

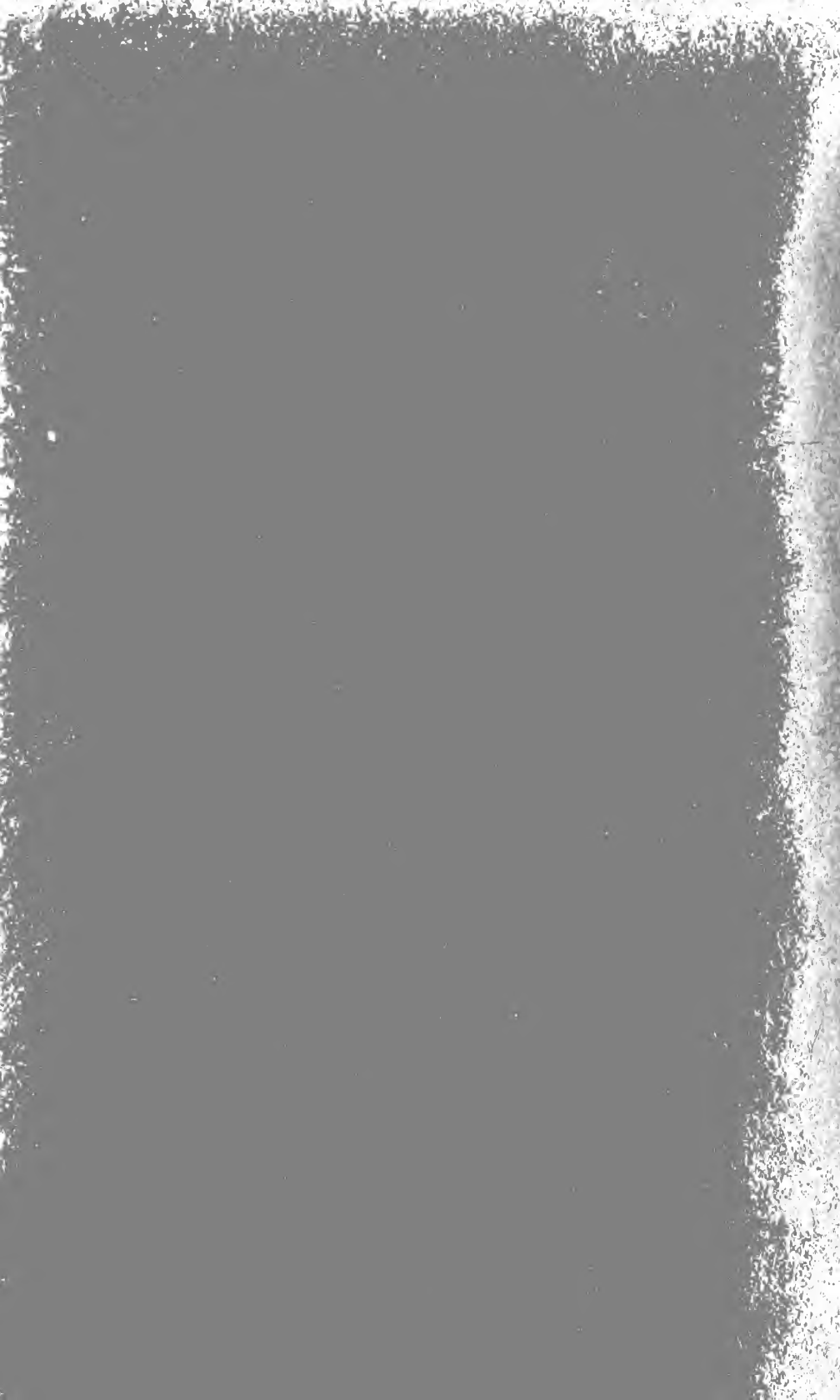
**JOURNAL
AMERICAN SOCIAL SCIENCE
ASSOCIATION**

No. 46

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A. S. S. A.

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NUMBER XLVI.

DECEMBER, 1909.

NEW YORK PAPERS OF 1909.

PAPERS READ IN THE DEPARTMENTS OF JURISPRUDENCE,
SOCIAL ECONOMY, AND EDUCATION.

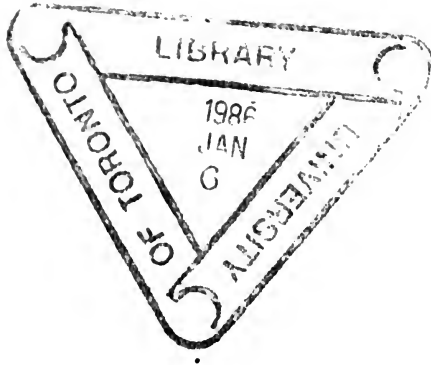


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1909.



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EDITED BY
ISAAC FRANKLIN RUSSELL,
GENERAL SECRETARY OF THE ASSOCIATION, 120 BROADWAY,
NEW YORK CITY.



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INTRODUCTION.

The papers included in this number of the *Journal of Social Science* comprise all of the New York addresses of 1909.

It may be well in this place to remind essayists once more of the *invariable rule* of the Association, that all papers engaged for the General Meeting are so secured with the understanding that they may be published in the *Journal* if deemed advisable. The members of the Council, however, are not pledged in advance to the publication of any particular paper. If writers choose to publish elsewhere, it must be with the stipulation that their papers may also be printed in the *Journal*, at the option of the Council as to date of publication. Heads of departments are not solicitous to secure essays which, in general form and substance, have been read elsewhere before presentation at the Association Meeting.

A list of all addresses and papers will be found in the Table of Contents, and volumes published by the Association may be ordered of the Boston Book Company or of Damrell & Upham, Boston, Mass., the selling agents of the Association.

MEMBERS OF THE ASSOCIATION.

All officers are *ex officio* members of the Association, but persons serving on the Department Committees may or may not be members of the Association.

In the list herewith submitted the annual and life members are given alphabetically, and the honorary and corresponding members according to nationality. The only distinction between honorary and corresponding members is that the former reside in the United States, and the latter in foreign countries. *It was voted at a meeting of the General Council that the "Journal" of the Association shall not be sent to any annual member who has not paid his dues for the year in which the convention is held which is reported in the "Journal."* *It was subsequently voted at a meeting held at Woodmont, Conn., July 6, 1898, that the General Secretary be permitted to use his discretion in carrying into effect this resolution.*

BUSINESS OF 1909.

The American Social Science Association held its Forty-sixth Annual Meeting at New York City. The proceedings of the convention were carried on in the Assembly Hall of the Metropolitan Building, corner of 23d Street, Fourth and Madison Avenues.

It was deemed best not to hold any convention of the Association in 1908. No. XLV. of the *Journal* was published in 1907. This number is accordingly XLVI. The Association met in New York City on the occasion of the twenty-fifth anniversary celebration of the American Historical Association and the American Economic Association, December 27 to 31, 1909.

No formal business was transacted at this meeting of the Association. It was deemed expedient to defer the consideration of the routine affairs of the Association until the meeting of the General Council in the fall.

The members of the Association were called to order at four o'clock P.M. by President Finley, who then delivered an introductory address. Names of the officers of the Association will be found on a succeeding page of the *Journal*.

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CONSTITUTION, BY-LAWS,
LIST OF OFFICERS, MEMBERS, ETC.,
OF THE
American Social Science Association.

DECEMBER, 1909.

CONSTITUTION.

I. This society shall be called the AMERICAN SOCIAL SCIENCE ASSOCIATION.

II. Its objects shall be classified in five departments: the first, of Education and Art; the second, of Health; the third, of Trade and Finance; the fourth, of Social Economy; the fifth, of Jurisprudence.

III. It shall be administered by a President, as many Vice-Presidents as may be chosen, a Treasurer, a Secretary, and a Council, charged with general supervision; five Department Committees, established by the Council, charged with the supervision of their respective departments; and such Local Committees as may be established by the Council at different points, to serve as branch associations. *The Council shall consist of President, Treasurer, Secretary, First and Second Vice-Presidents, the Chairman and Secretary of each Department, and ten Directors, with power to fill vacancies and to make their own By-laws.* The President, Vice-Presidents, Treasurer, Chairman, and Secretaries of Departments, and Directors shall be chosen annually by members of the Association, and shall hold office till their successors are chosen. The President, or in his absence a Director, shall be chairman of the Council. The Chairmen of the Local Committees shall be chosen at the pleasure of their respective committees. Whenever a Branch Association shall be organized and recognized as such by the Council, its President shall be *ex officio* one of the Vice-Presidents of the American Association, and, together with the Secretary and Treasurer, shall be entitled to all the privileges of membership in that Association. And, whenever a Local Department shall be organized and recognized as such by the Council, its Chairman shall become *ex officio* a member of the parent Association. The Chairman and Secretary of each Department, with the consent of the President of the Association, may appoint such special Department Committees as they may think best. The General Secretary shall be elected for three years, unless he resigns, or is removed by a two-thirds vote of the members present and voting in a regular meeting of the Council; and out of his compensation he may pay the salary of an Assistant Secretary, who may also be Secretary of one Department.

IV. Elections to membership shall be made by Standing Committee appointed by the Council in such manner as Council may provide. Any person so elected, and on payment of annual membership fee of five dollars, may continue a member by paying annually such further sum as may be fixed at the Annual Meeting of the Association, not exceeding ten dollars. On payment of one hundred dollars any person may become a life member, exempt from assessments. Honorary and corresponding members may be elected and exempted from the payment of assessments.

V. The Council shall have sole power to call and conduct General Meetings, and to publish the Transactions and other documents of the Association. The Department Committee shall have power to call and conduct Department Meetings.

VI. No amendment of this Constitution shall be made, except at an annual meeting, with public notice of the proposed amendment.

BY-LAWS OF THE ASSOCIATION.

[NOTE.—At a meeting of the Council of the Association, held May 9, 1900, at Washington, a committee of three was appointed to revise the Constitution and formulate By-laws to be considered and adopted by the Council at the earliest opportunity. That committee consisted of the Hon. S. E. Baldwin, the Hon. Francis Wayland, and the General Secretary.

At a subsequent meeting of the Council of the Association, held in New Haven, Conn., Oct. 12, 1900, this committee reported the following By-laws, which were unanimously adopted by the Council. Since the Constitution confers upon the Council power to enact its own By-laws, no further action by the Association is necessary.]

ARTICLE I.

ORDER OF BUSINESS.

The following order of business shall be observed at all meetings of the General Council of the Association:—

- | | |
|----------------------------------|---------------------------|
| (a) Reading of minutes. | (d) Report of committees. |
| (b) Report of Treasurer. | (e) Unfinished business. |
| (c) Report of General Secretary. | (f) New business. |

ARTICLE II.

QUORUM.

The quorum of the Council at all regular and special meetings shall consist of five members, of whom three shall be of the *ex officio* members of the Council.

ARTICLE III.

VACANCIES.

SECTION 1. A committee shall be appointed on the first day of the general session of the Association to nominate officers, and such committee shall report upon the morning of the last day of the general session.

SECT. 2. The President may fill any vacancy occurring during the year in any office.

ARTICLE IV.

AMENDMENTS.

The By-laws of the Association may be altered, amended, or repealed by the Council at any meeting by a two-thirds vote of the members present.

ARTICLE V.

TREASURER.

SECTION 1. It shall be the duty of the Treasurer to forward bills for annual dues on the first day of January of each successive year, and to meet all bills for printing, publishing, salaries, etc., on presentation of vouchers approved by President or First Vice-President, and the General Secretary.

SECT. 2. No funds shall be set apart for permanent investment without vote of Council; and all funds so set apart may be invested by the Treasurer at his discretion.

SECT. 3. The President or First Vice-President may draw on the Treasurer in favor of the General Secretary at any time for such sums, not exceeding one hundred dollars at any one time, as the President or First Vice-President may deem necessary to meet any proper expenses incident to the management of the Association or the proceedings of the Committee on Elections to Membership.

ARTICLE VI.

PRINTING.

SECTION 1. The selection of papers for publication in the *Journal* shall be left with the President and General Secretary, the latter serving also as editor of the *Journal*, and with the Heads of Departments. The Chairman of each Department will indicate to the General Secretary what papers, in his judgment, are available for publication in the report of proceedings.

SECT. 2. It shall be the duty of the General Secretary to print and distribute such information concerning the objects and purposes of the Association as may be useful in securing new members.

SECT. 3. It shall be the duty of the General Secretary to publish and distribute a cloth-bound copy of the annual *Journal* of the Association to each member in accordance with provisions under article referring to *Memberships*. Each essayist will be entitled to twenty-five reprints of his paper at the expense of the Association, on condition that his application is placed on file prior to the printing of his paper.

SECT. 4. If, in the judgment of the Treasurer and General Secretary, the funds of the Association will not justify publication in cloth, the current edition of the *Journal* shall appear in paper. The uniform date of publication shall be within six months of the Annual Meeting of the Association. Distribution of the *Journal* shall be effected as soon thereafter as possible.

ARTICLE VII.

MEMBERSHIPS.

SECTION 1. Elections to membership shall be made in accordance with provisions contained in Article IV. of the Constitution.

SECT. 2. After initial payment of assessment fee, all members in arrearages for the next following fiscal year of the Association shall not be entitled to the

Journal. Failure to remit annual dues for two consecutive years shall result in loss of membership in the Association. The General Secretary, however, may exercise his discretion as to the application of this rule in given cases.

ARTICLE VIII.

SALARIES.

The General Secretary shall be paid the amount of his salary in quarterly instalments upon the first days of October, January, April, and July, respectively; and he shall draw upon the Treasurer at his discretion such sums as may be allotted by vote of Council for clerical assistance.

OFFICERS OF THE ASSOCIATION.

1909-1910.

President, JOHN HUSTON FINLEY, Ph.D., LL.D., College of the City of New York.

Honorary President, FRANK B. SANBORN, Concord, Mass.

First Vice-President, Hon. OSCAR S. STRAUS, LL.D., New York City.

Second Vice-President, Hon. FREDERICK J. KINGSBURY, Waterbury, Conn.

Vice-Presidents.

Hon. SIMEON E. BALDWIN, LL.D., New Haven, Conn.	Mrs. CAROLINE H. DALL, LL.D., Washington D.C.
President DANIEL C. GILMAN LL.D., Baltimore, Md.	GRACE PECKHAM MURRAY, M.D., New York.
President J. B. ANGELL, LL.D., Ann Arbor, Mich.	H. HOLBROOK CURTIS, M.D., New York.
Hon. A. D. WHITE, LL.D., Ithaca, N.Y.	Rev. F. G. PEABODY, D.D., Cambridge, Mass.
Hon. JOHN EATON, Washington, D.C.	Prof. GEORGE L. RAYMOND, L.H.D., Washington, D.C.
Mr. GEORGE WESTINGHOUSE, LL.D., Washington, D.C.	Mrs. VIRGINIA B. MCKELWAY, Brooklyn, N.Y.
Hon. SETH LOW, LL.D., New York.	Hon. C. A. WOODS, Marion, S.C.
Hon. JOHN W. FOSTER, LL.D., Washington, D.C.	Rev. JOSEPH ANDERSON, D.D., Waterbury, Conn.

Directors.

President CHARLES W. ELIOT, LL.D., Cambridge, Mass.	EUGENE SMITH, New York City.
Hon. ST. CLAIR MCKELWAY, LL.D., L.H.D., Brooklyn, N.Y.	Hon. CHARLES S. HAMLIN, Boston, Mass.
BOOKER T. WASHINGTON, LL.D., Tuskegee, Ala.	President HARRY A. GARFIELD, LL.D., Williamstown, Mass.
	ALBERT SHAW, New York.

General Secretary, ISAAC FRANKLIN RUSSELL, D.C.L., LL.D., 120 Broadway, New York.

Treasurer, W. C. LEGENDRE, 59 Wall Street, New York.

LIFE MEMBERS.

Extract from Constitution: "On payment of one hundred dollars any person may become a Life Member, exempt from assessments."

- | | |
|---|---|
| Angell, Mr. George T., 19 Milk St., Boston, Mass. | Sanborn, F. B., Concord, Mass. |
| Baldwin, Hon. S. E., LL.D., New Haven, Conn. | Sanborn, Mrs. Louisa L., Concord, Mass. |
| Barnard, Mrs. James M., 140 Beacon St., Boston, Mass. | Smith, Prof. Goldwin, LL.D., Toronto, Canada. |
| Blatchford, Mr. J. S., Boston, Mass. | Stokes, Mr. Anson Phelps, 45 Cedar St., New York City. |
| Bradford, Mr. Gamaliel, 502 Beacon St., Boston, Mass. | Stokes, Mr. I. N. Phelps, 47 Cedar St., New York City. |
| Dodge, Mr. Charles C., 33 Broadway, New York City. | Stokes, Mr. Thomas, 47 Cedar St., New York City. |
| Dodge, William E., Jr., 99 John St., New York City. | Straus, Hon. Oscar S., LL.D., 42 Warren St., New York City. |
| Eliot, Mrs. Samuel, Boston, Mass. | Villard, Mrs. Henry, 145 W. 38th St., New York City. |
| Endicott, William, Jr., Boston, Mass. | Ward, Mr. J. Q. A., 119 W. 52d St., New York City. |
| Hermann, Mrs. H., 59 W. 56th St., New York City. | Ware, Mr. William R., 130 E. 27th St., New York City. |
| Hoyt, Hon. J. W., The "Victoria," Washington, D.C. | White, Hon. Andrew Dickson, LL.D., Ithaca, N.Y. |
| James, Hon. D. Willis, 45 Wall St., New York City. | Wolcott, Miss Ella L., Elmira, N.Y. |
| Kingsbury, Hon. Frederick J., Waterbury, Conn. | Young, Mr. J. Edward, 130 William St., New York City. |
| Letchworth, Mr. W. P., Portageville, N.Y. | |
| Libbey, Mr. Jonas M., New York City. | |

HONORARY AND CORRESPONDING MEMBERS.

In America.

- Prof. J. Irving Manatt, Providence,
R.I.
Major-Gen. O. O. Howard, Burling-
ton, Vt.
Edmund A. Meredith, Esq., care The
Toronto Income Trust Co., Yonge
St., Toronto, Can.
Hon. Domingo F. Sarmiento, Buenos
Ayres.

In Great Britain and Ireland.

- Lord Radstock, London.
Alfred Field, Esq., Birmingham.
Thomas H. Barker, Esq., Manchester.
Henry W. Acland, M.D., F.R.S.,
Oxford.
Miss Louisa Innes Lumsden, Glen-
bogie, Rhynie, Scotland.
Miss J. Frances Dove, Wycombe,
Abbey, Bucks, England.
Lord Hobhouse, 15 Bruton Street,
London.

- Rt. Hon. James Bryce, Washington,
D.C.
Geoffrey Drage, Esq., London.

In France.

- M. August Laugel, 12 Rue de la
d'Anjou, Paris.
M. Emile Cacheux, 25 Quai St.
Michel, Paris.
M. F. Buisson, Bd. 163 Montparnasse,
Paris.
M. Emil Levasseur, 24 Rue Monsieur
le Prince, Paris.
M. Arthur Raffalovich, 19 Avenue
Hoche, Paris.
M. Pierre Claudio Jannet, 22 Rue
Oudinot, Paris.

In Italy.

- Signor Martino Beltrani-Scalia, Rome.
Prof. C. F. Gabba, Pisa.

LIST OF ANNUAL MEMBERS, 1909.

[NOTE.—With reference to this enrolment some explanations are essential, and they are as follows:—

The "National Institute of Arts and Letters," organized under the auspices of the American Social Science Association, but now an independent body, still retains a certain connection with the Association in the form of Associate Memberships. The following clauses from vote passed at the Saratoga meeting of the Association define the existing status:—

Voted. That the members of the Institute be *ipso facto* associate members of the Association in return for the courtesy of the Institute in making members of the Association associate members of the Institute.

In the list subjoined, such associate members are marked with a *star*. In the matter of academic titles, such only are given as are known. Members are earnestly solicited to communicate with the editor at once respecting academic titles, and also to correct any errors which may be found upon the roll. All resignations should also be promptly reported to the General Secretary, Isaac Franklin Russell, 120 Broadway, New York City.]

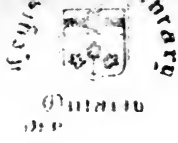
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|--|--|
| Abraham, A., 800 St. Marks Ave., Brooklyn. | Andrews, Charles, LL.D., Syracuse, N.Y. |
| *Adams, Henry, 1603 H St., N.W., Washington, D.C. | Andrews, Hon. Charles B., LL.D., Litchfield, Conn. |
| Addams, Miss Jane, Hull House, Chicago. | Anthony, Prof. Wm. A., Cooper Union, New York City. |
| Agar, John G., 31 Nassau St., New York. | Ashley, Prof. Clarence D., LL.D., N.Y. Un. Law School, New York. |
| *Alden, Henry M., care of Harper & Brothers, New York. | Ashley, George Hall, 15 W. 22d St., Indianapolis, Ind. |
| Aldrich, Charles F., Home Insurance Building, Chicago. | Ashmore, George C., M.D., 794 Republic St., Cleveland, Ohio. |
| Aldrich, Nelson W., Providence, R.I. | Ashmore, Sidney G., Union University, Schenectady, N.Y. |
| Aldridge, George W., 96 Plymouth Ave., Rochester, N.Y. | Atwood, Charles E., M.D., "Bloomingtondale," White Plains, N.Y. |
| *Alexander, John W., 120 Broadway, New York City. | Audsley, G. A., Bowling Green Office, 11 Broadway, New York. |
| *Allen, James Lane, 66 5th Ave., New York. | Austen, Peter T., 218 St. Johns Pl., Brooklyn. |
| Allen, Thomas, 12 Commonwealth Ave., Boston. | Avery, A. C., Morganton, N.C. |
| Allen, Miss Viola, 27 W. 93d St., New York City. | Avery, Edward H., Auburn, N.Y. |
| Allen, William A., Madison, Neb. | Ayers, Howard, University of Cincinnati, Cincinnati, Ohio. |
| Allison, Hon. W. B., 1124 N St., Washington, D.C. | Bacon, Edwin M., 6 Beacon St., Boston. |
| Ames, Gen. Adelbert, Lowell, Mass. | Bacon, Hon. Robert, Paris, France. |
| Ames, James Barr, LL.D., Cambridge, Mass. | Baker, David L., Wickford, R.I. |
| Anderson, E. Ellery, 27 William St., New York City. | Baker, Prof. George S., 190 Brattle St., Cambridge. |
| Anderson, Rev. Joseph, D.D., Waterbury, Conn. | Baker, Hon. John H., Indianapolis, Ind. |
| Anderson, Warren E., Pensacola, Fla. | Baldwin, Hon. S. E., LL.D., New Haven, Conn. |
| Anderson, Winslow, M.D., 1220 Sutton St., San Francisco. | Bangs, John Kendrick, Yonkers, N.Y. |

- Barber, Walter L., M.D., Waterbury, Conn.
- Barclay, Shepard, 705 Olive St., St. Louis, Mo.
- Barr, Mrs. Amelia E., Cornwall-on-Hudson, N.Y.
- Barrows, Charles Clifford, M.D., 8 W. 36th St., New York.
- Baylor, Mrs. Frances C., 313 Hall St., West Savannah, Ga.
- Beard, Daniel C., 204 Amity St., Flushing, L.I.
- Beaver, Hon. James A., Bellefonte, Pa.
- *Beckwith, J. Carroll, 58 W. 57th St., New York City.
- Bell, Clark, LL.D., 39 Broadway, New York.
- Belmont, August, 23 Nassau St., New York City.
- Benedict, E. C., Greenwich, Conn.
- Bentley, Edwin, M.D., 617 Main St., Little Rock, Ark.
- Bergen, Van Brunt, Shore Road and 77th St., Brooklyn.
- Bergen, Victor L., 1229 Second St., Milwaukee, Wis.
- Bernays, August C., M.D., 3623 Laclede Ave., St. Louis.
- Betts, B. Frank, M.D., 1609 Girard Ave., Philadelphia.
- *Bigelow, Hon. John, LL.D., Highland Falls-on-Hudson, N.Y.
- Bingham, E. F., Grafton Hotel, Connecticut Ave., Washington, D.C.
- Bishop, J. Remsen, 117 Huntington Pl., Mt. Vernon, Cincinnati, Ohio.
- Bissell, Herbert P., 714 Ellicott Sq., Buffalo, N.Y.
- Bixler, James W., D.D., 27 Broad St., New London, Conn.
- Bjorksten, Meodove, 95 Carnegie Hall, New York City.
- *Blashfield, Edwin H., 48 W. 59th St., New York.
- Blenner, Carle J., 58 W. 57th St., New York.
- Blumenberg, Marc A., Broadway and 70th St., The Ormonde, New York.
- Bowles, Samuel, Springfield, Mass.
- Boyde, David R., Norman, Okla.
- Boynton, F. D., 114 S. Geneva St., Ithaca, N.Y.
- Bracken, H. M., M.D., 1010 4th St., South Minneapolis.
- Brainerd, Ira H., 92 William St., New York.
- Braislin, Miss Alice G., Burlington, N.J.
- Brantley, W. G., Brunswick, Ga.
- Breaux, Hon. Joa. A., 1728 Canal St., New Orleans.
- Breed, William J., 1227 W. 8th St., Cincinnati.
- Brett, George P., 66 5th Ave., New York.
- Brevoort, James R., 390 N. Broadway, Yonkers, N.Y.
- Brewer, Hon. David J., LL.D., Supreme Court U.S., Washington, D.C.
- Brickell, Robert C., 634 Franklin St., Huntsville, Ala.
- Brinkerhoff, Roeliff, Mansfield, Ohio.
- Bristol, J. J. D., 1 Madison Ave., New York.
- Bronson, J. M., Waterbury, Conn.
- Brooks, Edward, 5971 Drexel Road, Philadelphia.
- Brooks, Noah, Castine, Me.
- Brown, Amos P., 20 E. Penn St., Germantown, Pa.
- Brown, Glenn, 918 F St., Washington, D.C.
- Brown, J. Stanford, 1 Broadway, New York City.
- Brown, John Howard, 378 Boylston St., Boston.
- Brown, Julius L., J. E. Brown Building, Atlanta, Ga.
- Brown, W. L., 42 W. 72d St., New York.
- Bruce, A. C., Atlanta, Ga.
- Brush, Edward N., M.D., Sheppard & Enoch Pratt Hosp., Baltimore.
- *Brush, George de Forest, Dublin, N.H.
- Buchanan, John L., Fayetteville, Ark.
- Buchanan, Joseph R., 45 Park Pl., New York.
- Bullowa, Emilie M., 32 Nassau St., New York City.
- *Bunce, Wm. Gedney, 21 Woodland St., Hartford, Conn.
- Burdette, Robert G., 801 Orange Grove Ave., Pasadena, Cal.
- Burleigh, C. B., Augusta, Me.
- Burnan, A. R., Frankfort, Ky.
- Burton, Frederick R., Yonkers, N.Y.
- Burton, James, 487 W. 22d St., New York.
- Bynum, William P., Jr., Greensboro, N.C.
- Cable, George W., L.H.D., Northampton, Mass.
- Cadwalader, John, 263 S. 4th St., Philadelphia.
- Cadwalader, John L., 40 Wall St., New York.
- Caldwell, Howard W., 511 N. 16th St., Lincoln, Neb.

- Cameron, Hon. John D., Harrisburg, Pa.
- Camp, W. H., Waterbury, Conn.
- Carter, Robert I., *Times Star*, Cincinnati, Ohio.
- Case, Theodore S., M.D., 900 W. 15th St., Kansas City, Mo.
- Cawein, Madison J., 1828 W. Market St., Louisville, Ky.
- Chamberlain, J. W., M.D., 220 Lowry Arcade, St. Paul, Minn.
- Chambers, P. H., M.D., 24 E. 53d St., New York.
- Chase, George, 35 Nassau St., New York.
- *Chase, William M., 303 5th Ave., New York.
- Chickering, J. W., The Portner, Washington, D.C.
- Choate, William G., 40 Wall St., New York.
- Christy, Howard C., 76 W. 85th St., New York.
- Church, Frederick E., Hudson, N.Y.
- Clarke, Thomas B., 5 E. 34th St., New York.
- *Clemens, Samuel L., Litt.D., Hartford, Conn.
- Clowes, George H., Waterbury, Conn.
- Cochran, Hon. W. Bourke, 31 Nassau St., New York.
- Coit, J. M., St. Paul's School, Concord, N.H.
- Coleman, Thomas D., M.D., 505 Greene St., Augusta, Ga.
- Coles, Rev. A. W., D.D., 316 Washington Ave., Elmira, N.Y.
- Collins, Joseph, M.D., 47 W. 38th St., New York City.
- Collins, Michael F., 270 River St., Troy, N.Y.
- Conner, P. S., M.D., 215 W. 9th St., Cincinnati, Ohio.
- Connolly, M. W., Memphis, Tenn.
- Cooke, George Willis, Wakefield, Mass.
- Coolidge, Hon. T. Jefferson, LL.D., 64 Ames Building, Boston, Mass.
- Cooper, Ellwood, Santa Barbara, Cal.
- Corliss, Guy C. H., Grand Forks, N.D.
- Cornwallis, Kinahan, 95 Nassau St., New York.
- Corson, Hiram, Cornell University, Ithaca, N.Y.
- Corthell, E. L., 1 Nassau St., New York.
- Costa, Paul F., Security Building, St. Louis, Mo.
- Coues, Elliott, 1726 N St., Washington, D.C.
- *Cox, Kenyon, 75 W. 55th St., New York.
- Craig, William Bayard, Des Moines, Ia., Drake University.
- Crampton, C. A., Int. Rev. Treas. Dept., Washington, D.C.
- Crandall, Charles H., New Canaan, Conn.
- Crane, R. T., Crane & Co., Chicago, Ill.
- Crane, William H., Cohasset, Mass.
- Crawshaw, Prof. W. H., Colgate University, Hamilton, N.Y.
- Crunden, Frederick M., Public Library, St. Louis, Mo.
- Culbertson, J. C., M.D., 317 W. 7th St., Cincinnati, Ohio.
- Curtis, Fanniebelle, 133 Livingstone St., Brooklyn, N.Y.
- Curtis, George W., New Haven, Conn.
- Curtis, H. Holbrook, M.D., 118 Madison Ave., New York.
- Curtis, Prof. Mattoon M., 43 Adelbert Ave., Cleveland, Ohio.
- Curtis, William E., 30 Broad St., New York.
- Cutting, R. Fulton, 32 Nassau St., New York City.
- Dabney, Prof. Charles W., University of Cincinnati, Cincinnati, Ohio.
- Davies, Julien T., 32 Nassau St., New York.
- Davis, Dr. Booth Colwell, Alfred, N.Y.
- Davis, Hon. John, Court of Claims, Washington, D.C.
- Davis, Richard Harding, 34 W. 30th St., New York.
- Day, Richard E., Litt.D., M.A., State Historian's Office, Albany.
- Dayton, Hon. Charles W., 27 William St., New York.
- De Blois, Austen K., Elgin, Ill.
- Deemer, Hon. H. E., Red Oak, Ia.
- *De Koven, Reginald, 83 Irving Pl., New York.
- Dennis, Charles H., 1893 Roscoe St., Chicago, Ill.
- De Wolf, J. Halsey, 20 Market Sq., Providence, R.I.
- Dimock, H. F., Pier No. 11, North River, N.Y.
- Dithmar, Edward A., Hotel Sans Remo, 8th Ave., New York City.
- Dixon, J. M., 5886 Von Weisen Ave., St. Louis, Mo.
- Dodd, Amzi, Bloomfield, N.J.
- Dolbear, A. E., Tufts College, Boston, Mass.

- Doughty, William Howard, Troy, N.Y.
 Douglas, Rev. George W., D.D.,
 Tuxedo Park, N.Y.
 Downes, William H., 83 Sutherland
 Rd., Boston, Mass.
 Drake, Gen. J. Madison, 116 Jeffer-
 son Ave., Elizabeth, N.J.
 Draper, Daniel, Ph.D., Central Park
 Observatory, New York City.
 Dresser, Horatio W., 272 Congress
 St., Boston, Mass.
 Drew, John, Racquet Club, New
 York.
 Drexel, George W. C., 608 Chestnut
 St., Philadelphia, Pa.
 Drumgoole, Will Allen, Estill Springs,
 Tenn.
 Duane, Russell, 2028 De Lancy Pl.,
 Philadelphia, Pa.
 Du Bois, W. E. B., Atlanta Univer-
 sity, Atlanta, Ga.
 Dudley, Charles B., Drawer, 334,
 Altoona, Pa.
 Dunning, Rev. A. E., D.D., 1 Somer-
 set St., Boston, Mass.
 Dwight, William B., Vassar College,
 Poughkeepsie, N.Y.
 Dyer, Col. D. B., Augusta, Ga.
 Eastman, Joseph, 71 Broadway, New
 York City.
 Eaton, Hon. John, Washington, D.C.
 Eberhard, Ernest, M.D., Vernon
 Heights, Mount Vernon, N.Y.
 Ebersole, E. C., Toledo, Ia.
 Edgar, William C., Minneapolis,
 Minn.
 Edgren, A. H., Lincoln, Neb.
 Edwards, George Wharton, Plainfield,
 N.J.
 Egan, Maurice Francis, 212 N. Cap-
 ital St., Washington, D.C.
 Eidlitz, Cyrus L. W., Townsend
 Building, New York City.
 Eliot, Pres. Charles W., LL.D., 17
 Quincy St., Cambridge, Mass.
 Elverson, James, 2024 Walnut St.,
 Philadelphia.
 Engelman, George J., 208 Beacon St.,
 Boston, Mass.
 Evans, James, M.D., Florence, S.C.
 Evans, J. G., Grant Park, Ill.
 Everard, Mrs. James, 1008 5th Ave.,
 New York.
 Fairchild, Hon. Charles S., LL.D., 46
 Wall St., New York.
 Farnam, Prof. Henry W., 43 Hill-
 house Ave., New Haven, Conn.
 Farquhar, A. B., York, Pa.
 Farrell, James C., 60 Willett St., Al-
 bany, N.Y.
 Fels, Maurice, 1312 Franklin St.,
 Philadelphia.
 Fenton, James, 34 Ashland Ave.,
 Buffalo, N.Y.
 Ferguson, Prof. Henry, 123 Vernon
 St., Hartford, Conn.
 Fernow, B., Army and Navy Club,
 New York.
 Ficke, C. A., 1204 Main St., Daven-
 port, Ia.
 Finerty, John F., 3562 Grand Boule-
 vard, Chicago.
 Finley, John H., Ph.D., LL.D., Col-
 lege of the City of New York, New
 York City.
 Fiske, Amos K., 7 W. 43d St., New
 York City.
 Fiske C. A., 1204 Main St., Daven-
 port, Ia.
 Fiske, Harrison Gray, 1432 Broad-
 way, New York.
 Fiske, Stephen, 64 5th Ave., New
 York.
 Flanders, Henry, 419 Walnut St.,
 Philadelphia.
 Fleming, Mrs. Williamina P., Harvard
 College Observatory, Cambridge,
 Mass.
 Flower, B. O., Pierce Building,
 Copley Sq., Boston, Mass.
 Folwell, William W., 1020 5th St.,
 S.E., Minneapolis, Minn.
 Forman, Allan, 20 Liberty St., New
 York.
 Fowler, Hon. Charles M., 720 N.
 Broad St., Elizabeth, N.J.
 Frankland, F. W., 346 Broadway,
 New York.
 Freese, John Henry, 62 Cedar St.,
 New York City.
 *French, Daniel C., 125 W. 11th St.,
 New York.
 Frothingham, A. L., Jr., Princeton, N.J.
 *Fuller, Henry B., Chicago, Ill.
 Fuller, Hon. Melville W., LL.D.,
 Washington, D.C.
 Fulton, Robert B., University of
 Mississippi, University P.O., Miss.
 Funk, I. K., D.D., LL.D., 195 Wash-
 ington Park, Brooklyn, N.Y.
 Gage, Hon. Lyman J., 45 Wall St.,
 New York City.
 Gaines, R. R., Austin, Tex.
 Gallaudet, Edward M., LL.D., Gal-
 laudet College, Washington, D.C.
 Gally, M., 130 Fulton St., New York.
 Gantt, James B., Jefferson City, Mo.
 Garrett, John B., Rosemont, Pa.
 Gates, Pres. Merrill E., LL.D., 1429
 New York Ave., Washington, D.C.

- Gatling, Richard J., 834 West End Ave., New York.
- Gay, Dr. George W., 665 Boylston St., Boston, Mass.
- Geiser, Karl F., Cedar Falls, Ia.
- Gelatt, Roland B., 417 W. Market St., Louisville, Ky.
- Gericke, Wilhelm, Upland Road, Brookline, Mass.
- Gibbons, Dr. Henry, Jr., 920 Polk St., San Francisco, Cal.
- *Gibson, C. D., Players Club, New York City.
- Gifford, Rev. Dr. O. P., 289 Highland Ave., Buffalo, N.Y.
- Gilbert, C. B., 500 W. 121st St., New York City.
- Gilbreath, Sidney G., Peabody Normal College, Nashville, Tenn.
- *Gilchrist, W. W., 107 15th St., Philadelphia, Pa.
- *Gillette, William, Plaza Hotel, New York.
- Gladden, Rev. Washington, D.D., Columbus, Ohio.
- Goddard, Morrill, *New York Journal*, New York City.
- Goetz, Philip Becker, 103 North Howard Ave., Buffalo, N.Y.
- Goodell, Rev. Charles L., D.D., 136 W. 130th St., New York City.
- Goodyear, Mrs. Frank H., 762 Delaware Ave., Buffalo, N.Y.
- Gordon, Armstead C., Staunton, Va.
- *Gordon, Rev. G. A., D.D., Boston, Mass.
- Gordy, Wilbur F., 104 Gillette St., Hartford, Conn.
- Gould, G. M., 1722 Walnut St., Philadelphia, Pa.
- Graham, George E., Manager Press Association, Albany, N.Y.
- Graham, George S., 509 Crozier Building, Philadelphia, Pa.
- *Grant, Robert, 205 Bay State Road, Boston.
- Graves, Nelson Z., S.E. cor. 3d and Arch Sts., Philadelphia, Pa.
- Graves, W. B., Andover, Mass.
- Gray, Elisha, Highland Park, Ill.
- Gray, Judge J. C., Court of Appeals, Albany, N.Y.
- Greene, Henry Copley, 111 Chestnut St., Boston.
- Greene, J. Warren, 3 Broad St., New York.
- *Gregory, Eliot, 6122 Broadway, New York City.
- Grew, Henry S., 89 Beacon St., Boston, Mass.
- Griffis, Raymond Lee, 35 Wall St., New York City.
- Griffis, Rev. William Elliott, D.D., Ithaca, N.Y.
- Griggs, Edward Howard, L.H.D., 77 Grove St., Montclair, N.J.
- Grimke, Archibald H., 1415 Corcoran St., Washington, D.C.
- Grinnell, George B., 346 Broadway, New York City.
- Grosvenor, Prof. E. A., Amherst College, Amherst, Mass.
- Grosvenor, Lemuel E., 185 Lindley Ave., Chicago, Ill.
- Guild, Curtis, Jr., State House, Boston.
- Habberton, John, New Rochelle, N.Y.
- Hainer, Bayard F., Perry, Okla.
- Haines, H. S., 665 Jefferson Ave., Detroit, Mich.
- Halford, R. J., 1622 22d St., N.W., Washington, D.C.
- Hall, C. H., Salem, Ore.
- Hall, Thomas, 10 Water St., Brooklyn, N.Y.
- Halladay, Waller, 120 Broadway, New York City.
- Hallett, Hon. Moses B., Denver, Col.
- Halsall, W. F., 620 Atlantic Ave., Boston, Mass.
- Halstead, Albert, Postal Telegraph Building, Washington, D.C.
- Hamlin, C. S., Ames Building, Boston.
- Hanford, C. H., Seattle, Wash.
- Hannan, Rev. F. Watson, D.D., 1114 Bushwick Ave., Brooklyn, N.Y.
- Harney, George E., 113 E. 36th St., New York City.
- Harris, Charles J., Dillsboro, N.C.
- Harris, Prof. W. T., LL.D., Washington, D.C.
- Harrison, Hon. Carter H., 295 Schiller St., Chicago, Ill.
- Harrison, Ralph C., 919 Pine St., San Francisco, Cal.
- Harter, George M., Delaware College, Newark, Del.
- Harvey, George F., Saratoga Springs, N.Y.
- Hassam, Childe, 152 W. 57th St., New York.
- Hastings, Frank Seymour, 80 Broadway, New York City.
- Hawes, Miss Susan M., 287 South St., Morristown, N.J.
- Hawkins, Rush C., 21 W. 20th St., New York City.
- Haynes, D. O., 90 William St., New York.
- Hazard, R. G., Peacedale, R.I.
- Hemphill, Ashton E., Holyoke, Mass.
- Henderson, Hon. J. B., 16th St. and Florida Ave., Washington, D.C.
- Herrick, A. B., 120 Liberty St., New York City.



- Herrick, Prof. C. Judson, Denison University, Granville, Ohio.
Herring, William, Tucson, Ariz.
Higgins, Algernon S., 150 6th Ave., Brooklyn, N.Y.
Higginson, James J., 16 E. 41st St., New York.
Hill, J. Stanhope, 21 Buckingham St., Cambridge, Mass.
Hill, Rev. J. Wesley, D.D., 268 Stuyvesant Ave., Brooklyn, New York.
Hills, Alfred K., M.D., 541 West End Ave., New York.
Hinds, Prof. J. I. D., Lebanon, Tenn.
Hitchcock, Hon. Henry, LL.D., 709 Wainwright Building, St. Louis, Mo.
Hobbie, John A., 716 Main St., Buffalo, N.Y.
Holland, Rev. Robert A., 2918 Pine St., St. Louis, Mo.
Holt, Henry, 34 W. 33d St., New York.
*Howard, Bronson, 201 W. 78th St., New York.
*Howells, W. D., LL.D., Litt.D., Kittery, Me.
Howland, Richard S., *Journal Office*, Providence, R.I.
Hoyt, Colgate, 36 Wall St., New York.
Hubbell, Hon. Charles Bulkley, New York City.
Hughes, Rupert, Criterion, 156 5th Ave., New York.
Hunt, Richard H., 28 E. 21st St., New York City.
Huston, J. W., Boise City, Ida.
Hyde, Dr. James Nevins, 100 State St., Chicago, Ill.
Indiana State Library, Indianapolis, Ind.
Jackson, Theodore F., 10 W. 43d St., New York.
Jacobi, A., M.D., LL.D., 19 E. 47th St., New York.
James, Henry, Lambs House, Rye, England.
James, Prof. William, LL.D., Harvard University, Cambridge, Mass.
Janeway, Edward G., M.D., LL.D., 36 W. 40th St., New York.
Jelly, Arthur C., M.D., 69 Newbury St., Boston, Mass.
Jenkins, Judge James G., Milwaukee, Wis.
John, Samuel Will, 2669 Highland Ave., Birmingham, Ala.
Johnson, Henry V., 1038 Pennsylvania Ave., Denver, Col.
*Johnson, Robert Underwood, the *Century Magazine*, New York City.
Jones, Breckenridge, St. Louis, Mo.
Keasbey, Lindley M., Bryn Mawr, Pa.
Keaton, Hon. James R., Oklahoma City, Okla.
Kellogg, Dr. James H., Battle Creek, Mich.
Kelly, Robert Morrow, 1536 2d St., Louisville, Ky.
Kenealy, Alexander C., 445 1st St., Brooklyn, N.Y.
Kimball, Benjamin A., Concord, N.H.
Kingsbury, Hon. Frederick J., Waterbury, Conn.
Kipling, Rudyard, Athenæum Club, Pall Mall, S.W., London.
Kobbe, Gustav, 138 Broadway, New York.
Kohlsaat, H. H., Chicago, Ill.
Kohns, Lee, 127 W. 79th St., New York.
Kursheedt, Manuel A., 35 Warren St., New York.
*La Farge, Bancel, 51 W. 10th St., New York.
*La Farge, John, 51 W. 10th St., New York.
Lang, B. J., 8 Brimmer St., Boston, Mass.
*Lathrop, Francis, 29 Washington Sq., New York.
Lea, Henry Charles, 2000 Walnut St., Philadelphia.
Leavitt, John Brooks, 30 Broad St., New York.
LeGendre, William C., 59 Wall St., New York City.
Leipziger, Henry M., LL.D., 324 E. 50th St., New York.
Levy, James, St. Paul Building, Cincinnati, Ohio.
Lewis, E. H., Lewis Inst., Madison and Robey Sts., Chicago, Ill.
Lindsey, C. E., Fall River, Mass.
Lippincott, Craig, 218 W. Rittenhouse Sq., Philadelphia.
Logan, James E., M.D., Kansas City, Mo.
Loring, Augustus P., 22 Congress St., Boston, Mass.
Lounsbury, Prof. Thomas R., LL.D., L.H.D., New Haven, Conn.
Low, A. Maurice, 1410 G St., Washington, D.C.
Lyman, Arthur T., P.O. Box 1717, Boston, Mass.
*Mabie, Hamilton W., LL.D., L.H.D., the *Outlook*, New York City.
Macmonnies, Fred W., Paris, France.
Magie, W. J., 556 N. Broad St., Elizabeth, N.J.

- Magill, Prof. E. H., 128 W. 43d St., New York.
- Magruder, Benjamin D., 7 Washington Pl., Chicago.
- *Mahan, Capt. A. T., LL.D., D.C.L., 160 W. 86th St., New York.
- Marshall, James, Fall River, Mass.
- Marshall, Louis, 30 Broad St., New York.
- Martin, John, Grimes Hill, Staten Island, N.Y.
- Mason, Miss Ida, 1 Walnut St., Boston, Mass.
- Mathews, Joseph McD., Louisville, Ky.
- *Matthews, Brander, L.H.D., 681 West End Ave., New York.
- Maurice, C. S., Athens, Pa.
- Mayer, David, 1043 5th Ave., New York.
- McBryde, John M., Blacksburg, Va.
- McCarthy, Hon. John H., 137 W. 120th St., New York.
- McCutcheon, F. W., 40 Wall St., New York City.
- McClure, A. K., *Times* Office, Philadelphia, Pa.
- McCrackan, W. D., 385 Commonwealth Ave., Boston, Mass.
- *McDowell, E. A., Columbia University, New York City.
- McKeen, James, LL.D., 40 Wall St., New York.
- *McKelway, Hon. St. Clair, LL.D., D.C.L., 121 Hicks St., Brooklyn.
- McKelway, Mrs. St. Clair, 121 Hicks St., Brooklyn.
- McLain, John S., *Journal*, Minneapolis, Minn.
- *McMaster, John Bach, LL.D., Philadelphia, Pa.
- Means, W. G., 40 Water St., Boston, Mass.
- Meigs, John, High School, Pottstown, Pa.
- *Melchers, Gari I., Egmont, Holland.
- Merriam, Prof. A. R., D.D., Hartford, Conn.
- Metcalfe, James S., 19 W. 31st St., New York.
- *Miller, Joaquin, Oakland Heights, Cal.
- Miller, John S., 4810 Kenwood Ave., Chicago, Ill.
- Milligan, Rev. J. L., Allegheny, Pa.
- Mills, Luther L., 122 LaSalle St., Chicago, Ill.
- *Mitchell, Donald G., LL.D., New Haven, Conn.
- Mitchell, John W., M.D., 227 Benefit St., Providence, R.I.
- Morey, Prof. William C., Ph.D., Rochester, N.Y.
- Morrow, Judge W. W., San Francisco, Cal.
- *Mowbray, H. Siddons, 66 W. 11th St., New York City.
- *Muir, John, Martinez, Cal.
- Munson, C. LaRue, Williamsport, Pa.
- Murray, Grace Peckham, M.D., 10 E. 60th St., New York City.
- Myles, Robert C., M.D., 46 W. 38th St., New York.
- Naegele, C. F., 318 W. 57th St., New York.
- National Cash Register Co. Corporation, Dayton, Ohio.
- *Nelson, Henry Loomis, New Rochelle, N.Y.
- Nelson, William R., the *Star*, Kansas City, Mo.
- *Nevin, Ethelbert, 221 W. 57th St., New York City.
- Nicoll, Hon. Delancy, 123 E. 38th St., New York City.
- *Norton, Prof. Charles Eliot, LL.D., Cambridge, Mass.
- Ogden, Robert C., LL.D., 123 E. 56th St., New York.
- O'Grady, C. Geraldine, Pratt Institute, Brooklyn, N.Y.
- Olmstead, John C., Brookline, Mass.
- O'Meara, Stephen, 29 Pemberton Sq., Boston, Mass.
- Orlady, George B., Huntington, Pa.
- Ormond, Alexander T., Princeton, N.J.
- Orr, Miss Mary Moore, 102 Remsen St., Brooklyn, N.Y.
- Page, Edward D., 60 Worth St., New York City.
- *Page, Thomas Nelson, 1759 R St., Washington, D.C.
- Paquin, Paul, M.D., Asheville, N.C.
- *Parker, Prof. Horatio W., Yale University, New Haven, Conn.
- Parkman, Henry, LL.D., 209 Washington St., Boston, Mass.
- Parrish, James C., 45 Broadway, New York.
- Parrish, Samuel L., 25 Broad St., New York City.
- Parsons, Frank, 11 St. James Ave., Boston.
- Patterson, John H., Dayton, Ohio.
- Payne, W. H., M.D., Ann Arbor, Mich.
- *Pearce, Charles Sprague, Paris, France.
- Pearce, Richard, 1712 Sherman Ave., Denver, Col.

- *Peck, Prof. Harry Thurston, Ph.D., LL.D., Columbia University, New York City.
- Pelle, Stanton J., The Concord, Washington, D.C.
- *Perkins, Hon. James Breck, Rochester, N.Y.
- *Perry, Thomas Sargeant, 44 Sahrada Machi, Azabee, Tokio, Japan.
- Peterson, Frederick, M.D., 201 W. 54th St., New York City.
- Pettus, Miss Isabella M., 415 Madison Ave., New York.
- Pidgin, Charles Felton, Room 256, State House, Boston, Mass.
- Pierce, C. S., "Arisbe," Milford, Pa.
- Place, Chester A., Beaumont, Tex.
- Poole, Murray E., Ithaca, N.Y.
- *Porter, Benjamin C., 22 W. 11th St., New York.
- Porter, D. G., Waterbury, Conn.
- *Potter, Edward Clark, Enfield, Mass.
- Pratt Inst. Free Library, Brooklyn, N.Y.
- Pratt, S. G., 176 W. 186th St., New York City.
- Putnam, Miss Elizabeth C., 63 Marlboro St., Boston, Mass.
- *Pyle, Howard, Wilmington, Del.
- Raymond, Prof. George L., L.H.D., 1810 N St., Washington, D.C.
- Rector, Miss L. E., 40 W. 20th St., New York.
- *Reid, Robert, Players' Club, New York City.
- Reid, Whitelaw, LL.D., Ambassador, Court of St. James's, London, Eng.
- *Remington, Frederick, New Rochelle, N.Y.
- Reynolds, James B., 500 Fifth Ave., New York.
- *Rhodes, James Ford, 176 Newbury St., Boston, Mass.
- Rice, Charles E., Wilkesbarre, Pa.
- Richardson, C. W., M.D., 1317 Connecticut Ave., Washington, D.C.
- *Riley, James Whitcomb, Indianapolis, Ind.
- Rinehart, C. D., Jacksonville, Fla.
- Robertson, Miss Clare L., 16 8th Ave., Brooklyn, N.Y.
- Robertson, Robert H., 160 5th Ave., New York City.
- Rockwood, Prof. C. G., Jr., 34 Bayard Lane, Princeton, N.J.
- Roelker, William G., Providence, R.I.
- *Roosevelt, Hon. Theodore, LL.D., L.H.D., Oyster Bay (L.I.) N.Y.
- Rosendale, Hon. S. W., 57 State St., Albany, N.Y.
- Rotch, Miss Joanna, Milton, Norfolk County, Mass.
- Rowe, Henry C., 45 Wall St., New York City.
- Rowe, G. H. M., M.D., City Hospital, Boston, Mass.
- *Royce, Prof. Josiah, LL.D., Harvard University, Cambridge, Mass.
- *Ruckstuhl, F. W., 939 8th Ave., New York.
- Russell, Prof. Isaac F., D.C.L., LL.D., 120 Broadway, New York.
- Russell, R. H., 3 W. 29th St., New York.
- Rutan, Charles H., 111 Davis Ave., Brookline, Mass.
- St. Louis Public Library, St. Louis, Mo.
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- Sampson, T. R., Sherman, Tex.
- Sanders, D. J., Biddle University, Charlotte, N.C.
- Sargent, John S., 33 Tife St., Chelsea, England.
- Satterlee, Col. Herbert L., Ph.D., 120 Broadway, N.Y.
- Scarborough, Prof. W. S., Wilberforce, Ohio.
- Schadle, Dr. J. E., Lowry Arcade, St. Paul, Minn.
- Schiff, Jacob H., 52 William St., New York.
- Schirmer, Rudolph G., 35 Union Sq., New York.
- Schmidt, Prof. Nathaniel, Cornell University, Ithaca, N.Y.
- Schoellkopf, Jacob F., 499 Delaware Ave., Buffalo, N.Y.
- Schuyler, Miss Louisa L., 37 Madison Ave., New York.
- Schwab, Gustav H., 31 W. 47th St., New York City.
- Schwan, L. M., 80 Broadway, New York.
- Scribner, Frank K., Cornwall-on-Hudson, N.Y.
- Seward, Hon. Frederick W., Montrose, Westchester County, N.Y.
- Seymour, John S., 40 Wall St., New York.
- Shedd, J. Herbert, Providence, R.I.
- Sheldon, George R., 4 Wall St., New York City.
- *Shelley, Harry Rowe, Mus. Doc., 35 Union Sq., New York.
- Shepard, Mrs. Elizabeth A., 85 Prospect St., Providence, R.I.
- Sherman, D. C., 25 Madison St., Adrian, Mich.

- Simmons, Edward, Carnegie Building, New York.
- *Sloane, Prof. W. M., 109 E. 69th St., New York.
- Slocum, Miss Jane M., 126 W. 23d St., New York.
- Smith, Eugene, 31 Nassau St., New York.
- Smith, F. Hopkinson, *Century Company*, New York.
- Smith, Rev. Samuel G., LL.D., 125 College St., St. Paul, Minn.
- Sollitt, Oliver, 140 Dearborn St., Chicago, Ill.
- Solly, Dr. S. Edwin, Colorado Springs, Col.
- Speer, Hon. Emory, Macon, Ga.
- Spencer, Mrs. Sarah A., 9th and D Sts., N.W., Washington, D.C.
- Spencer, Seth S., 688 W. Ferry St., Buffalo, N.Y.
- Stackhouse, T. B., Dillon, S.C., Box 168.
- Sterling, E. C., 22 Westmoreland Pl., St. Louis, Mo.
- Stevenson, Adrian D., 18 Wall St., New York.
- Stickney, George, care of First National Bank, Grand Haven, Mich.
- Stimson, Frederic J., 709 Exchange Building, Boston, Mass.
- *Stockton, Frank R., Convent Station, N.J.
- *Stoddard, Charles Warren, 149 Brattle St., Cambridge, Mass.
- Stokes, James, 49 Cedar St., New York.
- Stone, George H., Thompsonville, Ga.
- Straus, Isador, 6th Ave. and 33d St., New York.
- Street, Hon. Robt. G., Court House, Galveston, Texas.
- Street, Webster, Phoenix, Ariz.
- Sullivan, Isaac, Hailey, Ida.
- *Sullivan, T. R., 31 Massachusetts Ave., Boston.
- Sunderland, Rev. J. T., Toronto, Canada.
- Taft, Royal C., Box 1144, Providence, R.I.
- Taft, Hon. Russell Smith, Burlington, Vt.
- Taylor, Hon. Robert S., Fort Wayne, Ind.
- Taylor, H. C. Chatfield, 100 Washington St., Chicago.
- Taylor, James Knox, The Portland, Washington, D.C.
- Taylor, Pres. James M., D.D., LL.D., Vassar College, Poughkeepsie, N.Y.
- Taylor, Joseph S., 2275 Aqueduct Ave., New York.
- Terry, Seth S., 66 Broadway, New York.
- Thatcher, Prof. Oliver J., University of Chicago, Chicago.
- Thayer, Hon. Amos Madden, Federal Building, St. Louis, Mo.
- Thiry, J. H., 181 Academy St., Long Island City, N.Y.
- Thomas, Alfred A., 310 W. 2d St., Dayton, Ohio.
- Thomas, Allen M., 45 W. 54th St., New York.
- *Thomas, Augustus, New Rochelle, N.Y.
- Thomas, Samuel, Catasauqua, Pa.
- Thompson, Hugh S., Waterbury, Conn.
- *Thompson, Maurice, Crawfordsville, Ind.
- Thompson, Hon. O. C., Cincinnati, Ohio.
- Thomson, Dr. William, 1426 Walnut St., Philadelphia, Pa.
- Thurston, Ernest L., 1508 Kenesaw St., Washington, D.C.
- Townsend, James B., Calumet Club, New York.
- Trent, Prof. W. P., Columbia University, New York City.
- Truax, Chauncey S., 52 Broadway, New York.
- Trumbull, William, P.O. Box 133, Litchfield, Conn.
- *Van der Stucken, F., Cincinnati, Ohio.
- *Van Dyke, Rev. Henry, D.D., LL.D., Princeton, N.J.
- Vaughan, J. C., P.O. Box 688, 148 W. Washington St., Chicago.
- *Vedder, Elihu, Century Club, New York.
- *Vinton, Frederick P., 247 Newbury St., Boston.
- Von Post, H. C., 32 W. 57th St., New York.
- Von Stade, F. H., 316 5th Ave., New York City.
- Waite, Prof. Charles E., University of Tennessee, Knoxville, Tenn.
- Walker, Edwin, 2612 Michigan Ave., Chicago, Ill.
- *Walker, Henry Oliver, 154 W. 55th St., New York.
- *Walker, Horatio, 51 W. 10th St., New York.
- *Walker, John Brisben, *Cosmopolitan Magazine*, New York.
- Ward, Rev. George M., D.D., President Wells College, Aurora, N.Y.

- Ward, H. C., 718 5th Ave., New York.
 Ward, Samuel B., M.D., 281 State St., Albany, N.Y.
 Ward, Prof. William G., 281 Dartmouth St., Boston, Mass.
 Warmouth, H. C., 107 Camp St., New Orleans, La.
 Warren, H. C., New Haven, Conn.
 Warren, S. Edward, Newton, Mass.
 Waterman, Hon. C. M., Davenport, Ia.
 Waters, Robert, 502 Palisade Ave., West Hoboken, N.J.
 Watrous, Prof. George D., D.C.L., 121 Church St., New Haven, Conn.
 Wayland, C. N., 9 W. 36th St., New York.
 Wayland, Mrs. Francis, New Haven, Conn.
 *Weir, J. Alden, 146 W. 55th St., New York.
 *Wendell, Prof. Barrett, 358 Marlboro St., Boston, Mass.
 Westinghouse, Mrs. George, Erskine Park, Lenox, Mass.
 Wheeler, J. Davenport, 2 Rue Marboeuf, Ave. de l'Alma, Paris.
 White, Hon. Andrew D., LL.D., L.H.D., Ithaca, N.Y.
 White, Prof. H. C., University of Georgia, Athens, Ga.
 Whitehead, Rev. John, Waltham, Mass.
 *Whiting, Arthur, Windsor, Vt.
 Willard, Ernest R., the *Democrat*, Rochester, N.Y.
 Willcox, Prof. W. F., Cornell University, Ithaca, N.Y.
 Williams, C. R., the *News*, Indianapolis, Ind.
 Williamson, Mrs. E. E., 310 Broad St., Elizabeth, N.J.
 Wilson, George Y., Brown University, Providence, R.I.
 *Wilson, Pres. Woodrow, LL.D., L.H.D., Princeton, N.J.
 Winship, Rev. A. E., D.D., 3 Somerset St., Boston, Mass.
 *Wister, Owen, 328 Chestnut St., Philadelphia, Pa.
 Wolf, Miss Alice R., 1251 Westminister St., Providence, R.I.
 *Woodberry, George E., care of *Atlantic Monthly*, Boston, Mass.
 Woodhull, Prof. J. F., Teachers' College, Columbia University, New York.
 Woods, Hon. C. A., LL.D., Marion, S.C.
 Woolley, R. W., *New York World*, New York.
 Woolworth, Hon. I. M., Omaha, Neb.
 Wright, Hon. Carroll D., LL.D., Worcester, Mass.
 Wurts, Prof. John, 13 Whitney Ave., New Haven, Conn.
 Wylie, W. G., 28 W. 40th St., New York City.
 Yates, Lorenzo G., Santa Barbara, Cal.
 Yost, J. W., 289 4th Ave., New York.
 Young, Prof. A., Evanston, Ill.

The following persons were added to the membership of the Association during the winter of 1903-04, and are recorded in this separate alphabetical arrangement for the purpose of convenient reference:—

- Acheson, Edward G., Niagara Falls, N.Y.
 Adams, Hon. Charles Francis, LL.D., 84 State St., Boston, Mass.
 Anderson, George W., 43 Tremont St., Boston, Mass.
 Arnold, Miss Sarah Louise, Simmons College, Boston, Mass.
 Baker, Bernard N., 1206 N. Charles St., Baltimore, Md.
 Baker, James H., LL.D., President University of Colorado, Boulder, Col.
 Baldwin, William A., Principal State Normal School, Hyannis, Mass.
 Barbour, Mrs. A. Maynard, care of J. B. Lippincott Co., Philadelphia, Pa.
 Bardeen, C. W., 406 S. Franklin St., Syracuse, N.Y.
 Beck, Carl, M.D., President St. Mark's Hospital, 37 E. 31st St., New York City.
 Black, Samuel T., President State Normal School, San Diego, Cal.
 Bliss, Cornelius N., 117 Duane St., New York City.
 Brackett, Jeffrey R., 41 Marlboro St., Boston, Mass.
 Brandeis, Louis D., 161 Devonshire St., Boston, Mass.
 Brewster, Eugene V., 26 Court St., Brooklyn, N.Y.
 Brooks, Sarah C., 1105 N. Eutaw St., Baltimore, Md.
 Brown, George P., Bloomington, Ill.

- Buffalo Public Library, Buffalo, N.Y.
 Burdette, Mrs. Clara B., 891 Orange Grove Blvd., Pasadena, Cal.
 Butler, William E., 98 Tremont St., Boston, Mass.
 Cabot, Samuel, 109 Commonwealth Ave., Boston, Mass.
 Caffin, Charles Henry, Mamaroneck, N.Y.
 Campbell, Miss Mary R., 5201 Drexel Ave., Chicago, Ill.
 Carlisle, Miss Ellor E., 483 Beacon St., Boston, Mass.
 Catt, Mrs. Carrie Chapman, 205 W. 57th St., New York City.
 Chancellor, William E., Superintendent of Schools, Bloomfield, N.J.
 Chestnutt, Charles W., 9719 Lamont Ave., Cleveland, Ohio.
 Clark, W. A., President State Normal School, Peru, Neb.
 Claxton, Prof. P. P., University of Tennessee, Knoxville, Tenn.
 Clinton, Rev. George W., D.D., 415 N. Myers St., Charlotte, N.C.
 Coak, Waldo L., 18 Dorchester St., Springfield, Mass.
 Cooper, Oscar Henry, LL.D., President Simmons College, Abilene, Tex.
 Cortelyou, Hon. George B., Washington, D.C.
 Cox, Archibald, 229 Broadway, New York City.
 Dawson, Miles M., 11 Broadway, New York City.
 De Forest, Robert W., 30 Broad St., New York City.
 DeKay, Charles, 413 W. 23d St., New York City.
 Dewey, Melvil, LL.D., State Library, Albany, N.Y.
 Dietrich, John, 922 N. Weber St., Colorado Springs, Col.
 Eckoff, William J., Ph.D., S. 16th St. School, Newark, N.J.
 Elliott, Sarah Barnwell, Sewanee, Tenn.
 Elmendorf, H. L., Buffalo Public Library, Buffalo, N.Y.
 Ely, Prof. Richard T., LL.D., 237 Prospect Ave., Madison, Wis.
 Ely, Robert E., City Club, New York City.
 Filene, Edward A., 453 Washington St., Boston, Mass.
 Fillebrown, C. B., 68 Essex St., Boston, Mass.
 Fitzpatrick, Frank A., 93 Summer St., Boston, Mass.
 Forbes, Prof. George M., University of Rochester, Rochester, N.Y.
 Frissell, A. S., 530 Fifth Ave., New York City.
 Gilson, N. S., Fond du Lac, Wis.
 Gove, Aaron, Denver, Col.
 Grant, Rev. Percy Stickney, D.D., 7 W. 10th St., New York City.
 Green, John Arthur, 100 Washington Sq., E., New York City.
 Groszman, Maximilian P. E., Ph.D., Fort Washington Ave. and Depot Lane, New York City.
 Grouard, John S., M.D., Nantucket, Mass.
 Hanna, H. H., 1522 N. Penn St., Indianapolis, Ind.
 Harned, Franklin M., 17 Shepherd Ave., Brooklyn, N.Y.
 Harris, Abram Winegardner, Port Deposit, Md.
 Hatch, Abel F., 100 Washington St., Chicago, Ill.
 Hazard, Miss Caroline, President Wellesley College, Wellesley, Mass.
 Heath, D. C., 147 Highland Ave., Newtonville, Mass.
 Hill, Walter B., LL.D., Chancellor University of Georgia, Athens, Ga.
 Horton, Mrs. John Miller, 477 Delaware Ave., Buffalo, N.Y.
 Hughes, Charles E., LL.D., Albany, N.Y.
 Humphreys, Richard C., 272 Congress St., Boston, Mass.
 Jeffrey, J. A., 581 E. Town St., Columbus, Ohio.
 Johnson, B. F., 945 Pennsylvania Ave., N.W., Washington, D.C.
 Jones, Gen. Edward F., Binghamton, N.Y.
 Kehew, Mrs. Mary Morton, 29a Chestnut St., Boston, Mass.
 Knott, Mrs. Richard W., 127 E. Gray St., Louisville, Ky.
 Koren, John, 784 Beacon St., Boston, Mass.
 Lefavour, Henry, LL.D., President Simmons College, 739 Boylston St., Boston, Mass.
 Lewey, M. M., Editor Florida *Sentinel*, Pensacola, Fla.
 Locke, George Herbert, University of Chicago, Chicago, Ill.
 Macy, V. Everit, 68 Broad St., New York City.
 Mallory, Frank Burr, M.D., 116 Longwood Ave., Brookline, Mass.
 Mark, E. H., Centre and Walnut Sts., Louisville, Ky.

- Martin, T. H., Southern Rug and Carpet Mills, Atlanta, Ga.
- Matthews, Arthur J., Normal School, Tempe, Ariz.
- McCormick, Stanley W., 7 Munroe St., Chicago, Ill.
- McNeil, Hon. George E., 69 Rindge Ave., North Cambridge, Mass.
- Meldrim, Hon. Peter W., Savannah, Ga.
- Merritt, Schuyler, Stamford, Conn.
- Meserve, Charles F., Raleigh, N.C.
- Miller, Prof. Kelly, Howard University, Washington, D.C.
- Miller, Owen, Secretary Association Federation of Musicians, 20 Allen Building, St. Louis, Mo.
- Minot, James J., M.D., 188 Marlboro St., Boston, Mass.
- Moffat, R. Burnham, 12 E. 66th St., New York City.
- Munroe, Mrs. Chester, Englewood, N.J.
- Myrick, N. Sumner, Barristers' Hall, Boston, Mass.
- Nathan, Mrs. Frederick, 162 W. 86th St., New York City.
- O'Donnell, William J., Tremont Building, Boston, Mass.
- Ogg, Frederick A., 65 Hammond St., Cambridge, Mass.
- Olsen, J. W., State Capitol, St. Paul, Minn.
- Paine, Robert T., Jr., Queensbury St., Boston, Mass.
- Pearmain, Mrs. S. P., 388 Beacon St., Boston, Mass.
- Pinchot, Gifford, 1615 R.R. Ave., Washington, D.C.
- Playter, Franklin, 6 Beacon St., Boston, Mass.
- Pray, Jas. Sturges, Harvard University, Cambridge, Mass.
- Prescott, William H., M.D., 285 Marlboro St., Boston, Mass.
- Price, Mrs. Miriam Sutro, 379 West End Ave., New York City.
- Rand, George C., 107 Wall St., New York City.
- Rand, William, Jr., 65 Wall St., New York City.
- Reed, Hon. Warren A., Brockton, Mass.
- Rice, Dr. J. M., The Montana, 35 Mt. Morris Park, W., New York City.
- Richardson, Frederick A., Editor *International Quarterly*, Burlington, Vt.
- Roth, James A., Honolulu, T.H.
- Sandison, Howard, 404 N. Centre St., Terre Haute, Ind.
- Scudder, Myron T., State Normal School, New Paltz, N.Y.
- Sears, Francis B., National Shawmut Bank, Boston, Mass.
- Seward, Hon. George F., LL.D., 99 Cedar St., New York City.
- Shea, Thomas B., M.D., Old Court House, Boston, Mass.
- Skerrill, Mrs. Charles H., 20 E. 65th St., New York.
- Smith, Margaret K., State Normal School, New Paltz, N.Y.
- Smith, Wilford H., 150 Nassau St., New York City.
- Snow, Miss Mary S., Pratt Institute, Brooklyn, N.Y.
- Spencer, Robert C., Spencerian Business College, Milwaukee, Wis.
- Sterling, Henry, 574 Main St., Medford, Mass.
- Stewart, Seth Thayer, 640 Madison Ave., New York City.
- Stokes, J. G. Phelps, 100 William St., New York City.
- Storey, Hon. Moorfield, 735 Exchange Building, Boston, Mass.
- Thach, Charles Coleman, Alabama Poly. Institute, Auburn, Ala.
- Thomas, Hon. William H., 526 S. Perry St., Montgomery, Ala.
- Upham, Frederick W., 1700 Monroe St., Chicago, Ill.
- White, Henry, 95 W. 119th St., New York City.
- Willcox, E. S., Peoria Public Library, Peoria, Ill.
- Williamson, Rev. J. S., D.D., Haverhill, Mass.
- Woolley, Miss Mary E., L.H.D., President Mt. Holyoke College, Hadley, Mass.
- Young, Mrs. Ella Flagg, The University of Chicago, Chicago, Ill.

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OPENING ADDRESS.

PRESIDENT JOHN H. FINLEY.—I asked for the American Social Science Association the privilege and honor of representation at this great associational festival,—not that I desired its President to be heard on any of the social, economic, or political questions of the day, but because I wished the noteworthy service of this most venerable and distinguished institution to have filial remembrance; for she is now the mother, the enfeebled mother, I regret to say, grandmother, or aunt, of most, if not of all, of the associations now existent in the territory where once she dwelt alone in her omniscient interest. She sits in old age, impoverished by the very activity, the highly specialized and splendid activity, of her learned and scientific children, grandchildren, nephews, and nieces, who have so intensively cultivated each its field of the once wide-stretching territory that nothing is left to her except to live of their fruits and in her own memories. I will not believe that she has not yet years before her of usefulness,—perhaps in correlating all these knowledges here represented, the Presidents of these various descendant societies sitting as her council. But to-day I am concerned only that you shall be grateful for the glorious achievement of her child-bearing years.

I had engagement to be in Denver this week, and, when I found that I could not have release, I asked the Honorary President, Frank B. Sanborn, to present in my stead the record which I desired to have brought to your memories. He consented to prepare this record, though he could not, in his own striking figure, be present. Providence intervened yesterday in behalf of Denver to prevent my going there, and so I am here to enjoy with you this brief chronicle of the "Mother of Associations" which will be read by Mr. Russell, the Secretary.

HISTORY OF THE AMERICAN SOCIAL SCIENCE
ASSOCIATION IN A LETTER TO ITS PRESENT
SECRETARY, I. F. RUSSELL, NEW YORK.

BY F. B. SANBORN, OF CONCORD, MASS., A FOUNDER.

Dear Mr. Secretary Russell,—As the only person who has held office continuously in the American Social Science Association since its first organization, Oct. 4, 1865, I may perhaps be considered a good witness as to its aims and achievements. I was also cognizant of the movement preceding that organization, and, as secretary of the Board of State Charities of Massachusetts (the earliest of many such boards in other States), signed the call in August, 1865, which brought together at the State House in Boston the three hundred persons, chiefly from New England, who in the following October established the Social Science Association on a national basis. A small body, the Boston Social Science Association, had preceded us by a few months in the use of the European name which we adopted, and of that Boston society I believe the only survivor is now Mrs. Caroline Healey Dall, then of Boston, but now of Washington, D.C. She and Colonel T. W. Higginson, with myself, are now the only survivors, so far as I know, of the original members of the American Social Science Association, who joined in October, 1865, and indeed took an active part in the State House meeting. Both are now invalids, at a great age, and yet occasionally writing for publication in books and newspapers.

The year 1865 was a marked era in the revival and prosecution of those studies and the promotion of those practical interests which constitute the theory and the practice or application of what it has been agreed to style *Social Science*. The phrase is French, I believe, but was adopted in England by Lord Brougham and his associates in 1856, when they founded the British Social Science Association, which had a brilliant career for a quarter-century, but has long been extinct. We followed at first the general plan of Brougham and his colleagues in their organization, and several of them

became honorary members of the American Association. The problems presented in 1865, following the close of the Civil War and the first assassination of an American President, were more numerous, novel, and difficult than any existing here since the first great reorganization of order and liberty under Washington, Franklin, and Jefferson, from 1776 to 1789, when Washington became our first and most distinguished President, with Jefferson to assist him in the settlement of our difficult foreign affairs and Hamilton to do the same in the restoration of finances. All three were promoters of what we now call Social Science, and their Republic has been well called the chief practitioner of that science since the Christian era began. The death of Lincoln, greatest of Washington's successors, at the time when his sagacity would have been our guide in meeting the difficulties of 1865, complicated the dangers inherent in our situation. A grand political and social revolution had been more than half accomplished by the overthrow of negro slavery and the heresy of Secession; but it was still to be maintained in practice, under civil authority.

All minor questions of suffrage, finance, jurisprudence, social economy, and social order came then before the people and before our Association, to be debated and, if possible, settled peaceably, under new institutions built on Freedom's ancient foundations, for State and Church, as laid down by Washington and his contemporaries. A new enthusiasm to do this, springing from the accomplished revolution and the restoration of the Union, was general in the Northern States, and prevailed to some extent in the South. In the comment made by me as Secretary of the Massachusetts Board which invited the Boston meeting of Oct. 4, 1865, it was said: "On the second of August your Board directed me to issue a circular in your name, inviting a conference concerning those questions which, in Europe, have long been classed under the head of 'Social Science.' Accordingly, I sent such circulars to all parts of the Union where it was supposed any interest would be felt in the subject. Many answers were received, all expressing deep interest, from gentlemen in Maine, Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, Ohio, Kentucky, Missouri, Iowa, Minnesota, and the District of Columbia. Gentlemen from many of these States,

and in addition from Michigan and New Brunswick, met at the State House in response to your invitation; and there organized the American Association for the Promotion of Social Science,—a society from which we have reason to expect much service to science and humanity.”

This expectation has been by no means disappointed during the forty-four years it has since been in active existence. The president of the Boston meeting that created it was the illustrious War Governor Andrew of Massachusetts, who had during the Civil War promoted social reorganization by inaugurating our Board of Charities, and putting at its head Dr. Howe, the renowned philhellenist and philanthropist. (See the Second Annual Report of the Board of State Charities, Public Document No. 19, Boston, 1866, p. 6.) Those who signed the circular were Samuel G. Howe, Nathan Allen, Edward Earle, H. B. Wheelwright, F. B. Sanborn, etc. The first President of the Association was Professor William B. Rogers, a Virginian, and the son of one of Jefferson's English professors at the University of Virginia, where he had been educated; but then engaged in founding the Massachusetts Institute of Technology, since so distinguished. Its two General Secretaries were Dr. Samuel Eliot, once president of Trinity College in Hartford, and the undersigned, then secretary and afterwards chairman of the Massachusetts Board of Charities. Among the early members between 1865 and 1872 were Charles F. Adams, Edward Atkinson, Louis Agassiz, James M. Barnard, Dr. Henry Barnard, Francis W. Bird, Francis C. Barlow, George S. Boutwell, Phillips Brooks, W. C. Bryant, Charles L. Brace, Charles Butler, Salmon P. Chase, Joseph H. Choate, Edward Cooper, J. Elliot Cabot, Mellen Doane, William Endicott, H. Sidney Everett, William M. Evarts, W. P. Fessenden, James W. Grimes, U. S. Grant, James A. Garfield, John Stanton Gould, E. L. Godkin, Horace Greeley, Joseph Henry, John and William Jay, A. A. Low, Theodore Lyman, William Lloyd Garrison, Oliver Johnson, H. C. Lea, Henry Lee of Boston, Robert Paine, John Sherman, A. H. Rice, Charles Sumner, Francis S. Walker, David A. Wells, Emory Washburn, E. C. Wines, Robert C. Winthrop, and many more,—names of great importance then, most of whose bearers are now dead. With so many nursing fathers our Association nat-

urally was the mother of many children. Our first-born was the National Prison Association, founded in 1870 by a few of our early members,—Z. R. Brockway, the great prison reformer, Dr. E. C. Wines, the unwearied missionary of penal reform, Emory Washburn, Dr. Howe, and others. In 1874 we initiated at a session in New York City, when George William Curtis was our President, the National Conference of Charities and the American Health Association. Civil Service Reform, in which Mr. Curtis was long prominent, had been set on foot by our Association between 1865 and 1872, and during the administration of President Grant, one of our early members, it went forward to a degree of success. We revived the National Prison Association in 1882, which had fallen asleep after the death of Dr. Wines in 1879; and soon after the American Historical Association asked our society to assist at its birth in Saratoga, where for many years our annual meetings were held. Several other important societies have lighted their candles at our small vestal lamp, which was kept alive all these years, although sometimes the flame was low, and the oil hardly filled the bowl,—which, Dr. Watts says, is needful:—

"To keep the lamp alive,
With oil we fill the bowl,
'Tis water makes the willow thrive," etc.

When the water got low and our willows did not exactly thrive, we neither hung our harps thereon nor did we weep, remembering the more flourishing days, but we chose a new Secretary, and went several years in the strength thereof. Our most energetic Secretary—would that we could have retained him longer—was the late Henry Villard, who increased our membership, got out our Handbook of Immigration, and drew to these shores several hundred thousand, not to say millions, of those thriving citizens who now govern us in finance, industry, economics, history, and fiction,—especially in the last named. I believe I succeeded him,—nobody could replace him,—and continued to sit in that seat of the scribes for some twenty years,—usually holding also the secretaryship or chairmanship of my own special Department,—that of Social Economy; which a few of us, headed by Charles Brace and Mrs. Parkman of Boston, instituted in 1873, and first showed

what we could do at the New Year Meeting of 1874. It was out of this Department Committee that the Conference of Charities emerged, full grown, like Minerva from the head of Jove,—and has been extending her sphere and covering myriads with her shield, now for five-and-thirty years. This work and much more—too numerous in kind even to mention—went on under illustrious Presidents,—Eliot, Curtis, Gilman, Benjamin Peirce, General Eaton, David Wells, Andrew White, Francis Wayland, Dr. Kingsbury (who still instructs Connecticut and the world in the *Hartford Courant*), and others whom I need not name. Dr. William T. Harris, who lately died at Providence, after Herculean labors for many years in the twin causes of Education and Philosophy, declined the office of President, but gave us much of his strenuous aid in other ways. Hardly a subject in our whole encyclopedic round that he was not able to discuss; and the same was true of most of our Presidents,—not excepting, possibly, the honorary president, whose office, like that of Dukes, now so much out of favor, terminates only with life.

Amidst our toils and debates, at which no conclusion was ever reached that I can remember, there were rare pleasures to be shared,—the chief of which, as I now review the past, was to get round a dinner-table, or sit in a group at a Saratoga caravansary, and hear from Frank Wayland, Captain Patterson, Eugene Schuyler, and members of the New York bar stories of peace and war, of jurymen and alibis. All which was a chapter in Social Science.

CONCORD, Dec. 24, 1909.

LABOR LEGISLATION AND ECONOMIC PROGRESS.

BY PROF. HENRY W. FARNUM.

The natural world, if left to itself, is generally in a state of more or less perfect equilibrium. Those plants and those animals survive which are best adapted to their environment: the others perish. Each species has its enemies which prevent any one of them from monopolizing the earth and which, in turn, are held in check by their own enemies. As soon as civilized man steps upon the stage, however, this harmony of nature is disturbed, and the intruder may be positively destructive of those forms of life which are not able to adapt themselves to him or to minister directly to his wants. A good illustration of this is given by Theodore Roosevelt in his "Hunting Trips of a Ranchman" with regard to the buffalo.

"The most striking characteristics of the buffalo," he says, "and those which had been found most useful in maintaining the species, until the white man entered upon the scene, were its phenomenal gregariousness, . . . its massive bulk and unwieldy strength. . . . Its toughness and hardy endurance fitted it to contend with purely natural forces: to resist cold and the winter blasts or the heat of a thirsty summer, to wander away to new pastures when the feed on the old was exhausted, to plunge over broken ground, and to plough its way through snow drifts or quagmires. . . ."

"But the introduction of the horse, and shortly afterwards the incoming of white hunters carrying long-range rifles, changed all this. The buffaloes' gregarious habits simply rendered them certain to be seen, . . . their speed was not such as to enable them to flee from a horseman; and their size and strength merely made them too clumsy either to escape from or to contend with their foes." *

This is the first effect of civilized man, but not the last. The book in question was written nearly twenty-five years ago, when the buffalo seemed to be on the point of extermination. Fortunately, as man becomes more enlightened, he begins to realize that in his struggle for the supremacy over nature he

* Theodore Roosevelt, "Hunting Trips of a Ranchman," pp. 244, 245.

may carry the contest too far for his own good. We now find that somewhat tardily civilized man is trying to save from extinction the few scattered specimens of the bison that have survived, and even by skilful crossing to endow domestic cattle with some of those good qualities of their wild cousins which have enabled them to cope successfully with the climate of the plains through so many generations. Thus the stage of domestication follows the hunting stage of civilization, and the crude and wasteful processes of natural selection are replaced by those of artificial selection.

Like Orlando in the Forest of Arden, civilized man begins the struggle for existence with a drawn sword and a threat.

"He dies that touches any of this fruit
Till I and my affairs are answered."

In time, experience teaches him, in the words of the banished duke, that

"Your gentleness shall force
More than your force move us to gentleness."*

The course of man's dealings with nature is paralleled in his dealings with his fellow-men. Almost every new invention, almost every new process, creates a power which is susceptible of abuse or leads to changes in conditions which may be injurious to certain classes or certain interests. The pioneers of industry have much in common with the pioneers of the frontier. Even those improvements which seem altogether good may bring in some incidental evil, which, while not by any means counterbalancing the good, yet makes itself felt as something to be removed. A good example of this is seen in the homespun industry of some of the Scotch isles. The island of Harris has long been famous for the quality of its tweeds. The climate is, however, very wet, and the sheep have been so subject to disease that it has been the custom to rub them with tar and grease to protect them from the cold. More recently an improved breed of sheep has been introduced which is able to resist the climate, but it is now found that the grease which protected the sheep also improved the quality of the wool, so that the newer fabrics are not as good as the old ones.† This

* "As You Like It," Act II., Scene 7.

† Consular Reports, November, 1909.

is a common experience, not only in the history of inventions, but in the history of man's efforts to introduce higher forms of economic life and a higher kind of civilization.

The most important step upwards from savagery is to substitute the law of contract for the law of conquest, but as soon as violence is put down there is danger that the physical strength and the courage which were essential to existence in the ruder age will be lost or impaired. New dangers are also possible. If the law decrees that wealth shall be distributed not as the result of brute force, but through free bargaining among producers, there is a possibility that the advantage will go not to the man who produces the most, but to the man who is most unscrupulous in driving a hard bargain. It then becomes necessary to set up a new standard and to prohibit not only positive fraud, but also all contracts which may be so unequal in their operation as to discourage industry and promote trickiness. Without violence, it is possible so to frame a labor contract that the worker shall become virtually the bondsman of the employer. Thus slavery and peonage have to be prohibited as contrary to public policy. But abolish slavery, and you abolish, with the right of exploitation, the obligation of the master to care for the worker in sickness and in old age. Docility and trustfulness, which may have been useful characteristics of the slave, are converted in the free man into that disregard of the future which we call improvidence, and the superannuated or sick worker, who has made no savings and has no family to care for him, constitutes a new problem. Relieve the sick and the aged by means of private charity or public relief, and you run the risk of developing the institutional pauper and the tramp, those sorry by-products of civilization who will not support themselves, but whom charity will not suffer to starve, and who may not be put to forced labor without a violation of the constitutional prohibition of involuntary servitude.

These evils, which are observed so frequently in connection with efforts to improve social institutions, lead different minds to quite opposite conclusions. Some, exaggerating the incidental evils of progress, decry all efforts at betterment, and long for the good old times when there were no reformers. Others, realizing strongly the evils which grow up without regulation,

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think that reform has not been carried far enough and advocate some extreme remedy, such as socialism. In view of the difficulties which seem to attend both action and inaction, we naturally ask if there is no principle based upon experience which will enable us so to steer the Ship of State as to avoid both the Scylla of conservatism and the Charybdis of radicalism.

In seeking such a principle, the first thing to realize is that we are living in a highly dynamic period of the world's history. We are so accustomed to change that we sometimes do not realize all that it means or the great contrast which exists between the rate of change of the present day and any rate which has existed in any previous period of the known history of the world. These changes are seen not only in the endless improvements in mechanical processes with which the great inventions of the eighteenth and nineteenth centuries have made us familiar. More recently this spirit of progress has taken hold of what throughout history has been the most conservative of callings, and agriculture is now stimulated and vitalized by the application of science. New types of plants and animals are introduced in order to meet peculiar conditions. New methods of farming are devised by which dry lands, which have hitherto been considered infertile, are impressed into the service of an increasing population. The really significant thing with regard to these and other improvements is not that they are numerous and far-reaching, but that they are being deliberately planned. They are no longer the happy inspiration of the casual man of genius: they are often the outcome of a course of study deliberately undertaken with a definite end in view. Such establishments as the Carnegie Institution of Washington and the Sage Foundation, the agricultural experiment stations of the several States, and many departments of our universities and schools of agriculture are not only pushing forward our knowledge of Nature and her processes, but determining in advance the lines on which progress shall be made.

An interesting illustration of the tendency to anticipate discoveries is seen in the recent history of polar exploration. For centuries the difficulties of reaching the North Pole seemed almost insurmountable. One expedition after another had been undertaken only to write a new chapter in the history of

failures. When, during the summer of 1909, it was announced that two explorers had independently succeeded in accomplishing this feat, it was also disclosed that each had contracted in advance with certain newspapers for the exclusive right to publish an account of the discovery which at the time of making the contract was still problematical. Two things are significant in this episode: the first is the eagerness with which discovery is pursued; the second, the readiness to use a still unmade discovery as the basis of a property right. And if, as now seems probable, one of these expeditions was partly fictitious, this would only make the illustration more striking, as showing the impalpable foundation upon which a property right may be built up. The art of aerial navigation is still in its infancy, and yet an insurance company advertises itself as prepared to underwrite aerial risks. Every one of the fifty or sixty thousand patents applied for in our country in a single year represents a desire on the part of some one to effect a change in methods of production and to use it as the basis of some property right.

If we accept this general fact of change, we must now analyze its manifestations in order to study more closely its bearings upon labor legislation. Professor J. B. Clark, in his suggestive study of "Economic Theory as Applied to Modern Problems," enumerates five elements as characteristic of a dynamic society: (1) an increase in capital; (2) an increase in population; (3) changes in the methods of production; (4) changes in the methods of organization; (5) changes in consumers' wants.*

If we consider each of these five features of economic progress, we shall see that each one of them involves some new problems affecting labor. Many of these, fortunately, solve themselves; many others do not; and the experience of a century has proved that in at least many cases some form of legislation is necessary in order to prevent the incidental evils of progress from being perpetuated and aggravated. Let us take them up *seriatim*:—

1. Increase in capital tends to make large aggregations of wealth, which by their very size weaken the personal element involved in the relation of employer and employed. The simple, almost patriarchal expression "master and servant," which served as the rubric of the law on these subjects in the time

* Clark, "Essentials of Economic Theory," pp. 203-206.

of Blackstone, and indeed was not superseded in England as a legal term until 1875, is no longer applicable to modern industry, nor are old methods of bargaining satisfactory. New machinery must be devised to facilitate collective bargaining and to mitigate the effects of collective disagreement.

2. The increase in population often involves a crowding in industrial centres with an increase in disease, which must be dealt with by tenement-house laws and sanitary measures. The increase of population combined with modern methods of transportation leads to the amazing migration of modern times, which, in turn, creates new difficulties. To prevent the spread of contagious diseases, to prevent the abuse of new-comers, some restrictions have to be placed by law, not to stop, but to control this flood of immigration.

3. Changes in the methods of production, involving, as they do, more powerful and more complicated machines, bring many evils. In the early days of the factory system the displacement of skilled labor by unskilled was the most obvious injury felt by the workers. At the present time we are more concerned, because better acquainted, with the remoter and indirect effects of the age of machinery. We see new causes of accident, new kinds of industrial diseases, combined with a greater difficulty of securing the individual worker against the effects of accident and disease. Long experience has shown that these particular difficulties do not correct themselves, and one of the greatest problems in labor legislation at the present time is, on the one hand, to diminish accidents and disease, and, on the other, to provide some form of compensation or some form of insurance for those who are their victims. Still more important, if possible, is the effect of machinery upon the children, and therefore upon the workers of the future; and this, being comparatively remote and not realized for one or two generations, is the most difficult problem for the individual to solve. Government intervention seems the only agency sufficiently powerful and sufficiently general to save a country from the deterioration of its human capital.

4. Changes in organization tend, on the whole, to give a new advantage to capital. It is now possible for a single company or combination of companies to be spread out over many states or many continents. This, while it makes for efficiency, also

creates a power which may be abused, and results in a demand for laws putting upon capital new responsibilities in the interests of its employees. It above all points to the necessity of interstate and international labor legislation. With the aid of the International Association for Labor Legislation, a number of international treaties of great importance have been made, one of the most recent of which is a treaty between France and Great Britain, giving the workers of those countries reciprocal advantages in obtaining compensation for accidents.

5. Changes in consumers' wants create an artificial instability of business, which shows itself in alternating periods of activity and stagnation. The one tends to produce overexertion, the other unemployment, and each demands legislation.

It will be noticed that in each of these five cases the main purpose of the legislation in question is to prevent some injury to the human beings for whose sake economic progress exists and on whose efficiency its continuance depends. We should, therefore, add to the five elements of a dynamic society which have been enumerated a sixth, which has been comparatively neglected in the past, but which may prove in the future to be the most important of all. I refer to an improvement in the quality of the population itself. This is not altogether a dream. The average duration of the human life has within a century been decidedly lengthened in many of the leading countries of the world. In England and Wales, for instance, the average duration of life among males in 1838 to 1854 was $39\frac{9}{10}$ years, in 1891 to 1900 $44\frac{1}{10}$. In Sweden the average duration has increased from $39\frac{9}{10}$ in 1816 to 1840 to $50\frac{9}{10}$ in 1891 to 1900. Our statistics do not enable us to make general statements for the United States as a whole, but in several of the States the same tendency shows itself.*

Many diseases and many accidents are now recognized as clearly preventable. There is every reason to believe that by proper care human life can be lengthened, disease and accidents diminished, and the physical strength of the population improved; but, in order to bring about this most important element of progress, the State itself, which alone has an interest extending beyond that of the individual lifetime, must inter-

* Fisher, "Report on National Vitality," 1906, pp. 18, 19.

vene in order to prevent well-recognized causes of retrogression and also to promote those elements which make for improvement.

In this process, mistakes are pretty sure to be made. Eugenics has not yet reached the position of an exact science. All legislation that is passed with good intentions does not produce the desired results. The point to be emphasized is that economic progress in itself involves inevitably in each of its elements some form of labor legislation. As long as change continues, we must expect that labor legislation will be necessary. If the laws of the Medes and Persians were immutable, it was because their economic life was stagnant. We should not forget, however, that the Oriental politicians who are responsible for introducing this tradition into literature invoked the immutability of the law on behalf of a brand-new measure of their own devising, the purpose of which was to check reform by casting the reformer into a den of lions. For according to the prophet Daniel, "All the presidents of the kingdom, the governors, and the princes, the counsellors, and the captains, have consulted together to establish a royal statute, and to make a firm decree, that whosoever shall ask a petition of any God or man for thirty days, save of thee, O king, he shall be cast into the den of lions. Now, O king, establish the decree, and sign the writing, that it be not changed, according to the law of the Medes and Persians, which altereth not." * At the present day there are no more ardent advocates of the immutability of the law, none who more zealously urge that things be left alone, than those the value of whose property rights rests upon some comparatively recent law, such as a liberal charter or a high import duty.

This conception of labor legislation, if it could be generally entertained by our legislators and the public, would lead to certain important, practical results.

1. Labor legislation would be less in quantity and better in quality. A measure adopted for what seems an emergency is almost always hastily drawn and soon requires amendment. As soon as it is recognized that a certain type of legislation results from permanent conditions, more care will be bestowed upon it and the changes will be fewer.

* Book of Daniel, vi. 7, 8.

2. Legislation would also, on the whole, be more prompt. Certain general effects of industrial progress are well known by the experience of other States. These are often not corrected until they have become so flagrant that they are taken up by philanthropists or trades-unions, and corrective measures are then passed under pressure without due study. Legislation is often so afraid of crossing its bridges before it comes to them that it does not keep them in decent repair.

3. Laws would be more uniform if labor legislation were recognized as resulting from certain general economic conditions which are universal or nearly so. More care would be taken to secure harmonious action between different countries and different states in the same federation.

4. Labor laws would be less frequently the expression of class feeling. Many bills which excite prejudice on this ground would be recognized as being really in the general interest. The courts, too, might perhaps find it easier to distinguish between enactments which are really class legislation, and as such condemned by constitutional principles, and those laws which, while applying to certain definite groups, are in reality passed for the benefit of all.

5. The recognition of labor legislation as a permanent feature of our statutes would make it more consistent, because the very thought of adapting it to changes in economic conditions would force us to think more of those economic ideals which underlie subconsciously most social legislation, but are not always recognized or steadily followed.

Each great period of the world's history has had some such economic ideal, which, whether or not formulated in words, has become a part of the *mores* of the time and country and has guided the law in its main features. Under the Feudal System, for instance, society was divided into horizontal strata, based mainly on their relation to land and involving specific duties as well as rights. The Guild System dovetailed quite properly with this system, although strictly not a part of it, since under it the mechanics of the cities were classified and their places definitely determined, the crafts themselves being more or less hereditary. Whatever the merits or demerits of this system, it was one of order rather than one of freedom, one of conservatism rather than of progress.

The economic ideal of the United States is very different from this. It may not be easy to define it in a few words, but its most concise expression is perhaps found in that part of the preamble of the Federal Constitution which states, after enumerating certain political purposes, that its object is "to promote the general welfare and secure the blessings of liberty to ourselves and our posterity." Our ideal is clearly not a caste system, nor even a hierarchy of functions such as existed under the Feudal System. It is a system of freedom which implies equality of opportunity for all. This does not mean anarchy, for it is a liberty which brings blessings. It is not the paper liberty of a phrase. It is, moreover, a liberty of the race, not of the individual. All this implies, therefore, a liberty so regulated as to prevent one individual or one group from abusing their liberty to the harm of others.

This policy, though unfortunately not always realized, is seen in many typical pieces of legislation, both Federal and State. The public land policy of the United States is based upon the idea of putting the land into the hands of small farmers, therefore preventing its monopolization by a few. The Homestead Exemption laws of our States interfere with freedom of contract in the interest of the family. The Federal Government introduced within the first few years of its existence a system of caring for seamen of the merchant marine in case of sickness by means of what would now be called compulsory sick insurance.* This remarkable piece of labor legislation, enacted in 1798, anticipated by nearly ninety years the introduction of general compulsory sick insurance by Germany, showing that even in those early days of weakness and decentralization the United States was ready to practise social politics, when the practicability and the necessity of it was apparent. If a few years earlier Alexander Hamilton advocated a protective tariff, partly on the ground that it would introduce the factory system and thus secure the employment of children "of a tender age," † this was not because of any desire to break down the health of the population, but simply because the evils of the factory system were not appreciated as were the dangers of the sailor's life.

* For a full history of the Marine Hospital Service the writer is indebted to a still unpublished monograph on the subject, written by Dr. A. M. Edwards for the Carnegie Institution.

† Report on Manufactures, 1791.

We are fortunate in this country in having an ideal clearly expressed and pretty generally accepted, and it is this ideal which must give consistency to labor legislation. But it is a consistency of aim, not of words, that we must aim at. A navigator might seem vacillating to a landlubber who observed that he sailed now on the port tack and now on the starboard tack and constantly changed his helm. But through all of the apparent changes he is working steadily against the wind toward his port. Labor legislation must likewise adapt itself to the particular exigencies of the times, maintaining always, as its final purpose in the United States, to secure the blessings of liberty for ourselves and our posterity. Its very prohibitions are in the interest of a greater liberty, just as the traffic regulations of a great city put restrictions upon the individual driver for a time in order to secure a freer circulation for the traffic as a whole.

The movement for more intelligent labor legislation is, as our association has often stated, but a part of the great movement for the conservation of our natural resources. But in the construction of the irrigation works which are already reclaiming so many square miles of land and turning bad lands into fertile farms the first step is the building of a dam. There are few persons now so short-sighted as to suppose that these dams are intended to prevent the water from reaching the arid plains. Every one knows perfectly well that they are the very first condition of an adequate water supply. Likewise some restrictive legislation as applied to labor is often the condition of real economic freedom. It means that man is at last learning to apply to himself those principles of domestication, preservation, and improvement which he applied to his live stock when he emerged from the hunting stage of existence.

THE PROBLEMS OF LABOR LEGISLATION UNDER OUR FEDERAL CONSTITUTION.*

BY FREDERICK N. JUDSON.

THE LABOR QUESTION.

"Labor legislation," in its narrower sense of legislation directly affecting the relations of employer and employee, is the direct outgrowth of modern industrial conditions. When our Federal Constitution was adopted, the labor question in any modern sense was unknown in the United States, in England, or on the Continent of Europe. In England the Statute of Apprentices, enacted in 1564, in the reign of Queen Elizabeth, whereunder wages were fixed by the magistrate, was not repealed till 1814. The advanced thinkers of that time (that is, of the early years of the nineteenth century), imbued with the philosophy of Adam Smith and his followers, and including those who had the interests of the working class most at heart, believed that the removal of mediæval restrictions was all that was needed for the welfare of mankind. In France the abolition of the mediæval guilds was one of the first steps in the Revolution; and this, enacted against the opposition of the privileged orders, was welcomed by the Parisian workmen as the dawn of a happier day. It was at this time that the inventions of Hargrave, Arkwright, and Watt led speedily to the revolution of the manufacturing industries of the world. The introduction of machinery driven by steam and the consequent concentration of great manufacturing plants and the division of labor established the so-called factory system; and the trend to combination under the facilities afforded by corporate organization, which has had such tremendous influence in recent times, is too familiar to need recital.

The abolition of the mediæval restrictions, while necessitated by the industrial development, did not realize the sanguine anticipations of the betterment of the conditions of the laboring

* Reprinted from the Proceedings of the Third Annual Meeting of the American Association for Labor Legislation, Metropolitan Building, New York. The Association for Labor Legislation is a non-partisan, scientific organization interested in securing greater care and greater uniformity in protective labor legislation.

masses. In the fierce and unregulated competition which followed, a few of the laboring class of exceptional capacity rose to the position of employers; but the masses were depressed under the new conditions of concentrated industry. The unregulated employment of women and children resulted in abuses which shocked the people and brought about the beginning of the so-called Labor Legislation. The Factory Acts, under the leadership of Lord Shaftesbury, established the principle not only for England, but for the civilized world, that the plane of human competition should be elevated by the State control and regulation of the employment of women and children. The labor legislation of England, indeed of Continental Europe, as well as the States of this country, has advanced far beyond this. It has come in modern times to include any statute which in any way affects the labor contract; that is, the relation of the employer to the employed. It has extended to the specific regulation of certain hazardous employments, the length of the day's work, the sanitary condition of workshops and mines, with inspection by public authority, the prohibition of prison labor in competition with outside labor, the regulation of the time of payment of employees, and the preference of labor debts in case of insolvency of the employer. In England, early in the century, the so-called conspiracy acts which interfered with the rights of the workingmen by combination to better their own condition were repealed. In more modern times, in this country, we have had a demand for legislation abridging the right of the employer in the regulation of the condition of labor, and for the exemption of laborers from statutes enacted against combinations in industry. In England, recently, labor unions have been relieved from liability for injuries inflicted by strikes.

EMPLOYER'S LIABILITY.

But the latest development of labor legislation is in relation to the employee's right to compensation for injuries suffered in the hazards of his employment. Under the rule of the common law the employer is responsible to his employee when the injury results from his own negligence, but not where the injury results from the negligence of another employee in the common service. The fellow-servant rule was not recognized on the

Continent of Europe, but became established in our common law at the very time that the introduction of the factory system revolutionized the conditions of employment.

Under modern conditions it has become impossible for the workman to protect himself against negligence of his fellow-servant in another department of the common business, and this anomaly has resulted in modifications of the common employment rule in favor of the employees both by judicial decisions and by statute. The minute subdivisions of labor in the great centralized establishments of modern times and in our great railroad systems, and the introduction of complicated power-driven machinery, where a great number of employees are employed in different branches of one industry, have involved a vast increase of hazard to the workman and have created conditions as far as possible removed from the comparatively simple relations existing when the fellow-servant rule was first understood. The elimination of the personality of an individual employer, and the all but universal substitution therefor of an impersonal corporate control in industrial enterprise, have had far-reaching results in the relation of employer and employee.

The defence of common employment, as is well known to lawyers, is not looked upon with favor by juries, and it is materially modified in practice with different degrees in different jurisdictions by the so-called vice-principle rule, whereunder the negligence of the representative of the principle is not assumed by the employee, and by the so-called departmental rule, whereunder the fellow-servant's responsibility only extends to the same grade of employment, and by the further rule that the employer is responsible for his own negligence in not providing the necessary machinery and appliances of the employment.

These qualifications, however, have been found exceedingly difficult of application under the complicated conditions of modern enterprise. A large field is, therefore, left for the display of sympathies by juries, and subtleties by lawyers and courts, as to whether on the theory of negligence of the employer the employee can recover for injuries suffered in his employment. The results of this system are necessarily uncertain and expensive, and hence unsatisfactory both to the employer and

employee. The fellow-servant rule was all but abolished by the Act of Parliament in England in 1880, and it has been abolished or materially modified in several of the States of this country. The Employer's Liability Act enacted by Congress, both that of 1906, which was held to exceed the power of Congress, and that of 1908, in effect abolished the fellow-servant rule and introduced the doctrine of contributory negligence, whereunder it is left to the jury to determine how far the negligence of the employee contributes to the injury. The liability of the employer, however, in these acts is based distinctly on the principle of negligence.

COMPENSATION IN ENGLAND AND GERMANY.

England and Germany, and we can say the Continental countries in general, have gone far beyond the United States in substituting the principle of compensation for that of negligence in this matter of injuries to the employees in the course of their employments. Thus in England, under a conservative government in 1897, the Workmen's Compensation Act was enacted by the British Parliament. This act provided for compensation to workmen killed or injured in the course of employment according to a fixed schedule, applicable in every case where the death or injury was not due to his own fault. The effect was to substitute for the liability in tort the principle of insurance by the employer of the safety of his employee, as one of the hazards of his business, on the same principle that the buildings and machinery of the business are insured by him against loss by fire or the elements. The old doctrine of contributory negligence is done away with, except in the case of serious or wilful misconduct of the employee. Contracting out of the act is not permitted unless with reference to some scheme of insurance approved by public authority. Later, by the Act of 1900, the provisions of this act were extended to agricultural and cognate employments.

On the Continent of Europe the same result has been effected under a somewhat different system—that is, in the compulsory insurance of workingmen by the employer. Mr. Holland, in his "Principles of Jurisprudence," summarizes the legislation on this subject by saying that the tendency on the Continent of Europe is to substitute a system of State insurance for any

direct liability of the master, either for negligence or under the implied contract of indemnity, and that the burden imposed on the employer by the assumption of this liability is met by insurance; that is, by insurance companies assuming the employer's liability.

The subject of compensation to employees for injuries is now being extensively investigated in this country, both by legislative commissions in certain States and by employers and employees. Though in effect adopted by some organizations through private contract, it has not yet been adopted by statute in any State, though the principle, as will be shown later, has been adopted by Congress in relation to employees of the Federal government.

SOCIAL BETTERMENT LEGISLATION.

The term "labor legislation," however, has a broader application in the purpose of this Association for Labor Legislation than immediate relation of employer and employee. In this broader sense the term includes all so-called social betterment legislation, which finds its inspiring impulse in the humanitarian sympathies of our time and aims to use the powers of government to elevate, as far as may be, the poor and unfortunate; *i.e.*, the submerged classes of industrial civilization. Legislation of this class is illustrated in several States of this country by the extension of our public school system to include industrial education, at public expense, in primary and secondary schools, as also compulsory attendance in schools. In England it has taken a much wider field and has included the purchase of lands for laborers, the housing of the working classes, the compulsory closing of shops at specified hours, the furnishing of meals to school children, and an elaborate system of old age pensions.

LABOR LEGISLATION IN UNITED STATES.

We have, under our Federal Constitution, a sovereign national government with (as Mr. Bryce classifies it) a rigid constitution reaching directly the individual citizen as to subjects of national concern, and forty-six sovereign States, each with its own rigid constitution. In the words of Chief Justice Marshall, each (the Federal and State government) is sovereign with respect to the rights committed to it, and neither

is sovereign in respect to the rights committed to the other. Since Marshall's time the complexity of our political system has been increased under the Fourteenth Amendment through the extension of the Federal power to the protection of the rights of the citizen against impairment by State authority.

It needs only a statement of the labor problems which have been detailed, to show that the solution in the main must depend upon the legislation of the several States. The only direct legislative power of the Federal government in dealing with the relation of employer and employee, apart from its control of the District of Columbia, the Territories and dependencies, is in its right to regulate commerce among the States and with foreign nations. The difficulty growing out of this complexity of our Federal system in the enactment of wide-extended and far-reaching social legislation is inherent in the very nature of our government. It is in signal contrast with the facility with which such legislation can be enacted by Parliament of Great Britain, where there are no constitutional restraints upon legislation imposed by rigid fundamental law. The contrast is far greater now than it was at the time of the adoption of the Federal Constitution, as the authority of the House of Commons, as the controlling power of English legislation, subject to an appeal to the people, is far more distinctly established now in what we may term the constitutional law of England than it was in 1787.

This difficulty is still more complicated by the tendency in our recent constitution-making to expand our rigid State constitutions far beyond the range of fundamental laws, limiting the scope of legislative power. They have become, in fact, in some cases veritable codes of laws, dealing in many cases with the detailed subjects of legislation. These constitutional restraints, by the shortening of the legislative session and otherwise, have had the effect of making any kind of progressive legislation, particularly where public opinion is not effectively educated, very difficult of enactment.

Our rigid State constitutions with these detailed provisions, designed to impede the enactment of laws, have made the problem of effective labor legislation difficult in another point of view, in that they develop in some cases what may be termed an over-subtlety in lawyers and courts in the construction of

these constitutional provisions. This is illustrated by the frequency with which labor and other reformatory legislation has been held violative of State constitutions, while under the broader provisions of Federal Constitution such judicial annulment of Congressional legislation has been far less frequent. In this connection, however, it should be observed that the legislative measures which are thus annulled in the courts are sometimes carelessly prepared, without observance of constitutional limitations, and therefore are peculiarly vulnerable to judicial criticism. In this country personal property rights and liberty of private contract and protection against class legislation are secured both by the Federal and State Constitutions, so that a twofold constitutional question under our dual form of government is presented in testing the validity of this class of legislation.

Commerce and business are not limited by and do not recognize State lines, and this fact must be recognized in the enactment of legislation of this character, as a manufacturer is confronted with competitors from other States who may be subjected to very different legislation. Where the legislation looks only to the elevation of the plane of competition by controlling the employment of children and women, such objections may be met, as like objections to the Factory Acts of Lord Shaftesbury were met in England, by the suggestion that the increased burden to industry would be more than compensated by the increased effectiveness of labor. In a broader point of view, however, irrespective of any economic or even humanitarian considerations, the enlightened public opinion of the present day would not tolerate such conditions in our industries as would menace the future citizenship of a self-governing country. In its constitutional aspects there is an obvious difference between legislation which seeks only to remedy abuses in industrial conditions which directly affect the public welfare, as in the labor of children and women, and the imposition upon the employer, as in the recent legislation in England, of distinct burdens which add to his cost of production, with the expectation of his shifting the burden upon the consumer.

These considerations are so far-reaching that their proper discussion would require much more time than the present occasion permits. It is sufficient to say, however, that they

illustrate the care and wise discrimination with which such legislation must be prepared, not only that it may not violate the constitutional guaranties against class legislation and may conform with other constitutional requirements, but also that it may not disturb the delicate balancing of the factors of our business life, and thus embarrass the prosperity of our industries, whereon the employment of labor depends.

Under these complex conditions, in our community of federated sovereign States it is, of course, very desirable that we should have uniformity of legislation by the States on matters relating to the conditions of labor. This, however, is very difficult of realization for the obvious reason that there is a vast difference in local conditions which must be studied and to which such legislation must be adapted; and, therefore, there is a difference in the local public opinion which is necessary to secure such legislation and make it effective. The extension of manufacturing industries throughout the country has developed the fact that public opinion in the States which are newer in industrial growth is not yet prepared to enact and enforce the legislation which has been enacted and is being enforced in the older States, even in the correction of the recognized abuses.

These difficulties and complexities have led many earnest reformers, who are impressed with the facility with which such progressive legislation is enacted by a sovereign parliament of a single government under the flexible constitution of Great Britain, to deplore the restraints growing out of our complex form of government, and we have a demand not only for legislation from the Federal government which would involve a strained construction of the Federal power to regulate interstate commerce, but some go further, and ask for an amendment of the Constitution of the United States so as to give the Federal government control over all conditions of labor.

It should be observed that this disposition of reformers to look to the Federal government as the most convenient agency in securing desired reforms illustrates how little the old-time jealousy of the invasion of State rights by the enlargement of the Federal power avails against the current trend, demanding Federal action wherever it is deemed that a desired end can be more effectively secured thereby. This impulse also affects

capitalists who control great corporate interests, who are beginning to prefer one regulating master to forty-six; and also the great labor organizations, who are struggling for the betterment of their own conditions, regardless of old-time constitutional theories of the limitations of Federal power. The traditional dread of its extension carries little weight in this practical age, when the ends, commercial or philanthropic, can be best secured by the exercise of such power.

PUBLIC OPINION IN SOLUTION OF LABOR PROBLEMS.

The contrast, however, between the facility of legislation in the way of social reform under the flexible constitution of Great Britain and the delay and difficulty encountered under our Federal system of rigid constitutions, is less important when the underlying power of public opinion essential for the enforcement of any social reform is considered. It has been wisely said that legislation is the final agency by which the law is brought into harmony with social needs. Those needs must, however, exist and be recognized by prevailing public opinion before legislation, particularly in regard to such relations as employer and employee, master and servant, can become effective. More than a generation passed away before the labors of Lord Shaftesbury in the English Parliament developed a public opinion which demanded his reforms, and the so-called factory legislation was accomplished. Nearly a century passed since Bentham first advocated his reforms in law procedure, and, though recently enacted in England, public and professional opinion in this country is only recently beginning to realize the necessity for their adoption. The anti-saloon or prohibition agitation in this country is an effective illustration of the dependence of social legislation upon local public opinion. Such legislation is easily enforced in rural communities where the local opinion is favorable; but in cities, where such supporting opinion is lacking, it is necessarily a failure. In view of the continental extent of our country, with its varied climatic and geographic conditions from the lakes to the gulf and from ocean to ocean, it is obvious that no form of free government other than a federated government of independent States, with the widest extension of local control of local needs, could be successfully administered.

As I read the "Review of Labor Legislation of 1900," published by this Association, I am impressed not only with the wide scope of subjects included, but also with the indications of wide-spread interest and substantial progress in the different States in all parts of the Union. It may be true that States where manufacturing interests are comparatively new and few in number should be backward in developing a public opinion which demands an effective regulation of the conditions of employment. While information and discussion will in time develop the public opinion which will remedy existing abuses by appropriate local legislation, this gradual progress will be a sure one.

INFLUENCE OF FEDERAL GOVERNMENT.

On the other hand, the influence of the Federal government is being effectively, if not so directly, exercised. Thus the opinions of the Supreme Court in sustaining the Utah eight-hour law in mining, and later the upholding of the Oregon regulation of the hours of woman employment, carry a weighty influence in developing a public and judicial opinion in all parts of the country. Also in legislation, as in the employer's liability acts of 1906 and 1908, irrespective of any constitutional questions involved, the abolition of fellow-servant rule, and the introduction of the comparative negligence rules have, doubtless, a wide-extended influence in directing State legislation.

A still more effective illustration of the indirect influence of our Federal power is found in the Act of May 30, 1908, wherein the United States government, as one of the greatest, if not the greatest, employer of labor in the country, adopts the principle of compensation to its own employees killed or injured in the course of their employment. As the government was not subject to an enforceable employer's liability, this act was a declaration of the essential justice of the principle of compensation. No official report is yet obtainable as to the operation of the act, but I am informed that the law covers some 75,000 in the government service, and that for the eleven months ending June 30, 1909, there had been paid as compensation some \$33,000, and \$115,000 for other injuries.

The enactment and enforcement of this statute has promoted among employers the agitation of this subject of com-

pensation. In a broader point of view the Department of Commerce and Labor, not only in its regulation and control of immigration, but even in its statistical investigating powers of a non-compulsory nature, influences the trend of State legislation on these subjects. The collection by the Federal government of accurate official reports of the conditions of labor and industries of the different States is of itself a powerful factor in the education of public opinion on labor conditions.

THE NECESSITY OF RESTRAINT ON LEGISLATIVE POWER.

Our Federal government was organized upon the distinct theory that the permanent well-being of the people was secured by restraining the influence of temporary impulses and interests, and by this temporary restraint allowing the sober matured judgment of the people, through their representatives, to control. This is the political philosophy underlying our complex organization of sovereign representative republics under rigid written constitutions limiting the legislative power. Burke, in speaking of the necessity of this restraint upon the people, says: "This can only be secured by a power out of themselves, and not in the exercise of its functions, subject to the will and to those passions which it is its office to bridle and subdue. In this sense the restraints on men, as well as their liberties, are to be reckoned among their rights."

It has been wisely said that our system of constitutional restraints upon legislation obstruct the whim, but not the will, of the people. The facility with which legislation, recommended by the ministry in power, can be enacted in England, is not without its dangers, which have been freely admitted by the wisest of English statesmen. The danger, it is true, is in a great measure controlled by the tremendous power of custom and precedent on the English people, far greater than in this country on our people. Thus President Lowell, in his luminous treatise on the government of England, says there is great danger under the system of party government "to bid for the support of classes of voters by legislation for their benefit"; and he adds: "With the prevailing tone of thought and rapid changes in popular government such a tendency to deal with symptoms rather than causes is a characteristic of modern democracy, but, owing to the concentration of power

in the hands of the ministry, it is especially pronounced in the case of England."

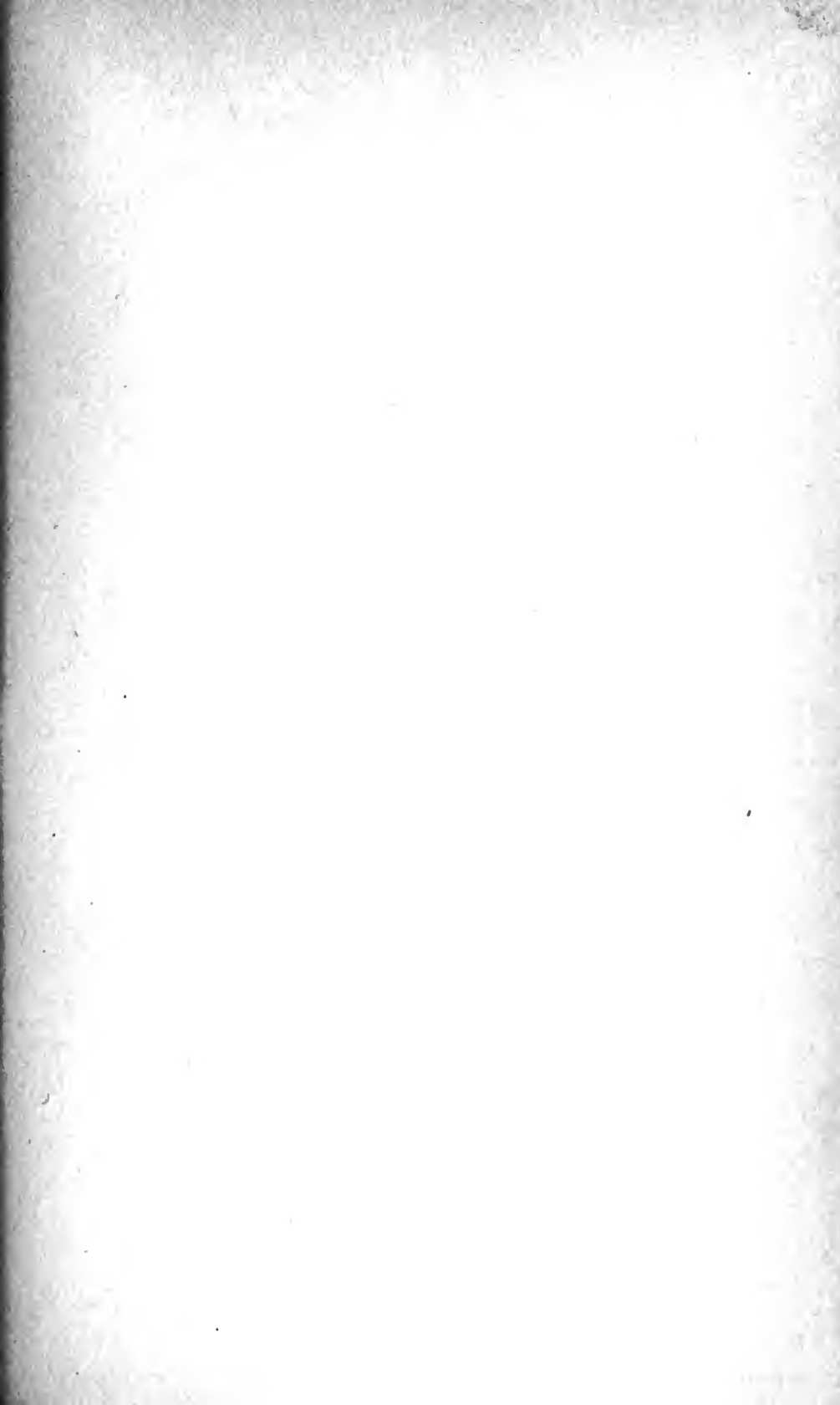
In this country, custom and precedent have far less influence in controlling the political action of our people, and therefore there is a greater necessity for the restraint upon legislation afforded by our written constitutions limiting and controlling the legislative power, whether Federal or State.

The difficulty of securing uniform State legislation in the regulation of conditions of employment, particularly where such legislation imposes substantial burdens upon the employer which would handicap him in competition with his competitors in other States, though serious, is not a hopelessly discouraging condition. As already pointed out, public opinion will sooner or later discover in all the States that the prohibition of child labor and regulation of the hours of women's labor are not only demanded by considerations of humanity and public safety, but, as long recognized in England, really in time increase the productive efficiency of labor.

Apart from such legislation necessitated by these considerations, the changes in the relation of employers and employees, as in the matter of compensation, will be gradually secured through voluntary co-operation of employers and employees. This trend is illustrated by those of our great employing industries who are adopting, through this voluntary co-operation, schemes of profit-sharing, pensioning, and of mutual insurance against the hazards of employment. We are prone in this age to rely too much on the efficacy of legislation in effecting reforms in human society. We have signs on all sides of an awakening interest in this subject.

The great usefulness of this Association is in gathering and disseminating the information as to actual conditions, which will educate the public opinion, and thus prepare the way for the co-operation of employers and employees. Public opinion in this age and country, when informed, moves rapidly. Amid so many encouraging signs we cannot but be hopeful that these problems, however difficult they may appear, will find their solution, whether by legislation or by voluntary individual action, through the working of the mightiest of political forces, —the enlightened public opinion of free men in a free state.





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