historical analysis of the Iowa revenue system attention should be called to the following basic facts: first, the ex officio and decentralized fiscal

administration; second, the low and grossly unequal assessments; third, the failure to reach moneys and credits; fourth, the nature and purpose of exemptions; and fifth, uniformity of taxation, which necessarily includes equity in the method of tax distribution as between the various units of government, State, county, and local. The second and third facts are logical results of the first; for it can not be denied that decentralization, on the one hand, and the ex officio, planless character of our fiscal administration, on the other, are primarily responsible for the present chaotic and unsatisfactory conditions.

Concerning the decentralized fiscal administration in Iowa enough has already been said. In the long contest between the county and township systems the victory was won by the latter. At present the assessment of all property in the State save that of certain State-wide public service corporations and the equalization of the same as between individual taxpayers are both strictly local functions. Local assessment is, therefore, the basis of the fiscal pyramid; and for that reason it may justly be said that our revenue system rests upon foundations of sand. Any program of reform which does not look this condition squarely in the face and provide for a gradual change from township to county assessment, or at least county supervision of local assessment, does not indicate progress and should, therefore, not receive the endorsement of the people. It should not be forgotten, however, that this change can be accomplished only by evolutionary and not by revolutionary methods.

As to ex officio assessment and equalization it can not be denied that this is one of the underlying causes of the present planless scheme of taxation. Equalization in Iowa is almost exclusively an ex officio function. Town

or township trustees, the city council, the county board of supervisors, and finally the Executive Council are all composed of men elected for purposes largely foreign to the administration of revenue laws. With decentralized assessment and an ex officio perfunctory equalization the only surprise is that Iowa has any system of taxation worthy of the name.

The two inevitable results of this absence of efficient administration have been: first, low and grossly unequal assessments; and second, almost a complete failure to reach personal property, especially moneys and credits. Attention has been called in the author's *History of Taxation in Iowa* to the inequalities of assessment as between counties, cities, towns, townships, and, most important of all, between individuals. The fact that real estate is now being listed for taxation at about one-half its value and that approximately nine-tenths of the personal property in Iowa does not contribute a dollar to the public burdens has been made clear to the reader of the two-volume work above referred to. When it is realized that the under-assessment of real estate represents about ten times the amount of moneys and credits now being listed for taxation, it is superfluous to suggest that there is something radically defective with the present revenue system.

In this connection it should be stated that all taxation aside from a personal or poll tax rests in the last analysis either on economic value or on credit instruments supposed to represent economic value. In Iowa, as in nearly all of the States of the Union, an effort is made to tax both real value and credits — the mere representatives of economic value. The obvious and logical result is the failure of both. While a game of hide-and-seek is being

played — efforts to conceal, on the one hand, and discover, on the other, pieces of paper in some strong box — the assessor fails to list the property which this very paper represents, the logical result being that the paper itself and the economic goods without which the credit instrument would be worthless both escape the burden of taxation.

The fiscal drama which has been enacted over and over again in Iowa may be easily stated. On the time honored principle that every desire creates its own conscience, the owner of moneys and credits claims that if these are listed he will be obliged to pay taxes on their full value, while the real property of the State is being assessed at about half of its value and some corporations at less than half the market value of their property. In the same manner, the farmer placidly explains the low standard of civic morality which proposes to assess his farm at its full value, while public service corporations are not paying their just share of the public burdens and credit instruments are practically evading all taxation. Under these conditions, the farmer naturally, perhaps justly, believes that he is imposed upon when land, improvements, live stock, and the like, which would sell in the market for twenty-five thousand dollars are listed for ten thousand and assessed at twenty-five per cent of that amount. As to the public service corporation its position is so unfortunate as to call for an expression of real sympathy. The manager of such a corporation can easily point to the low assessment of farm property, on the one hand, and the almost complete failure to reach moneys and credits, on the other. But in order to hold his own in this game of fiscal competition — or to phrase it differently, civic perjury — he is obliged frequently to

list property for fifty thousand dollars for purposes of taxation which he may be forced to declare almost in the next breath is worth half a million dollars from the standpoint of rate regulation. As a matter of charity, at least, something should be done to relieve this unfortunate situation of the captain of industry.

The only remedy for the conditions herein outlined is: first, a coherent centralized fiscal administration under the wise leadership of a permanent State tax commission; and second, the evolution of a desirable substitute or substitutes for the worn-out personal property tax. It is gratifying to note that some real progress has been made along both these lines since 1910.

The Thirty-fourth General Assembly passed an act providing for the appointment of a special State Tax Commission to investigate the tax laws of Iowa and of other States and report desirable changes to the Governor, including the drafting of bills to carry out their recommendations. An appropriation of \$10,000 was made for this work. In conformity with the provisions of this law, Governor B. F. Carroll on May 17, 1911, announced the following appointments: Attorney M. H. Cohen of Des Moines, Mr. C. N. Voss of Davenport, Mr. M. B. E. Stonebraker of Rockwell City, Attorney J. H. McConlogue of Mason City, and Hon. A. C. Ripley of Garner. Mr. Cohen was elected president and Mr. Voss vice-president of the Commission, and at a meeting held on August 3rd the author was appointed to serve as Secretary.

At the time of filing its report, on October 5th of the current year, the Commission had been in session from time to time more than two months, had attended the Fifth and Sixth Annual Conferences of the National Tax



Association and had also held a State Tax Conference in Des Moines, which was attended by two hundred and eighty-one voting delegates, representing seventy-four counties, and more than a hundred visiting members. In other words, an earnest effort was made to make a comparative study of tax legislation and administration and at the same time to get into close touch with the taxpayers in order to learn what would probably be accepted in the shape of constructive tax reforms. By means of a number of public hearings at Des Moines, Davenport, and Sioux City, and at the State Tax Conference itself, the Iowa taxpayer was given an opportunity to be heard; and the suggestions made during these various public meetings were of great service to the Commission in drafting its revenue bill and compiling its report.

The recommendations of the Commission may be classified as primary and secondary, the former being definitely incorporated in the proposed revenue bill and the latter merely suggested as important subjects for further consideration by the General Assembly and a permanent tax commission in case one is created. The purpose of limiting the recommendations actually contained in proposed legislation will be apparent to any thoughtful student of public affairs. The majority of special commissions make the serious mistake of attempting to do at one session that which may reasonably be expected to require a decade or perhaps even a generation for its complete accomplishment. Moreover, the Commission believed that the failure of our revenue system is so largely the result of faulty administration that a complete reform in the machinery of assessment and equalization is absolutely necessary before other desirable changes should be even seriously considered.

Accordingly the revenue code was carefully redrafted so as to include the following definite reforms: first, a permanent State tax commission of three members appointed by the Governor, subject to confirmation by the Senate, with the authority to assess the property of certain public service corporations and to act as a State board of review or equalization; second, a county assessor or rather a county supervisor of local assessment, elected by the people for a term of four years and clothed with authority to collect data relative to the assessed and sale value of farm lands and town lots, supervise the work of local assessors, giving them necessary instructions from time to time, and list omitted property, which power is believed to be essential in order to secure the efficient administration of the law of 1911 imposing a flat rate of five mills on moneys and credits; and third, the assessment of all property subject to ad valorem taxation at its actual value, it being recognized by practically every fiscal authority that on no other basis is uniformity of assessment, and, therefore, equality of taxation, possible or at least practicable.

Among the secondary recommendations or rather suggestions of the Commission may be mentioned separation of revenue sources and the income tax. Arguments are presented for and against the plan of segregation and it is further stated that before such a system can be enacted into law a constitutional amendment must be adopted giving the General Assembly complete authority to make a reasonable classification of property for purposes of taxation. In fact, a number of important problems were discussed from time to time, some of which are mentioned in the report and others are not. On the whole, the special Commission believed that

important and radical tax reform along any line should come gradually and only after an exhaustive study of all the facts and conditions.

The other important legislation enacted in 1911 was the repeal of the tax ferret law and the act imposing a flat rate of five mills on moneys and credits, exclusive of the stock in national, State and savings banks, loan and trust companies, and moneyed capital in competition with banks. In passing this latter measure, the General Assembly followed the successful experience of Maryland and Pennsylvania. Provision was made for the taxation of bank stock at the regular local rate, the assessment, however, to be made at twenty rather than twenty-five per cent of the listed value. In thus enacting a partial substitute for the worn-out personal property tax, the General Assembly of Iowa was in harmony with the views of a great many leading authorities on taxation.

In conclusion, it may be safely affirmed that any comprehensive program of revenue reform should embrace the following essential elements: first, a strong centralized fiscal administration, without which efficient and uniform assessment is impossible; second, a more equitable plan of tax distribution as between city, town, township, county and State; and finally, the gradual evolution of desirable substitutes for the so-called personal property tax. In the judgment of the writer, administrative reform is primary and should receive the prompt attention of the General Assembly.

## II

### THE COUNTY ASSESSOR AND TAX COMMISSION MOVEMENT

OF all the many and varied reform movements which are now engaging the attention of the American people, and especially the people of this State, it may safely be said that none is of more immediate interest and importance than the question of how to devise an efficient and equitable system of taxation. Yet the public has been slow to realize the significance of the problems involved. Indeed, the opening of the present century found less than a half dozen States with anything definite accomplished in the way of fiscal reform; and, for the most part, the general property tax, resting upon local assessment and perfunctory equalization, is still retained as it has come down to us from colonial days.

The State of Iowa, in particular, has been singularly free from any determined and well directed effort along the lines of revenue reform. A number of conditions have tended to produce this result. In the first place, during the last few years, while many other States have been busy revising their tax laws along scientific lines, Iowa has been actively engaged in other reform movements — the regulation of railroads, two-cent fares, primary elections, and the like. At the present time, moreover, it is true that taxation along with other State problems is being practically forgotten by the average voter who, nevertheless, is actively interested in the con-

trovcrsy over the tariff, conservation, and other national problems. These conditions are cited not in criticism of any faction or political party, but merely as a statement of fact.

In the second place, whenever Iowa law-makers have endeavored to reform the general revenue machinery they have uniformly proceeded along lines similar to those followed by Congress in drafting a tariff bill: in other words, they have endeavored to do the whole thing at once and that without any definite knowledge of facts or underlying principles. As it is impossible to revise all the schedules of the tariff at a single session of Congress on account of industrial and sectional conflicts, so it is impossible for any one General Assembly to re-shape the whole revenue system of the State along scientific lines. Among tax commissioners and other fiscal authorities this fact is regarded as a truism, yet from the *Revised Statutes* of 1842-1843 to the *Code of 1897* our law-makers have undertaken the absurd task of passing omnibus tax reform bills. So long as this policy is followed there will be much politics, but little sound finance. The multiplicity of conflicting interests, which always arises, has defeated and will continue to defeat any constructive program of reform.

When a dozen great tax questions are all included in the same bill it requires no prophet or statesman to foresee that passion, prejudice, and local selfishness will prevent the proper consideration of the problems involved on their merits. In all such cases there has been no end of log-rolling and perhaps a wealth of statutory verbiage, but no legislation worth while. It is evident that any sound fiscal reform must be accomplished along evolutionary not revolutionary lines. Furthermore,

while each part should be considered with intelligent reference to the whole, every tax problem which is brought forward should be debated and passed or defeated on the basis of inherent merits and not consigned by the "practical" man to the limbo of party or factional politics. It is believed that a considerable number of people are coming to apprehend these facts. When they are fully comprehended a great step forward will have been taken in the promotion of constructive legislation.

In the third place, it should not be forgotten that it is equally essential to consider every tax problem as a part of a carefully planned and well proportioned revenue system. Until recently not only law-makers but many tax theorists have disregarded this simple but obvious principle — which partially explains the present chaotic condition of the tax systems of the American States. If it is true that the second criticism noted above applies to the machinery of levy, assessment, and equalization outlined for the general property tax in Part I of the author's *History of Taxation in Iowa*, it is equally apparent that the failure to understand the revenue system as a unit is applicable with even greater force to the special problems of taxation presented in Parts II and III of the same work. On the one hand, legislators have in many cases failed to consider tax problems on their own merits without political log-rolling, and on the other, much special legislation has been passed with small regard for that organic fiscal unity that ought to prevail in any State.

#### TAX REFORM MOVEMENTS

During the last quarter of a century at least three distinct tax reform movements have been advocated with

more or less success in the United States: first, the evolution of special methods of taxation like the gross earnings system as applied to certain corporations, the stock and bond tax, the mortgage registry tax, the stock transfer tax, and the flat millage rate on moneys and credits; second, the plan of providing sources of revenue for the State separate from those of the local units of government, generally referred to as the principle of segregation or separation of revenue sources; and third, the improvement of the general machinery of administration, or in other words, the county assessor and tax commission movement.

There are, of course, arguments which may be advanced in favor of each plan of reform. Authorities on taxation quite generally agree that the worn-out personal property tax should be abolished and adequate substitutes provided to take its place. Among these substitutes may be mentioned the mortgage registry tax, the flat millage rate on moneys and credits, a special tax based on rental values or on the amount of business transacted, and the income tax. On the other hand, there is much to be said in favor of placing certain taxes on non-local property or business directly into the State treasury, for the obvious reason that to attempt to localize property or business which has no local situs results in great inequalities as between the minor subdivisions of government. To be concrete, the bulk of the tax on railroads, telegraph, telephone, and express companies, and all similar State-wide public service corporations, should go directly into the State treasury, simply because practically all of this class of property has no definite local habitation. To do this would be to accept a part of the program of the advocates of segregation, although such

a policy would not result in complete separation of revenue sources in Iowa under existing economic conditions.

It is a significant fact, however, that practically all fiscal authorities, including a majority of those who advocate certain special forms of taxation and also endorse the plan of separate revenue sources, hold that the basic and fundamental reform movement is to be realized through the establishment of more adequate machinery of administration. In other words, it is coming to be very generally admitted that neither provision for complete segregation nor the enactment of laws providing for special plans of taxation remove the necessity for efficient machinery of assessment and equalization. Indeed, the State tax commission may justly be regarded as the chief feature in any program of real fiscal reform — especially when supplemented by adequate county supervision of assessment, since the county is a necessary connecting link between the State and the minor subdivisions of government.

In order to understand the county assessor and tax commission movement it is necessary to make a brief survey of the basis of valuation and of the machinery of assessment and review or equalization in all of the forty-eight Commonwealths. This is true for the reason that the so-called general property tax, which forms the very heart of our revenue system, must be considered from the standpoint of the underlying principles of contribution, on the one hand, and of the machinery of administration on the other.

#### THE BASIS OF VALUATION

Only a word, however, need be said regarding the basis of listing or valuation throughout the country.



Alabama has the unique distinction of being the only State where the law does not require the listing of property on the basis of actual market value, which is universally defined by the courts to be that price which the same would bring on the market in the ordinary course of trade. While Nebraska, Iowa, Illinois, and Idaho provide by law for so-called fractional assessment, the ratio being 20 per cent, 25 per cent, 33 1-3 per cent, and 40 per cent of listed value, respectively, it should be understood that reference is made in each case to mere arbitrary percentages of actual market value and not to a fractional basis of valuation as in Alabama.

In the forty-eight Commonwealths different terms are used, such as "value", "actual cash value", "actual value", "true value", "fair market value", "just value", "fair cash value", and "the present true and actual valuation", but they all mean the price which the property would bring on the market in the ordinary course of trade and not at a forced sale. In some States, cash value is defined as what property would be taken for in the payment of a just debt due from a solvent debtor, and in other States as what it would sell for at a "fair, free and well advertised sale". Indeed, almost every variety of expression for the term "actual value" may be found somewhere on the statute books of the different Commonwealths.

The fact, however, that the law requiring the listing of property subject to ad valorem taxation at its actual market value is quite generally disregarded in practice, is a matter of common knowledge. Indeed, it may be said that property is being assessed in actual practice at from 10 per cent to 100 per cent of its true value in the various States, depending entirely upon the efficiency or

lack of efficiency of the revenue system. In States like West Virginia and Kansas, where a county assessor and tax commission system has been established and clothed with adequate power and authority, property is now being listed for taxation at more nearly its actual value than in any other State. Permanent tax commissions in States where the township plan of local government prevails have been able to accomplish substantial results in the equalization of the public burdens, but the most efficient assessment is possible only when the general supervision of a State board is supplemented by more direct county supervision of local assessment.

When it is considered in this connection that uniformity of assessment is impracticable except on the basis of actual value and that a uniform assessment of property is a necessary basis of equitable taxation, it would seem that the recommendation of the Tax Commission of Iowa, that property should be assessed at its actual market value, rests upon a solid scientific foundation. The fact that every State in the Union except Alabama requires the listing of property at its true or actual value, and the additional fact that every revenue law that has been enacted in Iowa from 1838 to the present time makes a similar requirement, proves that the recommendation of the Commission along this line is based upon experience rather than upon mere theory. Indeed, it may be truthfully affirmed that there is perhaps no other important phase of the whole revenue question about which a greater unanimity of opinion exists among fiscal authorities than the desirability of assessing all property subject to ad valorem taxation at its actual cash value. The machinery of assessment and equalization, therefore, which most closely approaches this ideal

is the most efficient and should be provided for by a thorough revision of the tax laws.

#### THE ASSESSMENT OF PROPERTY

Turning, in the second place, to the fundamental and all-important question of assessment, it will be found that this work is a township, county, or State function, depending upon the character of the property being listed and upon the form of local government which happens to prevail in a given Commonwealth. On the one hand, property which has no local habitation is quite generally, and in fact almost universally, assessed by some form of State board; while on the other hand, general property having a definite local situs is listed by township or county officials or by some compromise plan, depending entirely upon the character of local institutions, which in turn are always the product of historical development. The functions of the township, the county, and the State, respectively, in the work of assessment will therefore be briefly considered.

#### TOWNSHIP ASSESSMENT

The listing or assessment of general property of a strictly local character and subject to ad valorem taxation is vested almost exclusively in township officials in seventeen States. Assessment is made by township assessors without the supervision and control of county assessors or any county supervision whatever, except the mere nominal review or equalization by an ex officio county board. This list of seventeen Commonwealths includes all of the New England group and, in fact, every State north of the Ohio and Potomac rivers and east of the Mississippi River, except Illinois, Indiana, and Mary-

land. It is a striking fact, however, and one which throws considerable light on the development of local institutions that township assessment prevails only in Minnesota, Iowa, North Dakota, and North Carolina among all of the remaining States of the Union.

In addition to this list of seventeen States, where the assessment of local property is exclusively a function of the civil township or similar subdivision of local government, it should be stated that Indiana, Illinois, Kansas, and South Dakota have a dual system or plan of valuation. In Indiana local township assessors list property, but are subject to the supervision of a county assessor elected by the people — a system which has much in common with the plan recommended for Iowa by the Tax Commission. In Kansas township assessors elected by the people in the rural districts and local assessors appointed in towns and cities are clothed with authority to list property, subject, however, to the rigid supervision of a county assessor elected by the people for a term of four years. In South Dakota and Illinois part of the counties are under township organization and therefore have township assessors, but in the remaining counties the county system of local government prevails and, what logically follows, county machinery of assessment is provided.

In practically all of the seventeen States which have only township assessment, including also the four States having a dual system of township and county assessment, local assessors are elected by the people in the same manner as other township officers. Indeed, the elective system is almost universal in the country townships, but in the cities assessors or boards of assessors are quite frequently appointive. The growth of the appointive system

in cities may be explained by the obvious necessity of providing permanent expert officials to assess the infinite variety of property of a complex and more or less intangible character. In North Carolina the assessment is made by a board of list-takers of each township, who are appointed by the board of county commissioners.

In concluding this brief survey of the twenty-one States where either partial or complete township assessment prevails it should be noted that it is in these same Commonwealths that the permanent tax commission movement has made the greatest progress during the last decade. It is a significant fact that a permanent State tax commission, a State tax commissioner, or a State board of assessors has been established in all of the twenty-one States under consideration, except Iowa, Pennsylvania, South Dakota, and Illinois. Moreover, it should be stated that of the seventeen States which have no county machinery of supervision fourteen have created a permanent tax commission, a permanent State board of assessors, or a State tax commissioner. New Hampshire, Ohio, and Rhode Island have been placed in this list of tax reform States during the last two years.

The rapid progress of the tax commission movement in this list of Commonwealths may be partially explained by the existence of more complex and advanced economic conditions, but it is also very largely the result of the complete break-down of local township assessment. In other words, where township assessment prevails some method of supervision and control is deemed necessary in order to obtain anything approaching an efficient revenue system. If this supervision is not supplied in a measure by the proper county authority, it is obvious that a central State board becomes all the more essential.

In this connection it is interesting to observe that Iowa is one of only three States which have local township assessment and no county assessor or permanent tax commission — which means inefficient supervision of the local machinery of assessment and equalization. A thorough, comparative study of taxation problems, therefore, reveals the necessity of supplying some adequate supervision of local township assessment, such as would be provided by the county assessor and tax commission system.

#### COUNTY ASSESSMENT

County assessment in some form prevails in thirty-one Commonwealths, which list includes every State west of the Mississippi or south of the Ohio and Potomac rivers except Minnesota, North Dakota, Iowa, and North Carolina. It is thus very apparent that as the American people moved westward the county as a unit of local government must have proved its superiority over the township for the purpose of listing or assessing property. In fact, at the present time there is a movement on foot in Minnesota, North Dakota, and some of the other States such as Ohio, having the township plan of local organization, to create the office of either county supervisor or local assessment or county tax commissioner.

The plan of assessment in North Carolina merits a word of explanation. North Carolina being a southern State, one would expect the county system of assessment to prevail. A more detailed study of the revenue machinery of that State, however, shows that the plan of assessment is only nominally a township system. When it is considered that the township list-takers are appointed by the board of county commissioners, who in turn are

subject to the supervision of a State tax commission, it is apparent that the real power is vested in county and State authorities and not in township officials. Indeed, the township list-takers are mere servants of the county board in much the same way that the local assessors in Iowa would be in case they were appointed by the county board of supervisors and at the same time were subject to State as well as county supervision and control. The board of county commissioners in North Carolina can direct and control the work of local assessment in much the same manner that the county assessor is able to do in Kansas. In practice, however, the supervision would, perhaps, not be so efficient because the county assessor in Kansas is a permanent official, while the board of county commissioners in North Carolina are in session only a few days of the year.

In spite of the fact that some form of county assessment exists in two-thirds of the American Commonwealths, the system has been carried to its logical conclusion in only a few States. County machinery of assessment, to be placed on a really efficient basis, must first be in the hands of officials clothed with adequate power and authority, and second, be subject at the same time to the rigid supervision and control of a permanent State tax commission. The experience of many States has proved over and over again that either township or county assessment requires a substantial measure of State supervision in order to bring about equality and uniformity of taxation. At the present time West Virginia and Kansas are almost in a class by themselves for the reason that State supervision is supplemented by county supervision, each unit of government being clothed with a large measure of power and authority.

The fact that a dual system of county and State supervision of local assessment is much superior to the plan of State supervision above outlined, will be obvious to the critical reader when a comparison is made of the work done by the tax commissions of Kansas and West Virginia, on the one hand, and of Minnesota and Wisconsin, on the other.

A number of county assessor States are following the example of West Virginia and Kansas. This list includes Alabama, Texas, Arkansas, and Arizona in the South, and Colorado, Oregon, and Washington in the West. The last States, in which the county form of government predominates, to establish tax commissions were Arkansas, Colorado, and Arizona. While the new system in some of these Commonwealths has not been established long enough to furnish data for any definite conclusions, it is safe to assume that substantial results will be secured. As already suggested, the efficiency of any system, whether operating through civil townships or counties, must depend primarily on the power and authority vested in the different taxing officials and boards.

As to the method of election, salary, term of office and powers of county assessors, there exists a great diversity among the thirty-one Commonwealths having the county form of local organization. In the great majority of cases assessors, as well as other county officers, are elected by the people for a term of two or four years. Alabama, Arkansas, California, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Nebraska, Oregon, Tennessee, and West Virginia all elect county assessors for four years, which is the term provided for in the proposed revenue bill drafted by the Tax Commission of



Iowa. In Virginia it appears that county assessors are appointed by the circuit courts for a term of five years; while in Arizona the appointment is made by the county board of supervisors. The system of election, however, is practically universal for reasons which must be obvious to the student of American political institutions. Judged entirely from the standpoint of administration the system of appointment is, no doubt, preferable; but when the practical question of expediency under existing conditions is taken into account it is altogether probable that some method worked out on the basis of election rather than appointment would be more acceptable and perhaps just as successful. At any rate, the plan of electing county assessors is already giving satisfactory results in a number of States.

#### STATE ASSESSMENT

It will be recalled that township and county machinery of assessment as above outlined is employed in listing general property of a local character, which is subject to ad valorem taxation. A large amount of property in each State, however, has no definite local situs and unless some special plan of taxation is provided, assessment by a State board is the general rule throughout the Union. Reference is here made to the property of railroad, telegraph, telephone and express companies, and of similar corporations in States where the ad valorem system prevails. Substantial differences, however, exist among the various Commonwealths in the classes of corporations subject to State assessment for the reason that in many cases the gross receipts system, the stock and bond method, or some combination of special plans of taxation is employed to obtain revenue from certain corporate property.

Authority to assess the property of various State-wide public service corporations is sometimes vested in a single person, like the Comptroller General of Georgia, but this important function is almost universally placed in the hands of a board of three or more members. In States like Iowa, Missouri, and Nebraska an ex officio State board of equalization is clothed with this power — a method which was more general throughout the country before the days of the tax commission movement than at the present time. In States like Maine and New Jersey the same authority is conferred upon separate State boards of assessors. During the last decade, however, State assessment and review or equalization have both been very rapidly transferred to a class of permanent State boards generally known as tax commissions. This is true at the present time in Wisconsin, Massachusetts, New York, Michigan, Indiana, and a number of other States, and represents a very positive general movement in the field of scientific tax reform.

Speaking more in detail regarding specific States, it may be said that in North Carolina the so-called Corporation Commission composed of three members elected for six years is a State board of assessors for railroad, telegraph, telephone, street railway, canal, and steamboat companies and, in fact, for all other companies exercising the right of eminent domain. In South Carolina the State Board of Assessors is composed of five State officers with authority to assess the property of railroad, telegraph, telephone, and express companies; while the State Board of Equalization is a separate and distinct body composed of members elected by the county boards of commissioners. Virginia has no definite plan of State review or equalization, but the State Corporation Com-

mission, created by the Constitution, is vested with authority to assess the property of railroads and other State-wide public service corporations. Practically the same system prevails in Mississippi. Alabama has a State Tax Commission with general control of the assessment and collection of taxes, but it is instructive to note that the State Board of Assessors is an ex officio body composed of the Governor, Secretary of State, Treasurer, and Attorney-General.

Indeed, it should be stated that a considerable group of Commonwealths employ two separate boards; one for listing certain corporate property, and the other to do the work of review or equalization. In a word, the forty-eight States present a complex variety of plans for State assessment, thus making it difficult to formulate many general conclusions. But when the involved mass of comparative data brought to light in an investigation of the various systems is reduced to its lowest terms, it will be found that the one thread which serves as a connecting link or cementing principle is the tendency to replace mere nominal ex officio boards by permanent boards or commissions composed of officials giving all their time to the work.

#### EQUALIZATION OR REVIEW

Having considered the basis of listing property and the method of assessment, the third logical step in any thorough comparative study of revenue machinery is an investigation of the various plans of review or equalization which prevail throughout the Union. In this respect, as in the method of assessment, no two States have exactly the same system. For reasons already indicated, the machinery of review or equalization is closely woven

into the fabric of local government. In common with the method of assessment, the subject of equalization may logically be considered on the basis of the power and authority vested in the different units of government — township, county, and State. This being true it would seem to be logical to follow the general method of presentation outlined above.

#### TOWNSHIP EQUALIZATION

It is a significant fact that while the civil township is an important unit of local government from the standpoint of assessment in twenty-one States and exercises practically exclusive jurisdiction along this line in seventeen States, it does not possess a corresponding measure of authority in matters of review or equalization. This is the result of two principal causes: first, the fact that in a number of States having the township system of local organization, especially in New England, there are local boards for the abatement of taxes and not local boards of review as that term is understood in Iowa; and second, it is coming to be recognized more and more that where township assessment prevails the county should be vested with a substantial supervision and control of this important work, including the review or equalization of local assessment. In other words, if the civil township is to be retained as the unit of assessment it is all the more essential to clothe the county with the power of equalization in order to secure uniformity of assessment as between the local taxing district of a given county, and at the same time to make possible uniformity of assessment among the counties of the State.

At the present time Kansas, Michigan, Minnesota, North Dakota, South Dakota, and Wisconsin are the only

Commonwealths which have a system of local review or equalization substantially similar to the Iowa plan. In States like Connecticut and New Hampshire local boards are organized for the purpose of granting abatement of taxes and are not clothed with authority to increase or decrease the assessment of property as is the case in Iowa and the other six States named. Of the seven States, however, having local review boards with authority to increase or decrease individual assessments it is a significant fact that Kansas is the only State where the board is so organized as to guarantee anything approaching satisfactory results. The greater success of local review in Kansas is apparently the result of two important facts: first, the appointment of two out of the three members of the township review board by the county assessor; and second, the thorough county and State supervision of the whole work of local assessment. In other words, real power and authority is conferred upon the county assessor and State tax commission so that the important work of review or equalization is nominally a township, but in reality a county and State function. The Chairman of the Kansas Tax Commission frankly admitted to the author that their plan of local review worked out through the appointive system was simply a method of vesting the county and State with all the authority necessary in order to compel the uniform assessment of property.

Thus, it is apparent that forty-one States do not have what is known as a local or township review board. Besides Kansas, which in reality has county and State rather than township review, there are only five other Commonwealths which possess local machinery of equalization that may justly be compared with the Iowa system.

In this connection, however, it should be stated that local review was more general throughout the country at an earlier date than it is at the present time. The breakdown of local assessment has quite logically resulted not in the complete abandonment of the system, but rather in the adoption of some plan of county rather than township review with the hope of securing a more equitable method of taxation. For example, New Jersey abolished its local board of review in 1906; Oklahoma and Nebraska in 1911; and Illinois in 1898. Indeed, an historical and comparative study of tax systems proves conclusively that the township is too small a unit of local government for purposes of review or equalization, it being impossible to secure uniformity of assessment where a county is divided into from fifteen to thirty taxing districts, with assessment and review both in the hands of local township officials.

Where township assessment prevails it is even more essential to provide an efficient county plan of equalization. It is believed that such a plan can be worked out directly and on a more efficient basis by clothing the county assessor with authority to correct individual assessments as is done in the revenue bill drafted by the special State Tax Commission; or indirectly as in Kansas where the county assessor appoints a majority of the members of the local review board and is therefore in a position to direct and control their work. Thus, if Iowa is to retain local township assessment, the local review board ought to be abolished and its powers conferred upon a county assessor; for in no other way is it possible to secure uniformity of assessment throughout a given county and therefore an equitable distribution of the burdens of taxation.

## COUNTY EQUALIZATION

Turning in the second place to the county as a unit of local government, it will be found that all but nine States have some form of county equalization. In fact, the county has important functions of a fiscal nature in every section of the Union. Outside of New England, the only Commonwealths that do not have some plan of county review are Delaware, Georgia, and Virginia. It is not surprising, therefore, that the county in Iowa, through its regular governing board, has possessed in some form the power to equalize assessments almost from the beginning of the Territorial period.

In Arizona, California, Kentucky, Nebraska, Michigan, Mississippi, Iowa, New York, and Wisconsin the work of county review or equalization is vested in the county board of supervisors. The board of county commissioners possesses similar authority in the following States: Alabama, Colorado, Florida, Idaho, Illinois, Kansas, Maryland, Minnesota, Montana, Nevada, New Mexico, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Utah, Washington, and Wyoming. The county boards of equalization in other States present many different methods of organization. In Texas and West Virginia the county court is vested with authority to equalize valuations. Arkansas has a unique system, the county board of review consisting of "three intelligent citizens, real estate owners, and qualified electors," appointed by the Governor for two years. This same duty is placed in the hands of the police juries of the different parishes of Louisiana; while in New Jersey the judge of common pleas appoints the county board of review, and a system that is quite similar pre-

vails in Tennessee. Finally, in the organization of a county review board Missouri and Oregon are practically in a class by themselves, the board in the former State being composed of the county clerk, the county surveyor, the county assessor, and the judges of the county court; and in the latter State, of the county judge, the county clerk, and the county assessor.

The most instructive fact, however, regarding county boards of review consists in the powers conferred upon them, not in the method or plan of organization. Such boards almost universally possess the power to equalize individual assessments, a power which existed in Iowa until 1870, when the local board of review was created. This is a power which ought to exist in this State and therefore the recommendation of the Tax Commission along this line is in harmony both with sound theory and successful practice. Indeed, when it is considered, first, that the work of county review almost invariably includes the correction of individual assessments, and second, that authority along this line is vested either in boards of county commissioners or in county boards of supervisors in approximately thirty States, it must be apparent that the present plan of county review in this State should be retained and greatly strengthened.

As already observed, there is a tendency to substitute county for township review in States retaining the township plan of assessment. This is true for reasons which are familiar to the critical reader. If it is desirable, however, to so change the character of local organization as to hold the county responsible for uniformity of assessment, the careful student of tax problems will appreciate the obvious necessity of placing in the hands of the appropriate county board the right to review individual



assessments. Indeed, it is imperative that such authority be granted if the county is to exercise proper supervision of the work of local assessment. With a county assessor possessing the power of correcting individual assessments and the county board of supervisors also granted the same authority to be exercised on appeal, it would seem that the county would be placed in a position to compel the uniform assessment of property, which as has been suggested, is the cornerstone of equality of taxation. Such a plan is recommended by the Tax Commission and provided for in the revenue bill to be presented to the Thirty-fifth General Assembly.

#### STATE EQUALIZATION

In the third place, there is some method or plan of State equalization in all but ten Commonwealths. The States which do not have boards possessing this authority are nearly all located in the South where the county from the beginning has been the all-important unit of local government. Until very recently, however, the great majority of the boards of this class were *ex officio* in character, consisting as a rule of some of the leading State officials and possessing nominal rather than real authority. The plan of State review in Iowa, which had its origin in the *Code of 1851*, therefore represents a pioneer system which formerly was quite general throughout the Union, but which is rapidly being replaced by permanent commissions or boards giving all of their time to the work.

Indeed, it may be said that two very important tendencies along this line have characterized the last decade: first, a substantial increase in the power and authority conferred upon State boards of equalization; and second,

the creation of State tax commissions, a State tax commissioner, or some other permanent body or official to take the place of or at least advise and assist the ex officio boards of review which are coming more and more to be looked upon as worn-out relics of pioneer days. The so-called tax commission movement, in a word, means either the elimination of ex officio boards of State review, or at least provision for some permanent official to supply the necessary data, without which an intelligent equalization of assessed valuations is impossible.

So rapid has been the growth of the tax commission movement that at the present time no less than twenty-eight States have either a permanent State tax commission, a State tax commissioner, a State board of assessors, or some other body or official clothed with substantial power and possessing the necessary amount of time to accomplish a real service. This list includes the six New England States and eight other States north of the Ohio and Potomac rivers and east of the Mississippi River or, in other words, all of that group except Illinois and Pennsylvania. To this list of fourteen Commonwealths, must be added Alabama, North Carolina, and West Virginia east of the Mississippi and south of the Ohio and Potomac rivers. The wave of real tax reform, however, has not been confined to the great manufacturing States of the Atlantic Coast or even to the more populous Commonwealths of the North Central group. The tax commission movement has reached every section of the Union until at the present time eleven States west of the Mississippi River have made definite progress along this line. This list includes all three States on the Pacific Coast, Arizona, which was recently admitted as a State, Arkansas, Texas, Colorado, Kansas,

Wyoming, North Dakota, and Minnesota. The claim, therefore, that to create a permanent tax commission is a radical and novel scheme is no longer tenable. Such an argument might have been advanced with some real force ten or twelve years ago, when approximately five or six Commonwealths had State boards of this character. In a word, the tendency of the last decade has been to provide some definite machinery for the efficient administration of law in matters of assessment and taxation, which explains why the so-called tax commission movement has made such great progress and accomplished desirable results.

In the great majority of States above mentioned the commission, tax commissioner, or similar authority is either clothed with very extensive powers of review or equalization or possesses the authority to collect statistical data as a basis for this important work. In States like Indiana, Maine, Michigan, Minnesota, and Wisconsin, the commission practically serves as a State board of review or equalization. In Oregon the two State tax commissioners and three ex officio members make up the State board of review. Washington has substantially the same plan. In a word, the assessment of State-wide public service corporations and the work of State review of local assessments are coming more and more to be functions of permanent rather than ex officio boards. From the standpoint both of assessment and equalization, the county assessor and tax commission movement is therefore an imperative necessity and may be said to rest upon a solid, scientific foundation.

The reader will recall the suggestion that the best method of understanding the relative efficiency of the dual plan of county and State supervision of local assess-

ment and of State supervision alone is to compare the actual experience of West Virginia and Kansas with that of Minnesota and Wisconsin. As already stated, the work of the Tax Commissioner of West Virginia and the State Tax Commission of Kansas is supplemented by efficient machinery of county assessment, while in Minnesota and Wisconsin there is not the same connecting link between the central State board, on the one hand, and the local official who is required to list property, on the other. A study of the revenue systems of these Commonwealths will therefore supply concrete practical evidence as to the positive advantages of having both a county and State plan of supervising the actual work of local assessment.

#### TAX ADMINISTRATION IN WEST VIRGINIA

The tax reform movement in West Virginia may be said to date from February 20, 1901, when the legislature of that State passed a joint resolution authorizing the Governor to appoint a special commission of five members to investigate and report "what changes are required in the tax assessment or revenue laws of this State, to equalize taxation, to reach property, firms, persons and corporations not now bearing their just proportion of the burdens of taxation and to raise the necessary amount of revenue with the least possible burden upon the people and property of the State."

The Commission was appointed and within a short time issued a preliminary report calling attention to a number of serious defects in the revenue system, including the following: first, the absolute necessity of larger revenues for State and school purposes; second, low assessed valuations, and what logically follows, a complete lack of uniformity in the work of listing property for

taxation; and third, concrete statements regarding the gross inequalities which actually did exist between local taxing districts, but more especially, between individual assessments. With reference to the desirability of listing property at its actual value, the following significant statement may be found in the preliminary report: "The question is whether it is more advantageous for the public that the revenue necessary for its purposes shall be raised by the application of a low rate of taxation to a full valuation, or by a high rate of taxation applied to a low valuation of the property." After considering both sides of this problem, attention is called to the real danger there is in providing any variation from "true selling value of the property", for the obvious reason that such variations are subject to no law and tend to increase "the uncertainty and inequality that is inherent in results that spring from the many minds of many men."

The preliminary report, dated November 30, 1901, was followed by a final report submitted on October 20, 1902, which was based on a more thorough investigation and therefore contains very definite recommendations. Aside from a number of detailed changes, it is a significant fact that emphasis was placed on the desirability of having one assessor in each county and the necessity of creating the office of permanent State tax commissioner. "It is also believed", reads the report, "that the surest way to reach such uniformity (of assessment) is to have all property assessed at its actual value, if possible, and to reach this end, it has been thought best to have not more than one assessor in any county of the State, but to give him such aid in the way of assistants as may be necessary."

The form of the recommendation in favor of creating

the office of State tax commissioner is worthy of special attention in view of present conditions in this State. It appears that the Special State Tax Commission of West Virginia was anxious to decrease, if possible, the number of officers required to administer the law and in this way reduce expenses. Indeed, the hope was entertained that it would not prove necessary to establish any new office, and it was with much reluctance that the board was finally brought to the unanimous conclusion that a permanent State official giving all his time to the work of assessment and taxation was an imperative necessity. In fact, it was recognized that such an office ought to have been created much earlier in the history of the State and that had this been done, such great inequalities of assessment would not have existed. In other words, for reasons very definitely stated, it was urged that some adequate method of State supervision of the revenue system was essential in order to bring about uniformity of assessment and therefore equality in the distribution of the fiscal burden.

The legislature of West Virginia in 1903, however, did not create the office of State tax commissioner as recommended by the special commission. It was necessary to arouse public sentiment in favor of tax reform, which work, it appears, must have been accomplished with very little delay, since Governor A. B. White called an extraordinary session of the legislature in the summer of 1904 for the purpose of considering the one subject of the public revenues. The result of the legislative deliberations included but a few minor amendments in the content of the law itself, the radical and far-reaching change being along the line of more efficient administration. In other words, the fact was appreciated that no law, espe-

cially a tax law, will work automatically and that the mere enactment of laws can not solve the problem of uniformity and equality of taxation. The following statement in the biennial report of the State Tax Commissioner for 1905-1906, is significant:

If every man would obey the law, and if all property in the State of West Virginia were assessed as the law requires — at its actual value — and if all the property in the State were returned for taxation, we would have solved the taxing question. Outwardly and theoretically everybody seems to be for equal taxation. Practically, everybody, with few exceptions, seems to be for equal taxation for the other fellow, with immunity for himself.

For the purpose of bringing about greater uniformity of assessment as a necessary basis of equitable taxation the two principal changes adopted by the legislature were: first, the establishment of a State Tax Department with a commissioner at its head; and second, each county was made a unit for assessment purposes, a county assessor being provided and a sufficient number of deputies appointed by the county court upon the recommendation of the county assessor. The State Tax Commissioner, however, was not at first clothed with any large measure of power and authority. Indeed, a county assessor might arbitrarily list property at a small fractional part of its actual value and the State through the Tax Department be almost powerless to correct the evil. The new system, however, was an entering wedge for greater improvements in the future and for the realization of a vastly more efficient method of assessment. In the meantime, moreover, it was recommended in the report of 1905-1906 that the State Tax Commissioner be given power to

supervise the assessments made by county assessors, including also the authority to make new assessments, "reserving to the owner of the property at all times the right to an appeal."

It is a very significant fact, however, that the new revenue machinery, even with a rather limited measure of supervision and control, brought radical and far-reaching changes in the important work of assessment and equalization. Perhaps this success may be partially explained by the fact that the assessors who were first required to re-value the real estate were appointed by the State Tax Commissioner with the approval of the Board of Public Works, the regular county assessors at a later date being elected by the people for a term of four years. The assessed value of real estate was promptly increased from \$168,000,000 to \$476,000,000, the greatest increase being made in the coal and oil districts. The assessed value of the property of pipe line, telegraph, telephone, and express companies was increased from \$9,379,006.00 in 1905 to \$29,271,650.10 in 1906. The most remarkable increase, however, was made in the listing of railroad property, the assessed value of this class of corporations being \$30,048,170.92 in 1904; \$36,063,848.85 in 1905; and the large sum of \$176,675,980.74 in 1906. In other words, it appears that for the first time in the history of West Virginia the State Board of Public Works made a serious effort to ascertain the true value of railroad property by taking into consideration "the cost of reproducing such property, its earnings and profits, the character of its business, its location, the power and market value of its stocks and bonds, and so far as it could, every element and condition which added to or detracted from its supposed value."



While it was frankly recognized in the report that the large increase in the total assessed value of all property in the State from \$277,859,198 in 1904 to approximately \$875,000,000 in 1906 did not represent the full value of the same, the reader will at once appreciate the vastly greater efficiency of the new system. First of all, the rate of taxation was appreciably reduced, which quite naturally resulted in a more complete listing of intangible property. Moreover, the assessment of all property, especially that of large corporations, at more nearly its actual market value made possible a more equitable distribution of the burden of taxation than had ever before existed in West Virginia.

The second biennial report of the State Tax Commissioner (1907-1908) also reveals very substantial improvements in the work of assessment of all the various classes of property subject to ad valorem taxation. Indeed, the work accomplished by the State Tax Department had come to be so generally endorsed that many people were not able to understand why the State had not established such an office long before. Numerous other departments had been created much earlier in the history of the Commonwealth, all of which depended upon public revenue for their very existence and yet the corner-stone of all government activity and progress had been neglected until the extra session of the legislature of 1904, which, as already observed, created the offices of county assessor and State tax commissioner. By 1907 the commissioner was able to report that "The State of West Virginia has equality and uniformity in taxation more nearly approximated today than at any time in its history." In this same connection, the additional fact was recognized that "Every State which has established

an official head to its tax system has found it a paying investment." A careful analysis of the report under consideration shows the large measure of truth in this statement as applied to conditions in West Virginia.

Among other things, it appears that in the one item of license taxes alone, through the direct and indirect efforts of the State Tax Department, approximately \$200,000 was paid into the State treasury, which represented more than ten times the entire cost of maintaining the department. By 1908 the assessed value of real estate had reached the large sum of \$487,110,791, which represented over seventy-five to eighty per cent of its actual value; while the personal property listed by the assessors had increased until it reached the substantial sum of \$198,674,731. Indeed, the increase in the assessed value of moneys and credits and certain other investments was sixty-six per cent in 1905 over that of 1904, and again forty-six per cent in 1906 over that of 1905, as compared with an increase of only forty-eight per cent for the entire decade from 1880 to 1890 and twenty-one and one-half per cent for the ten year period from 1890 to 1900. The amount of moneys and credits listed in 1890 was \$12,512,391 as compared with \$19,974,080 in 1904, \$33,210,172 in 1905, and \$48,485,825 in 1906. Finally, by 1908, the total value of the property of certain public service corporations, including railroads, assessed by the State Board of Public Works reached the sum of \$252,610,423.46. This large increase in the assessed value of property, especially of intangible and corporate property, had two important results: first, a corresponding reduction in the tax levies; and second, greater uniformity and equality of taxation.

At least one additional fact should be suggested be-

fore passing on to the third biennial report of the West Virginia commissioner. Reference should be made to the important tax legislation of 1907 creating a board of equalization and review for each county. These boards are in each case to be appointed by the State Board of Public Works and to be composed of three members, not more than two of whom shall belong to the same political party. It is the duty of the board thus constituted to equalize annually the assessment of both real estate and personal property made by the county assessor and his deputies. This measure probably represents a much higher degree of administrative centralization than would be tolerated in this State at the present time, but it was the means of clothing the State Board of Public Works with an authority in the work of reviewing individual assessments which is almost universally placed in the hands of the county board of supervisors or similar authority, and which in six Commonwealths, including Iowa, is vested in township officials. In other words, the very important task of reviewing individual assessments, which in Iowa is a township function administered with little or no regard for uniformity, is in reality a State function in West Virginia, performed with vastly greater efficiency than is even possible under our system.

In this connection, the author does not wish to be understood as advocating the appointment of a county board of review in Iowa by the State tax commission. He is inclined to believe that by creating the office of county assessor and giving that official real power and authority supplemented by an appeal to the county board of supervisors, practically the same results can be obtained without so large a measure of centralized supervision and control.

In 1910, or rather at the close of the period covered by the third biennial report of the State Tax Commissioner of West Virginia, the department had been in existence for six years, thus having an opportunity to demonstrate its efficiency. Commencing its existence amid a storm of criticism and assailed on every hand by those who had enjoyed special privileges at the hands of the tax collector, it had come to be recognized not only as a popular but very essential part of the State government. The office of State tax commissioner, in fact, no longer needed any defense, the valuable services which it rendered being convincing evidence of its usefulness.

Moreover, the county board of review or equalization composed of three members appointed by the State Board of Public Works had also been in operation during the assessment years 1909 and 1910. The fact that these boards proved to be vastly superior to the old plan of vesting this same authority in the county courts is apparent from the following significant statement:

The establishing of these boards and the vesting in them of such extensive powers was a departure from a time-honored law, and an innovation upon established customs and precedents. The act was bitterly assailed, upon the ground that it took away from the counties legal self-government, and lodged it in three persons appointed by the Board of Public Works. The old threadbare argument of the centralization of power, and the building of a political machine, was forcibly, and, apparently, earnestly urged by those opposed to the act. All this argument was met, however, by showing the wholesale reductions theretofore made in assessments, without evidence, deliberation, justification or excuse, in star-chamber sessions and behind closed doors, and the legislature enacted the law. That it has proved of great and lasting benefit to the people of the State cannot be

denied. The Board of Public Works in making these appointments exercised extreme care. Men were chosen because of their fitness for the work. These boards are made up of our best citizens. Many persons are serving on these boards today at a great sacrifice in time and money, simply because they desire to render the public a patriotic service for which they can receive no other reward than duty well performed, and the satisfaction of an equitable and just assessment.

A substantial part of the report for 1909-1910 is given over to a discussion of the necessity of adopting a constitutional amendment permitting the classification of property for purposes of taxation. The unusual arguments in favor of such a constitutional provision are briefly outlined. Among other things, it is suggested that the coal industry of the State differs in many essential points from the oil industry, and the oil industry in turn has very little in common with the gas industry. Moreover, all of these industries and many others that might be mentioned should not be taxed, it is alleged, on the same basis as farm lands or city lots. In fact, a very able argument is presented in favor of the proposed constitutional amendment, which represents much truth but perhaps also a small amount of error.

In concluding this discussion of the most admirable work of the State Tax Commissioner, the county assessor, and the reorganized county board of review in West Virginia, perhaps nothing better can be done than to present a brief statistical review of assessed valuations. The total assessed valuation of the State in 1904, the year next preceding the revision of the tax laws, was \$278,829,659, composed of the following items: real estate, \$168,480,150; personal property, \$80,306,209; and public utility property, \$30,043,300. In 1909 the total taxable

property of the State had reached the enormous total of \$1,063,247,851, which included real estate to the value of \$579,085,888; personal property, \$221,125,930; and public utility property, \$263,036,033. In 1910 the total taxable property amounted to \$1,120,000,000, made up as follows: real estate, \$600,927,000; personal property, \$236,027,000; and public utility property, \$283,046,000.

It thus appears that while the assessed value of real estate had increased less than four-fold between 1904 and 1910, the assessed value of public utility property had increased more than nine-fold. This is only another way of saying that in 1904 the property of various leading public service corporations was paying approximately half of its just share of the public burdens. The author does not wish to be understood in this connection as suggesting that the same discrepancy may exist in Iowa when the facts are ascertained by means of adequate machinery of assessment. Matters of this character should not be prejudged. The experience of West Virginia, however, would tend to supply important circumstantial evidence at least that the Iowa farmer should be one of the last persons to place himself in opposition to the present tax reform movement.

#### TAX ADMINISTRATION IN KANSAS

The State of Kansas in 1907 made revolutionary changes in its system of tax administration by creating a State Tax Commission. Following the example of West Virginia, but few amendments were made in the content of revenue laws, it being generally recognized among thinking men that the extremely low valuations and, what always follows, great inequalities of assessment were primarily the result of faulty administration.

As a necessary connecting link between the local township assessors, on the one hand, and the State machinery of assessment and equalization, on the other, the same legislature also established the office of county assessor, the appointment to be made by the board of county commissioners. The county assessor thus provided for was vested with a substantial measure of real authority: first, by general powers of supervision and control definitely outlined in the statute; and second, by the privilege which was granted him of appointing two of the three members of the local board of review. In other words, the county assessor in Kansas possesses, in the first place, an important direct supervision over the actual work of the local listing officer, and in the second place, the authority to direct and in a large measure control the various equalization boards required to review the work of local assessment.

The best method of studying the efficiency of the new revenue machinery of Kansas created in 1907 is to compare the assessment of 1907 with that of 1908. Prior to the establishment of the tax commission and the office of county assessor, it was a matter of common knowledge that the statutes which required the assessment of property at its actual value were rarely observed. Indeed, the law in this respect had been scrupulously ignored for so long a period that the tendency was to constantly increase the degree of under-valuation of property for purposes of taxation. This fact is apparent when it is considered that the estimated true value of all property in Kansas as given in the report of the Federal Census Bureau for 1904 was \$2,253,224,243, as compared with a total assessed value for the same year of \$372,673,858. In other words, the assessed value at that time was ap-

proximately one-sixth of the actual value as estimated in the census report, a condition which is already more than familiar to the reader because it represents in so marked a degree the present situation in Iowa.

It appears that the same two evils existed at that time in Kansas which now prevail in Iowa: first, undervaluation of property; and second, inequalities of assessment. The total assessed value of real estate, personal property, and the property of railroads and certain other public service corporations was \$425,281,214 for 1907, the last assessment under the old system, as compared with \$2,451,560,397 in 1908, the first assessment under the tax commission and county assessor plan. This means that the assessed valuation of 1908 was nearly six times as great as that of 1907. To be exact, the total assessed value of the above classes of property for 1907 was only 17.34 per cent of that in 1908.

As has frequently been suggested, however, low valuation or under-assessment in itself may not be objectionable except to the extent that it arbitrarily multiplies tax rates. Nevertheless, in practice, low assessment always means inequalities of assessment all along the line, a different fraction of true value being given to each individual or each class of property. A study of conditions in Kansas prior to 1907 shows that inequality of assessment was the rule and uniformity the rare exception. In one county investigated by the Commission, for example, the assessment of farm lands varied from 3 1-3 per cent to 80 per cent of the actual value as shown by the real estate transfers. Indeed, the farm lands quite generally were assessed all the way from the small sum of 3 or 4 per cent of their true value up to 75 or 80 per cent of what the land would bring on the market in the ordinary



course of trade. In this connection, it may be mentioned that our own Tax Commission has found a similar condition of affairs in Iowa.

When it is discovered that the machinery of assessment breaks down even in the case of visible and relatively homogeneous property like farm lands, it need occasion no surprise that even greater inequalities exist in the listing of other classes of property of a more complex and intangible character. For example, the property of a certain manufacturing corporation in Kansas had been listed by the local assessor at approximately \$30,000, but in 1908, under the supervision and control of the State Tax Commission, the property of this same corporation was assessed at \$1,100,000. Honorable Samuel T. Howe informed the writer that examples of this kind could be multiplied almost indefinitely. Inequalities were found to exist not only between owners of farm lands and town lots, but between different corporations and classes of property. The new assessment of 1908 showed that the assessed valuation of some railroads was increased while that of other lines was decreased. Reduced to its lowest terms, the immediate and very pronounced result of the more efficient administration of the tax laws through the county assessor and tax commission system was to greatly reduce tax rates and, what is more important, to bring about vastly greater uniformity of assessment.

The first report to the legislature made by the Tax Commission of Kansas, dated 1909, contains a large number of important suggestions and recommendations. Emphasis is placed on the increasing tax burden, both State and local, and on the necessity of greater economy in public expenditures. A brief review of the work of

various other tax commissions is included and special attention is called to the desirability of a constitutional amendment permitting a reasonable classification of property for purposes of taxation. While the Commission does not advocate the exemption of moneys and credits from taxation, the necessity of classifying personal property and imposing different rates upon each class, is carefully outlined in a brief but well written chapter. In fact, a separate chapter is given to the important subject of mortgage taxation, but no definite recommendation along this line is made, largely because of constitutional limitations.

With reference to the subject of review or equalization of assessments, it is pointed out that of the three different types of review—that is, review between counties, minor taxing districts, and individuals, respectively—the latter is by far the most important. The following statement in this connection is worthy of careful attention:

The equalization first in importance is that among the tax payers of the single city or township district. Upon the foundation laid by the equality attained in these districts is built up the whole system, therefore this equalization is the fundamental proposition. If values among the property owners of any single district are not made relatively equal before those values become a part of the values of a larger taxing district, any resulting injustice may not in general be removed.

In its second report to the legislature, dated 1911, the Tax Commission of Kansas again calls attention to the increased fiscal burden, especially in the local units of government, and the corresponding necessity of greater economy all along the line in the field of public expenditures. A constitutional amendment permitting classi-

fication of property for purposes of taxation, separation of revenue sources, certain amendments to the law placing a tax on legacies and successions, and an enlargement of the powers conferred upon the tax commission are recommended in more or less definite form. It should be noted, however, that the principle of segregation is presented with certain important qualifications. "Separation is to be desired", according to the Commission, "to the extent that it may be had without producing conditions more unsatisfactory than now exist." In this connection, two important thoughts are suggested: first, the desirability of every taxpayer making at least a small contribution to the State, which would result in a greater scrutiny of State expenditures; and second, the injustice which always results from placing a local tax on property which is non-local in character.

The desirability of providing a different method of distributing the taxes levied against railroads and similar public service corporations, a vital topic in Iowa at the present time, is characterized in the following comprehensive statement:

Fiscal subdivisions of the state which under the present plan get no tax from railway property have been often and are yet taxed to pay the principal and interest of bonds voted in aid of railway construction and, by their patronage, directly aid in increasing the value of such property, but are denied the advantages enjoyed by the subdivisions in which the railway property is situated in the way of taxes derived from the fund jointly created. This condition applies particularly to school districts.

Finally, special attention is called by the Commission to the great value of the county assessor system as a means of enabling the State Tax Commission to bring

about a more thorough supervision of the entire work of local assessment. It is pointed out that the taxable value of those counties in Kansas having railroads ranges all the way from \$2,485,295 up to \$92,525,056, the general average being \$23,215,035, and in this connection the pertinent suggestion is made that "It is inconceivable that the administration of a private business of the magnitude even of the lowest value above named would be entrusted to a number of persons without a responsible head." Indeed, if a private business were conducted in such a manner the immediate result would be bankruptcy.

Under the old machinery of assessment which, by the way, is almost identical with the antiquated plan now prevailing in Iowa, there were approximately sixteen hundred assessors, with as many different ideas both as to standards of value and the requirements of law relative thereto. The logical result of such a system, as has already been observed, was the assessment even of relatively homogeneous property at from 2½ per cent to 75 or 80 per cent of its actual sale value. The effect of the county assessor and tax commission system, created in 1907, in removing such gross inequalities of assessment, is thus characterized: "Now all is different. Under the supervision and direction of the county assessor all deputy assessors in his county are striving to reach a common plane of value designated by the statute as 'actual value in money', and the nearer that plane is reached the nearer correspondingly is relative equality in distributing the tax burden obtained."

At the round table discussion of tax administration during the Milwaukee meeting of the National Tax Conference in 1910, there was a very earnest and instructive

debate between the representatives of West Virginia and Kansas as to which State had the lowest average tax rate. The writer was present at the Conference and was greatly impressed with the efficiency of the county assessor and tax commission systems of these States as indicated by low tax rates and, what is more essential, greater uniformity of assessment. The average tax rate of Kansas and West Virginia at that time was less than nine mills, as compared with an average rate of more than forty mills in Iowa. In the rural districts of Kansas the average tax rate is now about five mills, or in other words, the same rate which is being levied in this State on moneys and credits. The writer is convinced that efficient machinery of assessment in Iowa would reduce the average tax rate of the farmers to less than five mills, which is a very instructive fact in view of the prejudiced and ill-considered objections that are now being raised against the millage tax on moneys and credits provided for by the Thirty-fourth General Assembly.

As has been suggested, the greater efficiency of the dual system of county and State supervision of local assessment can not be fully understood except by comparisons based on actual experience. Minnesota created a tax commission in 1907, the same year which witnessed the establishment of the commission in Kansas. Wisconsin's commission dates back to 1898, while that of West Virginia was not organized on a permanent basis until 1904. The essential difference between the revenue systems of Minnesota and Wisconsin, on the one hand, and West Virginia and Kansas, on the other, judged from the important standpoint of administration, as has already been observed, is to be found in the existence of

county machinery of assessment in the latter States. A comparative statistical study, therefore, of tax administration in these States will be both interesting and instructive.

#### TAX ADMINISTRATION IN MINNESOTA

The commission of three members authorized by the legislature of Minnesota on April 23, 1907, issued a preliminary report in December of the same year, and has submitted two biennial reports since that time, one in 1908 and the other in 1910. Among the numerous questions mentioned in the preliminary report was that of low and unequal assessments. Indeed, it was frankly stated by the Commission that "the general property tax succeeds or fails with the task of assessment". This fact being appreciated, the fundamental importance of the work done, especially by local assessors and local boards of review, was quite naturally regarded as representing the corner-stone of the entire revenue system; but no definite recommendations along this line were made, pending the collection of more complete statistical data on the subject of assessed and sale value.

Two additional facts, however, contained in the report under consideration are worthy of attention: first, the data given as to State and local expenditures; and second, the great inequalities of assessment revealed by the preliminary investigation. It appears that the total expenditures, both State and local in Minnesota in 1907 were as follows: State expenditures, \$11,250,342.27; county expenditures, \$4,099,412.68; city and village expenditures, \$7,241,587.41; township expenditures, \$2,066,694.45; and school district expenditures, \$7,101,504.29; making a grand total of \$31,759,541.10. In other words,

the expenditures of the State represented more than one-third of the total expenditures both State and local. In striking contrast with this showing, it should be noted that the total expenditures of all the different units of government in Iowa was approximately the same as in Minnesota for the year 1907; but the State expenditures in Iowa represented approximately one-eighth as compared with more than one-third of the total expenditures. This is only another way of saying that vast sums of money are expended by the civil townships, cities, and counties of Iowa, which in Minnesota, the author believes, are more wisely expended under the authority of the State.

Regarding the ever-present question of unequal assessments, the Commission, after seven months of investigation, was able to report the existence of a complete lack of uniformity in the whole work of assessment and equalization in Minnesota, beginning with the local assessor and ending with the State board of review. In its first biennial report, submitted in 1908, this same question was outlined in great detail and a definite recommendation was made in favor of creating the office of county assessor. In this connection, the following inequalities of assessment were definitely presented: first, between different taxing districts, civil townships, cities, and counties; second, between rural and city property; third, between lands and the improvements thereon; fourth, between improved and wild lands; and finally, between individual parcels of land and different classes of property.

With reference to the numerous inequalities of assessment so ably presented, the following statement of the Commission is significant:

The conditions existing in the real estate assessments in Minnesota have been clearly indicated in this chapter. Real estate bears the larger burden of the tax; still, its assessment is nearly as unequal and unjust as the assessment of personal property. The remedy is at hand. The property taxed is of one kind, speaking generally, and the assessment is a question of careful valuation. What is needed is: first, careful and responsible assessing officers; second, knowledge of values; third, a uniform basis for the whole state; and, fourth, the enforcement of that basis wherever real estate is assessed in Minnesota. These are not impossible conditions and can be secured under the administration of a tax commission whenever public opinion is willing to give a partial support.

The definite recommendation made by the Commission to remedy these conditions was the creation of the office of county assessor along substantially the same lines as in Kansas. This recommendation was repeated in 1910 and will again be presented to the legislature of Minnesota when it meets in January, 1913. Indeed, the great importance, in fact the necessity, of county machinery of assessment in Minnesota to remedy existing conditions is apparent from the following statement:

To the commission the most important change in the law, which in their opinion will secure better administration, more thoro assessment, and greater equality of taxation, is in the establishment of a county assessor system as a substitute for the present local assessors. The argument for this change has been made in part I, chapter II. It is unnecessary to repeat at this point the arguments presented for a county assessor system, but in the opinion of the commission a much better assessment can be secured by centering the assessment in the hands of a county assessor, who shall be elected by popular vote for a term of four years and who shall also be under the supervision of the tax commission.



The fact that the small army of township assessors in Minnesota, even with the efficient supervision of a permanent State tax commission, is not able to bring about equal and uniform assessment of property at its actual value, as required by law, is apparent from the recommendation of the Commission in 1908 and again in 1910 in favor of passing a law placing the assessed value of property at 50 per cent of its true value as determined by actual sale on the market in the ordinary course of trade. In other words, while Kansas and West Virginia with a dual plan of county and State supervision of assessment actually brought the assessed value of property practically up to the actual sale value, it was impossible for the Minnesota Tax Commission to accomplish anything approaching this result. With reference to this consideration, it should also be stated that the Minnesota Tax Commission is clothed with as much or even more power than the commissions of Kansas and West Virginia.

The true condition of affairs in Minnesota becomes very obvious in connection with the reassessment of certain taxing districts, the authority to make such a reassessment being vested in the Commission. It appears that in one taxing district the regular assessor discovered 2853 items of property valued at \$34,406, while the special assessor, sent out by the Commission, was able to find 3585 items of property valued at \$49,892, or an increase of 49.9 per cent. In another taxing district the regular assessor placed on the rolls only 3239 items of property valued at \$35,771, as compared with 5368 items of property discovered by the special assessor and valued at \$67,057, an increase of 87.5 per cent. It should also be suggested that this substantial increase does not

represent actual value, since in making the reassessment, the special assessor was obliged to consider the general average assessed value of the State in actual practice and not the true value as required by law. To ignore this relationship would, in fact, work a great injustice to those taxing districts that happened to be reassessed.

In its second biennial report, submitted in 1910, the Minnesota Tax Commission lays great stress on what it calls the primary work of local assessors and local boards of review. Indeed, the point is well taken that it is practically impossible for powers higher up to undo the faulty and careless work of more than two thousand listing officers. In this connection, the following statement is worthy of thoughtful consideration :

At the threshold of its existence this commission was confronted by the startling inefficiency of the existing method of the primary assessment of property. It was self-evident that some other and better system should be devised, which even if it should be far from perfect would at least be a positive improvement upon the old, so that the valuation of taxable property in every community would at least approximate fairness and equality. In its investigations the commission early came to the conclusion that the abolishment of the 2,300 local assessors and the substitution of 85 county assessors in place thereof would be a very desirable step in advance and would to some extent eliminate many of the faults and defects in the existing system.

#### TAX ADMINISTRATION IN WISCONSIN

Only a word need be said regarding the admirable work done by the Wisconsin Tax Commission since the organization of a special board in 1898. The writer has examined with some care all of the reports submitted by this Commission, dated 1898, 1901, 1903, 1907, 1909, and

1910, respectively, which reports, no doubt, constitute the most thorough and comprehensive body of tax documents that has been compiled for any State in the Union. During all this time the Commission has been vested with very extensive powers and authority in its general supervision of the revenue system, and since the ad valorem plan of taxing railroads and certain other public service corporations was adopted, it has also been required to value these utilities.

The great difficulties, however, which the Commission has encountered from the beginning in supervising the work of local assessors on account of the absence of proper county machinery of assessment, are apparent from a statistical study of local assessments as compared with State assessments. In its first report, submitted in 1898, the Wisconsin Tax Commission stated that the total assessed value of all property in the State for 1890 was \$579,839,542, as compared with the estimated true value of taxable property given by the Federal Census for the same year as \$1,500,000,000. Bearing in mind, however, the fact that census reports of true value are "necessarily incomplete", the Commission believed that the discrepancy between assessed and true valuation at that time was approximately \$1,000,000,000. This means that property in Wisconsin was being assessed at about one-third of what it would bring on the market in the ordinary course of trade, which, by the way, is not so bad as the condition of affairs now prevailing in Iowa.

From the very beginning of its organization as a permanent body, the Commission has recognized the almost complete breakdown of the township plan of assessment, and for that reason has collected statistics of assessed and sale values through its own agents, thus virtually

making a separate State assessment to serve: first, as a basis of State review or equalization; and second, as a method of comparing the average tax paid on general property with the revenue obtained from certain public service corporations. Thus by comparing local township assessments with the State assessment based upon the sales method, the reader will see at a glance to what ex-

TABLE I

STATE ASSESSMENTS IN WISCONSIN, TOTALS BY YEARS 1901-10

	TOTAL	REAL ESTATE	PERSONAL PROPERTY
1910.....	\$2,743,180,404	\$2,108,140,021	\$635,040,383
1909.....	2,602,549,798	2,012,484,004	590,065,794
1908.....	2,478,561,786	1,901,290,225	577,271,561
1907.....	2,256,300,000	1,780,265,161	476,034,839
1906.....	2,124,800,000	1,671,142,204	453,657,796
1905.....	1,952,700,000	1,513,335,382	439,364,618
1904.....	1,842,841,000	1,422,621,485	420,219,515
1903.....	1,753,172,000	1,309,504,464	443,667,536
1902.....	1,504,346,000	1,226,376,973	277,969,027
1901.....	1,436,284,000	1,186,349,139	249,934,861

TABLE II

LOCAL ASSESSMENTS IN WISCONSIN, 1900-1909

	TOTAL	REAL ESTATE	PERSONAL PROPERTY
1909.....	\$1,613,427,747	\$1,314,252,061	\$299,175,686
1908.....	1,565,884,559	1,277,990,641	287,893,918
1907.....	1,531,909,825	1,251,461,225	280,448,600
1906.....	1,468,922,432	1,210,951,632	257,970,800
1905.....	1,411,576,454	1,169,451,206	242,125,248
1904.....	1,384,580,755	1,146,813,692	237,767,063
1903.....	1,358,098,346	1,119,992,057	238,106,289
1902.....	1,369,811,147	1,086,223,406	283,587,741
1901.....	1,082,641,094	878,911,348	203,729,746
1900.....	746,022,932	599,540,595	146,482,337

TABLE III

PERCENTAGE OF LOCAL TO STATE ASSESSMENTS AND OF EACH CLASS OF PROPERTY TO THE TOTAL OF ALL PROPERTY IN BOTH LOCAL AND STATE ASSESSMENTS IN WISCONSIN, 1900-1910

LOCAL AND STATE ASSESSMENT YEARS	PERCENTAGES OF LOCAL TO STATE ASSESSMENTS			PERCENTAGES OF EACH CLASS OF PROPERTY TO THE TOTAL OF ALL					
				STATE ASSESSMENT			LOCAL ASSESSMENT		
	TOTAL	REAL ESTATE	PERS. PROP.	TOTAL	REAL ESTATE	PERS. PROP.	TOTAL	REAL ESTATE	PERS. PROP.
1909-1910..	58.80	62.34	47.11	100.00	76.85	23.15	100.00	81.46	18.54
1908-1909..	60.17	63.50	48.80	100.00	77.33	22.67	100.00	81.61	18.39
1907-1908..	61.81	65.82	48.58	100.00	76.72	23.28	100.00	81.70	18.30
1906-1907..	65.10	68.02	54.18	100.00	78.90	21.10	100.00	82.44	17.56
1905-1906..	66.43	69.98	53.37	100.00	78.65	21.35	100.00	82.85	17.15
1904-1905..	70.91	75.78	54.12	100.00	77.50	22.50	100.00	82.83	17.17
1903-1904..	73.69	78.74	56.67	100.00	77.20	22.80	100.00	82.47	17.53
1902-1903..	78.14	82.93	63.92	100.00	74.69	25.31	100.00	79.29	20.71
1901-1902..	71.95	71.67	73.29	100.00	81.51	18.49	100.00	81.18	18.82
1900-1901..	51.94	50.54	58.60	100.00	82.59	17.41	100.00	80.36	19.64

tent the absence of proper county machinery of assessment has prevented Wisconsin from making assessed values approximately equal to actual sales value as in Kansas and West Virginia.

Tables I, II, and III give the State and local assessments both of real and personal property for the years 1900 to 1910, inclusive, and are self-explanatory. It will be observed that the State assessment in each case is necessarily given one year after the local assessments. In 1900 the local assessment was \$746,022,932 as compared with a State assessment of \$1,436,284,000, the ratio being 51.94 per cent. From 1901 to 1904, inclusive, there was a substantial increase in the percentage of local to

State assessments, but following 1904 there appears to be a constant decline until in 1909 the local assessment was \$1,613,427,747, while the State assessment for 1910 was \$2,743,180,404, or a ratio of 58.8 per cent. In other words, while the dual plan of county and State supervision of local assessment in Kansas was bringing the assessed value of property almost up to the actual sale value, thus making possible a more equitable system of taxation, the supervision by the Wisconsin Tax Commission clothed with just as great powers, but without the aid of county assessors, was failing to accomplish the same result. In fact, it is to be doubted whether there could be discovered a more striking method of illustrating the positive advantages of the county assessor and permanent tax commission system, such as exists in Kansas and has been recommended to the General Assembly of Iowa in the report of the Tax Commission submitted to Governor B. F. Carroll on October 5, 1912.

In this connection, the author does not wish to disparage or criticize the work of the very able men who have always made up the Wisconsin Tax Commission. On the contrary, by employing the sales method of investigating real estate values, the Commission has been able to bring about vastly greater uniformity of assessment than ever existed under the old system. Attention has already been called to the fact that low assessment in itself may not be objectionable except to the extent that it arbitrarily multiplies tax rates. In other words, if assessments are uniform at one-third of the actual sale value, the only result will be to make rates three times as high as is necessary. Thus, while much greater uniformity of assessment has been realized through the earnest and thorough work of the Wisconsin Commission,

operating through township machinery of assessment, it can not be denied that vastly more efficient results would have been obtained if the same State supervision had been ably supplemented by county supervision of local assessment.

Finally, the excellent service rendered by the Wisconsin Commission in valuing the property of railroads and certain other public service corporations should not be overlooked. Indeed, this task alone would more than justify the existence of a permanent State board in Wisconsin and, for similar reasons, the same statement might be made for Iowa. When the gross earnings system of Wisconsin, created in 1854, was finally abolished in 1903, it became the duty of the Commission to make a complete physical valuation of the property of railroads. In assessing railroads according to the ad valorem plan provided for in 1903, all the elements of value were carefully considered by the Tax Commission. The result was that in 1904 the total tax on railroads based on valuation was \$2,494,282.57, an increase of \$551,642.17 over what it would have been under the old gross earnings system. In 1905 the total railroad tax amounted to \$2,579,290.66, an increase of \$671,381.07 over the amount which would have been received were the tax based on gross earnings. The Wisconsin Tax Commission, therefore, has justified its existence over and over again: first, by so administering the revenue law of the State as to bring about greater uniformity of assessment for all classes of property; and second, by making a thorough and intelligent valuation of the property of certain public service corporations in order to equalize the burden of taxation as between that class of corporate wealth and the property of individual citizens.

## GENERAL CONCLUSIONS

In concluding this brief comparative study of tax administration, the following vital considerations should be suggested: first, the necessity of abolishing local boards of review and placing the authority to correct individual assessments in the hands of a county assessor, an appeal being granted to the county board of supervisors and also to the district court; second, the great importance of the office of county assessor for collecting statistical data both as to the listing of moneys and credits and the assessed and sale value of farm lands and town lots; and third, the creation of a permanent State tax commission vested with large powers and authority both as to the general supervision of the entire revenue system and the assessment of certain public service corporations. These reforms, together with the assessment of property at its actual value, are definitely recommended by the Tax Commission of this State and may be said to rest upon sound theory and, what is more important, upon the successful experience of a large group of progressive Commonwealths.



### III

## STANDARDS OF TAX ADMINISTRATION

THE central idea running through this entire paper is that radical and fundamental changes must be made in the general machinery of tax administration before a number of other fiscal reforms can profitably be discussed, much less enacted into law. As has already been suggested, of the three great tax reform movements of the last twenty-five years, namely, the adoption of certain special forms of taxation, the separation of the sources of State and local revenue, and the centralization of fiscal administration, the latter is not only the most important, but is a necessary basis for the real success of any important measure relating to ad valorem taxation. This truth is now almost universally being recognized by authorities on taxation and public finance and therefore the Tax Commission of Iowa acted in harmony with the best scientific thought on the subject in giving almost exclusive attention to the evolution of adequate revenue machinery for the administration of the tax laws.

The concrete form that the general plan of tax administration will naturally assume in a given Commonwealth depends in a marked degree on the type of local institutions which happens to prevail. In States where the township is the all-important unit of local government, the machinery of fiscal administration should be worked out along altogether different lines than in

States where the county form of local organization predominates. For the same reason a Commonwealth like Iowa having the compromise or township-county plan of local organization should if possible work out a type of reform which recognizes the legitimate sphere of the civil township, but at the same time imposes upon the proper county and State authorities those functions which are essential to the work of efficient administration. These considerations are self-evident to any thoughtful student who realizes that reform measures are not likely to be taken seriously when wholly or even to a large degree divorced from the experience of the past.

Under the revenue system which has prevailed in Iowa since 1858 the work of more than two thousand local assessors forms the foundation of the general machinery of tax administration. In other words, the plan of raising revenue in this State succeeds or fails very largely in the work of local assessment, including local or township review. While county and State boards of review exist and possess certain nominal authority elaborately outlined by the statutes, the fact is that their work in actual practice is perfunctory, leaving the assessment as determined by the township authorities. Therefore, the township assessor, the local board of review, the county board of review, and the State board constitute the present revenue machinery of this State for listing and assessing all property subject to ad valorem taxation.

Having a cross section of this general revenue system definitely in mind, the question which quite naturally presents itself is, what is to be done with the local assessor? If the office is not abolished, what type of county and State supervision should be provided in order to realize uniformity of assessment and therefore equality

of taxation? In other words, what plan of county and State revenue machinery is both expedient and efficient?

In case it is agreed not to abolish the local assessor, but to place him under adequate supervision and control, the very proper question may then be asked, what shall be done with the local review board? Does this board supply any real need which could not be wisely placed in a county assessor with an appeal to the county board of review and the district court? Only six States, Iowa excluded, answer this question in the affirmative because only seven Commonwealths have a local board of review. The other forty-one States have dispensed with this somewhat cumbersome relic of pioneer days. On the other hand, if it is concluded to retain the local review board, how can such a system be made to harmonize with any real authority vested in a county assessor? To state this same question differently, how can the supervision of a county assessor be made effective if from twenty to thirty local reviewing boards are able to override his authority and thus undo his work? Only one State, namely Kansas, has solved this particular question by vesting the county assessor with authority to appoint two out of the three members of each local reviewing board. This, however, makes the review board a mere creature of the county assessor, subject to his constant supervision and authority and in no real sense a township body. Indeed, the student of tax administration will appreciate the fact that it is logically impossible to harmonize the work of local review boards with an efficient county assessor system, unless the review boards are simply convenient machinery whereby the county assessor is able to supervise the work of local assessors. In other words, the local review board must be the ser-

vant and not the master of the county assessor if uniformity of assessment is to be realized.

When it is considered that more than twenty States have a partial or complete system of local township assessment and that only one-third of that number have retained the local reviewing board, it must be apparent that the former institution is more firmly rooted in the ideals of the people than the latter. This obvious consideration was recognized by the Tax Commission when it provided for the retention of the local assessors but abolished local reviewing boards, transferring the authority of the same to an official known as a county assessor elected by the people for a term of four years. Manifestly this is a compromise based upon the dual system of township and county authority in which the work of assessment is made a township function and that of review or supervision a county and State function.

With reference to the important problem of county assessment, it may be said that at least three distinct systems are possible: first, a county assessor clothed with power to appoint deputies and actually make the assessment; second, the appointment or election of a county assessor vested with authority to supervise the work of local township assessors, or in other words, a plan similar to that provided for in the revenue bill prepared by the Commission; and third, county machinery of supervision placed in the hands of a tax deputy in the office of the county auditor, given a limited amount of supervision, with or without the retention of local reviewing boards. While the third plan would be a more or less makeshift policy, it doubtless may have some advocates and no doubt would result in a substantial improvement over the existing system.

On the other hand, the election of a county assessor clothed with power to appoint deputies and thus do the work of assessment, while defensible on the grounds of simplicity and directness of administration, represents a radical step for any Commonwealth which has had a township plan of local assessment established for a considerable period of time. Such a plan, however, is no doubt logical and advisable in a State like West Virginia where the county is the dominating unit of local organization. As already noted, Kansas has worked out practically as efficient a method by retaining the township assessor in the rural districts, providing for a county assessor clothed with power to appoint a majority of the members of each local reviewing board, and thus exercise a thorough supervision of the entire work of assessment. Thus it is apparent that the county machinery which is likely to give the greatest satisfaction and be most acceptable to the people must be arranged with constant reference to the history of township and county government in a given Commonwealth.

That the county assessor system in some form, however, should be established will be generally recognized by all those who are well informed as to the actual working of the present revenue system of Iowa. At least three distinct facts may be mentioned in support of this statement: first, uniformity of assessment among the different counties of the State is impossible except on the basis of uniformity of assessment within each county, which in turn can not be realized except by making the county the unit of local government, at least from the standpoint of review or equalization; second, the collection and tabulation of data on assessed and sale value of different classes of property can be conveniently done

by a county assessor, it being generally admitted that statistics of this character are of great value in the work of review or equalization; and third, the moneys and credits subject to the flat millage rate can be listed with vastly greater efficiency by a county official than by a group of township officials, a fact which is especially true of recorded credits. As to the latter point, it should be stated that during the present fiscal year Iowa will lose approximately one million dollars because of the inadequate listing of moneys and credits; while Minnesota and Rhode Island, where the flat rate is less, have received substantially the same amount of tax as under the old law, a fact which may be explained by more efficient machinery of assessment under the leadership of permanent tax commissions.

As above suggested, if local township assessment is to be retained a dual plan of county and State supervision of this important work gives the most satisfactory results, as is abundantly proved by the experience of West Virginia and Kansas where the machinery of assessment is on the most efficient basis of any States in the Union. This is only another way of saying that a permanent State tax commission must be established in connection with the county assessor system, thus providing for a comprehensive plan of supervision and control of local assessment: first, within each county as between local taxing districts; and second, among the different counties of the State.

Moreover, it will be recalled that a permanent tax commission may be justified in connection with the work of assessing the property of public service corporations. When the valuation of railroads, telephone, telegraph, and express companies, and similar public service cor-

porations is placed in the hands of ex officio State boards, the work is always done in a perfunctory manner. This is necessarily so, largely because of lack of time and the absence of adequate authority to make the assessment of such corporations in a thorough, scientific manner. Until a permanent tax commission is created in Iowa, the assessment of all great public service corporations will be largely guess work, the result being that the people at large will have no definite knowledge as to whether these corporations are bearing more or less than their just share of the public burdens in comparison with farm lands, town lots, and other classes of property.

Nor is the desirability of a permanent tax commission any longer a question of mere theory. Strange to say there is still a large number of conservative citizens of Iowa who make themselves believe that such a commission is some novel and impracticable scheme which so-called reformers are endeavoring to foist upon an unsuspecting public. Most strange, indeed, is the contention emanating from certain well known sources that such a measure will place higher taxes on the farmers as a class. However plausible these arguments may appear they do not contain even a shadow of truth. When more than half the States now have some permanent State tax board or commissioner, the movement in favor of more efficient centralized assessment may be said to rest on the solid foundation of successful experience. Indeed, the small opposition which still exists to the creation of a permanent State tax commission is the result of well-defined causes — ignorance of facts which can be easily understood and selfish personal or class interest.

Without such a commission it is impossible to administer the present tax laws of Iowa or any other laws

which may be drafted with anything approaching real success. It is the first and in some respects the most important step in the pathway of fiscal reform. If the coming General Assembly adopts such a measure, including an efficient system of county supervision of local assessment, Iowa will be placed in the front rank of tax reform States.

With the work of tax administration placed on a scientific basis other necessary changes in the tax laws may be made from time to time. In this connection it may be stated that at least a partial separation of revenue sources rendered possible by a Constitutional amendment, the direct inheritance tax, desirable substitutes for what remains of the old personal property tax, and numerous other revenue problems may become proper subjects for future consideration. Finally, it should be affirmed that any changes that may be made from time to time either in the substance of the revenue laws or in the form of their administration ought to recognize the necessity of assessing all property subject to ad valorem taxation at its actual value rather than at any fractional part of the same.



INDEX



## INDEX

- Accident insurance, workings of, in Germany, 442-444; standards of legislation relative to, 475-483
- Accident insurance associations, operation of, in Germany, 443
- Accidents, reports of, 162, 184; annual number of, in United States, 423, 424; need of indemnity for, 423-429; unavoidable character of, 424; causes of, 424-426; distribution of cost of, 427; inability of workmen to bear cost of, 427, 428; number of, in Iowa, 428, 429; number of, indemnified, 435, 436; failure to prevent, 438; compensation for, in Great Britain, 441, 442; prevention of, 446, 462, 474, 477, 485, 486, 487, 489, 492; number of, affected by indemnity acts, 462; schedule of compensation for, 467-473; records of, 484
- Accountants, 229
- Accounting, 229
- Accounts, lack of intelligence in keeping of, 135, 136; publicity of, 141; supervision of, 141; requirements relative to uniform, 148; provisions relative to, 153, 154, 171, 191; reference to, 164, 175, 183; keeping of, 177; classification of, 178; shortcomings of, in Iowa, 198-201; auditing of, 203; suggestions relative to uniformity of, 212; regulation of, 224; keeping of, pending final determination of rates, 228
- Act of God, 431
- Actuary, 489
- Ad valorem principle, 523, 526, 528
- Ad valorem taxation, 535, 536, 551, 552, 600, 606
- Adams (Massachusetts), 157
- Addicks, J. Edward, public utility manipulations of, 105; reference to, 111, 144, 405
- Adjudication of claims, 457, 458, 459, 489-491
- Adjudications, character of, by commission, 181, 182
- Administration, widespread desire for better, v-xiii; study of, ix; short courses in, xiii
- Administration of indemnity system, 451, 457, 483-489
- Advertising, expenses of, 102
- Akers, Dwight, acknowledgement to, 303
- Alabama, road administration in, 43, 45, 46, 50, 51, 52, 60, 61, 63, 72, 73, 80; tax administration in, 551, 552, 558, 561, 565, 568
- Albany (New York), 184
- Aldermen, corruption of, 341
- Alfred, W. P., bill introduced by, 342
- Allegheny County (Pennsylvania), 436
- Allison, William B., 278, 282
- Alphabetical order of names, 272, 276, 278, 282
- Alterations, power to order, 161
- America, comparison of work accidents in Europe and, 438
- American Telegraph and Telephone Company, 133, 134
- Amortization, 130; requirement relative to, 222
- Amusement parks, 98
- Anderson Road Law, 27, 32
- Anita Tribune*, 294
- Anti-Masonic party, convention held by, 265
- Appanoose County, 437
- Appeals, restrictions on mode of, 167; prevention of, 173, 228; limitation on, 225, 490, 491; right of, in England, 442; provision for, in Germany, 444
- Appleton (Wisconsin), 195
- Applied History, discussion of, v-xiii; definition and scope of, vii, viii; opportunities for, viii; foundation of, viii, ix; relation of, to general historical study, x, xi; relation of, to education, xi, xii; character of research

- required in, xiii; contributions to, xiv, xv
- Arbitration Committee, adjudication of claims by, 490, 491
- Arbitration of disputes, 442, 444; provision for, 490; cost of, 491
- Archaeology, xiii
- Arizona, road administration in, 43, 50, 63, 64, 79; corrupt practices legislation in, 376; work accident indemnity in, 448, 449-454, 455, 456, 459, 463; tax administration in, 558, 559, 565, 568
- Arkansas, road administration in, 42, 61, 63, 72, 80; tax administration in, 558, 565, 568
- Arlington (Massachusetts), 157
- Ashland (Wisconsin), 195
- Assessment, machinery for, 499, 500, 502, 503, 506, 548; change to county system of, 504, 505; equalization of individual, 505; final establishment of township system of, 505; method of, applied to railroads, 509; destruction of efficiency of machinery of, 509; functions of township in, 510; present machinery of, 510, 511, 600; valuation of property for, 512-517; system of, applied to private corporations, 517-520; low and unequal, 539, 540; need of reform in machinery of, 543; reference to, 552; comparative study of, 553-561; comparative study of equalization of, 561-570; fables illustrative of, in Wisconsin, 594, 595; making of, by county, 602, 603; uniformity of, 603; county and State supervision of, 604; basis of, 606
- Assessment roll, filing of, 501; correction of, 501, 502, 503
- Assessors, election of, in cities and towns, 507; biennial election of, 510; reference to, 511, 517; listing of railroad property by, 528; number of, in Iowa, 600; problem of what to do with local, 600, 601; retention of local, 602 (see also County assessor and Township assessor)
- Assumption of risk (see Risk)
- Attleboro (Massachusetts), 195
- Attorney General, votes cast for candidates for, 286; reference to, 329, 330, 345, 362, 384, 390
- Attorneys, fees of, 458, 459
- Auditor of State, 191, 198, 200, 290; votes cast for candidates for, 286
- Aurner, C. R., monograph by, 6
- Australian ballot, 261, 276, 347; adoption of, 270, 324; argument against, 292
- Austria, accident insurance in, 444
- Authority, distribution of, in road administration, 5-20
- Automobile tax, distribution of, 33; standards of legislation relative to, 90
- Awards, making of, 490
- Ayer (Massachusetts), 157
- Badges, 373, 381, 413
- Baldwin, W. W., minority report by, 491, 492
- Ballot boxes, stuffing of, 267, 317; use of same, by all parties, 275; stealing of, 341
- Ballots, State regulation of, 270; preparation and distribution of, for primaries, 271; arrangement of names on, 272, 276, 281, 282, 283, 290, 299; form and distribution of sample, 281; recount of, 281; unintelligent casting of, 289; effect of long, 290-292; effect of regulation of, 292; preparation and authentication of, 299; counting of, 317; argument for secrecy of, 324; protection of secrecy of, 325, 326; prohibition of marking of, 346, 347; deceiving of elector regarding contents of, 350, 351; interference with marking of, 352
- Baltimore, 79, 164
- Bank Commissioners, 521
- Bank notes, assessment of, 513; taxation of, 521
- Banking, prohibition of, 520
- Banks, listing of shares of stock in, 519; taxation of, 520-524, 545; reasons for success of taxation of, 523, 524
- Barker, Mr., 175
- Beck, Joseph M., 530
- Beer, bill against treating to, 331
- Belgium, compensation system in, 441
- Belmont, August, 145
- Beloit (Wisconsin), differences in water rates in, 119; reference to, 195
- Berlin, capitalization of street railways in, 110, 111

- Betting on election results, bill to prevent, 320, 321; analysis of legislation against, 361, 362; comparative study of legislation against, 373, 374
- Bids, power to accept or reject, 45
- Bismarck (North Dakota), 44
- Blacksmiths, regulation of, 123
- Blatchford, Justice, 242
- Board of Control of State Institutions, 327, 355, 365
- Boies, Horace, recommendations of, 323, 324
- Bond, giving of, by utility companies, 171
- Bondholders, 113
- Bonds, issue of, 42, 51, 60, 70, 71, 72, 73, 83, 190; sinking fund for retirement of, 130; reference to, 140, 141, 225, 228; control of issue of, 155, 183, 202, 214-216; approval of issue of, 174; limitations on amount of, 218; issue of, by municipalities, 223, 224; fee for approval of, 230; taxation of, 549
- Bookkeeping, inefficiency in, 135, 136
- Books, power to compel production of, 153
- Boone, 195, 256
- Bosses, overthrow of authority of, 295; activity of, 400
- Boston, experiences of, with public utilities, 105; stock watering in, 112; differences in telephone rates in, 119; reference to, 132
- Brewer, Justice, 242
- Bribery, resorting to, to secure franchises, 131; reference to, 267, 269, 330, 331, 336, 341, 342, 361, 394, 401, 405; charges of, in senatorial election, 314-316; penalty for, 318, 394-396; bill to prevent, 321, 322; analysis of legislation against, 344-348; comparative study of legislation against, 369, 370; early attempts at, 407
- Bridge funds, 68-77
- Bridge legislation, relation of, to local government, 5
- Bridge taxes, levy of, 15, 28, 29, 68, 88; distribution of, 33
- Bridges, administration of, in Territory of Michigan, 6-8; change in administration of, 11; supervision of, under county judge system, 11-16; distribution of powers over, 12, 13; reduction of powers of county judge over, 14, 15; step in favor of centralizing authority over, 19; county fund for, 22, 23; supervision of, in Territory of Wisconsin, 23, 24; centralization of authority over, 30, 31; reference to, 34, 87, 90, 221; problem of construction of, 35; neglect of construction of, by pioneers, 35; necessity of State authority over, 38; comparative study of supervision of, 41-85; necessity of larger funds for construction of, 83; recent disclosures relative to building of, 89
- Brindley, John E., xiv, xv, 543; author's preface by, 3, 4, 495
- British colonies, compensation system in, 441
- British Workmen's Compensation Act, 441
- Brown, Leon, 333
- Bryan, William J., 285
- Buffet car companies, taxation of, 533
- Building contractors, 483
- Burlington, 195, 218, 256
- Burlington Hawk-Eye*, 279
- Business ability, quality of, required in public utilities, 98-100
- Business control, separation between ownership and, 113
- Buttons, 373, 381, 413
- Cables, 99
- Calhoun, John C., 266
- California, road administration in, 43, 45, 46, 50, 51, 53, 62, 63, 72, 73, 76, 79; urban utility regulation in, 146, 147, 148, 149, 150, 151, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 165, 166, 168, 169, 170, 171, 172, 173, 227, 245; act to protect elections in, 269; work accident indemnity in, 447, 448, 449-454, 455, 456, 457, 458, 459, 461; tax administration in, 558, 565
- Campaign, State aid in conducting of, 306, 385-387, 401, 402; legitimate expenses of, 362; corporation contributions to, 395
- Campaign books, 401
- Campaign contributions, restrictions on, 306, 327, 343, 362-365, 374-381; publicity of, 328, 329, 338-340, 366, 367, 381-385; requirements relative to statements of, 399, 400

- Campaign expenditures, limitation on, 327, 342, 343, 374-381, 399; statements of, 331, 399, 400; publicity of, 328, 329, 332, 338-340, 366, 367, 381-385; list of legal, 362, 377-381
- Campaign funds, publicity of, 306, 357, 366, 367; prohibition of corporation contributions to, 333, 335-338, 376; responsibility in handling of, 398
- Candidates, demand by people of right to choose, 264; nomination of, by congressional caucus, 264; reference to, 270, 289, 337; fees required of, 272; declaration of principles by, 274; nomination papers of, 276, 281; nomination of, by petition, 277; choice of, in alphabetical order, 278; arrangement of names of, on ballots, 290, 299; cost of primary to, 293, 294; nomination of, at pre-primary caucuses, 295; legal definition of method of making nominations of, 298; effect of contests on part of, 308; payment for political work for, 326; limitation on expenditures of, 327, 342, 343, 374-381, 399; statements of contributions and expenditures by, 328, 329, 399, 400; claims against, 329; assessment of, 332; false reports relative to, 349, 403; treating in behalf of, 356-358; corporation contributions for, 364; publicity of expenses of, 366, 367, 381-385; treating by, 370, 371; advertisements by, 372, 388; legitimate expenses of, 377-381; State aid in campaign of, 385-387; procedure in case of violation of law by, 390-394; limitation on political activity of, 397; responsibility for expenditures of, 398
- Candle-power test, 129, 180
- Capital, discrepancy between investment and, 111, 112; investment of, in urban utilities, 131
- Capital stock, 520, 528; taxation of, 521, 522, 523
- Capitalization, influence of, on rates, 108; comparison of, in America and foreign countries, 110, 111; control of, 127, 173, 174, 175, 181, 183, 214, 216; inability of cities to control, 134; reference to, 140, 142, 219; regulation of, by commissions, 154, 155 (see also Over-capitalization)
- Care, failure to exercise, 432
- Carelessness, 425, 426
- Carnage of peace, 424
- Carroll, B. F., 278, 289, 542, 596
- Car-seat-mile, 183
- Caucus, 263, 288, 379; rise of, 264; opposition of Jackson to, 265; lack of limitation upon participation in, 267; attendance at, 285; persistence of, 295
- Cedar Falls, 127, 256
- Cedar Rapids, 127, 170, 195, 205, 206, 256
- Cedar Rapids Gas Light Company, 112
- Cedar Rapids Republican*, 280
- Census Board, equalization by, 502, 503; reference to, 504, 508; powers vested in, 505, 506
- Centerville, 218, 256
- Central energy, 99
- Centralization, 12; tendencies toward, 20-34, 84, 85
- Chain gang, 81
- Challengers, 381
- Challenging, 317
- Charges, excessive, 103, 106, 107 (see also Rates)
- Charles City, 199
- Charles City Intelligencer*, 294
- Cheshire law, 534
- Chicago, stock watering in, 109, 111; capitalization of street railways in, 110, 111; debt of street railways of, 114; reference to, 132, 206; gas ordinance of, 133
- Chicopee (Massachusetts), 195
- Child labor law, 485, 486
- Children, employment of, 425; forcing of, into employments, 428
- Chillicothe (Missouri), 240
- Cigars, bill against treating to, 331; treating to, 343, 357
- Circuit court, functions of, in road administration, 7, 8
- Cities, prevalent misgovernment of, 125, 126, 131; insufficient powers given to, 126; disadvantages of, in law suits, 133, 134; granting of franchise by, 188; ordinances of, 189, 190; free service received by, 192, 193; opposition of, to creation of public service commission, 203-205; growth of, in Iowa, 207; debts of, 222; non-partisan primary for, 292, 299; corrupt prac-

- tices in, 341, 342; bribery in, 344, 345; election of assessors in, 507; local assessment desired by, 509, 528; reference to, 510; effect of act of 1872 on, 529; taxation of railroad property in, 530, 531
- Citizens, interest of, in public welfare, v; data furnished to, vii
- City council, 128, 225, 540; bribery of, 131; granting of franchises by, 188
- City government, powers beyond competence of, 127; annoyance of utility companies by, 132
- City hall, free telephones in, 131
- Civil engineer, 13; work of, 35
- Civil service rules, 486
- Civil War, 266, 423, 521
- Claim investigator, 489
- Claims for indemnity, decision of, in Germany, 444; adjudication of, 457, 458, 459, 489-491
- Clarinda, 199
- Clark, Dan E., acknowledgment to, xv
- Clarke, George W., 273
- Clay mine operators, 483
- Clerks, 486
- Clerks of election, 276, 281
- Cleveland, Grover, statement by, 354, 355
- Cleveland (Ohio), 132
- Clinton, 218, 256
- Clinton (Massachusetts), 157
- Coal dealer, 209
- Coal mine operators, 483
- Coal mines, accidents in, 438
- Coal Operators' Association, Iowa, 488
- Code commissioners, 25, 26
- Code of 1851*, adoption of, 11; road legislation in, 11-16; machinery of road administration provided in, 24-27; corrupt practices legislation in, 318-320, 326, 345, 347, 350, 351, 352, 358, 359; tax legislation in, 502-504, 513, 517, 518, 520, 524
- Code of 1873*, corrupt practices legislation in, 320; tax legislation in, 509, 510, 515, 518, 525
- Code of 1897*, corrupt practices legislation in, 326, 327, 347, 352, 353; tax legislation in, 515, 516, 517, 518, 522, 525, 535, 547
- Co-employees, negligence of, 433
- Co-employment, modification of doctrine of, 435
- Cohen, M. H., 542
- Cold storage houses, 209, 221
- Collection of taxes, machinery for, 499, 500, 502, 503; reference to, 501, 504, 505, 508, 509; present machinery of, 510, 511
- College of Agriculture and Mechanic Arts, xii
- College of Applied Political and Social Science, xii
- College of Applied Science, xii
- Colonizing, 358, 373
- Colorado, road administration in, 43, 45, 46, 50, 51, 53, 62, 64, 65, 69; State aid to political parties in, 402; tax administration in, 558, 565, 568
- Columbus (Ohio), 130
- Commission government, 126; act providing for, 341, 342, 347, 354; bribery in cities under, 345; political activity of officers under, 355; illegal voting in cities under, 361; political contributions by officers under, 365
- Commissioner system of county government, road administration under, 6, 9-11; adoption of, 18, 23; reference to, 29
- Commissions (see Public service commissions, Industrial Commissions, Tax commissions)
- Committee (see Political committee)
- Common carriers, regulation of, 123; reference to, 201, 209
- Common law, 157, 426, 447, 455, 465; origin of doctrines of, relative to employers' liability, 430, 431; modification of, 435; abrogation of defenses of, 450, 464
- Common stock, 112
- Commons, John R., 145
- Comparative religion, ix
- Compensation, impossibility of making, in certain cases, 426-427; schedules of, 441, 442, 443, 452-454, 456; basis of recovery of, 448; plans of, 449; standards for schedule of, 467-473; effect of rates of, on interstate competition, 471-473; absorption of, by expenses, 476
- Competition, failure of, as regulator of urban utilities, 101-105; cut-throat variety of, 103; regulation of, by commissions, 149, 162, 163; reference to,

- 175, 183, 185, 192, 193, 223; suggestions relative to regulation of, 218, 219; question of interstate, 471-473; effects of, in accident insurance, 476, 477, 479
- Compulsion, question of election on, 461-465
- Compulsory accident insurance, 427; necessity for, 475, 476, 480
- Condemnation, defects in method of, 222, 223
- Confiscatory rates, 108
- Congress, method of, in drafting tariff bill, 547
- Congressional caucus, 263, 266; reason for adoption of, 264; passing of, out of existence, 265
- Connecticut, road administration in, 43, 45, 47, 50, 51, 53; urban utility regulation in, 146, 147, 148, 149, 150, 152, 154, 155, 158, 161, 162, 163, 166, 168, 169, 172; tax administration in, 563
- Conservation, 547
- Consolidation of utilities, effect of, 102; reference to, 103; control of, 127, 155-157, 173, 216-218
- Constable, candidates for, 291
- Constitution of 1857, provision for banks in, 520
- Constitutionality, question of, 463, 531
- Consumer costs, 177
- Consumers, high cost of competition to, 103; effect of stock watering on, 109, 114; difference in rates to large and small, 114; equity between, 117; justification of low rates to large, 117; disproportionate rate reductions for large, 119; reference to, 140, 224, 230; shifting of cost of accidents to, 427, 474, 475; cost of production borne by, 440
- Consumption, necessity of large, 98; increase of, by reduction of price, 106
- Contingent fees, 437
- Contracting out of liability, 441
- Contractor, 467
- Contracts, power of municipalities to make, 224
- Contributions, principles of public, 499; historical analysis of principles of public, 512-517 (see also Campaign contributions)
- Contributory negligence, effect of doctrine of, 434; abrogation of, 450, 464, 465; reference to, 461, 462
- Convention (see Nominating convention)
- Convict labor on roads, 42, 50, 54, 81, 82
- Cook County (Illinois), 437
- Corporation stock, taxation of, 512, 513, 518, 519
- Corporation wrecking, failure of cities to prevent, 134
- Corporations, organization and powers of, 127; efforts of, to secure reversal of decision, 169; political activities of, 333-335; bill to prevent political activity of, 335-338; prohibition of contributions by, 363, 364; campaign contributions by, 376, 395; penalty for violation of election laws by, 404; growth of, 507; reference to, 509; taxation of, 517-520, 549, 559, 560
- Corrupt practices, 267, 294, 299; penalties for, 277; absence of, in early Iowa, 305; growth of, in Iowa, 306; procedure in cases of, 308; most demoralizing phase of, in Iowa, 355; distinction between illegal practices and, 368, 369; suggestions for re-definition of, 397, 398
- Corrupt practices legislation, reasons for, 305; aims of, 306; need and importance of, 307; failure in enforcement of, 307, 308; beneficial results of, 308, 309; history of, in Iowa, 310-343; period of Territory of Michigan, 310-312; period of Territory of Wisconsin, 312, 313; period of Territory of Iowa, 313; act of 1849, 313-318; provisions of Code of 1851, 318-320; period from 1851 to 1880, 320-322; period from 1880 to 1897, 322-327; period from 1897 to 1912, 327-343; analysis of, 344-367; comparative study of, 368-396; procedure in enforcement of, 390-394, 403; penalties for violation of, 394-396, 403, 404; suggestions for reforms in, 397-404
- Corruption, 126, 132, 220, 267, 305, 308, 309, 345, 374, 375; source of, 129; cause of, 131; charges of, in first State elections, 314-316
- Cost of living, 107
- Cost theory of utility rates, 177
- Counties, cost of Territorial roads paid by, 24; distribution of State aid to,



- 52-55; road funds raised by, 68-77; distribution of motor vehicle tax among, 78, 79; use of convict labor by, 81
- County, 6, 7, 11, 15, 16, 21, 22, 24, 26, 33, 38, 42, 509; growth of importance of, 8, 9, 82, 83; road supervision by, 13; blending of functions of township and, 17, 28, 29; distinction between spheres of township and, 18; centralization of authority in, 19; increase in authority of, 23, 29; levy of bridge taxes by, 29; differentiation of functions of, 31; fiscal authority transferred to, 32; jurisdiction of, in road matters, 33; limits of jurisdiction of, over highways, 45, 91; comparative study of road supervision by, 55-68; issue of bonds by, 83; functions of, 84, 85; standards of legislation relative to road functions of, 87, 88; importance of political contests in, 285, 286, 287; balance between township and, 501; assessment by, 502, 503, 504, 505, 602, 603; loss of power by, 504; character of equalization by, 505, 506; collection of taxes by, 508; functions of, in taxation, 509-511, 600; comparative study of assessment by, 556-559; comparative study of equalization by, 565-567; supervision of assessment by, 604
- County assessor, assessment by, 500; reference to, 502, 504, 505, 556, 557, 564, 577; recommendation relative to, 544; work of, in West Virginia, 573, 574; work of, in Kansas, 581-587; need of creating office of, 598; need of supervision by, 601-603
- County assessor movement, comparative study of, 546-598
- County assessor system, reasons for adoption of, 603, 604
- County attorney, 330, 390, 492
- County auditor, 276, 281, 366, 603
- County board of equalization, 504, 505, 506, 508
- County bridge fund, 22, 23, 38
- County clerk, 328, 329, 502, 505
- County commissioners, powers and duties of, 9, 23; increase in powers of, 10, 11; powers of, conferred on county judge, 11; objections to powers of, 24; reference to, 25, 29, 500, 501, 502; levy of taxes by, 500
- County conventions, choice of delegates to, 277, 288, 289; reference to, 282
- County court, 17; function of, in taxation, 502, 503
- County government, 5, 26, 35, 41; road administration under commissioner plan of, 6, 9-11; change in system of, 16, 18; adoption of commissioner system of, 23
- County judge, election of, 11; powers and duties of, 11, 12; reference to, 13, 15, 16, 18, 27; reduction of power of, 14, 15; abolition of office of, 16; reasons for taking fiscal authority from, 17; powers centralized in, 25; functions of, in tax administration, 502, 503, 504, 505
- County judge system, road supervision under, 6, 11-16; arguments against, 25, 26; arguments in favor of, 26; repeal of, 27; reference to, 28
- County officers, nomination papers of, 276
- County recorder, 502
- County road engineer, comparison of, with county road supervisor of 1851, 13, 14; position of proposed, 16; optional provision for, 30; reference to, 31, 33, 38, 39, 42, 63, 64, 67, 68, 83, 85, 87, 89, 90; movement to create office of, 59; necessity for creation of office of, 88
- County road fund, recommendation for establishment of, 19; acts relative to, 19; reference to, 23, 30, 31, 32, 33, 39
- County road supervisors, election of, 11; powers and duties of, 11, 12; comparison of proposed county road engineer with, 13, 14; reference to, 15, 28, 64, 65; powers centralized in, 25; arguments against, 25, 26
- County sheriff, collection of taxes by, 500; reference to, 502, 505
- County supervisors, board of, road administration by, 6; reference to, 7, 8, 9, 13, 19, 31, 33, 38, 40, 58, 86, 87, 91, 283, 293, 501, 506, 510, 511, 540, 598; change in composition of, 18, 508; powers vested in, 18; composition of, 21, 22; centralization of authority in, 30; functions of, in primary elections, 281

- County surveyor, 505  
 County treasurer, 500, 501, 502, 503, 510  
 County-township system of local government, 10  
 Court of Appeals, 442  
 Court review, 167-172, 459; failure to limit, 203; suggestions relative to, 225-228  
 Courts, unfitness of, for urban utility regulation, 139, 140; rate-making by, 226  
 Crawford County (Pennsylvania), direct primary in, 269, 271  
 Creamery, 209  
 Credits, corporate stock classified as, 518, 519  
 Crist bill, 201  
 Crossley, J. J., primary bill introduced by, 275; reference to, 280, 410  
 Crushed stone, 50  
 Culverts, 87, 90  
 Cumberland (Wisconsin), 136  
 Cummins, Albert B., 278, 330, 333; recommendation of, 334, 335, 338, 339
- Dangerous employments, 448, 449  
 Dangers, knowledge of, on part of employees, 431; duties of master relative to, 432  
 Darwin, Charles, xi  
 Data, collection of, by commissions, 42, 43, 44, 45, 47  
 Davenport, 256, 543  
 Davison, A. H., 255  
 Deaths, number of, caused by accidents, 423, 424, 428, 429; distribution of costs of, 440; compensation in cases of, 441, 442, 443, 454  
 Debts, limits on, of cities, 126; suggestion relative to, of cities, 222; deduction of, 518, 519, 522, 526  
 Decentralization, tendencies toward, 17, 18, 20-34  
 Defenses, abrogation of, 450  
 Delaware, road administration in, 50, 53, 62, 72; corrupt practices legislation in, 370; tax administration in, 565  
 Delay, measures to prevent, 170-172  
 Delegate to Congress, act relative to election of, 310-312  
 Delegates, choosing of, 266, 277; intimidation of, 269; reference to, 282; choice of, under primary, 288, 289
- Demand cost, 118  
 Democracy, 263, 298, 299  
 Democratic government, ultimate end of, 20  
 Democratic party, number of votes cast by, 285, 286; reference to, 295, 363; plank in platform of, 334  
 Democrats, 273; charges of bribery made by, 314, 315; charges against, 316  
 Des Moines County, establishment of, 312  
 Denmark, compensation system in, 441  
 Department of Finance and Municipal Accounts, 198  
 Dependents, inability of, to bear burden of accidents, 427, 428; number of, receiving indemnity, 436; schedule of compensation to, 441, 442, 443, 454, 467-471; reference to, 456  
 Depreciation fund, 137, 177, 183, 212, 222  
 Deputy assessor, 500, 504  
 Deputy road masters, 86  
 Deputy township road master, 12  
 Des Moines, amount paid to public utilities in, 107; reference to, 111, 112, 127, 130, 171, 195, 203, 205, 218, 222, 256, 291, 341, 351, 408, 543; gas ordinance of, 132; ownership of public utilities of, 133; experience of, in litigation, 195-197; cost of litigation in, 207, 230; tax conference at, 543  
*Des Moines Capital*, 290, 294  
 Des Moines plan, 292  
 Detroit, stock watering in, 109; reference to, 132  
 Dining car lines, 209, 533  
 Disability, compensation in cases of, 442, 443, 452, 453, 467-471; reference to, 456  
 Discrimination by urban utilities, 114-122, 136, 152, 157, 158, 224; instances of objectionable, 118-122, 194; disguising of, 121; prevention of, 127, 128; failure of cities to prevent, 134; methods of guarding against, 158, 159; lack of definition of unlawful, 203; definition of unlawful, 213  
 Disputes, adjudication of, 442, 444  
 Distributing system, necessity for large, 102, 103  
 Distribution costs, 177  
 District convention, choice of delegates to, 277; reference to, 282

- District court, 15, 16, 228, 490
- District road supervisors, 11, 16, 28, 32, 38; provision for, 14; election of, 15; retention of, 17; repeal of law providing for, 30
- Districts, nomination papers of candidates in, 276; importance of political contests in, 285, 286, 287
- Dividends, efforts to pay, 113; reference to, 212
- Dodge, Augustus Caesar, 316
- Domestic servants, exclusion of, from indemnity, 449, 466
- Downey, E. H., xiv, xv; author's preface by, 95, 96, 421
- Dragging, supervision of, 12, 86, 87; tax for, 75; reference to, 90
- Drinks, treating to, 343, 357, 371
- Drop switchboard, 99
- Dry battery, 99
- Dubuque, 136, 195, 218, 256
- Dubuque County, political contests in, 286, 287; establishment of, 312; reference to, 407
- Dubuque Telegraph-Herald*, 291, 293
- Dubuque Times*, 279
- Duplication, wastefulness of, 102, 103
- Economic aspects of road problem, 34-40, 82-85
- Economics, study of, ix
- Education, relation of, to Applied History, xi, xii; reasons for free and compulsory, 97, 98
- Election, provisions for, in indemnity acts, 450, 455, 456; question of compulsion or, 461-465
- Election day, closing of saloons on, 327; electioneering on, 372
- Election judges, 317, 341, 346, 351, 352, 358, 360
- Election laws, 269; penalties for violation of, 394-396; violation of, by corporations, 404
- Election offenses, lack of public sentiment against, 308; bill against, 331; reference to, 347
- Election officials, prevention of corrupt practices by, 319, 320; reference to, 347, 352
- Electioneering, 352, 372, 397
- Elections, regulation of, by State, 270; number of votes cast at, 286; effect of regulated ballot on, 292; reference to, 299; corruption in connection with, 305; prevention of offenses at, 306; effect of corruption on, 307; control of, by political parties, 308; legislation in Iowa relative to corrupt practices at, 310-343; act to preserve purity of, 314, 317, 320, 321; bill relative to sale of liquor on day of, 321; right of employees to vote at, 325, 356; improper use of money at, 326; violence at, 351; object of personal workers at, 353; prohibition of paid personal workers at, 353, 354; betting on, 361, 362, 373, 374; restrictions on money spent in, 374-381; publicity of expenses of, 381-385
- Elective principle, adoption of, 15
- Elector at Large, nomination papers of, 276; expenses of candidates for, 377
- Electoral College, 266
- Electors, expenses of candidates for, 377
- Electric companies, 127, 162, 189; commission control of, 151; competition between, 218, 219
- Electric lights, 98
- Electric meters, inspection and testing of, 160, 161; reference to, 183
- Electric plants, number of, owned by municipalities, 100; reference to, 164, 202, 209, 216, 221; inspection and testing of, 179, 180; municipal ownership of, 190; municipal operation of, in Iowa, 200
- Electricity, 97, 98, 107; rate of obsolescence in generation and transmission of, 99; difference in rates for, 115, 116, 119, 120, 121; fixing of standards for, 160; cost of, 177; fixing of price of, 192; faulty schedules of rates for, 193, 194; inspection and testing of, 214
- Elevators, 209, 221
- Elkins, Mr., 111
- Employees, law against intimidation of, 324, 325; undue influence exerted over, by employers, 349, 355, 356, 372; right of, to vote, 356; theory of freedom of, to choose work, 431; duties of master to, 432; occupational risks assumed by, 432, 433; contributory negligence of, 434; assumption of risk by, 434, 435; bitterness between

- employers and, 437, 438; number of, included in British compensation act, 441; number of, included in indemnity legislation, 449; election by, 450, 455, 456, 465; gross negligence and wilful misconduct of, 451; classes of, included in indemnity acts, 465-467; arguments for contributions by, 473-475; deductions from wages of, 475; adjudication of claims of, 489-491
- Employers, law against intimidation of employees by, 324, 325; undue political influence exercised by, 349, 355, 356, 372; penalty for undue influence by, 404; theory of equality of employees and, 431; delegation of duties by, 433; release of, from liability, 433-435; reference to, 435; cost of liability insurance to, 437; bitterness between employees and, 437, 438; accident insurance of, in Germany, 442-444; election by, 450, 455, 456, 464, 465; gross negligence and wilful misconduct of, 451; burden of indemnity placed on, 457, 473; compulsory or elective insurance of, 461-465; burden of proof placed on, 464, 465; violation of safety acts by, 465; insolvency of, 476; inducements made to, by stock companies, 479, 480; vote of, in indemnity association, 482; adjudication of claims against, 489-491
- Employers' Indemnity Association, creation of, 481; operation of, 481-483; reference to, 484, 488
- Employers' liability, origin of common law of, 430, 431; cardinal principle of, 431; ineffectiveness of, in Iowa, 435; insurance of, 456, 457
- Employers' Liability Commission, recommendations of, 423; comparison of recommendations of, with standards of legislation, 460-492; minority report of, 491, 492
- Employers' liability law, lack of efficiency of, 423
- Employers' mutual association, benefits of, 478; reference to, 480
- Employment agencies, 486
- Employments, number of, included in indemnity legislation, 448, 449
- Engineering aspects of road problem, 34-40, 82-85
- Engineers, 229
- England (see Great Britain)
- Entertainment, 343, 371
- Equalization, 500, 508, 603, 604; State board of, 502, 503; change in method of, 504; functions of county board of, 505; character of, by county, 505, 506; machinery of, 506, 510, 511, 548; failure of system of, in Iowa, 539, 540; need of reform in machinery of, 543; comparative study of, 561-570
- Erickson, Halford, acknowledgment to, 96, 145, 176, 177, 238, 239, 245
- Erie County (New York), 436
- Erie Railroad, 363
- Ethnology, ix
- Europe, 222, 482; comparison of work accidents in America and, 438; systems of indemnity in, 440-446; comparison of indemnity systems of, 445, 446; indemnity systems of, copied in America, 447
- Evidence, difficulty in securing, 134
- Evolution, doctrine of, ix
- Executive Council, 187, 281, 535, 536, 537, 540; functions of, in assessment and equalization, 511
- Executive officers, unfitness of, for urban utility regulation, 140, 141
- Exemptions, nature and purpose of, 539
- Expenditures (see Campaign expenditures)
- Experiment Station, xii
- Experimentation, expenses of, 102
- Expert assistance, 50; necessity of, 85
- Experts, hesitancy of, to testify, 134; reference to, 229, 486
- Express companies, 209, 560; taxation of, 533-535, 549; valuation of, 604
- Factories, building of, 306
- Factory inspection, 485
- Factory inspectors, 489
- Factory laws, 229, 486
- Fairfield, 256
- Farm laborers, exclusion of, from indemnity, 449, 466
- Farmers, loss caused to, by bad roads, 37; inability of, to attend primary, 287; attitude of, toward railroad taxation, 528; attitude of, toward inheritance tax, 538; reference to, 541, 605
- Fatigue, 426

- Fault, 431; compensation irrespective of, 448
- Federal Employers' Liability Commission, 463
- Federation of Labor, American, 460
- Federation of Labor, Iowa, 423, 488
- Fellow-servant rule, operation of, 433; modification of, in Iowa, 435; abrogation of, 450, 464
- Fenders, 184
- Ferries, 209, 221
- Ferryman, regulation of, 123
- Field work, xiii
- Finances, control of, 7, 12, 15, 17, 22, 27, 28, 29, 30, 33, 41, 68, 73-77
- Finland, compensation system in, 441
- Fire departments, prohibition of contributions by members of, 343, 365
- Fire escapes, 486
- Fiscal machinery, 499
- Fiscal reform movements, character of, 497, 498
- Fitting intervals, x
- Flash-light switchboard, 99
- Florida, road administration in, 42, 61, 72, 80; corrupt practices legislation in, 395; tax administration in, 565
- Forgetfulness, 426
- Fort Dodge, 195, 256
- France, compensation system in, 441
- Franchise, influencing of voter in exercising right of, 305
- Franchise value, 108
- Franchises, failure of regulation by, 129-132; regulation of, by commissions, 149; regulation of sale or transfer of, 156; provisions for revocable, 163, 164; power to grant, 164, 165, 224; granting of, in Iowa, 187-189; reference to, 190, 191, 192, 193, 202, 210; fixing of prices by, 192; approval of, 203; restrictions on granting of, 219-221; transfer of, 228; local taxation of, 530
- Fraud, 227, 330
- Freeholders, juries of, 7
- Freight companies, taxation of, 533
- Freight rates, differences in, 473
- Funeral expenses, 427, 440, 441, 443, 454, 456, 467, 468
- Funk, Senator, bill introduced by, 534
- Garst, Warren, 278
- Gas, 97, 98, 107, 131, 230; differences in rates for, 115, 116; changes in method of producing, 129; fixing standards for, 160; fixing of price of, 192; faulty schedules of rates for, 194; comparison of rates for, 195; litigation over price of, in Des Moines, 196; inspection and testing of, 214
- Gas companies, effect of competition between, 102; stock watering by, 111, 112; reference to, 127, 162, 189; commission control of, 151; competition between, 218
- Gas meters, inspection and testing of, 160, 161, 183
- Gas plants, number of, owned by municipalities, 100; reference to, 164, 202, 209, 216, 221; inspection and testing of, 179, 180; municipal ownership of, 190
- Gault, E. J., bill introduced by, 322
- General Assembly, urban utility regulation by, prohibited, 139
- General property tax, historical analysis of, 498-511; importance of, 498; standpoints for study of, 499; denunciation of, 499; reference to, 514, 516, 517, 520, 528, 550; relation of banks to, 523, 524; relation of insurance companies to, 526; relation of railroads to, 532
- Georgia, road administration in, 42, 62, 72, 80; urban utility regulation in, 145, 146, 147, 148, 149, 150, 151, 153, 154, 155, 158, 160, 165, 168, 245; tax administration in, 560, 565
- Germany, influence of universities in, xii; work accidents in, 424, 438; accident insurance in, 442-444; reference to, 445, 468, 471, 474, 477, 478, 479; superiority of accident indemnity in, 445, 446
- Glasgow, capitalization of street railways in, 110
- Gloucester (Massachusetts), 195
- Going value, 177, 235
- Good Roads Experiment Station, 44
- Good roads movement, 12, 40, 49, 52, 77, 89, 90; purposes of, 33; launching of, 38, 39; essential features of, 38, 39; economic and engineering aspects of, 82-85
- Gould, Jay, 363

- Government, protective and developmental functions of, 97, 98; demand for larger participation in, 264; larger participation in, afforded by primary, 271
- Governor, 201, 208, 290, 481, 487; votes received by candidates for, 285, 286, 287; expenses of candidates for, 377
- Graded toll roads, necessity for, 36; building of, 36
- Grades, loss caused by steep, 34, 35
- Graft, 126, 265
- Granger Cases, 140
- Gray, John H., 233
- Great Britain, capitalization of street railways, in, 111; reference to, 212, 476, 478, 479, 491; corrupt practices legislation in, 368, 369, 373, 375, 384, 393, 394, 395, 397, 404; work accidents in, 438; workmen's compensation in, 441, 442; comparative estimate of compensation system of, 445
- Greater New York, franchise values of, 107; average cost per family of light and transportation in, 107; stock watering in, 109; reference to, 183, 184
- Greece, compensation system in, 441
- Green Bay (Wisconsin), 195
- Greenfield (Massachusetts), 195
- Griggs, Mr., 182
- Gross earnings system, 549, 597
- Gross negligence, 451
- Gross receipts, taxation on basis of, 528, 534, 535, 536, 559
- Gypsum mine operators, 483
- Haeckel, Ernst, xi
- Hagenah, William J., 133
- Hale, Lord Justice, 123
- Hall, J. C., 316
- Hamilton, John J., 341
- Hanna, James R., acknowledgment to, 96; reference to, 257
- Harlowe, Mr., 176
- Harriman, Edward H., 363
- Harrison, Carter, 205
- Haverhill (Massachusetts), 195
- Hawarden, 199
- Hazards of industry, accidents due to, 426; assumption of, 432
- Hearings, conducting of, 180, 181
- Heating companies, commission control of, 151
- Heating plants, 209, 221
- Historians, attitude of, toward social sciences, ix; "fitting intervals" maintained by, x
- Historical Society of Iowa, State, reasons of, for publication of Applied History, vii, xiii; request of General Assembly for publications of, xiv
- History, law of continuity of, viii, ix; outcome of scientific, ix; changes in study of, x, xi
- Holding companies, 133; acquisition of public utilities by, 156, 157; number of utilities controlled by, 193
- Home rule for cities, 125, 126, 137, 203, 205
- Horack, Frank E., xv; author's preface by, 261
- Horses, displacement of, on street railways, 99
- Hospital expenses, 443, 468
- House of Lords, 442
- Household expenses, effect of public utility rates on, 107
- Houston (Texas), 240
- Howe, Samuel T., 583
- Hubbard, Nathaniel M., 509
- Hughes, Charles E., 145
- Hughes, O. H., 238
- Human nature, limitations of, 424, 425, 426
- Hungary, accident insurance in, 444
- Huntly Bill, 375
- Huxley, Thomas H., xi
- Hyde, Orson, 406
- Idaho, road administration in, 43, 45, 62, 72, 76; tax administration in, 551, 565
- Identification marks, prohibition of, 326; judicial decision relative to, 347, 348
- Illegal practices, distinction between corrupt practices and, 368, 369; penalties for, 395
- Illegal voting, definition of, 319; reference to, 331, 341; analysis of legislation against, 358-361
- Illinois, road administration in, 43, 45, 50, 54, 57, 72, 75, 76; corrupt practices legislation in, 370; work accident indemnity in, 448, 449-454, 455, 456, 458, 459, 461, 462, 464, 471, 472, 473, 480; tax administration in, 551, 553, 554, 555, 564, 565, 568

- Immigration Commissioner, 226  
Imperial Insurance Office, 443, 444  
Improvements, power to order, 161, 202;  
taxation of, 512  
Income tax, 544  
Indemnity, need of, 423-429; existing  
system of, in Iowa, 430-439; results of  
existing system of, 435-439; delay in  
securing, 437; systems of, abroad, 440-  
446; comparison of European systems  
of, 445, 446; comparative study of, in  
United States, 447-459; character of  
systems of, 449; burden of, placed on  
employers, 457; standard for basis of,  
460, 461; scope of provisions for,  
465-467; need of proportionate, 469;  
cost of, in Iowa, 472; burden of, 473-  
475; cost of, in Europe, 477, 478;  
distribution of burden of, 482; admin-  
istration of, 483-489  
Indemnity legislation, recent, in United  
States, 447-459; tables illustrative of,  
449-454, 458, 459; standards of, 460-  
492  
Indeterminate permits, 173, 203, 220,  
221, 223  
Indian trails, 35  
Indiana, road administration in 42, 58,  
62, 65, 72, 75; corrupt practices legis-  
lation in, 370, 373, 395; tax adminis-  
tration in, 553, 554, 558, 560, 569  
Indiana State Library, 183  
Individuals, guarantee of rights of, 7, 8;  
equalization of assessments of, 505,  
506, 508, 510, 598  
Industrial accident boards, 458  
Industrial Commission (Iowa), 465, 481,  
490; functions of, 484, 485; safety  
regulations by, 485, 486; powers vested  
in, 486; accident prevention by, 486,  
487; method of appointment of, 487,  
488; term of members of, 488, 489;  
support of, 489  
Industrial insurance, 440  
Industrial revolution, 431  
Inheritance tax, failure of, 499; refer-  
ence to, 503, 606; analysis of, 537,  
538  
Initiative, 126  
Injuries, number of, annually in United  
States, 423; number of, in Iowa, 428,  
429; number of, indemnified, 435, 436;  
distribution of costs of, 440; care of  
minor, 444, 468; number of, included  
in indemnity acts, 449 (see also Acci-  
dents)  
Inn-keepers, regulation of, 123  
Inquisitorial powers of public service com-  
missions, 152, 153; suggestions relative  
to, 211  
Inspection, 141, 178, 180, 183, 214;  
power of, 160, 161; lack of provision  
for, 203  
Inspectors, 486  
Installation charge, effect of, 118  
Insurance, amount of, carried by work-  
men, 427, 428; provisions for, in in-  
demnity acts, 456, 457; standards of  
legislation relative to accident, 475-  
483; need of compulsory, 480; refer-  
ence to, 491  
Insurance companies, taxation of, 524-  
526  
Insurgents, 290  
Intermediate employer, 467  
International Harvester Company, 460  
Interstate Commerce Commission, 176,  
182  
Interurban railways, 161, 209, 483  
Intimidation of voters, 269, 305, 330,  
347, 372, 373; bill to punish, 322;  
legislation against, 325, 348-356  
Intoxicating liquor, bill relative to, 321;  
reference to, 332  
Inventions, effect of, on public service  
industries, 99  
Investigation, lack of, in making ordi-  
nances, 132, 133; necessity for, 140;  
provision for, 202  
Investment, requirement of heavy, 98;  
discrepancy between capital and, 111,  
112  
Investors, loss caused to, by competition,  
103; effect of stock watering on, 109;  
reference to, 140, 212  
Iowa, road administration in 21, 41, 43,  
44, 48, 50, 57, 58, 60, 63, 64, 65, 72,  
75, 87; number of miles of roads in, 34;  
good roads movement in, 39; coming  
of railroads to, 48, 49; motor vehicle  
tax in, 77, 78; municipal outlook in,  
126; injustice of short-term franchise  
in, 130, 131; urban utilities in, 135,  
192, 193; legislative regulation of ur-  
ban utilities prohibited in, 139; survey  
of urban utility regulation in, 187-

- 207; urban utility rates in, 195; shortcomings of municipal accounts in, 198-201; utilities owned by municipalities in, 200, 201; attempts to create a public service commission in, 201-207; growth of cities in, 207; suggestions for effective utility regulation in, 208-232; capital invested in urban utilities in, 217; experiences with competition in, 218, 219; separation of powers in, 227; opportunity for effective urban utility act in, 231, 232; history of primary regulation in, 275-283; amendments to primary law in, 280-282; criticisms of primary in, 284-297; small proportion of illiteracy in, 289; taking of circle from Australian ballot in, 292; cost of primary in, 293, 294; growth of corrupt practices in, 305, 306; character of corrupt practices legislation in, 306; history of corrupt practices legislation in, 310-343; adoption of Australian ballot in, 324; political activity of corporations in, 333-335; analysis of corrupt practices legislation in, 344-367; Mormon influence in early, 349; violence at elections in, 351; undue influence of employers in, 355, 356; suggestions for reform in corrupt practices legislation in, 397-404; character of employers' liability law of, 423; number of work accidents in, 428, 429; existing system of indemnity in, 430-439; modification of common law rules in, 435; delay in securing indemnity in, 437; cost of employers' liability in, 437; center of interest in taxation in, 495; historical analysis of tax administration in, 497-545; character of fiscal reform movements in, 497, 498; failure of inheritance tax in, 499, 537, 538; backward movement in assessment in, 509; present machinery of tax administration in, 510, 511; economic conditions in early, 527, 528; conclusions relative to revenue system of, 538-545; lack of intelligent efforts at revenue reform in, 546-548; tax administration in, 551, 554, 555, 556, 560, 563, 565, 566, 567, 596, 597, 601; number of assessors in, 600
- Iowa, Territory of, road legislation of, 9-11; machinery of road administration in, 24; corrupt practices legislation of, 313; tax administration in, 500-502, 512; banking in, 520
- Iowa City, road convention at, 18, 39; reference to, 195, 206, 218
- Iowa country, necessity of outlet to market for, 35, 36; reference to, 312
- Iowa Economic History Series*, xiv, 43, 421
- Iowa Railway and Light Company, 217
- Iowa State College, relation of State Highway Commission to, 91
- Iowa Telephone Company, 197
- Italy, compensation system in, 441
- Jackson, Andrew, opposition of, to caucus, 265; reference to, 266
- Jefferson, Thomas, teaching of, 430
- Jefferson (Wisconsin), 135
- Johnson, Tom, 205
- Johnson County, 315
- Joplin (Missouri), 240
- Judges of election, 276, 281
- Judicial offices, selection of candidates for, 298
- Judicial review, 150, 227; restrictions on, 203
- Junkin, Senator, bill introduced by, 327
- Jury trial, 458, 459
- Justice, administration of, 97
- Justices of the peace, 6, 21
- Kansas, road administration in, 43, 44, 58, 63, 65, 72; urban utility regulation in, 146, 147, 148, 149, 150, 151, 153, 155, 156, 157, 158, 159, 160, 162, 163, 165, 166, 168, 172; work accident indemnity in, 448, 449-454, 455, 456, 458, 459, 471, 472, 473; tax administration in, 552, 554, 557, 558, 562, 563, 565, 568, 570, 580-587, 590, 591, 596, 601, 603, 604
- Kansas City, 240
- Kennan, George, 405
- Kentucky, road administration in, 43, 63, 65, 72; corrupt practices legislation in, 373, 374; tax administration in, 558, 565
- Keokuk, 195
- Keokuk County, 316
- Kerr, William G., bill introduced by, 327-330



- Ketchum, N. S., 255  
 King, Nelson, charges made by, 316  
 King Caucus, death blow to, 265  
 Knoxville (Tennessee), 171
- Labor, payment of road taxes in, 22  
 Labor Statistics, Bureau of, 429, 484, 485  
 La Crosse (Wisconsin), experience with public utilities in, 104  
 La Follette, Robert M., 145  
 Land Office, Federal, 226  
 Larrabee, William, recommendations of, 322, 323
- Law suit, regulation by, 133; advantages of public utility companies in, 133, 134; drawback to regulation by, 140  
 Law-makers, interest of, in public welfare, v; data furnished to, vii  
 Lawyers, amount of indemnity money received by, 437
- League of Iowa Municipalities, 530  
 Lefler, Shepherd, 406
- Legislative caucus, 263; reasons for adoption of, 264; passing of, out of existence, 265  
 Legislative Council, election of members of, 311, 312  
 Legislature, lack of training of, for urban utility regulation, 138, 139; nominations by, 265
- Lenocker, A. A., bill introduced by, 343  
 Leominster (Massachusetts), 157
- Levy of taxes, machinery of, 499, 500, 502, 503, 504, 506, 510, 511, 548; reference to, 501, 504, 505, 509
- Liabilities, abrogation of, 450  
 Liability insurance, cost of, 437, 474, 475; reference to, 445, 456, 457; rates of, 465; effect of rates of, 472, 473; standards of legislation relative to, 475-483
- License taxes, 512, 525, 576  
 Lieutenant Governor, vote cast for candidates for, 286; reference to, 290  
 Light, 98; average expenditure for, 107  
 Lighting plants, municipal operation of, in Iowa, 200  
 Lighting service, inspection of, 180  
 Liquor, treating to, 331, 357, 371  
 Liquor traffic, agitation against, 321  
 Litigation, 133, 185; failure of, as method of regulation, 139; attempts to do way with, 167; purpose of, 170, 171; experience of Des Moines in, 195-197; prevention of, 225; delay caused by, 437; bitterness caused by, 437, 438; indemnity wasted in, 445, 446; outlays for, 478; attempt to minimize, 491
- Liverpool, capitalization of street railways in, 110  
 Loafing, prohibition of, near polls, 351, 353  
 Loan and trust companies, listing of stock in, 519; taxation of, 522
- Local assessment, desire of cities for, 528; inequalities resulting from, 530; failure of, 539; county supervisor of, 544; importance of, 600
- Local government, relation of road legislation to, 5; importance of township in, 6; growth of importance of county in, 8, 9; county-township system of, 10; change in, in 1851, 11; township blotted out as unit of, 12; growth of sentiment in favor of township-county plan of, 14; differentiation of powers of, 18; arguments in favor of township-county plan of, 29; reference to, 39, 599; comparative study of road supervision by units of, 55-68; suggestion relative to functions of units of, 86, 88
- Local review board, problem of what to do with, 601, 602  
 Local self-government, 186; faith in, 205  
 Local supervision of roads, comparative study of, 55-68
- London, capitalization of street railways in, 110, 111  
 Long-hour users, justification of lower rates to, 115; reference to, 118, 194  
 Long-term franchises, evils of, 129, 130  
 Lorimer, William, 309  
 Los Angeles, 240
- Louisiana, road administration in, 45, 50, 51, 53, 72, 86; tax administration in, 558, 565  
 Lucas, Robert, 10  
 Lundt, J. F., bill introduced by, 331  
 Luxemburg, accident insurance in, 444  
 Lynn (Massachusetts), 195
- McClain, Emlin, opinion by, 522  
 McConlogue, J. H., 542  
 McGregor, Alexander W., bribery case of, 407

- McKinley Syndicate, 133, 217  
 McPherson, Smith, 196, 197  
 McVicar, John R., 255, 257  
 Macy, Jesse, 293  
 Madison (Wisconsin), 135, 195  
 Maginnis, W. A., bill introduced by, 321  
 Main track, local taxation of, 530  
 Maine, road administration in, 43, 45, 50, 51, 54, 74; corrupt practices legislation in, 379; work accident indemnity in, 447; tax administration in, 560, 569  
 Majority rule, 272  
 Malden (Massachusetts), 195  
 Management, expenses of, 102  
 Mandamus, 228  
 Manitowoc (Wisconsin), 195  
 Manufacturers, favors given to, 118; reference to, 483  
 Manufacturers, National Association of, 460  
 Manufacturers' Association, State, 423, 488  
 Marinette (Wisconsin), differences in rates for electricity in, 119, 120, 121; reference to, 122, 195  
 Marion, 127  
 Market, necessity for outlet to, 35, 36; difficulties in getting produce to, 36; reference to, 221  
 Market facilities, differences in, 473  
 Marlboro (Massachusetts), 195  
 Marshalltown, 256  
*Marshalltown Times-Republican*, 362  
 Maryland, road legislation in, 45, 50, 51, 53, 62, 63, 65, 72, 73, 78; urban utility regulation in, 145, 147, 148, 149, 150, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 168, 169, 170, 171, 172, 206; corrupt practices legislation in, 376; work accident indemnity in, 447, 448, 449-454, 461; tax administration in, 545, 553, 554, 565  
 Mass meetings, nominations by, 265  
 Massachusetts, road legislation in, 45, 50, 51, 74, 79; capitalization of street railways in, 110, 111; rate discrimination in, 121; urban utility regulation in, 144, 147, 148, 149, 150, 151, 152, 153, 155, 156, 157, 158, 160, 161, 162, 163, 164, 165, 166, 173, 180, 185, 186, 210, 216, 245; record of public service commission in, 174-176; urban utility rates in, 195; corrupt practices legislation in, 381; work accident indemnity in, 447, 448, 449-454, 455, 457, 458, 459, 462, 463, 464, 479, 482, 484; tax administration in, 560  
 Master, duties of, 432  
 Mayor, 128, 191  
 Meat packing establishment, 209  
 Mechanical industry, effect of, 424, 425; difficulty of adjustment to, 425; influx of women and children into, 425, 426; revolution in, 431  
 Medical expenses, 440, 441, 452, 454, 456, 467, 468, 475  
 Merchants, favors granted to, 118  
 Merger of public service companies, control of, 127, 155-157, 173, 203, 216-218  
 Merriam, C. E., 293  
 Meter charge, effect of, 118  
 Meters, inspection and testing of, 160, 161, 179, 180, 183, 214; reading of, 177; charges for, 189  
 Meyer, Balthasar H., 145, 176  
 Michigan, road legislation in, 45, 50, 51, 58, 72, 73, 75; work accident indemnity in, 436, 448, 449-454, 455, 456, 457, 458, 459, 476, 479; tax administration in, 560, 562, 565, 569  
 Michigan, Territory of, 3; road legislation of, 6-8, 25, 27, 28, 30, 38, 57; laws of, copied in Iowa, 9; machinery of road administration in, 20-23; corrupt practices legislation of, 310-312, 313, 345, 350, 357  
 Middle Ages, attitude toward public utilities during, 123  
 Milford (Massachusetts), 157  
 Military defense, 97  
 Military roads, 24  
 Milk dealer, 209  
 Millage tax, origin of, 501  
 Miller, Daniel F., election contest of, 316  
 Mills, dangers in operation of, 425  
 Milwaukee, 180, 586  
 Mine laws, 486  
 Mines, opening of, 306; danger in operation of, 425  
 Minnesota, road administration in, 43, 50, 51, 53, 58, 72, 81; Oregon plan adopted in, 296; corrupt practices legisla-

- tion in, 370, 371, 372, 373, 377, 378, 379, 382, 385, 387, 389, 395, 402, 403, 404; work accident indemnity in, 436, 472, 473, 484; tax administration in, 554, 556, 558, 562, 565, 569, 570, 587, 604
- Misgovernment of cities, 125, 126
- Misrule, cause of, 131
- Mississippi, road administration in, 42, 62, 63, 65, 72; tax administration in, 561, 565
- Mississippi River, 23, 42, 79, 80, 553, 556, 568
- Mississippi Valley, 271
- Missouri, road administration in, 44, 50, 51, 54, 57, 63, 66, 72, 75, 76, 79; corrupt practices legislation in, 371; employers' liability in, 472, 473; tax administration in, 558, 560, 566
- Money, bill to punish improper use of, at elections, 326; necessity for, in conducting campaigns, 363
- Money aid, 50
- Moneys and credits, taxation of, 521, 522, 525, 526, 544, 545, 549, 576, 604; failure to reach, 539, 540-542; listing of, 598
- Monopolist, limits on extortion by, 106
- Monopoly, inevitability of, 101; effect of attempts to cast out, 104; evils of unregulated, 105-122; public character of, 123; reference to, 185, 210, 219, 231
- Montana, road administration in, 72; corrupt practices legislation in, 370; work accident indemnity in, 447, 448, 449-454, 463; tax administration in, 565
- Moon, E. G., bill introduced by, 343
- Mormon voters, 349, 406
- Mortgage registry tax, 549
- Motor vehicle taxes, distribution of, 54; comparative study of, 77-79
- Mt. Pleasant, 199
- Municipal elections, publicity of expenditures in, 339, 340; bribery in, 344, 345; reference to, 346
- Municipal employees, protection of, from assessments, 343
- Municipal Franchises*, 182, 183
- Municipal government, commission plan of, 341, 342
- Municipal ownership, difficulties in way of, 98-101; inefficiency under, 135-137; restrictions on, 164; permission of, 192; suggestions relative to, 221-224
- Municipal plants, regulation of, by commissions, 164
- Municipalities, evils of public utility ownership by, 99, 100; number of utilities owned by, 100; inadequate powers vested in, 125, 126; failure of urban utility regulation by, 125-137; insurmountable difficulties in way of utility regulation by, 126-129; regulation of utilities owned by, 149; powers reserved to, 164-166; operation of public utilities by, in Iowa, 190, 191, 200, 201; benefit of indeterminate permit to, 220; suggestions relative to powers of, 224, 225
- Munn vs. Illinois*, case of, 123
- Murphy, Bernard, 278
- Muscatine, 195, 256
- Mutual insurance, working of, in Germany, 442-444; reference to, 472; effect of, 479, 480; advantages of, 480; features of, 481-483
- National banking system, establishment of, 521
- National banks, listing of stock in, 519; taxation of shares in, 521; reference to, 522, 545
- National Tax Association, 542, 543, 587
- Natural resources, 35
- Nebraska, road legislation in, 58, 63, 65, 72, 75, 79; corrupt practices legislation in, 373; work accident indemnity in, 472, 473; tax administration in, 551, 558, 560, 564, 565
- Neenah (Wisconsin), 256
- Negligence, law of, 431; reference to, 432, 465; effect of, on part of co-employees, 433; abrogation of law of, 460
- Netherlands, compensation system in, 441
- Nevada, road administration in, 69, 72, 79; urban utility regulation in, 146, 147, 148, 149, 150, 151, 153, 154, 155, 158, 159, 162, 166, 168, 169, 170, 171; work accident indemnity in, 448, 449-454, 455, 456, 458, 459; tax administration in, 565
- New England, 47, 56, 74, 75, 80, 217, 553, 562, 565, 568

- New Hampshire, road administration in, 45, 50, 51, 79; urban utility regulation in, 146, 147, 148, 149, 150, 151, 152, 153, 155, 156, 157, 158, 160, 163, 165, 166, 168, 169, 170, 171; work accident indemnity in, 448, 449-454, 455, 456, 458, 459, 476; tax administration in, 555, 563
- New History, ix, x
- New Jersey, road administration in, 43, 45, 50, 51, 54, 62, 63, 66, 72, 73; State aid in, 49; urban utility regulation in, 146, 147, 148, 149, 150, 152, 153, 154, 155, 156, 157, 158, 159, 160, 163, 164, 165, 168, 169, 172, 206; corrupt practices legislation in, 373, 374, 376, 378, 381, 385, 392, 393, 395, 399; work accident indemnity in, 448, 449-454, 455, 456, 457, 458, 459, 461, 462, 463, 464; tax administration in, 560, 564, 565
- New Mexico, road administration in, 43, 50, 62; tax administration in, 565
- New York, system of local government in, 16, 21; road administration in, 43, 48, 50, 51, 54, 58, 63, 66, 67, 72, 73, 75, 84; rate discriminations in, 121; urban utility regulation in, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 160, 162, 163, 164, 165, 166, 168, 172, 173, 174, 185, 186, 206, 210, 217, 230; work of public service commissions of, 182-184; election law in, 269; corrupt practices legislation in, 306, 373, 384; insurance scandal in, 333; election fund raised in, 363; work accidents in, 428; work accident indemnity in, 436, 437, 447, 448, 449-454, 455, 461, 463, 464; tax administration in, 560, 565
- New York City, capitalization of franchises of, 106; capitalization of street railways in, 110, 111; successive reorganizations of surface lines of, 111; history of traction system of, 114; reference to, 363
- Newbold, Joshua G., 530
- Newspaper announcements, nominations by, 265
- Newspapers, political announcements in, 340; restrictions on printing of political matter by, 387-389, 402, 403; act for federal control of, 417
- Nichols, Jay I., bill introduced by, 332, 339
- Noble, F. H., 529
- Nominating convention, 263, 270; rise of, 265, 266; period of sway of, 266; abuses of, 266, 267; attempts to eliminate evils of, 267, 268
- Nomination papers, 276, 281
- Nominations, methods of making, 263, 265; development of primary method of making, 269-274; experiments with popular, 271; systems of making, in various States, 271, 272; number of votes required for, 272, 273, 277, 299; certification of, 282; making of, by members of opposing party, 288; cost of securing, 293, 294; legal definition of method of making, 298
- Non-partisan primary, 292, 299
- Non-residents, 517, 518
- North Adams (Massachusetts), 157, 195
- North Carolina, road administration in, 44, 69, 72, 80; tax administration in, 554, 555, 556, 557, 560, 565, 568
- North Dakota, road administration in, 44, 58, 63, 72, 75; work accident indemnity in, 447, 472, 473; tax administration in, 554, 556, 562, 569
- Northampton (Massachusetts), 157
- Norway, accident insurance in, 444, 445, 446, 477, 478, 479
- Occupational risks, doctrine of, 432, 433; methods of giving effect to principle of, 440, 441; need of adoption of principle of, 460, 461; reference to, 466, 471, 475
- Office of Public Roads, statistics compiled by, 70
- Officeholders, assessment of, 342, 365; elimination of political activity of, 354, 355
- Officers, prohibition of campaign contributions by, 306; procedure against, in case of violation of election law, 329, 330
- Offices, increase in number of, 266; number of, included in primary, 275; small number of, in early Iowa, 305
- Offill, J. F., proposition of, 338
- Ohio, laws of, copied in Iowa, 9, 10; road administration in, 43, 45, 50, 51, 54, 58, 69, 72, 73, 75, 79; rate dis-

- crimination in, 121; urban utility regulation in, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 163, 165, 168, 171, 172, 206; election law in, 269; corrupt practices legislation in, 376, 389; work accident indemnity in, 437, 448, 449-454, 455, 456, 457, 458, 459, 462, 463, 464, 475, 479, 480; tax administration in, 555, 556, 565
- Ohio, Public Utilities Commission of, 96
- Ohio River, 42, 80, 553, 556, 568
- Oklahoma, road legislation in, 50, 58, 64, 65, 72; urban utility regulation in, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 158, 160, 161, 168, 169, 171, 173, 182, 227; corrupt practices legislation in, 370; tax administration in, 564, 565
- Oklahoma Bank Guarantee case, 463
- Operating expenses, 103; reduction of, 113
- Ordinances, failure of urban utility regulation by, 132-134; regulation of urban utilities by, 189, 190; fixing of prices by, 192; power of municipalities to pass, 224
- Ordinary care, common law standard of, 426; reference to, 432
- Oregon, road legislation in, 58, 62, 79; urban utility regulation in, 146, 147, 148, 149, 150, 151, 153, 155, 158, 159, 160, 161, 162, 165, 166, 168, 169, 170, 171, 172; expression on public policies in, 274; publicity pamphlet in, 294; plan of electing United States Senators in, 296, 298; corrupt practices legislation in, 368, 370, 371, 372, 375, 376, 378, 383, 384, 385, 389, 401, 403, 404; tax administration in, 558, 566, 569
- Oshkosh (Wisconsin), 195
- Ottumwa, 195, 256
- Output cost, 118, 177
- Overcapitalization of urban utilities, 108-112, 215; evils of, 114 (see also Capitalization)
- Ownership, separation between business control and, 113
- Pacific Coast, 64, 79, 80, 271, 568
- Page, Logan Waller, 50
- Palace car companies, taxation of, 533
- Palmer, David J., 411
- Papers, power to compel production of, 153
- Parker, Alton B., 307
- Parlor caucuses, 264
- Party affiliation, 273, 344; determination of, 276; tests of, 288, 292, 299
- Party assessments, suggestions relative to, 398
- Party committeeman, candidates for, 281
- Party machinery, early, in United States, 263-268; passing of old institutions of, 265; control of, 271
- Party platforms, writing of first, 266; methods of drawing up, 274, 300
- Party tests, 267, 270, 273, 288, 299
- Paternalism, 231
- Patronage, 126, 265
- Paul, C. B., bill introduced by, 342
- Peak, relative cost of service off and on, 115, 116; rate reductions for business on, 117
- Penalties for corrupt practices, 277, 320, 337, 338, 394-396, 403, 404
- Pence, William, acknowledgment to, 96
- Pennsylvania, road administration in, 45, 50, 51, 58, 72, 73, 75; capitalization of street railways in, 111; urban utility regulation in, 217; election law in, 269; tax administration in, 545, 555, 565, 568
- Pensions, provision for, 443, 456, 469, 470
- Periodicals, restrictions on printing of political matter in, 387-389, 402, 403
- Perjury, 336
- Permissive plan, effect of, 461
- Personal property, valuation of, for assessment, 512-517; taxation of, of banks, 521, 522, 523, 524; taxation of, 533, 549; failure of, to pay taxes, 540; substitutes for tax on, 545, 606
- Personal road taxes, comparative study of, 79-81
- Personal workers at elections, object of employing, 353; prohibition of employment of, 353, 354
- Personation, comparative study of legislation against, 373; reference to, 394
- Peterson, C. E., bill introduced by, 333, 335-338
- Peterson, Henry J., xv; author's preface by, 303

- Petitions, requirements relative to, in primary legislation, 271, 272; nomination of candidates by, 277; signatures to, 340
- Philadelphia, capitalization of street railways in, 110, 111; history of traction company in, 114; reference to, 265
- Philippine War, 424
- Pingree, H. S., 132, 205
- Pioneers, 8, 26; objections of, to powers of county commissioners, 10, 11; neglect of roads by, 35
- Pipe lines, 209
- Pittsburgh, 427
- Pittsburgh District, 436
- Plank roads, necessity for, 36; building of, 36
- Plans, preparation of, 42, 43, 45, 48
- Platforms, writing of first, 266; methods of drawing up, 274, 300
- Plows, taxes for purchase of, 28
- Plurality nominations, 272
- Police control, 224
- Police departments, prohibition of contributions by members of, 343, 365
- Police power, 464
- Police protection, 97
- Police regulations, 211
- Policies, demand by people of right to determine, 264
- Political assessments, 331, 332, 343, 367; restriction of, 364, 465
- Political committee, definition of, 328; statement of contributions and expenditures by, 328, 329, 367, 383; claims against, 329; reference to, 336, 337, 343, 353, 364, 376, 379; procedure in case of violation of law by, 390-394
- Political experiments, study of history of, vii, viii
- Political literature, restrictions on publication of, 387-389, 402, 403; distribution of, 397
- Political machine, prevention of building up of, 342
- Political machinery, demand for popular control of, 264
- Political parties, attempts to prevent organization of, 263; reference to, 266, 336, 337, 364; early machinery of, 263-268; legal recognition of, 270; question of membership in, 273; declaration of principles of, 273, 274; participation of, in primary, 275; menace of primary to, 292, 293; control of elections by, 308; payment for work in behalf of, 326; State aid to, 402
- Politics, study of, ix; short courses in, xiii; effect of, on public utilities management, 99, 100; participation in, by utility companies, 132; movement toward ousting corporations from, 333-335
- Polk County, District Court of, 227
- Poll tax, 42, 77, 90, 512; comparative study of, 79-81
- Poll watchers, 353, 381
- Polls, time of opening and closing, 281; reference to, 322; conveyance of voters to, 326, 331, 340, 353, 354, 381, 399, 414; prohibition of loafing near, 351, 353; electioneering near, 352
- Poor relief, 492
- Post office, effect of growth of, 265
- Potomac River, 42, 80, 553, 556, 568
- Poverty, 428
- Precinct, qualifications for voting in, 359, 360
- Preferential second-choice voting, 272, 273
- Preferred stock, 112
- Premiums, absorption of, 476; reference to, 477, 478, 480; taxation of, 524-526
- Presidency, nomination of candidates for, 264
- President, candidates for, 386, 387
- Presidential electors, popular choice of, 275; votes received by candidates for, 284, 285
- Presidential preference primary, 296, 298
- Press, position assumed by, 265; freedom of, 338
- Price, increase of consumption by reduction of, 106
- Price reduction, temptation to, 103
- Primary, demand for, 261; reference to, 263, 336, 379, 395, 397, 414; lack of limitation on participation in, 267; development of direct, 269-274; expense of, 269, 281, 293, 294; optional character of, 270; history of regulation of, in Iowa, 275-283; vote cast at first, in Iowa, 278; newspaper comments on, 278-280; publication of results of, 281; change of date of hold-

- ing, 283; canvass of votes at, 283; criticism of, in Iowa, 284-297; light vote at, 284-288; number of votes cast at, 286; alleged unrepresentative character of, 288, 289; unintelligent voting at, 289; effect of long ballot in, 290-292; menace of, to party, 292, 293; criticism of time of holding, 295; standards for regulation of, 298-300; law against corrupt practices at, 330, 331; publicity of expenditures in, 339, 340, 366, 381-385; purpose of bribery at, 344; bribery at, 345; disturbances at, 351; personal workers at, 353, 354; treating in campaign preceding, 357; origin of State regulation of, 360; illegal voting at, 360, 361
- Primary election law, efforts to secure, 275; chief features of, 275-277; results of, 278; amendments to, 280-282, 283; general observation relative to, 295-297; corrupt practices provisions of, 340; reference to, 347
- Pringle, William J., 241
- Prisoners, work of, on roads, 81, 82
- Private enterprise, services committed to, 98
- Private ownership of public utilities, 98
- Procedure, data relative to, 150
- Procedure in enforcement of corrupt practices legislation, 390-394, 403
- Proceedings, initiation of, in public utility cases, 166
- Produce, difficulties in marketing, 36
- Production, factors affecting cost of, 138
- Products, fixing of standards of, 203, 213, 214
- Profits, concealment of, 108; reference to, 152
- Progressives, attitude of, toward primary, 277; reference to, 290
- Promoters, activities of, in field of urban utilities, 109, 110; reference to, 185, 215, 216, 235
- Property, classification of, 504; multiplication of forms of, 507; plan for assessment of, at full value, 515, 516; valuation of, for taxation, 550-553, 603, 604; assessment of, 553-561; classification of, for taxation, 579
- Property road taxes, comparative study of, 81
- Prouty, S. F., 293
- Public employees, prohibition of campaign contributions by, 306, 364, 365; prohibition of political activity of, 355
- Public officers, bribery of, 336
- Public offices, purpose of, 26
- Public officials, interest of, in public welfare, v; data furnished to, vii; training for, xii, xiii; prevention of political activity of, 355; restrictions on assessment of, 364, 365
- Public opinion, moulding of, 265; attitude of, toward election offenses, 308, 309; reference to, 401
- Public service commission, attempts to create, in Iowa, 201-207; opposition to creation of 203-207; suggestions relative to, 208-232; suggestions relative to court review of decisions of, 225-228; suggestions relative to support of, 229-232
- Public service commissions, comparative study of, 144-186; tables containing data relative to, 147-150; judicial review of decisions of, 150; powers and duties of, 152, 153; enforcement of orders of, 166; court review of orders of, 167-172; opposition to, 185; change in attitude toward, 185, 186
- Public service corporations, complexity and cost of regulating, 127, 128; advantages of, in law suits, 133, 134; valuation of property of, 154; right to make contracts with, 164, 165; regulation of, by ordinances, 189, 190; reference to, 193, 205, 344, 541; litigation with, in Des Moines, 195-197; support of bills by, 204; restrictions on consolidations of, 217, 218; assessment of, 511, 598; taxation of, 533-537, 549, 559, 560, 576, 582; valuation of, 604, 605
- Public service industries, problem of social control of, 97; characteristics of, 97; difficulties besetting municipal ownership of, 98-101; recent origin of, 99; effect of progress of invention on, 99; monopolistic character of, 101-105; factors influencing business of, 138; need of State board for regulation of, 141-143
- Public utilities, commercial character of, 97-101; business ability required in management of, 98-100; progress in

- municipalization of, 101; effect of competition between, 101-105; effect of rates of, on cost of living, 107; separation between ownership and control of, 113; table showing number of, in Iowa, 192, 193 (see also Urban utilities)
- Public utility, definition of term, 210
- Public utility acts, comparative estimate of, 172, 173; operation of, 173-186
- Public utility commissions, list of, in cities, 240
- Publications, restrictions on, 387-389, 402, 403
- Publicity pamphlet, 378, 385-387, 401, 402
- Quarrymen, 483
- Quasi-elective plan, effect of, 461, 462; constitutionality of, 463, 464; features of, recommended for Iowa, 464, 465; reference to, 479, 481, 483
- Racine (Wisconsin), 195
- Railroad Commissioners, 204, 208, 229, 411, 416
- Railroad corporations, 204
- Railroad Counsel, 209
- Railroad expenses, 331
- Railroads, relation between wagon roads and, 34, 49; reference to, 36, 151, 209, 338, 509, 560; effect of coming of, 37, 49, 306; road administration before coming of, 48; effect of growth of, 265; political activity of, 333-335; undue influence over employees of, 349, 356; danger in operation of, 425; effect of fellow-servant rule on employees of, 433; modifications of common law relative to work accidents on, 435; work accidents on, 438; local assessment of, 509; taxation of, 526-533, 549, 576, 582, 586, 597; features in history of taxation of, 527-532; demand of frontier districts for, 528; valuation of, 604
- Railway Brotherhoods, 460
- Railway tracks, inspection of, 214
- Rate-making, 127, 183, 212, 223, 229; unfitness of legislature for, 139; unfitness of courts for, 139, 140; unfitness of executive officers for, 140, 141; character of function of, 141, 226, 227; power of commissions relative to, 158; methods employed in, in Wisconsin, 176-178
- Rate ordinances, failure of, to regulate, 132-134
- Rate schedules, faulty, 193, 194
- Rates, influence of capitalization on, 108; legitimate differences in, 114-117; objectionable differences in, 118-122; failure of cities to regulate, 134; impossibility of uniformity of, 138; reasonableness of, 141, 142; regulation of, 148, 157-159, 175, 176, 189, 224; reference to, 164, 225; determination of, 181, 202; character of, in Iowa, 195; litigation over, 195-197; suggestions relative to regulation of, 213 (see also Charges)
- Readiness to serve cost, 178
- Real estate, valuation of, for assessment, 512-517; taxation of, 518; deduction of capital invested in, 518, 519; reference to, 522, 525, 534
- Real property, valuation of, for assessment, 512-517; reference to, 524
- Rebates, 135, 152; prohibition of, 158, 159
- Rebating, existence of, 477
- Records, loss of damaging, 134
- Recovery, basis of, 448
- Referendum, 126, 166, 220
- Reformers, activities of, 498
- Refreshments, 331, 343
- Refrigerating companies, commission control of, 151, 209, 221
- Refrigerator car lines, 209
- Register and Leader*, 278, 287, 291, 333, 351
- Registration of voters, 270, 346; act providing for, 322
- Repairs, power to order, 161; reference to, 212
- Repeating, 358, 373
- Reports, tabulation of, 141; reference to, 178, 191
- Representative principle, alleged violation of, 26
- Representative government, essential features of, 26, 44, 45; reference to, 263
- Representatives (State), expenses of candidates for, 377, 386, 387
- Representatives (United States), limit on expenditure of candidates for, 327



- Republican party, 273, 290, 363, 411; division in, 277, 289; number of votes cast by, 284, 285, 286, 287; plank in platform of, 334
- Reserves, necessity for, 479; provision for, 481; reference to, 482, 483
- Residence suburbs, 98
- Revenue Commission of 1893, recommendations of, 515, 516, 537
- Revenue machinery, 500; incapacity of, 507
- Revenue reform, lack of determined effort toward, in Iowa, 546-548
- Revenue sources, separation of, 501, 544, 549, 550, 599, 606
- Revenue system, perfunctory character of, 503; conclusions relative to, 538-545; reasons for failure of, 543
- Reversal of decision, efforts to secure, 169
- Review, comparative study of, 561-570
- Review board, local, problem of what to do with, 601, 602
- Revised Statutes* of 1842-1843, 501, 517, 520, 547
- Revision of 1860*, corrupt practices legislation in, 320; tax legislation in, 506, 514, 518, 524
- Revocable franchises, 131, 163, 164
- Revolutionary War, 264
- Rhode Island, road administration in, 50, 51, 63, 64; urban utility regulation in, 146, 147, 148, 149, 150, 151, 152, 154, 155, 158, 159, 160, 162, 163, 165, 168, 169; work accident indemnity in, 448, 449-454, 455, 456, 458, 459; tax administration in, 555, 604
- Ripley, A. C., 543
- Rippey, H. C., bill introduced by, 320
- Risk, assumption of, effect of doctrine of, 434, 435; modification of, in Iowa, 435; abrogation of, 450, 464
- Risk groups, establishment of, 481
- Risk tariffs, 443, 489
- Road administration, need of information on subject of, vi; distribution of power and authority in, 5-20; periods in history of, 6; features of, during Michigan period, 6-8; change in system of, 9; two distinct systems of, 10; bond of union between units of, 16; blending of functions of, 17; recommendations of convention relative to, 18, 19; tendencies toward centralization and decentralization in, 20-34; movements relative to, 30; jurisdiction of units of, 33; economic and engineering aspects of, 34-40
- Road-bed, local taxation of, 530
- Road districts, 6, 7, 9, 16, 22; division of township into, 15, 28, 32; supervision by, condemned, 19; consolidation of, 19, 32; abolition of, 25; restoration of, 27; road supervision by, 59-63
- Road funds, 68-77 (see also Road taxes)
- Road improvement districts, 42; limits of jurisdiction of, over highways, 45; bonds issued by, 71, 83; comparative study of, 76, 77; necessity for creation of, 89, 90
- Road legislation, historical analysis of, 5-40; relation of, to local government, 5; period of Territory of Michigan, 6-8; period of Territory of Wisconsin, 8, 9; Iowa Territorial and early State period, 9-11; period from 1860 to 1870, 16-18; period from 1870 to present time, 18-20; forces operating on, 32, 33; new period in history of, 39; comparative study of, 41-85; tendencies in, 82-85; standards of, 86-91
- Road overseers, 6, 7, 9, 21, 22, 23, 25, 31, 86
- Road supervisors, appointment of, 9; duties of, 10; reference to, 23, 25
- Road taxes, levy of, 15, 28, 42, 60, 68-77, 87, 88; method of payment of, 22, 32, 33, 39; distribution of, 22, 33; reference to, 29; comparative study of personal, 79-81; comparative study of property, 81; recent tendency in method of payment of, 82, 83; expenditure of, by units of government, 85; suggestion relative to method of payment of, 90
- Roads, administration of, in Territory of Michigan, 6-8, 20-23; act for opening and regulating, 10; change in administration of, 11; supervision of, under county judge system, 11-16, 24-27; dragging of, 12; distribution of powers over, 12, 13; reduction of powers of county judge over, 14, 15; step in favor of centralizing authority over, 19; act of 1884 relative to improvement of, 19; super-

- vision of, in Territory of Wisconsin, 23, 24; centralization of authority over, 30, 31; number of miles of, in Iowa, 34; economic importance of, 34, 36, 37; problem of construction of, 35; neglect of construction of, by pioneers, 35; effect of coming of railroads on supervision of, 37, 38; necessity of State authority over, 38; comparative study of supervision of, 41-85; jurisdiction of State highway departments over, 42-48; comparative study of State aid in building of, 48-55; attitude toward building of, before coming of railroads, 48, 49; relation between railroads and, 49; comparative study of local supervision of, 55-68; expenditures on, in United States, 70; expenditures of automobile tax on, 78, 79; convict labor on, 81, 82; materials for construction of, 83; suggestions relative to supervision of, 86-91
- Robinson, C. H., bill introduced by, 326
- Roemer, John H., acknowledgment to, 96; reference to, 176
- Rolling stock, local taxation of, 530
- Roosevelt, Theodore, 438
- Rotation in office, 266
- Rural districts, attitude of, toward railroad taxation, 528, 529; effect of system of railroad taxation on, 529, 530
- Rural life, change from, 264
- Russell, Lord John, 307
- Russia, compensation system in, 441
- Russo-Japanese War, 424
- Ryan, Mr., 145
- Ryan-Whitney-Widener interests, 111
- Sac City, 199
- Safety, fixing of standards of, 479
- Safety acts, violation of, 465
- Safety appliances, 184
- Safety exhibits, 486, 489
- Safety regulations, 161, 162, 213, 485, 486
- St. Joseph (Missouri), 240
- St. Louis, capitalization of street railways in, 110, 111; reference to, 240
- Saloons, closing of, on election day, 327
- Sammis bill, 201-203, 208
- Savings, amount of, on part of workmen, 427, 428
- Savings banks, listing of stock in, 519; taxation of, 522, 545
- Schaff, Mr., 175
- Schaffner, Margaret, acknowledgment to, 96
- Schedule of compensation, 441; 442, 443, 452-454, 456; standards for, 467-473
- Schedules of public utility rates, 118; penalty for departure from, 159; inconsistencies in, 193, 194; requirement relative to, 213
- School elections, 352, 366
- Scott County, 294
- Scrapers, taxes for purchase of, 28
- Seattle, 240
- Second-choice voting, 272, 273, 293, 299
- Secret ballot, arguments for, 344
- Secretary of State, 281, 290, 366, 385, 388; votes cast for candidates for, 286
- Securities, selling of, by promoter, 109, 110; issue and transference of, 127; control of issue of, 148, 154, 155, 174, 183, 184, 214-216; limitation on amount of, 218
- Segregation, 549, 550
- Semi-autonomous groups, 483
- Service of urban utilities, inadequacy of, 112-114; elements in cost of, 118; supervision of, 127; failure of cities to regulate, 134; character of function of regulation of, 141; regulation of, by commissions, 149, 159-161, 189, 224; lack of regulation of, 192; standards of, 203, 229; rates for, 213; suggestions relative to standards of, 213, 214; reference to, 225
- Settlement, encouragement of, 24
- Settlers, 14; difficulties of, in marketing produce, 36; attitude of, toward railroads, 37
- Sewer systems, 99; reasons for municipal ownership of, 100
- Sewerage companies, commission control of, 151
- Shambaugh, Benj. F., editor's introduction by, v; discussion of Applied History by, v-xiii; acknowledgment to, 96, 303
- Sheboygan (Wisconsin), 195
- Shenandoah, 256
- Short ballot, 126; demand for, 291, 292; necessity of adoption of, 299
- Short courses, xiii
- Short-hour users, justification of higher rates to, 115; reference to, 118, 194

- Short-term franchises, 192  
Shows, 343  
Sinking fund, necessity for, 130; provision for, 190; reference to, 222  
Sioux City, 195, 205, 218, 543  
*Sioux City Tribune*, 279  
Slaughter-house, 209  
Sleeping car lines, 209; taxation of, 533  
Smith, Adam, teaching of, 430  
Social experiments, study of history of, vii, viii  
Social psychology, ix  
Social sciences, attitude of historians toward, ix  
Sociology, ix  
South, 62, 63, 80, 81, 558; control of party machinery in, 271; primaries in, 274  
South Carolina, road administration in, 42, 63, 66, 67, 69, 72, 80; tax administration in, 560, 564  
South Dakota, road administration in, 50, 58, 63, 75; work accident indemnity in, 473; tax administration in, 554, 555, 562, 565  
Spain, compensation system in, 441  
Specifications, preparation of, 42, 43, 45, 48  
Speculation, 215  
Speculators, 110  
Spencer, Herbert, xi  
Spencer (Massachusetts), 157  
Spoils System, basis of, 354  
Standard Oil Company, 105  
Standards of service, fixing of, 160  
Standpatters, attitude of, toward primary, 277, 278; reference to, 290  
State, road supervision by, 13, 24; reference to, 16, 26; efforts to clothe, with authority, 30; differentiation of functions of, 31; jurisdiction of, in road matters, 33; probable increase in functions of, 33, 34; failure of, to regain former authority in road matters, 37, 38; limits of jurisdiction of, over highways, 45, 91; relation of county to, 55; growth in importance of, in road administration, 82, 83; issue of bonds by, 83; functions of, 84, 85; appropriate organ of urban utility regulation by, 138-143; constitutionality of urban utility regulation by, 142, 143; opposition to control of urban utilities by, 185; need of urban utility supervision by, 205-207; cost of regulation of urban utilities by, 229, 230; regulation of elections by, 270, 271; expenses of indemnity administration borne by, 482; millage tax for, 501; power transferred to, 503, 510; assessment of railroad property by, 531; assessment of public service corporations by, 536, 537; comparative study of assessment by, 559-561; comparative study of equalization by, 567-570; functions of, in taxation, 600; supervision of assessment by, 604  
State aid in campaigns, 385-387, 401, 402  
State aid in road building, 31, 33, 39, 41, 45, 71, 83, 84, 89; arguments in favor of policy of, 37; comparative study of, 48-55; character of, 50; amounts appropriated for, 51, 70; distribution of, 52-55, 74  
State bank act, repeal of, 521  
State Bank of Iowa, act creating, 520, 521  
State banks, listing of stock in, 519; taxation of, 522, 545  
State board of equalization, 509  
State Central Committee, 282  
State convention, choice of delegates to, 277; reference to, 282  
State engineers, comparative study of, 42-48  
State Highway Commission, xii, 6, 38, 39, 40, 83, 85; creation of, 19, 30, 31; functions of, 19, 20; effort to strengthen powers of, 33; State aid fund, supervised by, 33; recommendations relative to increase in powers of, 88, 89, 90, 91; relation of, to State College, 91  
State highway departments, comparative study of, 41, 42-48  
State insurance, 475, 480, 484; effect of, 479, 480  
State Mine Inspectors, 485, 486  
State officers, nomination papers of, 276; limitation on expenditures of candidates for, 327, 377  
State Road Convention, recommendations of, 18, 19, 39; reference to, 30, 38; progress since date of, 31  
State roads, laying out of, 36  
State Senator, expenses of candidates for, 377; candidates for, 386, 387

- State Tax Conference, 543  
 State Treasury, desirability of retaining motor vehicle tax in, 78  
 State University of Iowa, xii  
 Station records, 214  
 Statisticians, 229, 486  
 Steamboat companies, 560  
 Steamboats, 209  
 Steel Corporation, 460  
 Stock companies, 472, 525; low rates made by, 479, 480  
 Stock company insurance, ineffectiveness of, 476, 477  
 Stock watering, 103, 108-112, 152, 216; failure of cities to prevent, 134; prevention of, 154, 155; law against, in Iowa, 187  
 Stockholders, 113; effect of overcapitalization on, 114; taxation of shares of, 517-519, 521, 522, 527, 528  
 Stocks, sinking fund for redemption of, 130; reference to, 140, 225, 228; control of issue of, 155, 174, 183, 202, 214-216; law relative to issue of, in Iowa, 187; limitation on amounts of, 218; fee for approval of, 230; taxation of, 517-519, 521, 522, 527, 528, 549  
 Stokes, Edward G., 307  
 Stone, crushing of, 81  
 Stonebraker, M. B. E., 542  
*Story City Herald*, 294  
 Street car fares, 106  
 Street cars, safety appliances on, 184  
 Street railways, 98, 127, 161, 162, 188, 189, 190, 202, 209, 216, 221, 483; motive power of, 99; number of, owned by municipalities, 100; difficulties in allowing rivalry between, 101, 102; table showing capitalization of, 110, 111; reduced rates by, 116; changes in motive power of, 129; commission control of, 151; inspection of, 180; litigation over, in Des Moines, 196  
 Streets, use of, by utility companies, 188, 189  
 Sub-contractor, 467  
 Suffrage, struggle for extension of, 264; offenses against right of, 326  
 Superintendent of Public Instruction, 226; votes cast for candidates for, 286  
 Superior (Wisconsin), 195  
 Supreme Court of Iowa, decision of, 189, 190, 196, 227, 228, 345, 347, 348, 360, 522, 525, 529, 534, 535, 536; appointments by, 487, 488  
 Supreme Court of United States, 123, 140, 196, 463  
 Surgeons, regulation of, 123  
 Surplus, taxation of, 522, 523  
 Sweden, compensation system in, 441  
 Switzerland, accident insurance in, 444; reference to, 482  
 Table, on road bonds, 72, 73; on urban utilities, 110, 111, 120, 121, 147, 148, 149, 150, 192, 193, 195, 200; on primary elections, 286; on work accident indemnity, 449-454, 458, 459, 472; on tax administration, 594, 595  
 Taft, William H., 284, 289  
 Tammany, 132  
 Tank car lines, 209  
 Tariff, 547  
 Taunton (Massachusetts), 195  
 Tax administration, historical analysis of, in Iowa, 497-545; comparative study of, 546-598; system of, in West Virginia, 570-580; system of, in Kansas, 580-587; system of, in Minnesota, 588-592; system of, in Wisconsin, 592-598; standards of, 599-606  
 Tax Commission (Iowa), appointment of, 542; work of, 542, 543; recommendations of, 543-545, 599, 602  
 Tax commission, 376, 537; assessment of railroad property by, 531; recommendation for permanent, 544; work of, 552; establishment of, 555, 568; work of, in West Virginia, 570-580; work of, in Kansas, 580-587; need of establishment of permanent, 598; reasons for establishment of permanent, 604, 605  
 Tax commission movement, comparative study of, 546-598  
 Tax distribution, 536, 537, 539, 545  
 Tax ferret law, repeal of, 545  
 Tax legislation, Territorial period, 500-502; provisions of Code of 1851, 502-504; act of 1857, 504, 505; act of 1858, 505, 506; provisions of Revision of 1860, 506, 507; period from 1860 to 1873, 507-509; provisions of Code of 1873, 509, 510; period from 1873 to 1897, 510; period since 1897, 510, 511

- Tax reform, need of information on subject of, vi, vii
- Tax reform movements, comparative study of, 548-550
- Taxation, control of money raised by, 44, 45; character of reforms in, in Iowa, 497, 498; underlying principles of, 499; system of, applied to railroads, 509, 526-533; basis of, 513; system of, applied to private corporations, 517-520; system of, applied to banks, 520-524; system of, applied to insurance companies, 524-526; system of, applied to public service corporations, 533-537; special methods of, 549, 599
- Taxation in Iowa, History of*, 495
- Taxes, levy, assessment and collection of, during Territorial period, 500-502; provisions of Code of 1851 relative to, 502-504; assessment of, by county, 504, 505; semi-annual payment of, 510 (see also Levy, Assessment, Collection, Equalization, Road taxes, and Bridge taxes)
- Telegraph, effect of coming of, 265
- Telegraph companies, 202, 209, 560; taxation of, 533, 534, 549; valuation of, 604
- Telegraph system, 216
- Telephone companies, effect of competition between, 102; commission control of, 151; reference to, 162, 164, 165, 166, 202, 209, 535, 560; litigation with, in Des Moines, 197; competition between, 218, 219; taxation of, 549; valuation of, 604
- Telephone service, difference in rates for, 115, 116, 119, 121
- Telephone systems, number of, owned by municipalities, 100; references to, 216
- Telephones, 97, 98, 131, 189, 190, 191; new inventions in operation of, 99; long-distance connections of, 127; inspection of, 180
- Tennessee, road administration in, 62, 72, 73, 80; tax administration in, 558, 566
- Terminals, 209, 533; diffusion of value of, 529; taxation of, 530
- Territorial roads, act for laying out, 9; jurisdiction over, 10; laying out and opening of, 23, 24, 36
- Testimony, power to compel, 153; taking of, 211
- Tests, power to provide for, 160, 161; provisions relative to, 179, 180; making of, 183, 214
- Teter, L. D., bill introduced by, 331, 332, 339
- Texas, road administration in, 42, 63, 65, 66, 67, 72, 73, 80; popular expression on public policies in, 274; corrupt practices legislation in, 389; work accident indemnity in, 447; tax administration in, 558, 565, 568
- Thirty-fourth General Assembly, xiv
- Thompson, William, contested election of, 316
- Tickets, giving of, near polls, 322
- Tie votes, determination of, 277
- Titanic disaster, 424
- Toll bridges, 209
- Tools, duty of master relative to, 432
- Towns, granting of franchises by, 188; ordinances of, 189, 190; election of assessors in, 507; reference to, 510
- Township assessors, 504, 600, 603
- Township board, composition of, 6, 21; reference to, 9, 22, 23, 25
- Township board of equalization, 508
- Township clerk, 6, 7, 14, 15, 16, 17, 21, 27, 28
- Township collector, 7
- Township-county plan of local government, growth of sentiment in favor of, 14; arguments in favor of, 29
- Township government, 5, 35, 41; invasion of sphere of, 13
- Township Government in Iowa, History of*, 6
- Township officers, nomination of, 288
- Township road commissioners, 6, 7, 9, 21, 22, 23, 25, 83
- Township road district, 32
- Township road master, 13, 31
- Township road superintendent, appointment of, 12, 13, 32; recommendation relative to, 18; reference to, 38, 39, 63, 83, 85, 88, 90, 91; movement to create office of, 59; necessity for creation of office of, 87
- Township supervisor, 6, 21, 28, 29; road administration by, 6, 16-18; election and functions of, 8; powers and duties of, 17
- Township trustees, 6, 14, 15, 16, 17, 19, 28, 30, 38, 40, 58, 86, 87, 91, 540;

- appointments by, 12; powers vested in, 18, 27, 28, 31; act relative to duties of, 31, 32; equalization by, 508
- Townships, importance of, in Territory of Michigan, 6, 20, 21; reference to, 7, 11, 15, 16, 22, 26, 33, 38, 42, 509; increase in power of, 10, 27, 28; act for organization of, 10; reduction of importance of, 12; road functions of, 13, 33, 84, 85; position regained by, 15, 27; division of, into road districts, 15, 28, 32; blending of functions of county and, 17, 28, 29; distinction between spheres of county and, 18; centralization of authority in, 19; consolidation of road districts in, 19, 32; functions of, in Territory of Michigan, 21, 22; practical blotting out of, 25; fiscal authority transferred from, 32; limits of jurisdiction of, over highways, 45, 91; distribution of State aid to, 52-55; comparative study of road supervision by, 55-68; road funds raised by, 68-77; use of convict labor by, 81; issue of bonds by, 83; standards of legislation relative to road functions of, 86, 87; qualification for voting in, 359; assessment by, 501, 504; balance between county and, 501; substance of power gained by, 503; restoration of assessment by, 505; victory of, in tax administration, 506; present functions of, in taxation, 509-511, 600; special favors conferred on certain, 529, 530; comparative study of assessment by, 553-556; comparative study of equalization by, 562-564
- Traction companies, stock watering by, 111
- Traction resistance, 83
- Traction system, development of feeders for, 98
- Transportation (local), 97, 107
- Treasurer of political committee, 328, 329, 375, 376, 379, 383
- Treasurer of State, votes cast for candidates for, 286; reference to, 290
- Treating, prohibition of, 321, 331, 340, 342, 343; analysis of legislation against, 356-358; comparative study of legislation against, 370, 371; reference to, 394, 397
- True, F. T., 530
- Undivided profits, taxation of, 520, 522, 523
- Undue influence, definition of, 319; analysis of legislation against, 348-356; comparative study of legislation against, 371, 372; reference to, 394, 397; penalty for, 403, 404
- Unit costs, 177
- United Gas Improvement Company of Philadelphia, 133, 217
- United States, expenditures on roads in, 70; failure of municipal ownership in, 100; progress in municipal ownership in, 101; reference to, 106, 126, 264, 265; capitalization of street railways in, 111; recognition of need of urban utility regulation in, 122-124; public service commissions in, 144-186; early party machinery in, 263-268; aim of corrupt practices legislation in, 306; comparative study of corrupt practices legislation in, 368-396; number of work accidents in, 423; average wages in, 427; recent indemnity legislation in, 447-459; tax reform movements in, 548-550
- United States Circuit Court, 197
- United States Commerce Commission, 143
- United States Senators, advisory vote on, 275; nomination papers of, 276; primary vote on, 281; filling of vacancies in office of, 282; votes received by candidates for, 285; Oregon plan of electing, 296, 298; charges of bribery in election of, 314-316; deadlock in effort to elect, 316; candidates for, 386, 387
- Universities, influence of, in Germany, xii
- Upkeep, neglect of, 113, 114; reference to, 222
- Urban life, change from rural life to, 264
- Urban utilities, need of information on subject of regulation of, vi, vii; need of regulating, 97-124; failure of competition as regulator of, 101-105; evils of unregulated monopoly in, 105-122; excessive charges by, 106, 107; overcapitalization of, 108-112; lack of risks in, 109; lack of need for promoter in, 109, 110; inadequate service by, 112-114; discrimination by, 114-122; recognition of need of regulation of, 122-124; failure of local regulation of, 125-

- 187; limits of cities transcended by, 127; inefficiency of city government as arbiter in disputes with, 128, 129; failure of municipal ownership of, 135-137; appropriate organ of State regulation of, 138-143; constitutionality of State regulation of, 142, 143; comparative study of regulation of, 144-186; number of, regulated by commissions, 148, 151, 152; accounts of, 153, 154; control of mergers of, 155-157, 216-218; regulation of rates of, 157-159; regulation of service of, 159-161; joint use of facilities of, 161; opposition to State control of, 185, 204, 205; survey of regulation of, in Iowa, 187-207; franchises of, in Iowa, 187-189; regulation of, by ordinances, 189, 190; municipal operation of, in Iowa, 190, 191; criticism of present system of regulating, 191, 192; failure to regulate, in Iowa, 192, 193; rates of, in Iowa, 195; need of State supervision of, in Iowa, 205-207; suggestions for effective regulation of, 208-232; suggestions relative to number of, included in regulation, 209-211; valuation of property of, 211; uniformity of accounts of, 212; capital invested in, in Iowa, 217; restrictions on granting of franchises to, 219-221; suggestions relative to municipal ownership of, 221-224; cost of regulation of, 229; organization of, 306 (see also Public utilities)
- Utah, road administration in, 43, 50, 51, 62, 72, 79; tax administration in, 565
- Vacancies, filling of, 277, 282
- Valley Junction, 127
- Valuation for assessment, powers of Census Board relative to, 502, 505; basis of, in Iowa, 512-517, 606; method of, in case of railroads, 528; comparative study of basis of, 550-553; making of, 603, 604
- Valuation of public utilities, 127, 148, 154, 203, 211, 229; method and principles of, 177
- Vermont, road administration in, 43, 50, 51, 63, 64, 79; utility regulation in, 145, 147, 148, 149, 150, 151, 152, 154, 155, 158, 162, 163, 165, 168, 169, 170, 173
- Vice President, candidates for, 386, 387
- Virginia, road administration in, 43, 45, 50, 51, 53, 63, 65, 72, 73, 80; tax administration in, 559, 560, 565
- Voluntary relief, 451
- Volunteer political organizations, 400, 401
- Voss, C. N., 542
- Vote, smallness of, at primary, 278, 284-288
- Voters, exclusion of, 267; intimidation of, 269, 372; registration of, 270, 346; petitions signed by, 271; tests of party affiliation of, 273, 276; indifference of, to primary, 287; lack of knowledge of candidates on part of, 289; lack of appreciation of ballot by, 305; attempts to influence, 305; demoralization of, 307; legislation in Iowa against attempts to influence, 310-343; challenging of, 317; oath taken by, 317; protection of right of, to secret ballot, 325, 326; conveyance of, to polls, 326, 331, 340, 353, 354, 381, 399, 414; undue influence on, 348-356, 371, 372; deceiving of illiterate, 350, 351, 352; personation of, 373
- Votes, number of, required for nomination, 272, 273, 277
- Voting, lack of intelligence in, 289, 290; lack of appreciation of privilege of, 305; qualifications and disqualifications for, 317, 358-361; refraining from, 326, 332, 346, 347, 350; bill for compulsory, 343
- Wage-earners, average wages received by, 427; theory of equality of employer and, 431
- Wages, average of, in United States, 427; compensation for loss of, 427, 441, 442, 443, 452, 453, 467-471; reference to, 456; deductions from, 457, 475; differences in, 473
- Waite, Chief Justice, 242
- Waiting time, 453, 456, 469, 470
- Wallace, Alfred R., xi
- Warehouses, commission control of, 151; reference to, 209, 221
- Warren, Fitz Henry, 406
- Washington, road administration in, 43, 50, 58, 62, 63, 64, 73, 79; urban utility regulation in, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155,

- 158, 159, 160, 161, 162, 164, 168, 169, 170, 171, 172, 173; corrupt practices legislation in, 370; work accidents in, 429; work accident indemnity in, 447, 448, 449-454, 455, 456, 457, 458, 459, 461, 462, 463; tax administration in, 558, 565, 569
- Washington, D. C., 70, 314
- Water, 98; differences in rates for, 115, 116, 119; fixing of standards for, 160; litigation over price of, in Des Moines, 196, 197; inspection of, and testing of, 214
- Water companies, commission control of, 151; reference to, 162, 189
- Water meters, inspection and testing of, 160
- Water supply, 97
- Water works, 99, 202, 209, 221; reasons for municipal ownership of, 100; municipal ownership of, 190, 191; municipal operation of, in Iowa, 200
- Waterloo, 127, 195, 256, 334
- Watterson, Henry, 363
- Webster (Massachusetts), 195
- Webster City, 218, 256
- Weissmann, August, xi
- West Virginia, road administration in, 45, 62, 64, 73, 79; corrupt practices legislation in, 378; tax administration in, 552, 557, 558, 565, 568, 570-580, 587, 591, 603, 604
- Wharves, commission control of, 151
- Wheel guards, 184
- Whigs, reply of, to Democrats, 314, 315; charges made by, 316
- White, A. B., 572
- White-Grier-Larrabee bill, 201
- Whitney, Mr., 111, 145
- Whitney, Travis H., 183
- Whitten, Robert H., 183
- Widener, Mr., 111
- Wilcox, Delos F., 182
- Wilful misconduct, 451
- Williamstown (Massachusetts), 157
- Wilmington (Delaware), 240
- Wilson, James H., 411
- Wilson, John, bribery of, 407
- Winterset, 280
- Wisconsin, road administration in, 43, 45, 50, 51, 58, 75; regulation of urban utilities in, 118, 139, 145, 147, 148, 149, 150, 151, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 168, 169, 170, 171, 172, 173, 174, 185, 186, 194, 195, 198, 220, 230, 245; political platforms in, 274; publicity pamphlet in, 294; corrupt practices legislation in, 308, 377, 387, 390, 396, 401, 403, 404; work accidents in, 429; work accident indemnity in, 436, 447, 448, 449-454, 455, 456, 457, 458, 459, 461, 462, 463, 464, 471, 472, 473, 477, 484; tax administration in, 558, 560, 562, 565, 570, 587, 592-598
- Wisconsin, Territory of, road legislation of, 6, 8, 9; laws of, copied in Iowa, 9, 10; machinery of road administration in, 23, 24; corrupt practices legislation of, 310, 312, 313, 407
- Wisconsin, University of, 145, 176
- Wisconsin Library Commission, Legislative Reference Department of, 273
- Wisconsin Railroad Commission, 96, 145, 225; record of work of, 176-182
- Wisconsin Railroad Commission Reports*, 181
- Wishart, Mr., 182
- Witnesses, summoning of, 153
- Woburn (Massachusetts), 195
- Women, employment of, 425; average wages received by, 427; forcing of, into employments, 428
- Working place, duty of master relative to, 432
- Workmen, dangers to, 424, 425; inability of, to bear cost of accidents, 427, 428, 440; number of, indemnified for accidents, 435, 436; effect of accidents on families of, 436, 437; insurance of, in Germany, 442-444; contributions by, in Germany, 444; deductions from wages of, 457; number of, affected by indemnity act, 462; classes of, included in indemnity acts, 465-467; arguments for contributions by, 473-475 (see also Employees)
- Workmen's compensation, 440; workings of, in Great Britain, 441, 442
- Wyoming, road administration in, 50, 62, 65, 79; corrupt practices legislation in, 378; tax administration in, 565, 569
- Yerkes, Charles F., 111, 112, 114
- Young, Lafayette, 294











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